

APPENDIX TO STAY APPLICATION

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APPENDIX A

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

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

Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,

Defendants.

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

**DEFENDANTS' MOTION FOR A
PARTIAL STAY OF THE COURT'S
JANUARY 6, 2023 ORDER
FOR THE 2024 ELECTION CYCLE**

Defendants—the Senate Defendants, House Defendants, and State Election Commission Defendants—respectfully move this Court for a partial stay of its January 6, 2023 Order (“January 6 Order”) (Dkt. 493), to the extent that Order enjoins Defendants from carrying out primary and general elections in Enacted Congressional District 1 in 2024. This Court has already clarified that it “has no intention to proceed with consideration and adoption of a remedial plan during the pendency of the appeal before the United States Supreme Court.” Feb. 4, 2023 Order at 2 (“February 4 Order”) (Dkt. 501). The parties have moved expeditiously with the appeal and jointly requested that the Supreme Court issue a decision by January 1, 2024. *See, e.g.*, Juris. Stat. at 5, *Alexander v. S.C. State Conf. of the NAACP*, No. 22-807 (U.S. Feb. 17, 2023); Letter Re: Argument and Briefing Schedule, *Alexander*, No. 22-807 (U.S. May 25, 2023) (“May 25 Letter”). The Supreme Court held oral argument on October 11, 2023, but has not yet issued a decision or indicated a date by which it may do so.

The commencement of South Carolina’s 2024 primary election cycle for all offices other than president, including Congress, is imminent. The period for candidates to file a Statement of Intention of Candidacy opens on March 16 and closes on April 1. *See* Knapp Aff. ¶ 3 (Exhibit A); S.C. Election Comm’n, *2024 Election Calendar*, <https://scvotes.gov/wp->

content/uploads/2023/12/2024-Election-Calendar-scVOTES-2023-12-4-updated.pdf (last visited Mar. 5, 2024). The Election Commission Defendants, through the respective County Boards of Voter Registration and Elections (“County Boards”), must mail absentee ballots to military and overseas voters by April 27 to comply with federal law, including the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. § 20301, *et seq.* See Knapp Aff. ¶¶ 8-9; 2024 Election Calendar, *supra*. The primary election is set for June 11. See Knapp Aff. ¶ 9; 2024 Election Calendar, *supra*. And at least five major party candidates already have declared their candidacies in Enacted District 1 and neighboring Enacted District 6.¹

At this juncture, the only appropriate course is to grant a partial stay and allow the 2024 elections to proceed in Enacted District 1, regardless of the Court’s view of the merits of Defendants’ appeal. See *Purcell v. Gonzales*, 549 U.S. 1 (2006); *Merrill v. Milligan*, 142 S. Ct. 879 (2022). The absentee voting period for the upcoming primary election begins in only 51 days—which is even *shorter* than the 65 days at issue in *Milligan*, a case in which the Supreme Court granted a stay due to the imminency of a primary election, permitted the 2022 Alabama Congressional elections to proceed under the challenged plan, and eventually *affirmed* the liability finding. See *Milligan*, 142 S. Ct. 879; *Allen v. Milligan*, 599 U.S. 1 (2023). Indeed, any other approach—such as postponing elections, *see* February 4 Order at 5—is unworkable and unduly burdensome on the State, would “result in voter confusion and consequent incentive to remain away from the polls,” would undermine “[c]onfidence in the integrity of [South Carolina’s] electoral process,” and would all be for naught if the Supreme Court reverses this

¹ See Mace for Congress, <https://nancymace.org/> (last visited Mar. 5, 2024); Templeton for Congress, <https://templetonforcongress.com/> (last visited Mar. 5, 2024); Deford for Congress, <https://www.defordforcongress.com/> (last visited Mar. 5, 2024); Michael B. Moore for U.S. Congress, <https://www.michaelbmoore.com/> (last visited Mar. 5, 2024); Clyburn for Congress, <https://clyburnforcongress.com/> (last visited Mar. 5, 2024).

Court's order. *Purcell*, 549 U.S. at 4-5. The Court should grant a partial stay and allow the 2024 elections to proceed in Enacted District 1 as scheduled.

To ensure a reasonable opportunity to seek any appropriate relief in the Supreme Court if necessary, Defendants respectfully request a ruling on this motion by March 14, 2024. Undersigned counsel for Defendants has consulted with counsel for Plaintiffs, *see* Loc. Civ. R. 7.02 (D.S.C.), who indicate that Plaintiffs oppose the requested relief.

BACKGROUND

On January 6, 2023, this Court ruled that Enacted District 1 violates the Fourteenth Amendment and “enjoined” elections in that District “until further order of this Court.” *See* January 6 Order at 32. The Court also directed the General Assembly to submit a remedial map to the Court by March 31, 2023. *See id.* After filing a notice of appeal, Defendants moved to stay the January 6 Order pending appeal, arguing among other things that they would suffer irreparable harm from having to implement a remedial map before the Supreme Court had a chance to rule on Enacted District 1's constitutionality. Dkt. 495.

The Court denied Defendants' request for a stay but modified its January 6 Order in the February 4 Order. The Court clarified it “has no intention to proceed with consideration and adoption of a remedial plan during the pendency of any appeal before the United States Supreme Court.” February 4 Order at 2. Accordingly, it modified the date by which the General Assembly must submit a remedial plan to “30 days after a final decision of the United States Supreme Court.” *Id.* at 3. The Court further expressed “every hope and expectation that the appeal process can be completed and remedial plan adopted before the 2024 primary and general elections,” but suggested that “on the outside chance the process is not completed in time for the 2024 primary and election schedule, the election for Congressional District No. 1 should not be

conducted until a remedial plan is in place.” *Id.* at 5; *see id.* at 6 (citing *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)).

The parties jointly asked the Supreme Court to resolve the appeal by January 1, 2024. *See* May 25 Letter. The Supreme Court, however, has not issued a decision or indicated the date by which it may do so. Plaintiffs have not asked this Court for further relief, such as a change to South Carolina’s election calendar for Enacted District 1 or any other office. If the Supreme Court follows its historical practice, it will issue all decisions in cases argued this Term by the end of June 2024.

South Carolina’s primary elections for all offices other than president are now imminent, *see* Knapp Aff. ¶¶ 3, 9; *2024 Election Calendar, supra*, and candidates already have publicly declared their candidacies in Enacted District 1 and neighboring Enacted District 6, *supra* at 2 n.1. Those candidacies—and the voters who support them—necessarily would be affected by any delay in the primary election schedule or change in the lines of Enacted Districts 1 and 6.

LEGAL STANDARD

Federal courts typically apply a four-part standard in determining whether to grant a stay pending appeal: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 426 (2009) (quotation omitted). When, as here, a government is one of the parties, the third and fourth factors “merge.” *Id.* at 435.

Under the *Purcell* principle, however, when “a lower court” alters “a state’s election law in the period close to an election,” the “traditional test for a stay does not apply.” *Milligan*, 142

S. Ct. at 880 (Kavanaugh, J., concurring). To avoid “disruption” and “unanticipated and unfair consequences for candidates, political parties, and voters,” *id.* at 881, the public interest in orderly elections alone justifies staying the injunction, regardless of the Court’s “opinion [] on the correct disposition” of the State’s “appeals,” *Purcell*, 549 U.S. at 5.

ARGUMENT

The Court should grant a partial stay of the January 6 Order under the *Purcell* principle given the imminence of the primary election. Alternatively, the Court should grant a partial stay under the traditional standard because Defendants are likely to prevail on appeal.

I. A Partial Stay Is Warranted Under the *Purcell* Principle.

Purcell mandates a partial stay to allow the 2024 elections to proceed in Enacted District 1. Indeed, failing to grant a stay would impose extraordinary disruption on the State and its voters: it would require the State to make last-minute changes to its election rules either by rushing through a new districting map or upsetting the carefully calibrated primary date and attendant deadlines—or both. The imperative to avoid such disruption, and the attendant voter confusion, erosion of voter confidence, and disincentivizing of voter turnout, alone warrants a stay. *See, e.g., Purcell*, 549 U.S. at 4-5; *Milligan*, 142 S. Ct. at 882 (Kavanaugh, J., concurring).

This Court has stated it “has no intention to proceed with consideration and adoption of a remedial plan during the pendency of any appeal before the United States Supreme Court.” February 4 Order at 2. That decision not to proceed to a remedial phase during the pendency of Defendants’ appeal is both sensible and correct as a matter of law. *See, e.g., Milligan*, 142 S. Ct. 879 (granting stay of injunctions “pending further order of the Court” while expressing no opinion on the merits); *id.* at 882 (Kavanaugh, J., concurring); *Milligan*, 599 U.S. 1 (lifting earlier stay and affirming liability finding); *Benisek v. Lamone*, 585 U.S. 155, 157-58, 160 (2018) (holding that, even assuming challenged plan was unconstitutional, the district court

properly refused to enjoin its use because “the timely completion of a new districting scheme in advance of the [next] election season” was not feasible); *Reynolds v. Sims*, 377 U.S. 533, 586 (1964) (commending district court for “wisely ... declining to stay the impending primary election” using plan it had found unconstitutional).

Moreover, even if the Supreme Court were to issue a decision affirming this Court’s order during its next public session on March 15²—or, obviously, even later in its Term, such as *after* the June 11 primary date—there *still* would not be enough time to adopt a remedial plan for the 2024 elections. After all, the General Assembly would at minimum remain entitled to at least 30 days to enact a remedial plan in the first instance, *see* February 4 Order at 3; any remedial proceedings in this Court would take significant time; and the primary election could not be conducted until *after* candidate filing and the mailing of absentee ballots. At this date, there is simply no realistic way that a remedial process could be completed in time for the 2024 election cycle, let alone by the March 16 opening of candidate filing, the April 27 commencement of absentee voting, or the June 11 primary election. *See* Knapp Aff. ¶¶ 3, 9; *2024 Election Calendar, supra*.

Indeed, the State Election Commission Defendants are required to implement the procedures, tasks, and timelines established in state law as well as the deadlines and procedures necessary to comply with UOCAVA and the National Voter Registration Act (NVRA), 52 U.S.C. § 20501, *et seq.*, for *both* the primary election and the general election. Knapp Aff. ¶¶ 2, 8. In conjunction with the various County Boards and counties that may be affected by a remedial reapportionment map, these tasks include, but are not limited to, identifying and

² *See* Supreme Court of the U.S., *Supreme Court Calendar: October Term 2023*, https://www.supremecourt.gov/oral_arguments/2023TermCourtCalendar.pdf (last visited Mar. 5, 2024).

reassigning voters to the proper Congressional district, opening candidate filing, conducting primary elections, including runoffs as necessary, and conducting the general election. Each of the election cycles requires the State Election Commission and affected County Boards to comply with the requirements (including mailing ballots not less than 45 days prior to the election) of UOCAVA. *Id.* ¶ 8. Any change to statutorily established election timelines and procedures can lead to voter and election administration confusion. Additionally, any changes in the statutory election schedule can create logistical and feasibility challenges for the State Election Commission Defendants and the affected County Boards. *See id.* ¶ 6.

To say that implementing a new plan for the 2024 elections “would require heroic efforts by [] state and local authorities” would be a serious understatement. *Milligan*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). And denying a stay would also be “a prescription for chaos for candidates,” “voters,” and others. *Id.* At least five major party candidates have already declared their candidacy and begun campaigning in Districts 1 and 6. *Supra* at 2 n.1. These candidates must file their candidacies by April 1, but without a stay, they “cannot be sure what district they need to file for.” *Id.* Indeed, they and their supporters “do not even know which district they live in” and who their opponents are. *Id.*

On the other side of the ledger, Plaintiffs (who have sought no further relief from this Court) have even *less* of an interest in denial of a stay than a prevailing plaintiff in a typical *Purcell* case. The Court’s finding of a constitutional violation in Enacted District 1 is, of course, not enough to defeat a stay of an injunction under *Purcell*. *See* 549 U.S. at 5-6. Moreover, in this case, refusing a stay would not even provide Plaintiffs a durable form of relief: the Supreme Court is already resolving this case on the merits, so this Court’s injunction may be reversed at any time. And even if the Supreme Court affirms, it may very well issue remand instructions

that supersede the January 6 Order as it applies to the 2024 election cycle. Thus, even if Plaintiffs’ challenge to Enacted District 1 is meritorious, denying a stay is no guarantee of vindicating that challenge and providing them a remedy in time for 2024. All it is sure to establish is confusion and uncertainty over this year’s elections. “[D]ue regard for the public interest in orderly elections” requires entering a partial stay for 2024. *Benisek*, 585 U.S. at 160.

Nor is it possible to avoid these problems and enter an effective remedy for 2024 by postponing the primary election, as this Court previously suggested as a possibility. *See* February 4 Order at 5. For the reasons explained above, such a postponement would not permit sufficient time to complete and implement any remedial plan for the 2024 elections in any event. Moreover, this Court has no authority to order a new date for the 2024 primary election. *See, e.g., North Carolina v. Covington*, 581 U.S. 486, 488 (2017). And even if it did as a general matter, the *Purcell* principle would bar doing so at this point in time. Instead, “[g]iven the imminence of the election” at issue, the only proper course is to grant the partial stay and “allow the election to proceed without an injunction.” *Purcell*, 549 U.S. at 6; *see also Milligan*, 142 S. Ct. at 880 (Kavanaugh, J., concurring) (collecting cases); *Benisek*, 585 U.S. at 160; *Reynolds*, 377 U.S. at 586.

First, this Court lacks any remedial authority to postpone the 2024 primary election dates and deadlines. At the threshold, this Court lacks authority to order postponement of the June 11 primary election for all offices—including the State Senate, State House, and Congressional districts that could not be affected by a remedial plan. Such a ballot-wide postponement would not “fit[]” the “remedy” to “the legal violation[] this Court has identified” in District 1. *Covington*, 581 U.S. at 488.

Furthermore, the Court lacks authority to postpone the primary election even in Enacted District 1 and any other district, such as District 6, that may be affected by a remedial plan that may or may not become necessary after the Supreme Court decides the appeal. The Supreme Court has not “addressed whether ... a special election” can *ever* “be a proper remedy for a racial gerrymander.” *Id.* It has made clear, however, that such a remedy could only ever be appropriate if “the severity and nature of the particular constitutional violation” established that the plaintiffs had special interests beyond those present “in *every* racial-gerrymandering case.” *Id.* at 488-89. No such circumstances are present here. This Court has described the basis for a possible postponement of the primary election as its finding that Plaintiffs’ “fundamental voting rights have been violated,” February 4 Order at 5-6, but that is the *same* interest present “in *every* racial-gerrymandering case,” *Covington*, 581 U.S. at 488-89.

Second, even if the Court had authority to postpone a primary election as a hypothetical matter, *Purcell* forecloses it from doing so in this case. The most the Court could even arguably do is order postponement of primary elections in a subset of Enacted Congressional Districts, such as Districts 1 and 6, that may eventually be affected by a remedial plan that may not even prove necessary after the appeal. *See id.* at 488. In other words, the outer limit of the Court’s remedy would be to require the State to hold a *second* non-presidential primary election at some later date to be determined after the Supreme Court rules and after the conclusion of any remedial proceedings. *See id.*

Postponing any primary election—particularly at this late juncture and when Defendants’ appeal remains pending—is a recipe for “voter confusion and consequent incentive to remain away from the polls” and an erosion in “[c]onfidence in the integrity of [South Carolina’s] electoral process.” *Purcell*, 549 U.S. at 4-5. After all, the imminent primary election

deadlines already have been publicized, *see 2024 Election Calendar, supra*, and candidates and voters have already begun campaigning and supporting their candidates of choice in reliance on those deadlines, *see supra* at 2 n.1. Moreover, until the Supreme Court issues a ruling—which could occur any time from March 15 to the end of June—this Court cannot even designate a new primary date, leaving the State’s electoral process in limbo. And the duplicative costs to the State and South Carolina voters of running a *third* primary election cycle this year would be substantial. All of this voter confusion, erosion of confidence, and imposition of costs on the public fisc and State officials would be unrecoverable and for naught if the Supreme Court ultimately reverses this Court’s injunction. Postponing any primary election now, including for the subset of voters in potentially affected Congressional districts, would inflict precisely the kind of last-minute disruption to the State’s voters and election machinery that *Purcell* forbids. *See Purcell*, 549 U.S. at 6; *see also Milligan*, 142 S. Ct. at 880 (Kavanaugh, J., concurring) (collecting cases); *Benisek*, 585 U.S. at 160; *Reynolds*, 377 U.S. at 586.

The Fourth Circuit panel majority’s decision in *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, which the Court cited in its February 4 Order, *see* February 4 Order at 6, actually confirms this result. That case did not even involve a claim against a redistricting plan, let alone uphold postponement of an election or judicial imposition of a remedial plan on a compressed timeline. *See* 769 F.3d at 247. Instead, the panel majority affirmed a preliminary injunction against various North Carolina voting rules in the lead-up to the 2014 election on the view that such an injunction was necessary to prevent “irreparable injury” to “fundamental voting rights.” *Id.* But just one week later, the Supreme Court *stayed that decision* and allowed North Carolina to implement the challenged rules in the imminent election, *see North Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (Oct. 8, 2014),

even though it eventually *denied* review of the merits and left the liability finding in place, *see North Carolina v. League of Women Voters of N.C.*, 575 U.S. 950 (Apr. 6, 2015). *League of Women Voters* thus underscores that the *Purcell* principle remains applicable, alive, and well in this case—*regardless* of the Court’s view of the merits. The Court should grant a partial stay.

II. A Partial Stay Is Warranted Under the Traditional Standard.

Alternatively, Defendants are entitled to a partial stay under the traditional standard.

First, for the reasons explained in their briefs and oral argument at the Supreme Court, Defendants are likely to show on appeal that this Court erred in concluding that Enacted District 1 runs afoul of the Fourteenth Amendment. *See* Br. of Appellants, *Alexander*, No. 22-807 (U.S. July 7, 2023); Reply Br. of Appellants, *Alexander*, No. 22-807 (Sept. 11, 2023); Tr. of Oral Argument, *Alexander*, No. 22-807 (U.S. Oct. 11, 2023).³

Second, absent a stay, Defendants will suffer irreparable harm. South Carolina’s “inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State.” *Abbott v. Perez*, 585 U.S. 579, 603 n.17 (2018); *see also Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (“any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury”). Moreover, rescheduling the primary for Districts 1 and 6 (and potentially other districts) would impose compliance costs on the State and its taxpayers that the State cannot later “recover[.]” *Ala. Ass’n of Realtors v. Dep’t of HHS*, 141 S. Ct. 2485, 2489 (2021).

Finally, the balance of interests supports a stay. Since “reapportionment is primarily the duty and responsibility of the State through its legislature,” enforcing a constitutionally valid

³ Because the State Election Commission Defendants have consistently taken no position on the merits of the litigation, they do not join this paragraph. However, they do believe that their co-defendants have presented serious issues that may very well be meritorious and need to be resolved prior to the conduct of any other Congressional election in South Carolina. The

reapportionment plan is in the public interest. *Chapman v. Meier*, 420 U.S. 1, 27 (1975). Further, as discussed in Part I, regardless of the merits of Defendants’ appeal, “due regard for the public interest in orderly elections” weighs decisively against redrawing District 1 or rescheduling its primary at this late hour. *Benisek*, 585 U.S. at 160. In contrast, Plaintiffs have no interest in denying a stay, since enforcement of Enacted District 1 likely does not in fact violate their constitutional rights.

CONCLUSION

The Court should partially stay its January 6 Order and allow the 2024 elections to be conducted in Enacted District 1.

March 7, 2024
Columbia, South Carolina

Respectfully submitted,

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State Election Commission Defendants join in the remainder of this motion because they strongly believe a stay should be granted for all of the other reasons discussed.

/s/ Mark C. Moore

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APPENDIX B

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

The South Carolina State Conference)	Civil Action No.: 3:21-cv-03302-MGL-TJH-RMG
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;)	
James H. Lucas , in his official capacity as)	
Speaker of the House of Representatives,)	
Chris Murphy , in his official capacity as)	
Chair of the House of Representatives)	
Judicial Committee;)	
Wallace H. Jordan , in his official capacity)	
as Chair 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, JoAnne Day, Clifford J.)	
Edler, Linda McCall and Scott Moseley ,)	
in their official capacity as member of the)	
South Carolina State Election Commission,)	
)	
Defendants.)	
)	

AFFIDAVIT OF HOWARD M. KNAPP

Personally appeared before me, Howard M. Knapp, who, first being duly sworn, deposes
and says that:

1. I am the Executive Director of the South Carolina State Election Commission (“SEC”) and a resident of Richland County, South Carolina.

2. My duties are set forth in S.C. Code Ann. § 7-3-20(D) (2018) and include supervising the conduct of the county boards of voter registration and elections, ensuring the county boards’ compliance with state and federal law, supervising the creation of election databases to be used in South Carolina elections, and serving as the State’s chief election official responsible for implementing and enforcing South Carolina’s responsibilities under the Uniform and Overseas Citizens Absentee Voting Act (“UOCAVA”), as set forth in the United States Code, 52 U.S.C.A., §§ 20301-20311.

3. Candidates seeking a political party’s nomination for a Congressional seat in South Carolina must file their statements of intention of candidacy and party pledge and pay their filing fees between noon on March 16, 2024 and noon on April 1, 2024. See S.C. Code Ann. § 7-11-15(A).¹ Thus, the candidate filing period for the 2024 Congressional elections opens eleven (11) days from the date of this Affidavit.

4. There are forty-six (46) counties in South Carolina, each with its own Board of Voter Registration and Elections (“county boards”). Each county board must conduct elections and primaries within the county, including Congressional elections.

5. The SEC does not send out absentee ballots directly to eligible voters who request them. The county boards are responsible for processing requests for absentee ballots, issuing absentee ballots, and receiving voted absentee ballots for qualified electors within the respective

¹ S.C. Code Ann. § 7-11-15(A) sets a primary filing deadline is between noon on March 16 and noon on March 30, but if March 30 falls on a Saturday or Sunday, the deadline extends to the next regular business day. March 30, 2024 is on a Saturday and April 1, 2024 is the next regular business day.

counties. This includes absentee ballots issued pursuant to S.C. Code Ann. § 7-13-320 and UOCAVA.

6. The SEC is responsible for preparing the election databases to be used by each county board to conduct elections. These databases are created to work with the Election Systems & Software (“ES&S”) voting machines used in all elections in South Carolina. The SEC must have ample time to create, test, and deliver the election databases and ballots to each of the 46 county boards. The database for each county will include the various ballot styles to be used in each county on election day and for absentee ballots, including absentee ballots requested pursuant to UOCAVA.

7. None of the databases for the various county boards will be identical; each database will vary considerably given the precincts and congressional district lines(s) within each county.

8. Pursuant to S.C. Code Ann. § 7-15-680 (2018), absentee ballots for voters requesting them under UOCAVA must be sent to them at least forty-five (45) days prior to any election or primary.²

9. The primary elections for South Carolina’s Congressional seats will take place on June 11, 2024, as required by S.C. Code Ann. § 7-13-15(B)(1). Thus, the UOCAVA deadline is Saturday, April 27, 2024.

10. For South Carolina to comply with UOCAVA for the 2024 Congressional primary elections, the SEC must deliver each of the 46 county boards their respective election databases no later than forty-eight (48) hours before the UOCAVA deadline, or April 25, 2024.

11. Further Affiant saith not.

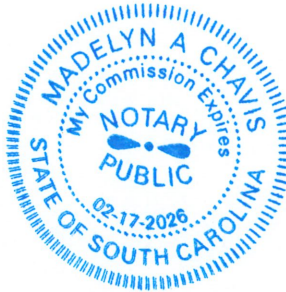
² This is also required by the federal UOCAVA law.

Howard M. Knapp
Howard M. Knapp

Sworn to and subscribed before me
this 5 day of March, 2024.

Madelyn A. Chavis
Notary Public for the State of South Carolina.

My Commission expires: 2/17/26



APPENDIX C

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

THE SOUTH CAROLINA STATE
CONFERENCE OF THE NAACP, and

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

Plaintiffs,

v.

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

Defendants.

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

THREE-JUDGE PANEL

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR A
PARTIAL STAY OF THE COURT'S
JANUARY 6, 2023 ORDER FOR
THE 2024 ELECTION CYCLE**

INTRODUCTION

Following trial, this Court unanimously concluded that Defendants racially gerrymandered Congressional District 1 (“CD 1”) and designed it with a racially discriminatory purpose. Because of the harm to all voters in CD 1 flowing from these violations, this Court issued a permanent injunction, barring future elections from taking place in CD1 under the enacted unconstitutional map. Three weeks after this Court’s injunctive order, Defendants moved to stay the decision, pending their appeal to the U.S. Supreme Court, which this Court promptly denied. Defendants neither appealed the denial of the stay nor, most importantly, have taken any steps to meet the burden now shifted to them to rectify the unconstitutional harms. Yet more than a year later, as the parties await a decision from the Supreme Court, Defendants now ask this Court to issue a partial stay of its decision so that the unconstitutional congressional map can remain in place for upcoming elections this year. If permitted, which Plaintiffs urge it should not, it would be the second electoral cycle under the constitutionally infirm map.

Issuing a stay is an extraordinary relief that requires the requesting party to overcome a significant burden. Like Defendants’ first stay request, their new one comes nowhere close to meeting—much less carrying—their burden. On the merits, Defendants repeat the same arguments—though in less detail—that this Court committed factual and legal errors in its January 6, 2023 decision. But this Court has already considered and rejected those arguments in its February 4, 2023 Order. Defendants offer no reason for this Court to revisit its permanent injunction, given the extensive trial record and its detailed factual findings and application of law. On the equities, Defendants’ claims that implementing a remedial map for the 2024 election cycle will lead to election-administrability issues and confusion for voters and election officials are hypothetical, unsupported, and overblown by the record. So too is Defendants’ attempt to invoke

the *Purcell* principle to support a stay. Any *Purcell* concerns are premature. Instead, Defendants proffer a false dichotomy for this Court: namely, Defendants contend that this Court must either attempt to reduce potential voter confusion and election-administration issues by allowing elections to go forward under a constitutionally deficient map or protect the rights of all voters in CD 1 by ensuring there is no election under a map that is racially discriminatory. But this Court need not consider this false choice because Defendants have presented no evidence supporting that a remedial map cannot be feasibly adopted and implemented if the U.S. Supreme Court affirms this Court’s January 6, 2023 decision in short order.

What will happen if Defendants’ stay request is granted, however, is that voters in South Carolina will be forced to vote in a district that violates the U.S. Constitution, just as they did for the 2022 midterm elections. This Court should reaffirm its commitment to disallow these constitutional injuries to persist—indeed, it rightly has already. Defendants’ motion for a partial stay should be denied. Furthermore, as Plaintiffs’ notice of intent to file this response reflects, ECF 520 at 2, they respectfully request a status conference as early as this Wednesday, March 13 or soon thereafter, to discuss any steps that can be taken at this juncture to ensure that any remedial process occur as expeditiously as possible following a decision by the U.S. Supreme Court.

BACKGROUND

This Court is well-versed in the factual and procedural background of the case. *See, e.g.*, Jan. 6, 2023 Op., ECF 493 (“Op”). Plaintiffs therefore only briefly recount some of the relevant facts.

After an eight-day trial, during which it heard from two dozen witnesses, including six experts, and considered hundreds of exhibits, this Court unanimously ruled that Defendants’ design of CD 1 is a racial gerrymander and intentionally discriminates against Black voters in

Charleston County. Op. at 29-30. This Court enjoined further elections in CD 1 until the adoption of a legally compliant remedial map, and it gave the legislature the first opportunity to submit such a plan. *Id.* at 30-31. Rather than act promptly to rectify Plaintiffs’ constitutional rights, Defendants tried to stay the Court’s decision while they appealed to the Supreme Court. *See* ECF No. 495. On February 4, 2023, the Court denied Defendants’ original stay motion. *See* ECF 501 (“February 4 Order”). The Court also altered the date for the legislature to submit a remedial plan to 30 days after a final Supreme Court decision. *Id.* at 6.

In the February 4 Order, this Court found that Defendants had not shown a strong likelihood of success on the merits, “argu[ed] against precedent rather than relying upon existing Supreme Court authority,” *id.* at 4, and did not address—much less establish—irreparable injury they might suffer from the injunction, *id.* at 5. On the other hand, the Court invoked “the well-established principle that where fundamental voting rights have been violated, plaintiffs suffer irreparable injury *until the constitutional deprivation has been removed.*” *Id.* at 5-6 (emphasis added). Defendants did not appeal or seek any further relief until the current motion.

The parties moved expeditiously to brief the appeal, asking the Supreme Court to resolve it by January 1, 2024. *See, e.g.,* Juris. Stat. at 5, *Alexander v. S.C. State Conf. of the NAACP*, No. 22-807 (U.S. Feb. 17, 2023); Parties Joint Letter Re: Argument and Briefing Schedule, *Alexander*, No. 22-807 (U.S. May 25, 2023). And early in the Supreme Court’s fall 2023 term, on October 11, 2023, that Court heard oral argument on Defendants’ appeal. But the Supreme Court has yet to issue its decision. As Defendants acknowledge, *see* Defs.’ Mot. for Partial Stay of Jan. 6, 2023 Order, ECF 519 (“Mot.”) at 3-4, this Court accounted for the possibility that the appeal process would take time and the chance that a remedial plan would not be adopted before the 2024 primary and general elections. *See* Feb. 4 Order at 5. This Court clearly ordered that, in those

circumstances, “the election for Congressional District No. 1 should not be conducted until a remedial plan is in place.” *Id.*; *see also* Mot. at 3-4.

As the Executive Director of the South Carolina State Election Commission (“SEC”) explains in the declaration submitted with Defendants’ motion, key election dates are still far off. *See* Howard Knapp Aff., ECF 519-1 (“Knapp Aff.”). While prospective candidates have until April 1, 2024, to file the necessary paperwork to run in the CD 1 primary, *id.* at ¶ 3, that primary is not scheduled to occur until June 11, 2024. *Id.* at ¶ 9. Remaining operative dates do not occur for more than a month. *See Id.* at ¶¶ 9 (UOCAVA absentee ballots must be sent by April 27, 2024) & 10 (election database not due until April 25, 2024).

Moreover, the legislature will remain in regular session for almost two more months, until May 9 2024, *see* S.C. Code Laws § 2-1-180. Even then, the session can be extended to consider matters of importance, by passing a so-called *sine die* resolution, *Id.* § 2-1-180(c). The Governor can also extend legislative sessions, *see* S.C. Const. Art. IV, § 19. And sessions are routinely extended. In fact, from 2002 to 2022, the Legislature passed a *sine die* resolution every single year to consider specific matters of importance, including, in 2021, redistricting.¹ When, in 2023, the Legislature did not extend the session of its own accord for the first time in 20 years, Governor McMaster extended it to consider budgetary matters.²

¹ H. 4285, 124th Gen. Assemb. Sess. (S.C. 2021), https://www.scstatehouse.gov/sess124_2021-2022/bills/4285.htm#:~:text=The%20Sine%20Die%20adjournment%20date%20for%20the,the%20General%20Assembly%20to%20continue%20in%20session.

² *See* S.C. Off. Governor, *Gov. Henry McMaster Calls General Assembly Back for Extra Session*, (May 12, 2023), [https://governor.sc.gov/news/2023-05/gov-henry-mcmaster-calls-general-assembly-back-extra-session.](https://governor.sc.gov/news/2023-05/gov-henry-mcmaster-calls-general-assembly-back-extra-session)

Meanwhile, the Supreme Court can rule in March 2024 or soon after, as it may again issue decisions on Friday, March 15 or thereafter on March 18 when it next holds oral arguments.³ The State Election Commission has not represented that it cannot meet the existing deadlines if a decision is issued soon. *See generally* Knapp Aff.

Nor are Defendants compelled to operate from scratch in proposing a remedial map. In fact, the General Assembly is currently in possession of maps that may pass constitutional muster. *See, e.g.*, Pls.’ Post-Trial Proposed Amended Findings of Fact & Conclusions of Law, ECF 499 (“Pls’ FoF/CoL”) ¶¶ 83-119, 129-32, 670. For example, during the 2021-2022 legislative session, the House Defendants developed and published a map in which the Black voting-age population (“BVAP”) of CD 1 is 20.27% and does not have the infirm hallmarks of the enacted congressional map. *Id.* ¶¶ 478-81, 85-87.

ARGUMENT

Defendants’ renewed stay request should be denied because Defendants offer no compelling reason for reconsidering this Court’s February 4 Order, and they still fail to make a showing on the relevant factors to support a stay. Defendants are unlikely to win on the merits, fail to demonstrate that they will suffer irreparable harm absent a stay, and the balance of interests do not support a stay. Defendants’ argument that a stay is warranted under *Purcell* also should be rejected because it is premature and lacks supporting evidence at this stage.

A stay pending appeal is “extraordinary relief” and requires the movant to meet a “heavy burden.” *Winston-Salem/Forsyth Cnty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971) (Burger, C.J., in chambers). “[T]he applicant must ... show[] not only that the judgment of the lower court

³ *See* United States Supreme Court Calendar https://www.supremecourt.gov/oral_arguments/2023TermCourtCalendar.pdf (last visited March 12, 2024).

was erroneous on the merits, but also that the applicant will suffer irreparable injury if the judgment is not stayed pending his appeal.” *Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979) (quoting *Whalen v. Roe*, 423 U.S. 1313, 1316 (1975) (Marshall, J., in chambers)).

Courts regularly receive requests to stay court orders enjoining the use of redistricting plans, but rarely grant them. *See, e.g., Bethune-Hill v. Va. State Bd. of Elections*, No. 3:14-CV-852, 2018 WL 11393922 (E.D. Va. Aug. 30, 2018), stay denied *sub nom. Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 914 (2019); *Harris v. McCrory*, No. 1:13CV949, 2016 WL 6920368 (M.D.N.C. Feb. 9, 2016), stay denied, 577 U.S. 1129 (2016); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552 (E.D. Va. 2016), stay denied *sub. nom. Wittman v. Personhuballah*, 577 U.S. 1125 (2016); *see also Perez v. Texas*, 891 F. Supp. 2d 808 (W.D. Tex. 2012), stay denied *sub. nom. LULAC v. Perry*, 567 U.S. 966 (2012).

To determine whether to grant a stay pending appeal, the Court considers: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The first two factors “are the most critical.” *Id.*

Here, Defendants cannot justify “an intrusion into the ordinary processes of administration and judicial review.” *Kentucky v. Biden*, 23 F.4th 585, 593 (6th Cir. 2022) (quotations omitted).

First, Defendants have scant likelihood of upending this Court’s well-reasoned, highly fact-dependent determination, which faithfully applied existing precedent. *See, e.g., Appellees’ Br.* at 29-30, *Alexander*, No. 22-807 (U.S. August 11, 2023). Defendants do not even make a strong case for this prong, offering just one-sentence to attempt to address it and repeating arguments this

Court has already considered and rejected. Mot. at 11. Their motion should be denied for this reason alone.

Second, Defendants will not be irreparably harmed absent a stay because there is no evidence that a constitutionally compliant map cannot be developed and implemented if the Supreme Court issues a decision in the next month. Moreover, Defendants are responsible for any putative harm because they have taken no steps towards proposing a remedial plan even though the burden now is on them to do so and this Court invited them to do so more than a year ago.

Third, as this Court has already held, Plaintiffs suffer “serious ongoing constitutional injury,” due to Defendants’ decision to use unlawful racial targeting during redistricting. Op. at 31. *Finally*, the public interest favors an expeditious remedy to the constitutional violations, such that this next congressional election must occur using district lines that do not discriminate against Black voters.

I. Defendants Still Fail to Establish a Likelihood of Success on the Merits.

This Court has already considered and rejected Defendants’ claims that it committed any factual and legal errors in reaching its post-trial decision. February 4 Order at 3-4. Defendants’ motion recycles those same claims without addressing—let alone refuting—the Court’s conclusions to the contrary. *See generally* Mot. That is because this Court’s January 6 Opinion is built on a series of sound factual findings—including credibility determinations—that are amply supported by the record, February 4 Order at 3-4, and subject to highly deferential clear-error review on appeal, *see, e.g., Cooper v. Harris*, 581 U.S. 285, 293 (2017). As Plaintiffs have argued, Defendants cannot overcome the vast deference given to the Court’s factual findings on appeal. *See* Appellees’ Mot. to Affirm at 20-29, *Alexander*, No. 22-807 (U.S. March 29, 2023) (“Mot. to Affirm”); Appellees’ Br. at 42-53, *Alexander*, No. 22-807 (U.S. August 11, 2023) (“Appellees’ Br.”); *see generally* Oral Arg. Tr., *Alexander*, No. 22-807 (U.S. Oct. 11, 2023) (“Oral Arg. Tr.”).

As this panel found previously, the claimed legal errors also are meritless because this Court straightforwardly applied relevant and governing precedent. *See* Mot. to Affirm at 30-34; Appellees’ Br. at 53-62; *see generally* Oral Arg. Tr.; February 4 Order at 3-4. Defendants have therefore not made any showing—let alone a strong one—that they will prevail on their appeal based on the Court’s February 4 order and the reasons described in Plaintiffs’ briefs and oral argument at the Supreme Court. The Court should deny their motion for this reason alone.

II. Neither *Purcell* Nor the Balance of Equities Justifies A Partial Stay.

A. The *Purcell* principle does not require a partial stay.

Defendants’ motion is premature and lacks evidence to support invoking *Purcell*. To begin, Defendants’ claim that the General Assembly *needs* “at least 30 days to enact a remedial plan in the first instance” rings hollow. Mot. at 6. They hypothesize, without citation or support, that “any remedial proceedings” in the case “would take significant time.” *See id.* But courts routinely give legislatures significantly less time to enact lawful remedial plans, including in cases where more districts need to be redrawn than are at issue here. *See, e.g., Singleton v. Merrill*, 582 F. Supp. 3d 924, 936–37 (N.D. Ala. 2022), *order clarified*, Nos. 2:21-CV-1291-AMM, 2:21-cv-1530-AMM, 2022 WL 272637 (N.D. Ala. Jan. 26, 2022), and *aff’d sub nom. Allen v. Milligan*, 599 U.S. 1 (2023) (three-judge court) (14 days); *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, Nos. 2021-1193, 2021-1198, 2021-1210, 2022 WL 110261, at *28 (Ohio Jan. 12, 2022) (10 days); *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (14 days); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1356-57 (N.D. Ga. 2004) (per curiam) (three-judge court) (19 days).

The evidentiary record and ease in which a remedial plan can be developed cast even further doubt on Defendants' allegation that 30 or more days are needed for any remedial process.⁴ The General Assembly need not craft a remedial plan from scratch. In fact, it has the benefit of the many maps and draft maps produced during the redistricting cycle, including one publicly proposed by House Defendants with a CD 1 BVAP of 20.27% that does not reflect the Enacted Plan's gerrymander. *See, e.g.*, Pls' FoF/CoL ¶¶ 83-119, 129-32, 670. And if the General Assembly declines to adopt any of those maps wholesale, it can at least use one or more of them as a baseline to draw a proposed remedial map, which, depending on the circumstances, could be limited to changes between CDs 1 and 6 and a limited number of counties within them rather than a full redraw of the map.

Moreover, Defendants have the resources and technology needed to quickly draft constitutionally compliant maps, including access to their own experienced mapdrawers, as well as this Court's technical advisor, the South Carolina Revenue and Fiscal Affairs Office. For all these reasons, Defendants have not shown that a "constitutionally compliant map" for CD 1 cannot be designed "without undue difficulty." February 4 Order at 4 n.2 (citing January 6 Opinion at 30). And this Court retains its jurisdiction to change the remedial schedule to shorten the timeframe for considering and adopting a remedial plan that would not risk moving certain upcoming deadlines and would allow for the June 11 primary to remain in place. February 4 Order at 3 n.1.

⁴ Of course, if the South Carolina legislature abdicates its responsibility to promptly cure the violations with a constitutional and legally valid remedy, or if it is not practical for that legislative body to act because of an imminent election, this Court may have to take on "the unwelcome obligation" to fashion a remedy. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (quoting *Connor v. Finch*, 431 U.S. 407, 415 (1977)).

Moreover, the failure to enact a constitutionally compliant congressional map is a problem of the Legislative Defendants own making, and they need not continue to wait for any direction on a remedial process. The burden to cure a constitutional harm rests with the violating entity. *See N. Carolina State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 240 (4th Cir. 2016) (citing *United States v. Virginia*, 518 U.S. 515, 547 (1996); *see also Green v. New Kent Cnty. Sch. Bd.*, 391 U.S. 430, 439 (1968) (“The burden on [the entity violating the constitution] today is to come forward with a [remedial] plan that promises realistically to work, and promises realistically to work now.”). Accordingly, the General Assembly can start creating a contingent remedial map while it is in session now. Indeed, House Defendants quickly developed remedial maps during the 2022 legislative session to resolve Plaintiffs’ claims challenging certain state House legislative districts as being racially discriminatory. *See* ECF 266 and 266-1. As discussed above, the General Assembly has the benefit of several maps in the evidentiary record and access to several mapdrawing resources. Developing a contingency plan can avoid any potential inconveniences for election administrators and reduce any discussion about moving key relevant deadlines even if the Supreme Court affirms the January 6 Opinion during its sitting later this month or soon thereafter.

Notably, other states have responded to court rulings by enacting contingent remedial plans pending the resolution of their appeals. In Georgia, for instance, Governor Brian Kemp called a special session of the General Assembly beginning November 29, 2023, and the legislature enacted remedial plans for the state senate and house, which were signed into law on December 8, 2023.⁵

⁵ *See* Georgia General Assembly, SB1EX: Georgia Senate Redistricting Act of 2023, at <https://www.legis.ga.gov/legislation/65851>; Georgia General Assembly, HB1EX: Georgia House of Representatives Redistricting Act of 2023, at <https://www.legis.ga.gov/legislation/65850>; Order, *Alpha Phi Alpha Fraternity v. Raffensperger*, No. 1:21-CV-05337-SCJ, 2023 WL 9424682 (N.D. Ga. Dec. 28, 2023).

Nor have Defendants offered evidence that a remedial map cannot be feasibly implemented even if they wait for court action. Instead, they recite a series of potential hypothetical harms to election administrations—for example, “various County Boards and counties [] *may be affected* by a remedial reapportionment map” and “any changes in the statutory election schedule *can create* logistical and feasibility challenges for the State Election Commission Defendants and the affected County Boards.” Mot. at 6-7 (emphases added). But tellingly, nothing in State Election Commission Director Knapp’s untested declaration supports—let alone suggests—that implementing a congressional map at this point or any other would be unduly burdensome or otherwise infeasible, which may explain why Defendants can only offer hypotheticals.⁶ *See* Knapp Aff. at 2-5. His recitation of administrative redistricting tasks lends no support to Defendants’ claim either. That is because the question before the Court is whether Election Commission Defendants can perform their usual duties for the election, and nothing in Director Knapp’s affidavit suggests otherwise. And these routine assignments do not amount to the “heroic efforts” Defendants claim would be needed for both state and county election officials. *See* Mot. at 7.

Defendants’ unsubstantiated and conclusory claims that adopting a remedial map at this stage could lead to voter and election administrative confusion and chaos for candidates fare no better. Neither Director Knapp’s declaration nor Defendants’ motion cite—let alone detail—how adopting a congressional remedial map would create confusion for voters or election officials. *See generally* Mot. & Knapp Aff.. And there is no reason to support a risk of hypothetical confusion

⁶ Director Knapp submitted an affidavit that neither Plaintiffs nor the Court has had the opportunity to question to assess the veracity of his claims. An opportunity to question Defendant Knapp is even more necessary because Defendants cite to his declaration to lend support to allegations on election administration and confusion to voters and election officials on which his affidavit remains silent. This, among other reasons, is why a conference on Defendants’ motion would aid the Court and parties at this juncture.

over the undisputed irreparable harm to more than 190,000 voters who would have to cast their ballots in an unconstitutional district. But even if the Court does consider any potential hypothetical confusion to candidates, Mot. at 7, Defendants, once again, offer no evidence or testimony from or about a single candidate to verify their claim. *See id.*

In Justice Kavanaugh’s concurring opinion in *Merrill v. Milligan*, 142 S. Ct. 879 (2022), he identified other factors that he would consider, including the underlying merits of the case, the harm suffered to plaintiffs absent an injunction, and whether the plaintiffs unduly delayed in bringing the lawsuit. *Merrill*, 142 S. Ct. at 881. (Kavanaugh, J., concurring). These factors likewise do not support a stay. As the Court’s January 6 Opinion demonstrates, the merits overwhelmingly favor Plaintiffs, *see supra* Section I, and Plaintiffs will suffer irreparable harms absent an injunction, *see infra* Section II(B)(1). Nor have Plaintiffs “unduly delayed bringing the complaint to court.” *Merrill*, 142 S. Ct. at 881. On the contrary, Plaintiffs amended their lawsuit to add claims challenging the congressional map six days after the General Assembly passed it on January 26, 2022.

Ultimately, the Court should not sanction Defendants’ attempt to circumvent the legal requirements imposed by the U.S. Constitution by seeking a stay so close to upcoming deadlines even though they had more than a year to refile such a motion. Nor should the Court allow Defendants to evade their legal obligations by invoking *Purcell* without providing any supporting evidence. For all these reasons, Defendants have not met their extraordinary burden to show that the Court does not remain on pace to adopt a remedial plan that would not move the June 11 primary even if the Supreme Court issues a decision in the next month. Still, should that calculus change, Defendants are incorrect that this Court lacks the authority to order changes to candidate qualifying periods and to postpone primary and general election deadlines and dates, and order

special elections. *See, e.g., Smith v. Beasley*, 946 F. Supp. 1174, 1212 (D.S.C. 1996); *Wallace v. House*, 377 F. Supp. 1192, 1201 (W.D. La. 1974), *aff'd in part and rev'd in part on other grounds*, 515 F.2d 619 (5th Cir. 1975); *see also Smith v. Bd. of Supervisors of Brunswick Cnty.*, 801 F. Supp. 1513 (E.D. Va. 1992), *rev'd on other grounds*, 984 F.2d 1393 (4th Cir. 1993); *Clark v. Roemer*, 777 F. Supp. 471, 484 (M.D. La. 1991) (“Federal courts have ordered special elections to remedy violations of voting rights on many different occasions.”); *Arbor Hill Concerned Citizens v. Cnty. of Albany*, 357 F.3d 260, 262 (2d Cir. 2004); *Goosby v. Town Bd. of Hempstead*, 180 F.3d 476, 498 (2d Cir. 1999); *Large v. Fremont Cnty.*, No. 05-cv-0270, 2010 WL 11508507, at *15 (D. Wyo. Aug. 10, 2010); *United States v. Osceola Cnty.*, 474 F. Supp. 2d 1254, 1256 (M.D. Fla. 2006); *Williams v. City of Dallas*, 734 F. Supp. 1317, 1318, 1415 (N.D. Tex. 1990). Indeed, special elections occur regularly in South Carolina.⁷ For example, a special election for Congress was last held on June 16, 2017, in CD 5.⁸ “Once a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971). Indeed, courts exercised this authority in South Carolina elections just three redistricting cycles ago. *See, e.g., Beasley*, 946 F. Supp. at 1212. But for now, these considerations are premature and unwarranted.

⁷ *See* S.C. Election Comm’n, *News & Press Releases, Special Election Results*, <https://scvotes.gov/category/special-election-results/>.

⁸ *See* S.C. Election Comm’n, *News & Press Releases, U.S. House of Representatives District 5 Special Election* (July 16, 2017), <https://scvotes.gov/u-s-house-of-representatives-district-5-special-election/>.

In CD 1, a special election was held on March 15, 2013. *See* S.C. Election Comm’n, *News & Press Releases, U.S. House of Representatives District 1 Special Election* (last updated May 7, 2013), <https://scvotes.gov/u-s-house-of-representatives-district-1-special-election/>.

B. The balance of harms weighs against a stay.

Equitable considerations also weigh heavily against a stay of the district court’s preliminary injunction. The right to vote is one of the most fundamental rights in our democratic system of government and is afforded special protection. *See Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (Voting is ‘a fundamental political right’ that in turn protects all other rights)). Subjecting voters to a redistricting plan that has been deemed unlawful requires an “unusual” showing that doing so is a “[n]ecessity.” *Upham v. Seamon*, 456 U.S. 37, 44 (1982); *see also Reynolds*, 377 U.S. at 585 (“[I]t would be the unusual case in which a court would be justified in not taking appropriate action to ensure that no further elections are conducted under [an] invalid plan.”). Defendants make no such showing here.

1. Defendants fail to demonstrate any irreparable injury.

Defendants will not suffer irreparable harm absent a stay. As an initial matter, the Court should view Defendants’ assertions of injury with considerable skepticism given that Defendants filed the instant stay application a week before the candidate qualifying deadline and over a year after the district court found the enacted congressional district to be unconstitutional. *See, e.g., Chem. Weapons Working Grp. (CWWG) v. Dep’t of the Army*, 101 F.3d 1360, 1361-62 (10th Cir. 1996) (denying motion for stay pending appeal because appellants waited several weeks before seeking the stay and that delay belied their claim of “extreme urgency”); *Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 39-40 (2d Cir. 1993) (denying motion for stay pending appeal because appellant waited five weeks after district court decision before seeking stay and thus appellant’s

“inexcusable delay . . . severely undermine[d] [its] argument that absent a stay irreparable harm would result”).

Even so, a remedial map is not necessary before the candidate filing deadline because the location of congressional district lines within a state does not impact a candidate’s qualification for U.S. House of Representatives. Under Article I, Section 2 of the U.S. Constitution, a candidate for U.S. Congress must be at least 25 years old, must have been a citizen of the United States for at least 7 years, and must, “*when elected*, be an Inhabitant of that State in which he shall be chosen.” U.S. Const. art. I, § 2, cl. 2 (emphasis added). Though South Carolina enforces different residency requirements for candidates for state office, the U.S. Constitution exclusively controls qualifications for membership in the U.S. House of Representatives. *See Schaefer v. Townsend*, 215 F.3d 1031 (9th Cir. 2000) (striking down application of California rule requiring residency be shown upon the filing of nomination papers). Because a candidate need only be a resident of South Carolina when elected, electoral boundaries need not be settled before candidate filings for Congress.

Nevertheless, under this Court’s order, the State has ample opportunity to draw a remedial plan. February 4 Order at 5. If it does so, the State’s only “injury” will be the short delay in the filing deadline, and the related potential administrative inconvenience to election officials and a few candidates. *See Covington v. North Carolina*, No. 1:15CV399, 2018 WL 604732, at *6 (M.D.N.C. Jan. 26, 2018) (denying a stay despite the “inconvenience” to “legislators having to adjust their personal, legislative, or campaign schedules”), stay denied in relevant part, 138 S. Ct. 974 (2018).

Courts have repeatedly held that potential administrative inconveniences for Defendants are not irreparable harm and cannot overcome the significant harm that the panel found Plaintiffs

would suffer under the Plan. *Cf. Abbott v. Perez*, 585 U.S. 579, 602-03 (2018) (holding that enjoining enforcement of enacted statute “would seriously and irreparably harm the State” *unless the statute is unlawful*); *Bethune-Hill v. Va. State Bd. of Elections*, No. 3:14-CV-852, 2018 WL 11393922, at *1 (E.D. Va. Aug. 30, 2018) (“[T]he risk that a stay wholly would deprive the plaintiffs of a remedy significantly outweighs the inconvenience and any other detriments that the intervenors may experience in re-drawing the districts.”). The reality is that “legislative districts change frequently,” including “after every decennial census.” *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. at 1955). And in any event, Defendants’ argument ignores this Court’s express finding that a remedial congressional plan can be implemented in advance of the 2024 elections. February 4 Order at pages 5-6.

2. *Plaintiffs and other voters will be irreparably harmed by a partial stay.*

The irreparable harm to Plaintiffs and Black South Carolinians from conducting an election using an illegal districting map far outweighs any administrative burden on Defendants. A district constructed for unjustified and predominately racial reasons “bears an uncomfortable resemblance to political apartheid” and amounts to use of “racial stereotypes.” *Shaw v. Reno*, 509 U.S. 630, 647 (1993). Residing in such districts is a palpable and ongoing injury to Plaintiffs and *every* voter who resides in the challenged district.

It is a fundamental principle of voting rights jurisprudence that Plaintiffs and other voters in the challenged district will suffer irreparable injury if they are forced to continue to reside in and cast ballots in an unconstitutional district. *See, e.g., League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247-48 (4th Cir. 2014) (collecting cases). Plaintiffs subjected to a racially discriminatory map are suffering an ongoing constitutional violation, a violation of their fundamental rights for which there is no adequate remedy. “[O]nce the election occurs, there can be no do-over and no redress” for citizens whose voting rights were violated. *Id.* at 247.

Accordingly, “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury.” *Id.* (citing *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986)).

3. *A partial stay is against the public interest.*

The Court has already recognized that the injunction issued in this case “best serves the public interest.” *Op.* at 31; *see also* February 4 Order at 6. Moreover, when a legislature impermissibly uses race to draw congressional districts, the “the public interest aligns with the Plaintiffs’ . . . interests, and thus militates against staying implementation of a remedy.” *Personhuballah v. Alcorn*, 155 F. Supp. 3d at 560. That follows because the harms are necessarily “harms to every voter” in the racially gerrymandered district, all of whom have been duly injured by improper racial sorting. *Id.* at 560-61. The court in *Harris v. McCrory* denied a similar stay motion upon finding that, *inter alia*, the harms to the state are public harms, and “[t]he public has an interest in having congressional representatives elected in accordance with the Constitution.” 2016 WL 6920368, at *2. Moreover, “[i]t is clear that it would not be equitable or in the public’s interest to allow the state . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (quoting *United States v. Arizona*, 641 F.3d 339, 366 (9th Cir. 2011)).

Accordingly, the public interest would most assuredly be served by enjoining implementation of a congressional districting scheme that violates the U.S. Constitution.

CONCLUSION

Defendants’ Motion for a Partial Stay should be denied. Plaintiffs further respectfully ask for a status conference or hearing on the remedial process as early as this Wednesday, March 13 or soon thereafter at the Court’s convenience.

Dated: March 12, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2024, a true and correct copy of the foregoing was served on all counsel of record by electronic mail.

/s/ Santino Coleman
Santino Coleman

APPENDIX D

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

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

Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,

Defendants.

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

REPLY IN SUPPORT OF
DEFENDANTS' MOTION FOR A
PARTIAL STAY OF THE COURT'S
JANUARY 6, 2023 ORDER
FOR THE 2024 ELECTION CYCLE

Plaintiffs' Opposition (Dkt. 521) ("Opp.") only confirms that the Court should grant Defendants' Motion For a Partial Stay (Dkt. 519) ("Mot."). On the *Purcell* principle, Plaintiffs take a "heads I win, tails you lose" approach, arguing that Defendants waited until *too late* to file the Motion but that it is somehow *too early* to grant a stay. They therefore ask the Court for an open-ended delay of South Carolina's Congressional primary elections, with no guarantee that an orderly, on-time primary can be conducted absent a stay. On the traditional stay standard, Plaintiffs' arguments all rest on the false premise that Defendants are not likely to prevail on appeal. All along the way, Plaintiffs ignore the operative terms of the Court's February 4 Order, the controlling Supreme Court precedents, and even the subsequent history of cases they cite. The Court should grant a partial stay and allow the 2024 elections to proceed under the General Assembly's Enacted Plan and election calendar.

I. A Partial Stay Is Warranted Under the *Purcell* Principle.

The Court should grant a partial stay under *Purcell* due to the imminence of the 2024 election cycle alone. *See* Mot. 5-11.

Plaintiffs' principal response is to ask the Court for open-ended delay and a status conference—but they neither offer specifics as to *how* the Court actually should proceed nor

come to terms with the untenable consequences of their request. Instead, Plaintiffs want the Court to halt South Carolina’s Congressional primary elections and to “delay ... the filing deadline” for Congressional candidates, so that they can later ask the Court to rush to impose a remedial plan in the middle of an election year on the off chance the Supreme Court affirms the liability finding “in the next month.” Opp. 12, 15. Plaintiffs baldly assert that this course of action will leave open the possibility of imposing a remedial plan in time for the June 11 primary election. *See id.* at 9.

This assertion fails on multiple fronts. In the first place, at this juncture, any delay in the State’s candidate-filing deadline alone violates *Purcell* and warrants a stay. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 5-6 (2006); *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). Moreover, Plaintiffs gloss over the fact that this Court granted the General Assembly until “30 days after a final decision of the United States Supreme Court” to propose a remedial plan. Dkt. 501 at 3 (February 4 Order). Instead, their assertion contemplates that the Court will renege on this assurance, penalize the General Assembly for taking the Court at its word, and require the General Assembly to propose a remedial plan on a much shorter timeline. *See* Opp. 12. Indeed, Plaintiffs do not *attempt* to argue that it would be feasible to conduct the 2024 primary on time under a remedial plan if Defendants submit a remedial proposal on the 30-day deadline. *See* Opp. 8-11 (arguing instead that Defendants should submit a map sooner).

In all events, Plaintiffs offer no supporting facts, specifics, or explanation for their assertion that a remedial map could be imposed for the June 11 primary election even if the Supreme Court affirms the liability finding “in the next month” and the Court reneges on its assurance to the General Assembly. *Id.* Nor could they, had they tried. To point out just one failing, Plaintiffs do not account for the fact that candidate declarations must be finalized, and

absentee ballots must be prepared, reviewed, and printed, well in advance of the April 27 deadline for mailing ballots to military and other overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). *See id.*; Knapp Aff. ¶ 6 (Dkt. 519-1).¹

Plaintiffs, moreover, do not own up to what happens under their proposed open-ended delay if the Supreme Court does *not* affirm the liability finding “in the next month.” *Id.* Of course, all of the disruption, voter confusion, and interference with the State’s election machinery occasioned by Plaintiffs’ proposal will be for naught if the Supreme Court reverses. Plaintiffs likewise do not suggest that a remedial map could be adopted if any Supreme Court affirmance comes later than “in the next month,” *id.*, such as in May or June, as is eminently plausible. And Plaintiffs make no argument that denying a stay here would somehow be less disruptive than in *Milligan*, where the Supreme Court granted a stay even though there was substantially more time before the beginning of absentee voting than is present in this case. *See* 142 S. Ct. 879 (65 days before absentee voting); Mot. 2. Plaintiffs’ Opposition thus proves that this case is a textbook example of precisely when and why a *Purcell* stay is warranted. *See* Mot. 5-11.

Plaintiffs’ various other arguments against a *Purcell* stay uniformly fail.

First, Plaintiffs rehash their arguments on the merits, *see* Opp. 7-8, but a stay is warranted under *Purcell* even if Defendants are not likely to prevail on appeal, *see Milligan*, 142 S. Ct. at 882 (Kavanaugh, J., concurring); *Benisek v. Lamone*, 585 U.S. 155, 158, 160 (2018); *Purcell*, 549 U.S. at 5-6; Mot. 5-11.

¹ Plaintiffs’ contention that they have not “had the opportunity to question” Defendant Knapp about the election administration tasks and deadlines described in his affidavit, *see* Opp. 11 n.6, is false. Plaintiffs deposed Defendant Knapp regarding those very topics earlier in the case. *See* Apr. 19, 2022 Deposition of Howard Knapp 21-28, 51-52, 55-93 (discussing UOCAVA deadlines, implementation of Congressional redistricting maps, processing of candidate filings, ballot preparation, and associated “time crunch”); *id.* at 93-96 (discussing costs

Second, Plaintiffs argue that *Purcell* is not triggered because Defendants should adopt a new map pending appeal or at least in less than 30 days after the Supreme Court rules. *See* Opp. 8-11. But regardless of what other courts have done in other cases, *see id.*, *this Court assured* the General Assembly *in this case* that it would have “30 days after a final decision of the United States Supreme Court” to submit a proposed remedial map. February 4 Order at 3. If it is infeasible or too disruptive to conduct the 2024 primary in accordance with the Court’s assurance, Plaintiffs’ issue is with this Court’s February 4 Order, not Defendants’ conduct. Yet Plaintiffs have not sought reconsideration or modification of the February 4 Order.

Nor could they. Even if this Court were to *sua sponte* order, contrary to its earlier assurances, Defendants to submit a new map right away, the start of absentee voting would still be too imminent to adopt a remedial map. As Plaintiffs note, in *Milligan*, 65 days before the onset of mail-in voting, the district court gave Alabama 14 days to submit a new Congressional map. *See* Opp. 8; *Singleton v. Merrill*, 582 F. Supp. 3d 924, 937 (N.D. Ala. 2022). But Plaintiffs nowhere mention that the Supreme Court *stayed* that order under *Purcell*. *Milligan*, 142 S. Ct. 879. And here, there are only 44 days until the start of absentee voting.

Third, Plaintiffs suggest that Defendants provided insufficient “supporting evidence” of disruption and voter confusion to meet their “extraordinary burden” of justifying a stay. *See* Opp. 12. This argument squarely contradicts governing law. The whole point of the *Purcell* principle is that, when voting is imminent, the ordinary presumption against stays flips to an all-but-conclusive presumption in favor of stays. Once “the eve of an election” approaches, “lower federal courts should ordinarily not alter the election rules.” *RNC v. DNC*, 140 S. Ct. 1205, 1207

of special elections); *id.* at 98-102 (explaining that late changes in districting plans result in confusion amongst candidates and voters and undermine confidence in election results) (Ex. A).

(2020). And where a lower court’s injunction violates that principle, the reviewing court “should correct that error” with a stay. *Id.*; accord *Milligan*, 142 S. Ct. at 882 n.3 (Kavanaugh, J., concurring). The principle *presumes* a “risk” of “voter confusion” resulting from late-breaking judicial intervention that justifies keeping the existing voting rules in place. *Purcell*, 549 U.S. at 4-5. Any other approach would be unreasonable. After all, *Purcell* stay applications necessarily must be litigated on short timelines; it is not feasible to expect States to develop detailed factual records before seeking relief.

Accordingly, the Supreme Court has never conditioned *Purcell* stays on the kind of detailed evidence Plaintiffs demand. The defendants in *Milligan* did not identify any specific record evidence of voter confusion, reduced turnout, or erosion of public confidence. *See* Emergency App. for Stay, *Milligan*, 142 S. Ct. 879 (No. 21A375 (21-1086)), 2022 WL 385302, at *38-39. Nor did the Court or Justice Kavanaugh cite any. *See Milligan*, 142 S. Ct. 879; *id.* at 880 (Kavanaugh, J., concurring). And the Supreme Court has granted *Purcell* stays in many other cases based simply on the common-sense presumption that changing the rules at the eleventh hour is likely to be disruptive, not specific factual findings rooted in developed evidentiary records. *See, e.g., DNC v. Wis. State Legislature*, 141 S. Ct. 28, 30 (2020) (Kavanaugh, J., concurring); *RNC*, 140 S. Ct. at 1206-07; *Purcell*, 549 U.S. at 4-6.

In any event, here it is obvious that disruption and voter confusion will result absent a stay. Plaintiffs acknowledge that denial of a stay will likely force candidates to file their Statements of Intention of Candidacy before they even know the district lines. *See* Opp. 15. Candidates obviously have an interest in “know[ing] which district they live in” so they can run in that district, even if they are not required by the Constitution to do so. *Milligan*, 142 S. Ct. at

880 (Kavanaugh, J., concurring). And voters likewise have a corresponding interest in electing representatives who live in their districts.

Even more serious is the risk of disrupting the State’s efforts to comply with UOCAVA. The State has a federal-law obligation to comply with the deadlines set by UOCAVA to ensure that South Carolinians in the military and overseas can exercise their right to vote. Plaintiffs do not dispute that the State cannot alter this deadline. *See* Opp. 4. Nor can the State comply with it instantaneously. Before ballots can be mailed out, the State Election Commission Defendants must have “ample time to create, test and deliver the [required] election databases and ballots to each of the 46 county boards.” Knapp Aff. ¶ 6. They cannot begin this process—which takes weeks, not days—before a map is in place and candidates have declared, because the databases and ballots will vary depending on where the Congressional district lines fall. *Id.* ¶ 7. Since the UOCAVA deadline is only 44 days away, denying a stay will seriously imperil the State’s ability to meet it.

Fourth, Plaintiffs fail to identify any case denying a *Purcell* stay under analogous circumstances. *See* Opp. 6 (citing cases). To begin, *Perez v. Texas*, 891 F. Supp. 2d 808 (W.D. Tex. 2012), *relied on* the *Purcell* principle to deny a stay. There, *the plaintiff* sought to stay the court’s interim remedial map to replace it with yet another map, arguing an intervening decision made the interim map unlawful. *Id.* at 811. The court found “taking any action at this juncture is not feasible,” that “[d]elaying the November election is simply not a viable option,” and that “bifurcating the election” and holding a second redundant election “would lead to voter confusion and enormous expense to the counties.” *Id.* It thus denied the stay without addressing the merits—indeed, even while expressing it “understands [the plaintiff’s] current concerns”

about the intervening judicial decision. *Id. Perez* thus actually confirms that this Court should grant a partial stay here.

Plaintiffs' other cases denying stays have no persuasive value because they considered only the traditional stay factors, without addressing the *Purcell* principle. *See Bethune-Hill v. Va. State Bd. of Elections*, 2018 WL 11393922 (E.D. Va. Aug. 30, 2018) (applying only the traditional stay standard); *Harris v. McCrory*, 2016 WL 6920368, at *1 (M.D.N.C. Feb. 9, 2016) (same); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 557 (E.D. Va. 2016) (adopting plan in January when defendants had represented they needed "to have a plan in place by late March"), *stay denied sub. nom. Wittman v. Personhuballah*, 577 U.S. 1125 (2016); *see also Rose v. Raffensperger*, 143 S. Ct. 58, 59 (2022) (requiring stay applicant to "advance[]" a *Purcell* argument distinct from an argument based "on the traditional stay factors and a likelihood of success on the merits" to preserve a request for a *Purcell* stay). Moreover, in two of those cases, the movants not only did not press a *Purcell* argument, but state election officials also affirmatively *opposed* a stay sought by plaintiffs or intervenors. *See Emergency Application for Stay, Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 914 (2019) (No. 18A629 (18-281));² Mem. in Support of Intervenor-Defendants' Motion to Suspend, Dkt. 271, *Personhuballah*, 155 F. Supp. 3d 552 (No. 3:13-cv-678), 2015 WL 13158667; Defs.' Br. in Opposition, Dkt. 284, *Personhuballah*, 155 F. Supp. 3d 552 (No. 3:13-cv-678), 2015 WL 13158666. Those cases thus are doubly distinguishable from this case, where the Election Commission Defendants have *joined* the request for a stay.

² Available at https://www.supremecourt.gov/DocketPDF/18/18-281/76155/20181213171301115_2018-12-13%20Bethune%20Hill%20Emergency%20Stay%2018-281.pdf.

In contrast, Plaintiffs cannot evade the force of *Milligan*, which clearly calls for a stay here. *Milligan* granted a *Purcell* stay after the district court had ordered Alabama to redraw its Congressional district lines 65 days before the start of absentee voting. 142 S. Ct. 879; *see* Mot. 2. Plaintiffs do not identify any respect in which denying a stay would have been more disruptive there than in this case, where absentee voting is only 44 days away. Knapp Aff. ¶ 9. They instead argue that this is the exceptional case where a stay should be denied even though the *Purcell* principle applies. Opp. 12. In *Milligan*, Justice Kavanaugh hypothesized that “the *Purcell* principle [] *might* be overcome ... if a plaintiff establishes *at least*” four points, including that “the underlying merits are entirely clearcut in favor of the plaintiff” and “the changes in question are at least feasible before the election without significant cost, confusion, or hardship.” 142 S. Ct. at 881 (Kavanaugh, J., concurring) (emphases added). Plaintiffs claim they fit within this potential exception, which the Supreme Court has never to date actually invoked to deny a stay. Plaintiffs are wrong: By denying Plaintiffs’ motion for summary affirmance, the Supreme Court has already found that the merits at minimum are not entirely clearcut in their favor. *See Alexander v. S.C. State Conf. of the NAACP*, 143 S. Ct. 2456 (2023). Nor, for the reasons already discussed, have Plaintiffs met their burden of showing that significant cost, confusion, or hardship *will not* occur. *Milligan* thus proves, rather than refutes, that the Court should grant a partial stay here.

Fifth, Plaintiffs suggest Defendants acted without proper diligence by not seeking a stay earlier, even though Plaintiffs inconsistently also suggest that it is too early to grant a *Purcell* stay here. Opp. 12. To the contrary, Defendants have asserted their interests consistently and promptly throughout the appellate process. Defendants first sought a stay only three weeks after the January 6 Order. Dkt. 495. When in response the Court modified the deadline to submit a

remedial map to “30 days after a final decision of the United States Supreme Court,” February 4 Order at 3, there was no longer any exigency warranting a stay so long as the Supreme Court issued a decision with adequate time to adopt a new map before the 2024 primary. To ensure that would be the case, Defendants and Plaintiffs jointly requested a decision by January 1. *See* Mot. 1. Defendants also “reserve[d] the right to seek a stay of the district court’s injunction if appellate proceedings remain pending in early 2024.” *Juris. Stat.* at 5, *Alexander v. S.C. State Conf. of the NAACP*, No. 22-807 (U.S. Feb. 17, 2023) (citing *Purcell*, 549 U.S. 1, and *Milligan*, 142 S. Ct. 879). Once it became clear the Supreme Court would not rule in time to adopt a remedial map for the 2024 election cycle, Defendants promptly moved for a partial stay. *See* Mot. Defendants sought a stay only after their best efforts to protect their interests by other means had failed. That shows responsibility, not lack of diligence.

Finally, Plaintiffs have not shown that scheduling a special election is a viable option here. Plaintiffs do not even cite—much less try to distinguish—*North Carolina v. Covington*, 581 U.S. 486 (2017), which held that a court cannot order a special election based on factors that are present “in every racial-gerrymandering case,” such as the harm inherent in being “represented by legislators elected pursuant to a racial gerrymander.” *Id.* at 489. But that is the only harm they identify. *See* Opp. 12-13, 16-17. Nor do they address the point that ordering a special election at the eleventh hour would itself violate the *Purcell* principle. *See* Mot. 9-11. Indeed, given the uncertainty over when the Supreme Court will rule, Plaintiffs cannot even give a ballpark suggestion of when a special election could be scheduled, reinforcing that ordering a special election would be a recipe for electoral chaos, mass voter confusion, and erosion of public confidence in the State’s elections. The Court should grant a partial stay.

II. A Partial Stay Is Warranted Under the Traditional Standard.

Alternatively, the Court should grant a partial stay under the traditional standard. *See* Mot. 11-12. Although Plaintiffs contest each of the three factors, all their arguments fail.

First, as to likelihood of success, Plaintiffs make no argument that this Court should deny a stay *even if* the Supreme Court is likely to reverse. *See* Opp. 7-8. Indeed, all their arguments on irreparable harm and the equities assume that voters have been denied their rights and Defendants have no legitimate interest in implementing the Enacted Plan. *See id.* at 14-17. Thus, since Defendants are likely to prevail, *see* Mot. 11, they are entitled to a stay.

Second, Plaintiffs assert that Defendants have failed “to demonstrate any irreparable injury.” Opp. 14. In doing so, they ignore the governing case law establishing, as a matter of law, that a State suffers irreparable injury from any “inability to enforce its duly enacted plans.” *Abbott v. Perez*, 585 U.S. 579, 603 n.17 (2018); Mot. 11. Further, preventing the State from enforcing its candidate-filing deadline would on its own constitute “irreparable harm,” since the deadline is compelled by “a duly enacted statute.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers); *see* S.C. Code § 7-11-15(A); Knapp Aff. ¶ 3. Plaintiffs also ignore the irrecoverable compliance costs involved in holding a special election. *See* Mot. 11.

Third, Plaintiffs contend that their harm from a stay outweighs any harm to the public interest because Plaintiffs will be “forced to continue to reside in and cast ballots in an unconstitutional district.” Opp. 16. Again, that assumes the Enacted Plan is unconstitutional. Because Defendants are likely to prevail, the State’s interest in “enforc[ing] its duly enacted plans” holds greater weight. *Abbott*, 585 U.S. at 603 n.17; *see also Nken v. Holder*, 556 U.S. 418, 434 (2009) (“The first two factors of the traditional standard are the most critical.”). And because the primary is imminent, the public interest in orderly elections necessitates a stay even if the Supreme Court is likely to affirm, as even the cases Plaintiffs cite confirm. *See* Mot. 5-11;

supra Part I; *Covington v. North Carolina*, 2018 WL 604732, at *1 (M.D.N.C. Jan. 26, 2018) (cited at Opp. 15) (noting that the district court “denied Plaintiffs’ request for a special election and reluctantly permitted a third biennial general election (2012, 2014, 2016) to proceed under an unconstitutional redistricting scheme”), *stay entered for yet another cycle*, 138 S. Ct. 974 (2018); *North Carolina v. League of Women Voters of N.C.*, 575 U.S. 950 (2015) (staying the *League of Women Voters* decision cited at Opp. 16-17).

CONCLUSION

The Court should partially stay its January 6 Order and allow the 2024 elections to be conducted under the General Assembly’s Enacted Plan and election calendar.

March 14, 2024
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Counsel for Election Commission Defendants

APPENDIX E

Page 2

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF SOUTH CAROLINA
 3 COLUMBIA DIVISION
 4 Civil Action No. 3:21-cv-03302-MBS-TJH-RMG
 5 THE SOUTH CAROLINA STATE CONFERENCE
 6 OF THE NAACP, and TAIWAN SCOTT, ON
 7 BEHALF OF HIMSELF AND ALL OTHER
 8 SIMILARLY SITUATED PERSONS,
 9
 10 Plaintiffs,
 11 vs.
 12 HENRY D. McMASTER, IN HIS OFFICIAL
 13 CAPACITY AS GOVERNOR OF SOUTH CAROLINA;
 14 THOMAS C. ALEXANDER, IN HIS OFFICIAL
 15 CAPACITY AS PRESIDENT OF THE SENATE;
 16 LUKE A. RANKIN, IN HIS OFFICIAL
 17 CAPACITY AS CHAIRMAN OF THE SENATE
 18 JUDICIARY COMMITTEE; JAMES H. LUCAS,
 19 IN HIS OFFICIAL CAPACITY AS SPEAKER
 20 OF THE HOUSE OF REPRESENTATIVES; CHRIS
 21 MURPHY, IN HIS OFFICIAL CAPACITY AS
 22 CHAIRMAN OF THE HOUSE OF REPRESENTATIVES
 23 JUDICIARY COMMITTEE; WALLACE H. JORDAN,
 24 IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF
 25 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.

Page 3

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 5 BEHALF OF HIMSELF AND ALL OTHER
 6 SIMILARLY SITUATED PERSONS:
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 19 ALSO PRESENT:
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 Cynthia Nygord, Paralegal
 (Appearing via Zoom)
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 (INDEX AT REAR OF TRANSCRIPT)

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1 **THE REPORTER:** The attorneys
 2 participating in this deposition acknowledge that I
 3 am not physically present in the deposition room
 4 and that I will be reporting this deposition
 5 remotely.
 6 They further acknowledge that in lieu
 7 of an oath administered in person, I will
 8 administer the oath remotely.
 9 If any party has an objection to this
 10 manner of reporting, please state it now.
 11 **THE VIDEOGRAPHER:** I, Alan Metts,
 12 hereby affirm that I am familiar with Rule 30 of
 13 the Federal Rules of Civil Procedure and the
 14 provisions of Rule 30(h) of the South Carolina
 15 Rules of Civil Procedure pertaining to videotaped
 16 depositions and will assure that the videotaping of
 17 this deposition is done in compliance with the
 18 provisions of Rule 30(h) and in an impartial
 19 manner.
 20 Good morning. We're going on the
 21 record at 10:10 on April 19th, 2022. Audio and
 22 video recording will continue to take place unless
 23 all parties agree to go off the record. This is
 24 media unit 1 of the video recorded deposition of
 25 Howard Knapp, 30(b)(6) corporate representative of

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1 the South Carolina State Election Commission taken
 2 by counsel for the plaintiffs in the matter of the
 3 South Carolina State Conference of the NAACP and
 4 Taiwan Scott, on behalf of himself and all other
 5 similarly situated persons, plaintiffs, versus
 6 Thomas C. Alexander, in his official capacity as
 7 President of the Senate, et al., defendants, Civil
 8 Action No. 321-cv-03302-MBS-TJH-RMG, pending in the
 9 United States District Court for the District of
 10 South Carolina, Columbia Division.
 11 This deposition is being held at Burr
 12 Forman and also remotely, located at 1221 Main
 13 Street, Suite 1800, Columbia, South Carolina.
 14 My name is Alan Metts from the firm
 15 Veritext Legal Solutions. I'm the videographer.
 16 The court reporter is Sandy Bjerke from the firm
 17 Veritext Legal Solutions.
 18 I'm not related to any party in this
 19 action, nor am I financially interested in the
 20 outcome.
 21 Will counsel now please state your
 22 appearances and affiliations for the record after
 23 which the court reporter may swear in the witness.
 24 MR. INGRAM: My name is Antonio Ingram.
 25 I'm here on behalf of Plaintiffs South Carolina

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1 State Conference of NAACP and Taiwan Scott.
 2 MS. CRUM: I am M. Elizabeth Crum. I
 3 am here on behalf of the South Carolina State
 4 Election Commission, Mr. Knapp and the other
 5 individual defendants, and Mr. Knapp is here as the
 6 30(b)(6) deponent.
 7 MR. NICHOLSON: I'm Thomas Nicholson,
 8 and I am general counsel for the South Carolina
 9 State Election Commission.
 10 MR. RICARD: Good morning. My name is
 11 Rhett Ricard with the Nexsen Pruet law firm here on
 12 behalf of the House defendants.
 13 MR. TRAYWICK: Good morning. My name
 14 is Lisle Traywick, and I represent the Senate
 15 defendants.
 16 HOWARD M. KNAPP
 17 being first duly sworn, testified as follows:
 18 EXAMINATION
 19 BY MR. INGRAM:
 20 Q. Good morning, Mr. Knapp. How are you?
 21 A. I'm doing fine, thanks.
 22 Q. As you've already heard, my name is
 23 Antonio Ingram, and I'm an attorney with the NAACP
 24 Legal Defense Fund. And I represent the
 25 plaintiffs, the South Carolina State Conferences of

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1 the NAACP and Taiwan Scott.
 2 Before going further, can you please
 3 state and spell your name for the record.
 4 A. My name is Howard Knapp. That's
 5 H-O-W-A-R-D, K-N-A-P-P.
 6 Q. Thank you. As I believe you know,
 7 plaintiffs are challenging the state House
 8 redistricting maps under the US Constitution in
 9 this current litigation.
 10 Mr. Knapp, have you been deposed
 11 before?
 12 A. No.
 13 Q. Okay. So I'll go through a brief
 14 explanation of what to anticipate today. So you
 15 now understand that you are under oath?
 16 A. Yes.
 17 Q. And that essentially means that any
 18 statement you make here can be used in court as a
 19 sworn statement.
 20 Is there anything that would prevent
 21 you from providing honest answers to my questions
 22 here today?
 23 A. No.
 24 Q. Are you taking any medications that
 25 will prevent your ability to answer my questions?

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1 A. No.
 2 Q. I have to ask that. It's sort of
 3 standard procedure.
 4 A. That's okay.
 5 Q. So if you need to take a break at any
 6 point please let me know. I only ask that if you
 7 request a break while a question is pending that
 8 you answer the question, and then we can take a
 9 break.
 10 A. Okay.
 11 Q. The court reporter is transcribing the
 12 deposition today, so it's important that we don't
 13 talk over one another and that we use verbal
 14 responses. So that means head shakes or nods can't
 15 really take place in this context because that
 16 won't appear on the written record. And similarly,
 17 responses, say uh-huh or huh-uh, sound a lot alike,
 18 so let's try to use yes or no if we can.
 19 And if I ask a question and it's
 20 unclear please ask me to clarify. And if you don't
 21 ask me to clarify I'll sort of assume that you've
 22 understood my question. Is that fine?
 23 A. Yes.
 24 Q. And finally, once in a while your
 25 lawyer may object to a question that I ask or she

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1 and I may have a discussion. When we do that you
 2 can wait until we're finished and then go ahead and
 3 answer the question unless your lawyer specifically
 4 asks you not to answer the question.
 5 And before we begin I just have a few
 6 preliminary questions. How did you find out about
 7 today's deposition?
 8 A. My general counsel and outside
 9 attorneys notified me.
 10 Q. And were you able to review the notice
 11 of deposition that we provided to them?
 12 A. Yes.
 13 Q. And were you able to review the topics
 14 that were attached to it?
 15 A. Yes.
 16 Q. And so as you know, the commission has
 17 designated you as a Rule 30(b)(6) deponent. And so
 18 is your understanding that you're testifying on
 19 behalf of the commission?
 20 A. Yes.
 21 Q. And are you prepared to provide
 22 testimony regarding each of the topics on the list?
 23 A. Yes.
 24 Q. And, Mr. Knapp, aside from your
 25 attorneys, did you meet with anyone else to prepare

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1 for this deposition?
 2 A. No.
 3 Q. And without talking about sort of the
 4 content of your preparation, when did you meet to
 5 prepare for this deposition?
 6 A. Earlier last week.
 7 Q. And how long was that preparation
 8 session?
 9 A. Approximately one hour.
 10 Q. And what did you review to sort of
 11 prepare for this deposition?
 12 A. The topics you submitted.
 13 Q. Anything else?
 14 A. Internal election calendars as well as
 15 the Code of Laws. Title 7, to be exact.
 16 Q. Thank you. So just for some
 17 background, outside of your role in the South
 18 Carolina State Election Commission, I know you said
 19 you've never been deposed before. Have you been
 20 deposed in sort of non-state business?
 21 A. No.
 22 Q. Have you ever testified in court,
 23 whether it be in your personal or professional
 24 capacity?
 25 A. No.

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1 Q. Now I have some questions on sort of
 2 the lawsuit background. Are you aware of your
 3 codefendants in this lawsuit?
 4 A. Yes.
 5 Q. What do you know about the current
 6 lawsuit in which you're a named defendant?
 7 A. The plaintiffs allege that the
 8 redistricting plans as passed by the General
 9 Assembly and signed into law by the Governor
 10 unfairly discriminate against various people,
 11 voters within the state.
 12 Q. And when did you first learn about this
 13 lawsuit?
 14 A. The day my outside counsel and general
 15 counsel were notified about it.
 16 Q. And do you have an opinion about the
 17 lawsuit?
 18 A. I have no opinion on the lawsuit.
 19 Q. And have you specifically discussed
 20 this lawsuit with anyone else besides your
 21 attorneys in this case?
 22 A. I have discussed the existence of the
 23 lawsuit with many people. It's common knowledge.
 24 But in terms of the details of the case, no.
 25 Q. So have you talked to any current SEC

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1 members?
 2 A. I notified them at commission, our
 3 monthly commission meetings of its existence. When
 4 we were served with the lawsuit as defendants I
 5 notified them that they were defendants in their
 6 official capacities, but beyond that, no.
 7 Q. Have you discussed the lawsuit with any
 8 current legislators?
 9 A. No, I haven't.
 10 Q. What about former legislators?
 11 A. No.
 12 Q. And do you know the plaintiff, Taiwan
 13 Scott?
 14 A. I'm sorry. Could you repeat that?
 15 Q. Do you know the plaintiff, Taiwan
 16 Scott?
 17 A. Oh. No. No, I don't.
 18 Q. Do you know President Murphy of the
 19 South Carolina State Conference of the NAACP?
 20 A. I do not.
 21 Q. Have you read the second amended
 22 complaint filed in this case?
 23 A. Yes.
 24 Q. When did you read the complaint?
 25 A. When it was filed.

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1 Q. Okay. I now have some background
 2 information that I would like to get from you.
 3 When were you born, sir?
 4 A. August 12th, 1985.
 5 Q. And in what city?
 6 A. Nashville, Tennessee.
 7 Q. And where do you live currently?
 8 A. Columbia, South Carolina.
 9 Q. Have you ever lived outside of
 10 Columbia?
 11 A. Yes.
 12 Q. Where else have you lived?
 13 A. Iowa City, Iowa; Billings, Montana;
 14 Washington, DC; Alicante, Spain; Naples, Florida;
 15 and Charleston, South Carolina.
 16 Q. And where did you go to high school?
 17 A. Billings Central Catholic High School
 18 in Billings, Montana.
 19 Q. And what year did you graduate from
 20 high school?
 21 A. 2003.
 22 Q. And where did you go to college?
 23 A. The Citadel.
 24 Q. And what year did you graduate from The
 25 Citadel?

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1 A. 2008.
 2 Q. And what was your undergraduate major
 3 at The Citadel?
 4 A. History.
 5 Q. Did you have any particular focus?
 6 A. No.
 7 Q. Did you go to graduate school?
 8 A. I went to law school.
 9 Q. What law school did you attend?
 10 A. Ave Maria School of Law in Naples,
 11 Florida.
 12 Q. And what year did you graduate?
 13 A. 2012.
 14 Q. Thank you. So in terms of your
 15 professional background, what is the title of your
 16 current position?
 17 A. Executive director of the South
 18 Carolina State Election Commission.
 19 Q. Could you please describe, sort of in
 20 your own words, what is the South Carolina Election
 21 Commission?
 22 A. It is a independent commission
 23 established in Title 7 of the South Carolina Code
 24 of Laws that holds responsibilities of varying
 25 nature related to the maintaining of the statewide

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1 voter registration list and system as well as
 2 supervisory authority over county boards of voter
 3 registration and elections.
 4 Q. And how old is the commission?
 5 A. 54 years old, I believe.
 6 Q. So before the commission was
 7 established, how were elections run in the state?
 8 A. They were -- the State Election
 9 Commission was a -- it wasn't a commission. It was
 10 a division within the South Carolina Secretary of
 11 State's Office.
 12 Q. And the commission's founding, is that
 13 based on a statute, or what is its sort of founding
 14 origin?
 15 A. Its origin -- it was created in
 16 statute, in state statute.
 17 Q. And how many members are on the
 18 commission?
 19 A. Five.
 20 Q. And how are commission members
 21 selected?
 22 A. They are appointed by the Governor.
 23 Q. And how long are their terms?
 24 A. Four years.
 25 Q. And are those terms staggered, or do

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1 you get a whole new commission every four years?
 2 A. They, I believe, were initially
 3 staggered. Each member was staggered. However, at
 4 this time there are four members who share the same
 5 term period, and one member is staggered from the
 6 rest.
 7 Q. And what is your relationship to the
 8 commission as executive director?
 9 A. They are the governing board of the
 10 agency, and they approve -- well, their biggest
 11 duty, I should say, is to serve as the State Board
 12 of Canvassers for all statewide elections. So they
 13 certify the results of those elections. And as I
 14 said, they are the governing board of the agency
 15 itself and appoint the executive director.
 16 Q. So they're essentially your boss, the
 17 commission?
 18 A. Yes.
 19 Q. And how many executive directors
 20 preceded you?
 21 A. Four.
 22 Q. And so how long -- is the executive
 23 director position a term position?
 24 A. No.
 25 Q. So your predecessors, in what

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1 circumstances did they leave their positions?
 2 A. I do not know. The previous four -- I
 3 don't know. I mean, I could tell you the first
 4 four -- one of the first four passed away, I
 5 believe, and the others, I think, simply retired.
 6 Marci Andino resigned her position in 2021.
 7 Q. How long have you been the executive
 8 director?
 9 A. I was appointed in January 2022.
 10 Q. And before that did you have another
 11 position inside of the commission?
 12 A. Yes. I was the director of voter
 13 services, which is a division director position
 14 within the agency.
 15 Q. And is it correct that you also served
 16 as interim executive director before you were
 17 appointed?
 18 A. Yes.
 19 Q. And how did you become interim
 20 executive director?
 21 A. Former Director Andino submitted her
 22 resignation to the commission and the commission
 23 appointed me the interim director in a -- in a
 24 commission meeting upon her departure and that was
 25 October 2021.

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1 Q. Is there usually an interim director
 2 before a new director is appointed?
 3 A. It is common practice throughout state
 4 government for an interim director to hold that
 5 position, that interim position until a full-time
 6 director is appointed, and the election commission
 7 is no exception to that.
 8 Q. And aside from -- so it's my
 9 understanding that sort of the election commission
 10 are your supervisors. Aside from the commission do
 11 you report to anyone?
 12 A. No.
 13 Q. And so as executive director how do you
 14 interface with the commission? Do you have weekly
 15 meetings? How does that relationship work?
 16 A. I have -- or the commission holds
 17 monthly commission meetings which are held the
 18 third Wednesday of every month, and that's when
 19 they've been held since before I arrived at the
 20 agency. So those are monthly.
 21 And I speak to commission members on an
 22 ad hoc basis. Whenever they need a question
 23 answered or if they're getting questions from the
 24 general public they will forward those questions to
 25 me for answering. So outside of the commission

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1 meetings I speak to them on an as-needed basis.
 2 Q. And how does your current role differ
 3 from your previous role as director of voter
 4 services?
 5 A. My previous role as director of voter
 6 services I supervised essentially two departments:
 7 the information technology -- information
 8 technology and cybersecurity department, and the
 9 other department was the database building
 10 department, and those personnel essentially build
 11 the ballots that we vote on in every election.
 12 So my responsibilities centered on the
 13 statewide voting system, database production,
 14 cybersecurity, information technology, and all the
 15 ancillary technologies around voting, things like
 16 that. My current position, I retain responsibility
 17 for those duties as well as the rest of the entire
 18 agency.
 19 Q. Can you say more about your current
 20 responsibilities? Like what does your job entail?
 21 A. Sure. So in Title 7, I can't remember
 22 the citation exactly, but there is a section at the
 23 beginning of Title 7 which enumerates the duties of
 24 this position, but essentially I am the agency
 25 head. I serve as the administrative head of the

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1 agency. I serve as the state's chief election
 2 official, which is a requirement of federal law,
 3 that every state have a chief election official. I
 4 also serve as a sort of secretary -- I don't know
 5 if that's official or not -- to the commission. So
 6 I make sure that minutes are taken during
 7 commission meetings. I kind of manage the
 8 commission meetings along with the chairman of the
 9 commission. And I manage the day-to-day operations
 10 of the agency.
 11 Q. And what is your relationship like with
 12 state and federal sort of compliance? How do you
 13 ensure that the state of South Carolina complies
 14 with state and federal law?
 15 A. Well, we identify what those standards
 16 are that are set forth in state or federal law and
 17 align our operations accordingly.
 18 Q. And could you say more about that
 19 process? What do you do to align those operations
 20 accordingly?
 21 A. I can give you an example. For
 22 instance, federal law dictates that the UOCAVA
 23 deadline, uniform and overseas citizens, they
 24 receive their ballots 45 days ahead of any
 25 election. Therefore, my agency has to make sure

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1 ballots are completely developed and ready to go
 2 for all counties to send to those UOCAVA voters.
 3 So if there is a standard set forth by
 4 either state or federal law we establish procedures
 5 to make sure tasks are done in accordance to meet
 6 those mandated deadlines or processes.
 7 Q. Thank you. And so I have a couple
 8 questions about in your role as executive director
 9 how you work with the local county boards to
 10 implement maps.
 11 Would you say that as the executive
 12 director of the commission, are you responsible for
 13 supervising implementation of maps through the
 14 county boards?
 15 A. Ultimately, yes.
 16 Q. And how many county boards are there?
 17 A. 46.
 18 Q. And so how does that process work of
 19 your supervision? Could you sort of walk me
 20 through that?
 21 A. Sure. So how it happens is
 22 congressional, state House and state Senate plans
 23 or maps are signed into law by the Governor. Then
 24 we instruct counties to begin reviewing
 25 congressional plans.

Page 23

1 We start looking at congressional
 2 reapportionment and essentially look at what
 3 counties are wholly within congressional districts
 4 and what counties are what we call split districts
 5 where a county shares more than one congressional
 6 district. An example of a split county would be
 7 Richland County.
 8 So we notify counties that they need to
 9 proceed looking at redistricting. So what happens
 10 is the counties identify district changes within
 11 their counties. So they look at various files and
 12 data points both within the law and that have been
 13 provided by Revenue and Fiscal Affairs to determine
 14 which voters need to be moved into which districts.
 15 That -- so that process is what's
 16 called a D code change. They identify precincts
 17 which contain voters, obviously, that need to be
 18 moved into a new district, Senate district, House
 19 district, congressional district. They submit
 20 those D code changes to my office. We essentially
 21 move the voters or we approve the moving of the
 22 voters by the county.
 23 At the end of this process -- and we do
 24 that D code change for every map that is passed.
 25 At the end of that process Revenue and Fiscal

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1 Affairs will work with us to create what's called
 2 kickout lists. And those are essentially lists of
 3 voters that have either been moved or not moved but
 4 are in the wrong district.
 5 And so, of course, once those kickout
 6 lists are sent out the county and/or us will move
 7 the voters to their correct district, and that's
 8 how redistricting is done.
 9 Q. And so it seems like -- and correct me
 10 if I'm wrong -- the county boards sort of create
 11 their own maps, and you approve of their decisions?
 12 A. So historically the Revenue and Fiscal
 13 Affairs office has given significant support to the
 14 SEC and counties by taking the data and creating
 15 maps for all counties in the SEC to use.
 16 However, during this cycle RFA has
 17 played a much less significant role in the process
 18 and has not provided the same level of support. So
 19 instead RFA provided PDF files and the shape files,
 20 which are essentially -- shape files are the
 21 building blocks of maps, what are used to create
 22 maps. So they provided those to counties and to
 23 us, but they did not -- they did not provide any
 24 paper maps.
 25 So counties had to rely on their local

Page 25

1 GIS office for those maps, and in some cases the
 2 GIS office didn't know what they were doing or did
 3 not know the process. It's been a long time since
 4 this was done last. So -- and they used to -- they
 5 used to provide kickout lists and -- to counties.
 6 Now they're providing those lists to us as well.
 7 So the process this year has deviated from what my
 8 understanding of previous redistricting processes
 9 were.
 10 Q. Each county has its own GIS officer?
 11 A. Yes, each county has its own GIS
 12 office.
 13 Q. And how -- what does this GIS office do
 14 outside of sort of redistricting mapping work?
 15 A. Well, they're essentially the map
 16 holders of county council, school board. I mean,
 17 just any kind of maps or street planning. They
 18 work with planning commissions. Anything to do
 19 with the geographics of a county, they run that
 20 show, ostensibly. I would assume that every GIS
 21 office has a slightly varying role depending on
 22 what county they're in.
 23 For instance, just in regards with the
 24 redistricting process an example of a very
 25 competent and supportive GIS office in a county

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<p>1 would be Charleston. Another which provided no 2 support and no competence about this process would 3 be Bamberg. 4 The GIS offices usually print the maps. 5 They -- let me back up. The RFA in years past has 6 provided these maps. This year counties are having 7 to rely on their local GIS office to produce the 8 maps which has created some issues. Some GIS 9 offices cannot physically print the maps because 10 they don't have the infrastructure to do that. So 11 not every GIS office is equal. 12 Q. And as executive director how do you 13 ensure that the county boards and their GIS offices 14 comply with state and federal law? 15 A. We double-check all the work done by 16 the locals, by the counties. We ensure that -- 17 because at the end of the day the most important 18 thing for us is that every voter is in the correct 19 district, whether it's county council -- I mean, 20 from the smallest office to congressional, that 21 every voter is in the correct office [sic]. 22 So we work with the counties, all 46 23 counties to ensure that those kickout lists I 24 mentioned are rectified. And we're still doing 25 that to this day as we speak, that that's -- that</p>	<p>1 county board is gubernatorially appointed upon 2 recommendation by the county delegation. 3 And I should add that the Governor can 4 only appoint people recommended by the county 5 delegation, and he does not have the authority to 6 appoint anyone outside those recommendations. 7 Q. Are these boards compensated? 8 A. They are given quarterly stipends. 9 Q. Do you know how much the stipend is? 10 A. A little over a thousand dollars a 11 year. 12 Q. And are these boards partisan? 13 A. No. 14 Q. But they're selected by how -- by 15 elected officials who are partisan. 16 A. Correct. 17 Q. So how does the delegation ensure that 18 these individuals not act with partisan interests? 19 MS. CRUM: Object to the form of the 20 question. You may answer. 21 THE WITNESS: I don't know that they 22 do. 23 BY MR. INGRAM: 24 Q. And as executive director, do you 25 communicate directly with the county boards across</p>
Page 27	Page 29
<p>1 that process is occurring. So until every county's 2 kickout list is clean, we will continue that work, 3 but it's a lengthy process, a very lengthy process. 4 Q. And so you had mentioned before that 5 there are 46 county boards. Does each board have a 6 uniform number of board members? 7 A. No. So there is no rhyme or reason or 8 formula behind how many board members are on each 9 county board. That is left to the sole discretion 10 of each county delegation. 11 For instance, I believe Chesterfield 12 has three board members. And others of varying -- 13 other counties, large, medium and small counties 14 have as much as nine. Richland County, which is 15 the third largest county in the state, has five. 16 So it's really at the discretion of the 17 county delegation which is comprised of each 18 county's House -- South Carolina House and South 19 Carolina Senate representatives. 20 Q. And the delegation of these state 21 legislators, they appoint the board, or how does 22 that work? 23 A. They recommend approval -- I'm sorry. 24 They recommend certain members of the public be 25 appointed by the Governor to the board. So each</p>	<p>1 the state? 2 A. My agency holds numerous training 3 sessions throughout the year for county boards, 4 county board members. I rarely speak to county 5 board members one on one. I usually, if there is 6 an issue within a county or even with a county 7 board, my first conversation is with that county 8 director. I have only spoken directly to a handful 9 of board members. 10 The most I converse with these board 11 members is at training sessions where I'm present 12 and they just come up to me to chitchat. But there 13 are more and more conversations between myself and 14 board members currently due to a range of issues 15 that counties are facing right now. 16 Q. What are some of the issues that are 17 being dealt with? 18 A. The lack of county support, both 19 financially and otherwise, of the county government 20 of the election and voter registration's office. 21 The fact is that -- well, I shouldn't 22 say the fact. What I have found in the short -- in 23 my short tenure is probably over half of the 24 counties in this state, their county councils or a 25 portion of their county councils do not even</p>

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1 recognize the county board offices as county
 2 offices.
 3 They are county offices by law, the
 4 county councils have to appropriate money to run
 5 those offices, but the stance of these county
 6 councils is because the boards are gubernatorially
 7 appointed, they are state offices, and they are
 8 not. So this lack of support has illustrated
 9 itself in ways that have hindered county
 10 operations.
 11 For instance, recently in Newberry
 12 County the director actually left to come work for
 13 my agency. She gave a five-and-a-half-week notice
 14 that she was leaving, and in that time the county
 15 did nothing to replace her. And when she left --
 16 and her deputy left as well -- there was nobody to
 17 run that county office for weeks. And the county
 18 administrator was new and had no interest in
 19 helping out.
 20 And it's those kinds of
 21 misunderstandings about how government is
 22 structured, that's really what I'm dealing with
 23 when it comes to the county boards. They're not
 24 getting the needed support from their county
 25 councils.

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1 And as I tell them, there is very
 2 little I can do about that. I advise them to go
 3 speak to their county delegation members or the
 4 county council chairman, but there's very little I
 5 can do about that other than agree that their
 6 concerns are real.
 7 Q. And for a county board that you just
 8 talked about, it probably is based on each county,
 9 but is there a typical tenure to serve on the
 10 board, or how does that work --
 11 MS. CRUM: Object to the form of the --
 12 MR. INGRAM:
 13 Q. -- for each county?
 14 MS. CRUM: Object to the form of the
 15 question. You may answer.
 16 THE WITNESS: The county boards are --
 17 they serve essentially at the will of the
 18 delegation for their -- so upon their term expiring
 19 I've seen a range of people not really being
 20 reappointed, but they're just holdovers. They're
 21 in their position until they're told to leave.
 22 I've seen board members who were told to leave, you
 23 know, upon expiration of their term and the county
 24 delegation wanted somebody else.
 25 So it's up to the county delegation

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1 upon expiration of each person's term what that
 2 delegation wants to do with them, either renew
 3 their appointment or not.
 4 BY MR. INGRAM:
 5 Q. So they're essentially political
 6 appointees of the congressional -- of the
 7 delegation of state and/or state officials?
 8 MS. CRUM: Object to the form of the
 9 question. You may answer.
 10 THE WITNESS: They are appointees of
 11 the delegations.
 12 BY MR. INGRAM:
 13 Q. And whether indirectly or directly, do
 14 these county boards reach out to your office for
 15 guidance, or is it more formally, just having
 16 trainings?
 17 A. So county offices, board members,
 18 staff, they reach out to my agency often for
 19 support. And that's part -- you know, that's part
 20 of our job, is to help support these counties, both
 21 with...
 22 So my predecessor created the area
 23 representative department within my agency, and we
 24 have four area representatives whose job it is to
 25 go out into these counties and support them,

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1 whether it's with equipment or IT, limited IT
 2 support.
 3 So the reality is a lot of these
 4 counties have very limited resources. And it's not
 5 to the willingness of the county to help. That's
 6 irrelevant. Just some counties don't have the
 7 resources that others do.
 8 An example of a county that gets
 9 anything they want whenever they want it is
 10 Charleston. Another example of a county that
 11 doesn't get a lot of support is Saluda.
 12 So because of the differentiation in
 13 the level of support and the differentiation in the
 14 level of resources of these counties, my agency
 15 tries to help out as much as it can according to
 16 the law.
 17 Q. Just to confirm, your agency doesn't
 18 have any sort of control over the county boards or
 19 independent actors.
 20 A. So --
 21 MS. CRUM: Object to the form of the
 22 question. Have you finished your question?
 23 MR. INGRAM: Yes.
 24 MS. CRUM: That's more like a
 25 statement.

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1 MR. INGRAM: I can rephrase if it's
 2 helpful.
 3 BY MR. INGRAM:
 4 Q. Are the county boards independent
 5 actors?
 6 A. Yes, they are independent.
 7 Q. So how does your relationship with
 8 these independent boards impact map implementation?
 9 A. I wouldn't say it does. In terms of
 10 redistricting it is a cohesive effort of multiple
 11 parties at the state and local level.
 12 And in my experience, we are truly --
 13 every party involved, from RFA to us to the
 14 counties, is agnostic about the maps themselves.
 15 We just want to make sure the voters are moved into
 16 their districts according to the law as it's
 17 written.
 18 And so there's very little -- there's
 19 no discussion about the maps themselves. It's
 20 just -- the discussion centers on the logistics and
 21 processes of moving voters, which, as I said
 22 before, is very lengthy.
 23 Q. Have there been situations in the past,
 24 to your knowledge, where your agency has issued
 25 guidance or a directive and there has been

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1 resistance by the county boards?
 2 A. No.
 3 Q. So we'll just shift gears for a moment.
 4 As executive director are you also in charge with
 5 communicating with elected officials?
 6 MS. CRUM: Object to the form of the
 7 question.
 8 THE WITNESS: I speak with other
 9 elected officials.
 10 BY MR. INGRAM:
 11 Q. In what context?
 12 A. So as agency head of a state agency I
 13 am funded entirely by state general funds. So I,
 14 like all my counterparts in state government, have
 15 to submit budget requests which are submitted to
 16 the Governor's office and the General Assembly.
 17 So I regularly, throughout the
 18 legislative session, work with legislative staff
 19 and members on -- and I advocate for my agency's
 20 budget, which, like I said, is -- every agency --
 21 every state agency in the state does that.
 22 In regards to other communications I
 23 have with them, it regards various legislation
 24 pertaining to elections. And the staff and/or
 25 members will ask me my opinion or how things work

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1 logistically, what will work, what won't work in
 2 the current -- under the current law. If we change
 3 this law, how will that impact elections, things
 4 like that.
 5 Q. How often do you have these
 6 communications?
 7 A. During legislative session, I would
 8 say -- well, depending on the -- depending on the
 9 calendar of the Senate or the House and depending
 10 what legislation is pending, sometimes not at all
 11 because there's no election law pending.
 12 But in my tenure there has been a
 13 number of election bills that have been introduced.
 14 So I have spoken to a number of legislators and
 15 their staffs about pending legislation and I'd say
 16 weekly or at least every two weeks.
 17 Q. And how does this communication happen?
 18 Is it via phone, email, written correspondence?
 19 A. In person or over the phone. And the
 20 only email I can recall -- the only email
 21 communications would be to discuss when we could
 22 talk on the phone or meet in person.
 23 Q. And do you ever have to liaise with
 24 public officials on behalf of the commission?
 25 A. I don't -- I don't understand the

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1 question.
 2 Q. Do you ever have to serve as sort of a
 3 intermediary between the commission and public
 4 officials regarding legislation or other issues
 5 that impact elections?
 6 A. Well, that is kind of a function of my
 7 position. I speak for the commission itself and as
 8 well as the agency. So when I speak to these
 9 members I often speak on behalf of the commission
 10 and the agency.
 11 If there is an issue that I know the
 12 commission will want to know about I notify the
 13 commission. Such as if a bill's been filed, a big
 14 election bill has been filed I will notify the
 15 commission and say for your information this bill
 16 was filed today in the House or Senate. This is
 17 what it does. And I'll discuss that as well in our
 18 commission meetings in open session, so...
 19 Q. Can the commission remove an executive
 20 director?
 21 A. Yes. I serve at the pleasure of the
 22 commission.
 23 Q. And would the commission vote on that
 24 decision, or how would that decision be made?
 25 A. Ostensibly, I believe the commission

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1 would have to vote to remove an executive director.
 2 Q. And has that happened in the past?
 3 A. Not to my knowledge.
 4 Q. And from your recollection what is the
 5 average tenure of an executive director? I know
 6 there's only been four in 54 years, so probably
 7 long, but I'd love to get your thoughts on that.
 8 A. Well, I know one director was only
 9 director for approximately nine months or something
 10 like that. So myself and her apart, the average
 11 tenure is probably 15 years. 15 to 20 years. They
 12 are long tenures for state agency heads.
 13 Q. And given those long tenures, how does
 14 that work if the commission changes? Does the
 15 commission have to re -- sort of nominate or
 16 approve of the executive director, or is this sort
 17 of -- how does that process work?
 18 A. So when an executive director is
 19 appointed currently, that executive director serves
 20 until they're either asked to leave or they resign
 21 or retire. It doesn't matter who gets appointed,
 22 reappointed onto the commission. That executive
 23 director has just held their position until such
 24 time as they leave.
 25 But when new commissioners are

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1 appointed they'll -- you know, the executive
 2 director has worked with the new commissioners to
 3 help them understand their role, understand their
 4 different duties as commissioners, and that's how
 5 that relationship has worked.
 6 Q. And if you need to implement policy on
 7 behalf of the commission, how would you go about
 8 doing that? Who would you talk to?
 9 A. It would depend on the policy. Thus
 10 far, the commission, during my tenure, has not
 11 issued a policy on anything.
 12 Q. In the past can you give an example of
 13 what this looked like when a policy was issued?
 14 A. I can't recall hearing of or personally
 15 seeing the State Election Commission issuing a
 16 policy on anything. I'm not saying that that has
 17 never happened, but not to my knowledge and I have
 18 never personally seen it.
 19 Q. Let me ask you more specific. If there
 20 are, for example, federal or state legislation that
 21 needs to be communicated to county boards, what
 22 would be your role in that conveying of
 23 information?
 24 A. So I convey that -- the way it works
 25 practically is I convey that information both to

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1 the commission, so they understand it, and I convey
 2 that information to the county boards as well. And
 3 when I say county boards I'm talking about the
 4 county directors, their staff. So when I say
 5 county board I mean everybody at the county level.
 6 But the board -- the commission does
 7 not set forth policy or implement policy or make
 8 decisions on the day-to-day operations of
 9 elections. That is the role of the executive
 10 director. Or has been the role of the executive
 11 director.
 12 Q. And is your position a partisan
 13 position?
 14 A. No.
 15 Q. And the election commission is also
 16 nonpartisan?
 17 A. Correct.
 18 Q. Are there any safeguards to keep it
 19 that way in place?
 20 A. There is a section of Title 7 that
 21 mandates that at least one member of the commission
 22 be a representative of the majority party as
 23 represented in the General Assembly and also
 24 another commission member must be a member of
 25 the -- a representative of the minority party as

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1 represented in the General Assembly.
 2 Q. And what constitutes a quorum for the
 3 commission?
 4 A. Three members.
 5 Q. And currently what is the composition
 6 of the commission in terms of partisan background?
 7 A. I do not know. This is an issue that
 8 has faced the commission since it was -- I think
 9 since the code was written.
 10 Although the provision I just described
 11 to you exists, there is not a mechanism by which
 12 you can easily identify who's a Democrat or who's a
 13 Republican because we do not have partisan
 14 registration in the state of South Carolina.
 15 So the Governor appoints whom they --
 16 whomever they wish to the commission, and that's
 17 just how it's been.
 18 Q. And what are the backgrounds typically
 19 of commissioners? Professionally, for example.
 20 A. In my experience they range from
 21 attorneys to commercial real estate agents to
 22 bankers, insurance agents. In my experience and to
 23 my knowledge it has been wide ranging. The
 24 backgrounds are wide ranging.
 25 Q. So this system that you described of

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1 having sort of a person from the majority party and
 2 a person from the minority party, do you think it's
 3 worked well in practice?
 4 A. Yes.
 5 Q. So would you -- do you think that the
 6 commission has sort of been able to stay above
 7 politics in South Carolina in a nonpartisan way?
 8 A. I believe it has. And that's, frankly,
 9 why the commission was taken away -- or the
 10 office -- the election office was taken out of a
 11 partisan position under the elected secretary of
 12 state's office and established as an independent
 13 commission. And to my knowledge and in my
 14 experience it has worked well under that scheme.
 15 Q. And where does the commission's funding
 16 come from?
 17 A. The General Assembly. I'd say the vast
 18 majority of funding comes from the General
 19 Assembly. The State Election Commission as well as
 20 every other state office, election office receives
 21 grants from the -- from Congress through the United
 22 States Election Assistance Commission approximately
 23 every two to three years to assist with election
 24 security or other similar information technology
 25 needs.

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1 Q. So there's funding from both the
 2 federal government and South Carolina state
 3 government?
 4 A. Correct. Overwhelmingly state
 5 government funded, minimal federal funding.
 6 Q. And does the commission's funding sort
 7 of stem from a line item in the budget, or is there
 8 a -- you know, how does that process work?
 9 A. Yes. Every agency has a section of the
 10 state budget. The state budget is a bill that's
 11 written like any other piece of legislation, and
 12 the -- every agency, including the State Election
 13 Commission, has a section of that budget.
 14 So the way it works is in late fall of
 15 every year every agency will submit their budget
 16 requests to the Governor's office for consideration
 17 in his executive budget. In January, very, very
 18 early February every agency goes before the House
 19 Ways and Means, their respective House Ways and
 20 Means subcommittee, they present their budget
 21 requests to the House that way.
 22 And then, of course, the subcommittee
 23 meets, determines what they want to do for every
 24 agency, the full House Ways and Means committee
 25 determines how they want to fund the state, and

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1 then that goes, of course, to the full House like
 2 any other piece of legislation.
 3 It's a similar process in the Senate.
 4 Approximately March of every year, late February
 5 and March state agencies present their budget
 6 requests to their respective Senate finance
 7 subcommittee. And then those -- that subcommittee
 8 will determine how they want to fund the agency,
 9 present that to the full finance committee and the
 10 full finance committee will issue a report to the
 11 Senate and the Senate will debate the budget bill.
 12 Once the House and Senate have passed
 13 their own budget bills they are then sent to
 14 conference and the conference committee, which is
 15 appointed by the leaders of both bodies, appoints
 16 three representatives -- I believe it's three --
 17 from each body to represent those bodies in
 18 conference.
 19 And the conference committee negotiates
 20 sections of every piece of legislation, including
 21 the budget. Conference committee reports are then
 22 adopted by the House and Senate and sent to the
 23 Governor for his signature or veto.
 24 Q. And would you say that the budgets
 25 allocated to the commission varies depending on

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1 whether it's an election year, or is it a more
 2 consistent allocation of funds?
 3 A. In my experience the State Election
 4 Commission's budget requests have been funded
 5 almost -- almost always at the complete request of
 6 the agency.
 7 So in other words, my predecessor, I
 8 can't recall a time where her budget request was
 9 not granted. My first budget request, which is
 10 before the Senate right now, the House
 11 representatives fully funded my complete request,
 12 and to my knowledge, I believe the Senate intends
 13 to do the same. So I believe the General Assembly
 14 has funded the agency adequately as requested by
 15 the agency every year.
 16 Q. Let me rephrase my question.
 17 There are some years where there are
 18 more elections than others; correct?
 19 A. Correct.
 20 Q. Does the funding oscillate depending on
 21 election activity in terms of --
 22 A. No.
 23 Q. -- what you request?
 24 A. No. No. Well, so the request itself
 25 might be in preparation for an election, a

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1 statewide election year, but the funding does
 2 not -- is not determined by, oh, it's going to be
 3 an election this year so we better give them more
 4 money. It's truly just whatever the executive
 5 director requests of the General Assembly.
 6 That's -- it's granted based solely on that.
 7 Now the federal government will
 8 issue -- like I said, those federal funds, those
 9 are in preparation for federal elections,
 10 congressional or presidential, et cetera. So
 11 they're very open about that, that this is, you
 12 know, to be used in preparation for federal
 13 elections.
 14 Q. How does one deal with unexpected
 15 election costs? For example, if there is a budget
 16 that was submitted and you anticipated a certain
 17 level of election activity but then, for example,
 18 there's a special election, how does one
 19 accommodate for that?
 20 A. So the way our budget is built or
 21 created is we -- the State Election Commission
 22 establishes a sort of cushion for -- based on the
 23 average number of special elections in off-election
 24 years. It's not a lot, but, you know, we know how
 25 much approximately -- and I don't have that

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1 information with me.
 2 But, you know, we can determine how
 3 much we will have to reimburse the county for a
 4 state Senate primary -- or election, special
 5 election or state House special election.
 6 And those are minimal, to be honest.
 7 So we don't have a lot of state-level races that
 8 need reimbursement or that happen in special
 9 elections or off-election years. So we're able to
 10 plan for those and -- accordingly. That's just the
 11 way budgeting works.
 12 Q. And what is the annual budget for the
 13 commission?
 14 A. It has gone -- well, currently it sits
 15 at approximately \$12 million a year.
 16 Q. And does that include so both the
 17 federal contributions and the state-funded portion?
 18 A. Yes.
 19 Q. And you had mentioned before that each
 20 county office has a GSI sort of for mapping. Does
 21 the commission have any in-house cartographers?
 22 A. The commission does not have any
 23 in-house GIS staff. We rely on the expertise of
 24 Revenue and Fiscal Affairs and -- yes, that's -- we
 25 don't have anybody inside.

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1 Q. So when the census data is released,
 2 who in your office reviews it? Like who are those
 3 people?
 4 A. So my information technology staff will
 5 work with Revenue and Fiscal Affairs, GIS people,
 6 and they'll work together on that.
 7 Q. Do you outsource any of this work to
 8 third parties, individual consultants?
 9 A. No. No, the State Election Commission
 10 does not, no.
 11 Q. And so we've sort of established
 12 there's a commission, you're executive director.
 13 What type of staff do you hire that you're sort of
 14 supervising?
 15 A. Well, my staff includes currently 27
 16 people split into various divisions. There's the
 17 voter services division, which, like I said, is
 18 primarily information technology and cybersecurity
 19 focused. There is the public information and
 20 training division which is comprised of individuals
 21 that specialize in training or have education
 22 backgrounds and individuals that have backgrounds
 23 in public information, public relations, things of
 24 that nature. Outreach as well. So -- and
 25 administration and finance. The administration and

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1 finance division is comprised of individuals that
 2 have finance and accounting and human resource and
 3 procurement backgrounds.
 4 Q. And do you know the average sort of
 5 tenure of your staff?
 6 A. So prior to the 2020 election the
 7 agency was one of few in state government that had
 8 very low turnover and very high tenure. I would
 9 say after the 2020 election we've seen over 50
 10 percent turnover for a variety of reasons, as have
 11 the counties.
 12 We have, I believe at this point since
 13 2020, 20 new county directors, most of which have
 14 never been through any statewide election. So a
 15 lot of new people and a lot of new roles at the
 16 state and local level.
 17 Q. Why would you say there's -- there was
 18 so much turnover after the 2020 election?
 19 MS. CRUM: Object to the form of the
 20 question; calls for speculation. You may answer.
 21 THE WITNESS: The environment
 22 surrounding elections nationwide following the 2020
 23 election has been contentious, and repeated
 24 misinformation about how elections work in various
 25 states has taken a toll on election officials. It

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1 has made election officials the bad guys.
 2 Election officials are like many, I
 3 guess, government functions where you don't really
 4 care about the successes, you only care about the
 5 failures.
 6 And then to add to that mantra, you
 7 know, there's the concern that it's just not worth
 8 it for these election officials, what they go
 9 through both at the local level and within my own
 10 agency.
 11 The amount of stress they're under and
 12 the amount of scrutiny they're under is not worth
 13 it to them. And people's health has been a concern
 14 because of that stress, and people are retiring if
 15 they can, they are leaving if they can find better
 16 work, but the entire -- and this is not -- not just
 17 South Carolina. This is nationwide.
 18 BY MR. INGRAM:
 19 Q. And so the average tenure in the past
 20 was a lot higher, but now I think you said you have
 21 about maybe half new employees?
 22 A. Correct.
 23 Q. And how do those employees get trained?
 24 What sort of human resources structure do you have?
 25 A. So when new employees are hired they're

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1 given a brief orientation from our human resource
 2 staff, and the kind of work my staff does and
 3 myself is not something you learn in any school.
 4 It is very much on-the-job training, and you just
 5 learn by doing.
 6 When I joined the agency I had
 7 absolutely no election experience, but I had a lot
 8 of government administration experience. So I had
 9 to learn a lot on the job about what my people did
 10 and become an expert quickly in a variety of
 11 election processes.
 12 So that same -- that applies to every
 13 staff member of mine from the database builders
 14 that build the elections to information technology
 15 people.
 16 Even people in public relations or
 17 training, even though that's not technically
 18 oriented, they have to understand how elections
 19 work. You know, how do you prepare for an
 20 election, what to -- what are the responsibilities
 21 of the counties and state, et cetera.
 22 And so a lot of -- I'd say all of the
 23 training done in my agency and at the county level
 24 is on-the-job training.
 25 Q. Thank you. So is it fair to say that

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1 when -- in this current cycle, for example, when
 2 the state House orders the commission to implement
 3 maps, is there discretion there, or is there sort
 4 of a hierarchy that requires compliance?
 5 MS. CRUM: Object to the form of the
 6 question.
 7 THE WITNESS: Do you want me to answer?
 8 BY MR. INGRAM:
 9 Q. You may answer.
 10 A. No, there's no discretion. The
 11 redistrict map -- the districting maps are passed.
 12 Once they're signed into law by the Governor it's
 13 as effective as any other law that's passed, and we
 14 have to implement the maps accordingly. There is
 15 no discretion by either the commission, the county
 16 boards, myself or the county directors.
 17 Q. I also just want to go back to a
 18 comment you made a few minutes ago. We were
 19 talking about the composition of the commission.
 20 You said that South Carolina does not have partisan
 21 registration; is that correct?
 22 A. Correct.
 23 Q. Can you say more about that? Or what
 24 does that mean?
 25 A. When a new voter goes to register to

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1 vote, unlike in other states like Florida -- in
 2 Florida you go to register to vote you can say I am
 3 registering as a Republican or as a Democrat or as
 4 a Green Party, Liberal Party, Working Families
 5 Party. You're registered as a voter in those
 6 parties or you're assigned to one of those parties.
 7 In South Carolina you register to vote
 8 and you're a voter. What this practically means
 9 as -- going back to my example in Florida, if you
 10 registered as a Republican and you want to vote in
 11 a primary you will vote in a Republican primary or
 12 if you're registered as a Democrat you vote in a
 13 Democratic primary.
 14 In South Carolina anybody, any
 15 qualified voter can vote in any primary. We have
 16 open -- it's called open primaries. So we have
 17 open primaries in South Carolina.
 18 Q. Does it stay -- does that concept mean
 19 that -- well, do you have to pick a primary to vote
 20 in?
 21 A. You do. Well, if you want to vote,
 22 yes, you have to pick. You have to pick one
 23 primary to vote in, yes.
 24 Q. So it's open, but you effectively still
 25 have to choose to vote in the Republican or the

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1 Democratic primary?
 2 A. Correct. You cannot vote in both.
 3 Q. And does the commission collect voting
 4 demographic information such as partisan
 5 preferences?
 6 A. So we collect voter history which is
 7 available to the public for purchase. And that
 8 voter history includes demographic information
 9 about the voter, in which elections those voters
 10 voted as well, in what years.
 11 Q. And do you collect information about
 12 racial demographics?
 13 A. That data includes -- the data I
 14 mentioned previously does include racial
 15 information.
 16 Q. What about socioeconomic?
 17 A. No. The data includes the person's
 18 name, their address, their race, date of birth, so
 19 their age, so -- and what elections they voted in.
 20 Q. Perfect.
 21 MR. INGRAM: Let's take a five-minute
 22 break.
 23 THE VIDEOGRAPHER: We are going off the
 24 record. This is the end of media unit No. 1. The
 25 time is 11:19.

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1 (A recess transpired from 11:19 until
 2 11:28.)
 3 THE VIDEOGRAPHER: We are back on the
 4 record. This is the beginning of media unit No. 2.
 5 The time is 11:28.
 6 BY MR. INGRAM:
 7 Q. Mr. Knapp, I want to talk about what
 8 happens after each redistricting cycle. I know
 9 this is probably your first one. So once the
 10 Governor signs a new map into law, what happens at
 11 the commission level?
 12 A. So at the commission level I direct the
 13 county directors and their staff -- I'll just use
 14 the term county boards. The board members
 15 themselves don't really have any role in this
 16 process.
 17 But I direct the directors and the
 18 staff to look at the data points set forth in the
 19 congressional redistricting law and start looking
 20 basically at their counties. Again, as I said
 21 before, is your county wholly in a congressional
 22 district or is it a split county with two or more
 23 congressional districts in it. So that's the first
 24 step.
 25 Q. Sorry. I don't want to interrupt, but

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1 this deposition is about the House maps. So would
 2 you be so kind to talk about the process for the
 3 House maps?
 4 A. Sure. Yeah, and my apologies. We kind
 5 of do all of them together. So yeah, the House
 6 maps, it's similar. So what we have done in the
 7 past, again, this is not this cycle, but my
 8 understanding of past practice is we would accept
 9 maps and data from the Revenue and Fiscal Affairs
 10 office and use those resources to do what I said
 11 before, the whole D code process of moving voters,
 12 moving precincts into new districts, et cetera.
 13 That has not occurred this year. The
 14 staffer at RFA who -- well, the two staffers
 15 that -- there were two primary staffers at RFA who
 16 did this. One has since passed away since the last
 17 redistricting cycle, and one now works for the
 18 Senate in a similar capacity.
 19 So RFA does not have the expertise or
 20 competence that they once had to do this process.
 21 So how it's worked this year is they're just
 22 providing PDF files and shape files, again, which
 23 are not maps. They haven't provided any maps to
 24 the counties or the SEC to help with this process,
 25 but they have been checking for errors, doing those

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1 kickout errors. So we send RFA data to check
 2 behind us to make sure both we and the county are
 3 correct, and they've been helping with that
 4 process.
 5 Q. And so that's sort of what happens at
 6 the commission level statewide, and then when it
 7 trickles down to the county, can you walk me
 8 through that?
 9 A. So that whole dynamic also applies to
 10 the counties, and with the added caveat of they're
 11 also dealing with their GIS office which has
 12 varying levels of competency and resources
 13 themselves.
 14 As I said, a lot of counties this
 15 turnaround or this cycle, redistricting cycle have
 16 had to rely on their GIS office to make the maps
 17 for them since they were not provided by RFA. And
 18 some GIS offices have been unable to do that
 19 because they don't have the equipment to do that.
 20 So counties, what they do, again, with
 21 the House or, you know, House, congressional,
 22 Senate, whatever -- we're talking about the House.
 23 So the county identifies the district changes, the
 24 House district changes within their county.
 25 Districts may be added, removed or adjusted based

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1 on the redistricting plan.
 2 The county request -- they submit
 3 requests for the D codes, the D code changes. So
 4 they submit a D code change form to the State
 5 Election Commission, and that D code form changes
 6 the districts within a precinct.
 7 So the county updates -- and to go
 8 further deep into that, each D code contains street
 9 files. So on one side of the street you may have
 10 District 1. On the other you may have District 2.
 11 So you have a lot of those street files within a
 12 precinct D code.
 13 And so those are then processed by the
 14 State Election Commission, and the county then
 15 redistricts the voters or requests a mass county
 16 decoding.
 17 If there's been a complete change in
 18 the county we can do a mass change for them, but
 19 then, you know, the county will run various reports
 20 to identify any redistricting or street address
 21 errors on their own, and they'll also work with us
 22 and RFA to do those kickout lists.
 23 So really the redistricting effort when
 24 it comes to House redistricting is very much a
 25 hand-in-glove approach by the SEC and the county

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1 offices.
 2 The counties are on the streets. They
 3 are the ones looking at the physical boundaries of
 4 these district lines. It's a laborious process.
 5 Sometimes they have to physically get in their cars
 6 to figure out where is the line. This house on
 7 this corner might be District 1, but its neighbor
 8 might be District 5, for instance.
 9 So we help with the high-level stuff,
 10 and they do the minutiae street stuff. That would
 11 be an easier way to look at it.
 12 Q. So is it possible that the maps that
 13 are enacted have to undergo slight modifications to
 14 comply with these county, sort of -- how does that
 15 work?
 16 MS. CRUM: Object to the form of the
 17 question.
 18 THE WITNESS: I don't really -- could
 19 you rephrase? I don't really understand the
 20 question.
 21 BY MR. INGRAM:
 22 Q. So the process of implementation that
 23 you're describing in terms of minutiae, for
 24 example, one side of the street having District 1
 25 and one side of the street having District 2, is

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1 all of that reflected in the maps that are signed
 2 by the Governor, or are those sort of tweaks that
 3 happen at the commission and county level?
 4 A. The process itself is not enumerated in
 5 any law. What I recall, the redistricting law, all
 6 of them, all the laws that have been passed, the
 7 plans that have been passed simply dictate the data
 8 points of the districts. Like this district has
 9 these voters, et cetera. It's not -- they are not
 10 maps. They are data points in the law. So the
 11 process of actually moving voters and the process
 12 of redistricting is not something that's enumerated
 13 in the law. The process itself is not.
 14 Q. So in terms of my question, after the
 15 maps are drawn does implementation require any sort
 16 of modification?
 17 A. No, not to my knowledge. I mean, in
 18 the laws themselves the redistricting plans are not
 19 maps. I know that's a misconception, that the
 20 House has passed their map, the Senate has passed
 21 their map, et cetera. They aren't maps at all.
 22 They are just data points. As the legislation
 23 shows, that they are just data points. So it's
 24 left up to RFA and us and the counties to interpret
 25 those data points to the best of our abilities.

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1 Q. But those -- do those data points not
 2 entail physical demarcations of lines and counties?
 3 A. They do.
 4 Q. So they may not be physical maps, but
 5 they still are conveying boundaries; correct?
 6 A. That's correct. That's a fair -- yes.
 7 So they're not drawings of maps, of geographical
 8 boundaries. They enumerate them with words and not
 9 illustrations, I guess, for lack of a better term.
 10 So yeah. But we take that exact data and implement
 11 that data accordingly. There is no deviating from
 12 that, from whatever's enumerated in the law.
 13 Q. And is the commission the only entity
 14 in charge of preparing the state for elections
 15 under the new maps?
 16 A. It depends on the election. For
 17 statewide elections, yes. For municipal elections,
 18 it depends. And for less than countywide, that
 19 would be the counties. So the State Election
 20 Commission kind of leads the efforts for statewide
 21 elections.
 22 So like this year with the
 23 gubernatorial year we have several statewide
 24 offices up for election. In 2024 it will be
 25 similar. We'll have the President, the President

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1 and Vice President, Congress, et cetera.
 2 So for statewide elections, the State
 3 Election Commission is kind of the lead on that.
 4 When it comes to countywide or less than countywide
 5 the county boards are the ones that lead those
 6 efforts.
 7 And there are a number of municipal
 8 election commissions that are not held accountable
 9 by us or the county offices that have their own
 10 elections, and they run those elections as they see
 11 fit.
 12 Q. You've talked about implementing maps
 13 in terms of moving voters to comply with the data
 14 provided by the Governor and the legislative
 15 chambers in South Carolina. What else goes into
 16 implementing maps that your office has to --
 17 A. There's nothing -- I'm sorry. Go
 18 ahead.
 19 Q. -- perform? Yeah.
 20 A. Okay. Well, nothing is added to the
 21 data. There's no extemporaneous information that's
 22 added. We just simply -- we, and I use that term
 23 in terms of the counties and us. We take the data
 24 that's in the law. And as I said, the most minute
 25 process is done by the counties, and that is to --

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1 sometimes they need to figure out if the law says
 2 that this street and that street establish a
 3 boundary but there's a question as to certain
 4 houses on that street, they may have to physically
 5 go to those streets to figure out this house is
 6 here, that house is there. So they are...
 7 And RFA used to do this. RFA used
 8 to -- when they created the maps following -- like
 9 the physical drawing of the maps, RFA would. They
 10 would get in the car and if there were issues they
 11 would have a GIS system in that car to kind of
 12 physically map out the boundaries. For whatever
 13 reason they don't do that anymore. So it's left to
 14 the counties to do that.
 15 Q. For example, in terms of candidate
 16 qualifying deadlines, is that something the
 17 commission and your office has jurisdiction over?
 18 A. Candidate filing deadlines?
 19 Q. And qualifying deadlines.
 20 A. Oh, qualifying deadlines? Oh, no.
 21 Those are established by state law. Candidate
 22 filing and certification deadlines are established
 23 in state law in Title 7.
 24 Q. Right, but does the commission and your
 25 office have any interface with that process?

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1 A. We accept the filing of the candidates,
 2 of each candidate. So the State Election
 3 Commission accepts certain candidates. So for
 4 congressional, President. I mean, the big offices,
 5 the statewide offices, the greater than countywide
 6 offices. Essentially everything from South
 7 Carolina House of Representatives up we accept.
 8 The county boards accept South Carolina Senate,
 9 South Carolina House and below. So those
 10 candidates file with the county office.
 11 So we, the county boards and us, we
 12 accept the filings, we gather the information.
 13 Those are -- that's all publicly available on our
 14 website under the candidate tracking system. And
 15 that data is sent to -- or those lists are sent to
 16 each respective party, and it's up to the party to
 17 certify their candidates by a certain deadline.
 18 So once the parties have certified
 19 their candidates, they send us a list of their
 20 certified candidates for each respective office,
 21 and then we build the ballots based on those
 22 candidates that the parties have certified.
 23 Q. And does that sort of division of
 24 responsibilities apply to all aspects of the
 25 election process?

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1 For example, for ballots, does your
 2 office prepare the ballots for both statewide
 3 offices or only -- how does that work?
 4 A. We -- the State Election Commission
 5 builds all ballots for all elections in the state
 6 with the exception of the municipal election
 7 commissions in the state that hold their own
 8 elections under any -- any way they seem fit or
 9 they deem fit.
 10 Q. And what about recruiting or training
 11 poll workers?
 12 A. So that is a joint effort by the state
 13 and the county offices. The state has a media
 14 campaign, if you will, called No Excuse SC. We run
 15 various advertisements and other public relation
 16 campaigns to get more poll workers for the
 17 counties. But the poll workers themselves, they
 18 are signed up by the county offices, they are
 19 trained by the county offices.
 20 We provide the training materials to
 21 the counties and we train the counties on how to
 22 train poll workers, but the counties are the ones
 23 that train the poll workers. And that's really
 24 done at the county level. They are paid by the
 25 county. We reimburse the counties a percentage,

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1 but counties are free to use as many or as -- poll
 2 workers as they would like.
 3 Q. So we've talked about qualifying
 4 deadlines, we've talked about preparing ballots,
 5 and poll workers.
 6 Is there any other aspect to election
 7 administration that your office is involved with
 8 that we haven't talked about today?
 9 A. I'm sure there is. I can't really
 10 think of it right now. I mean, there is very
 11 little that we don't have anything to do with.
 12 You know, even when it comes to
 13 cybersecurity we try and prepare county offices as
 14 best we can for cybersecurity threats. When it
 15 comes to IT support, again, counties should rely on
 16 their IT department if they have one, but they
 17 heavily rely on us.
 18 One aspect that has been challenging
 19 for a growing number of counties are their county
 20 attorneys. Many county attorneys throughout the
 21 state, again, like their county councils, do not
 22 recognize their county board offices as county
 23 offices and, thus, will not give them the legal
 24 support and advice they need and that they're due.
 25 There is an attorney general report on

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1 this exact issue in 2017 which was requested by the
 2 former Richland County director when he was dealing
 3 with this issue, and that issue remains in Richland
 4 County, but we cannot provide legal support. So I
 5 guess that would be one area we cannot do.
 6 We can provide guidance on various
 7 legal issues, but we do not -- we cannot advise
 8 counties legally on anything, if that makes sense.
 9 So like my attorney, my general counsel is not the
 10 attorney for the county offices.
 11 Training. Again, we provide all the
 12 training materials, we train the counties, we train
 13 the counties to train poll workers, we train the
 14 counties to train their own staff. Oftentimes my
 15 staff will go train county staff. We train county
 16 board members.
 17 So to kind of answer but not answer
 18 your question, there is very little, if anything,
 19 besides -- outside of the legal advice thing that I
 20 mentioned that we don't have anything to do with at
 21 the county level.
 22 Q. Thank you. I have a few logistical
 23 questions for you as well.
 24 A. Sure.
 25 Q. So when new maps are drawn how long

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1 does it take to prepare the ballots for those
 2 elections?
 3 A. The same amount of time it takes for
 4 any other election. As we speak, so really what
 5 happens is after candidate filing is done -- let me
 6 back up.
 7 Redistricting ideally should be
 8 completely done by the time candidate filing occurs
 9 so candidates know what offices they're running for
 10 in what districts and voters will know who their
 11 candidates are.
 12 So we build ballots based on that and
 13 we are building them right now and that's a
 14 couple-of-week process that involves both creating
 15 the ballot databases.
 16 We do a process called Q&A, which is we
 17 have separate people in my office who are
 18 segregated from that process that review the
 19 ballots for accuracy to ensure that the ballots are
 20 correct.
 21 Before the QA process we have county
 22 offices looking at their databases to make sure the
 23 offices are listed correctly, the ballots look good
 24 to them.
 25 So it's a multistep, several-party,

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1 stakeholder process to develop ballots, and it
 2 takes several weeks to do.
 3 Q. And for example, does the printing
 4 occur in-house of the ballots, or do you have a
 5 third-party vendor for that?
 6 A. So are you talking about absentee?
 7 Q. No. Just regular ballots.
 8 A. Okay. Well, regular ballots are -- on
 9 election day counties have blank ballot cards which
 10 are used by the ballot-marking devices that you --
 11 THE REPORTER: I'm sorry. I'm sorry.
 12 Because of the paper moving it kind of obliterated
 13 some of what you said. Could you say that again,
 14 please?
 15 THE WITNESS: That's okay. Sure. So
 16 on election day every county, every polling place
 17 has blank ballot cards. These are thermal paper
 18 cards that are used, are inserted by the voter into
 19 a ballot-marking device. So there's no printing
 20 there other than by the voter with the BMD.
 21 The counties will print backup paper
 22 ballots for use in polling places. They will print
 23 provisional ballots and fail-safe ballots in-house.
 24 So -- but a lot of -- you know, the counties
 25 basically source their own paper and their own

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1 ballots for election day at the polling place.
 2 Absentee ballots, it differs. Some
 3 counties will mail off or issue paper ballots
 4 in-house. So they'll print the ballot, they have
 5 the envelope, they mail it to the voter. Or in our
 6 current in-person absentee process the voter will
 7 come into the office, they'll go through the BMD
 8 process or they'll be issued a paper ballot that
 9 was printed in-house.
 10 Many counties use approved printing and
 11 mailing vendors. There are three of them that were
 12 selected in a joint county board and SEC committee
 13 in two thousand -- leading up to the 2020 election.
 14 So these vendors have been scrutinized and approved
 15 to print absentee ballots for any county in the
 16 state.
 17 So the county will send a data file.
 18 So if Howard Knapp requests a absentee ballot from
 19 Richland County, Richland County will send Howard
 20 Knapp's ballot to their printer who will print the
 21 ballot, send it to me in an envelope and then I
 22 send the return envelope back to the county.
 23 So many counties utilize these
 24 third-party vendors, and we encourage them to do so
 25 because of the increasing number of absentee ballot

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1 requests.
 2 BY MR. INGRAM:
 3 Q. And sort of in the same vein of
 4 logistical questions, how long would you say it
 5 takes to typically recruit poll workers?
 6 A. It depends on the environment. And
 7 I'll clarify that statement for you.
 8 Leading up to the 2020 primary it was
 9 very difficult because the reality is a good
 10 segment of the poll worker population is of a
 11 certain age and did not want to be around anybody
 12 during Covid.
 13 So following the primaries there was a
 14 huge campaign by us, led by us, and the counties
 15 also did their own campaigning for poll workers.
 16 And in the 2020 general election we actually had a
 17 surplus across the state of poll workers.
 18 So in terms of actually the process of
 19 recruiting somebody, it could take a matter of
 20 days, as quick as a -- as quickly as a number of
 21 days. It really depends on the county and how the
 22 county HR office onboard those poll workers.
 23 Because as I've learned, certain
 24 counties -- this goes to the lack of uniformity
 25 throughout the state. Certain counties treat poll

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1 workers as independent contractors and have their
 2 own onboarding process with that. Some counties
 3 treat poll workers as temporary employees, so they
 4 have their own process for hiring them.
 5 So it's really, again, dependent on the
 6 county support and how that county treats poll
 7 workers. So it could take as quickly as a few days
 8 or as long as a few months depending on the county.
 9 Q. And do you know if counties typically
 10 have either a database or a Listserv of previous
 11 poll workers that they can draw from?
 12 A. Yes. Every county, to my knowledge,
 13 has an ongoing, ever-evolving list of poll workers
 14 to choose from.
 15 Q. And in terms of filing deadlines, how
 16 does that work with the commission in terms of
 17 administering elections? How much sort of lead
 18 time do they need to effectively administer
 19 elections after filing deadlines?
 20 A. Well, following candidate filing
 21 deadlines we would need approximately two months to
 22 build and compile all the databases and have them
 23 ready to go.
 24 Basically the clock -- the period we
 25 have to work with is once the party sends us the

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1 certified candidates for their party, we have until
 2 shortly before the UOCAVA deadline of 45 days
 3 before an election to get all the ballots done.
 4 And that is approximately a two-and-a-half month
 5 period to get all of that done. So it's a time
 6 crunch. And that's a federally mandated deadline,
 7 that all UOCAVA ballots must be issued by each
 8 respective county to each UOCAVA voter 45 days
 9 before any election.
 10 Q. And if, for example -- well, I guess
 11 the time crunch, could that be alleviated by hiring
 12 additional staff, or what creates the time crunch?
 13 A. Well, it's not just the number of
 14 staff, but it's also -- we're relying on a lot of
 15 other people like the party to make sure they have
 16 all their ducks in a row, make sure their
 17 certification is correct. We're relying on the
 18 county offices to get their information correct to
 19 know what actually needs to go on their ballot.
 20 So it's not just a situation where
 21 throwing more money at the situation will fix it.
 22 You know, this is an ebb-and-flow process. My
 23 database-building department is extremely busy
 24 right now, but in December of this year they're not
 25 going to have a lot to do.

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1 So I'm not going to hire 20 database
 2 builders to get, you know, two counties done in one
 3 day just for that, you know. And again, there's
 4 the QA process, that we have to be methodical and
 5 pragmatic about making sure the ballots are correct
 6 and accurate on election day and --
 7 Q. But -- um-hum.
 8 A. Oh. I was going to say to that end I
 9 established for the first time this year a
 10 candidate withdrawal deadline.
 11 So what this agency has done in the
 12 past is allowed candidates to withdraw on -- you
 13 know, there's no deadline for them to withdraw
 14 before their name is taken off the ballot.
 15 With all the technologies we have with
 16 elections right now and with everything going on I
 17 established a candidate withdrawal deadline of
 18 April 27th, which is 48 days before an election.
 19 So essentially we've created a process
 20 where we have to consider the federal deadlines and
 21 the technology used in elections. So the time
 22 between candidate -- party certification and that
 23 candidate withdrawal of 48 days before an election,
 24 that's really the time crunch, and adding more
 25 people to that is not going to help the situation.

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1 Q. And so it sounds like -- correct me if
 2 I'm wrong -- it's not just about sort of the
 3 people; right? It's about information sharing and
 4 the logistics of having to communicate with
 5 different moving parts?
 6 A. Yes.
 7 Q. And going back to the budget that we
 8 discussed earlier, how much does it cost to
 9 implement maps post redistricting?
 10 A. That's -- I truly don't know. I mean,
 11 this is just a part of our jobs, and I don't think
 12 we incur any more costs because of redistricting.
 13 It's just part of what we do. So there is no
 14 additional cost to the state for us to redistrict.
 15 That's also because we don't use
 16 outside consultants to do the work for us. So if
 17 the question is does it cost the state anything
 18 additional to implement redistricting from the
 19 State Election Commission standpoint, no, it does
 20 not.
 21 Q. So if the commission and your office
 22 had to redraw a portion of the maps, would it cost
 23 additional money?
 24 A. We would not redraw a portion of the
 25 map. That would be the -- that is the sole

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1 jurisdiction of the General Assembly or the court.
 2 Q. Sorry. Let me be more specific. If
 3 you had to implement portions of the map that were
 4 redrawn, would that cost additional funds?
 5 A. No, no. We would just do it.
 6 Q. We'll be done shortly, but I just have
 7 a few last questions about the current cycle. Are
 8 you familiar with House Bill 4493?
 9 A. I am not. I mean, I might be, but I
 10 don't remember the number.
 11 Q. So that's the bill that was passed for
 12 the state House maps that I believe went into --
 13 was enacted in -- I think December 9th, if I
 14 remember correctly.
 15 A. You -- yeah, the state House and the
 16 state Senate plans were both signed on December
 17 10th. So yeah, I'm familiar with all three
 18 redistricting maps. I just didn't know the
 19 numbers, so --
 20 Q. No worries.
 21 A. Yes, I am familiar with it.
 22 Q. So that was, you know, as you said,
 23 December 10th. It is now April 19th. So what has
 24 happened since the Governor signed the state House
 25 maps by your office in terms of implementation?

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1 A. So at the beginning of that process we
 2 were trying to -- I reached out to my predecessor
 3 to ask her what do I do, because I've never been
 4 through this process. The last time I was -- this
 5 process took place I was in my first year of law
 6 school or the second year of law school in a
 7 different state and I had no idea what to do. So I
 8 reached out to her, what did we do last time, and I
 9 know many county directors did the same. And she
 10 walked me through the process as it occurred in her
 11 tenure.
 12 So we engaged with Revenue and Fiscal
 13 Affairs, Frank Rainwater and his staff who were not
 14 sure of their own role in the process and needed
 15 clarification from a former staffer of theirs who
 16 currently works for the Senate on what their
 17 responsibilities were.
 18 So we have been working with RFA as
 19 best we can to take the data they send to us and
 20 the counties into the local GIS offices and we have
 21 been systematically moving precincts into their
 22 proper districts ever since then.
 23 So an issue that has occurred and
 24 somewhat delayed the process this year is the staff
 25 at RFA who have never done this before were using

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1 the current data as outlined in all of the
 2 redistricting acts, plans, but were using old
 3 precinct names from 10 or even 20 years ago, and we
 4 were getting a lot of errors, a lot of bad
 5 information from RFA because of that.
 6 And once that was discovered I reached
 7 out to the Senate majority and minority leaders and
 8 the deputy clerk and asked them if we could work
 9 with their staffer who had previously worked at RFA
 10 to assist us in this process because he knew the
 11 process, he knew the technology that needed to be
 12 used. And we had been working with him to
 13 establish these kickout lists, these error messages
 14 and to kind of get our ducks in a row.
 15 And ever since then, which was about a
 16 week or so ago, things have been running smoothly,
 17 and we're on track to being complete soon.
 18 Q. And so aside from sort of the moving of
 19 voters into various precincts based on the newly
 20 drawn maps from the legislature and Governor, have
 21 you done any activities involving ballots or
 22 candidate-qualifying activities?
 23 A. So in regards to candidate
 24 qualifications, we don't do anything with that.
 25 There's nothing in Title 7 of the state code that

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1 allows us to do anything with that, but we did
 2 conduct candidate filing in March. We accepted
 3 candidate filing documents from all the candidates
 4 in the state. And by we again I mean the county
 5 boards and us, and we have been building ballots
 6 based on those candidates and offices.
 7 So right now we are in the process of
 8 building those ballots in coordination with -- as
 9 they're being reviewed by the counties and my QA
 10 staff, quality assurance, QA staff. So yeah, it's
 11 a very long and, like I said, laborious process.
 12 Q. So in terms of building ballots, based
 13 on what you said previously sort of more in the
 14 abstract, most of that work is about data
 15 compilation?
 16 Because it seems like -- and correct me
 17 if I'm wrong -- that the way voting takes place,
 18 there are blank ballots that individuals put into a
 19 machine. And so those are sort of preprinted. You
 20 don't have to sort of print those on a case-by-case
 21 basis.
 22 A. Correct. So -- and this is something
 23 that's not commonly known by most people, but every
 24 voter has a ballot style. And so the way this
 25 works kind of at a high level is we take candidate

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1 information, it's entered into VREMS, which is our
 2 Voter Registration and Election Management System.
 3 We take that data from VREMS about the candidates
 4 and the offices, we take that information and start
 5 building the ballots. We code the ballots. This
 6 is what your ballot's supposed to look like.
 7 So where the ballot styles come in is
 8 the ballot style is a number that differentiates
 9 what ballots go to what voters. So you and I could
 10 be neighbors but with two different ballot styles.
 11 Or we might have the same one. But if we had a
 12 different one -- so, for instance, we had the same
 13 US Senator, same congressman, same House and --
 14 House rep and senator at the state level but
 15 different school districts. So I might be ballot
 16 style, you know, ABC001 and you might be ABC0002.
 17 So every voter has a ballot style in
 18 the state. So we build -- we code those ballots
 19 with that in mind, that voters that live here get
 20 this ballot style.
 21 And so effectively what this means is
 22 on poll -- on election day every polling place has
 23 one or more ballot styles. Usually we'll have a
 24 few ballot styles available. So when you go to
 25 present your ID and you get your blank ballot card,

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1 the BMD knows Antonio Ingram gets ballot style X
 2 and Howard Knapp gets ballot style Y. So you'll
 3 get your ballot, your accurate ballot, I'll get my
 4 ballot, so...
 5 Q. That's helpful. Thank you for
 6 explaining that.
 7 And so at this point, in the sort of
 8 election year -- I know the election's coming up
 9 this fall -- what more do you need to do as an
 10 office to prepare for the upcoming elections?
 11 A. So the primaries, once the ballots are
 12 built, ballots are approved, the candidate
 13 withdrawal date of April 27th has passed, we then
 14 have to ensure that every county sends out their
 15 UOCAVA ballots by the deadline, and those that
 16 don't -- and there have been those that haven't we
 17 then have report to the Department of Justice. So
 18 every two years --
 19 THE REPORTER: I'm sorry.
 20 THE WITNESS: I'm sorry. Go ahead. I
 21 think Sandy's frozen.
 22 MR. INGRAM: You guys are both frozen
 23 for me.
 24 THE WITNESS: Oh, no. We can see you.
 25 MR. INGRAM: Okay. We will begin.

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1 Sandy's still frozen.
 2 MS. CRUM: Yeah.
 3 THE VIDEOGRAPHER: Can I go off the
 4 record?
 5 THE WITNESS: Yeah.
 6 THE VIDEOGRAPHER: We are off the
 7 record at 12:04.
 8 (Off the record to resolve technical
 9 issues from 12:04 until 12:09.)
 10 THE VIDEOGRAPHER: We are back on the
 11 record at 12:09.
 12 BY MR. INGRAM:
 13 Q. Mr. Knapp, what other steps does the
 14 commission still need to take to implement the maps
 15 before the election this fall?
 16 A. So the steps that are taken to move
 17 maps, you said?
 18 Q. To implement the maps.
 19 A. Implement the maps?
 20 Q. You already talked about moving people
 21 into different precincts --
 22 A. Well, that's --
 23 Q. -- based on changes, et cetera.
 24 A. And that's really -- that's what
 25 redistricting is. Once the voters are moved and

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1 all voters -- or all moves have been approved,
 2 that's the show. That's redistricting. So...
 3 Q. Right. But the elections can't happen
 4 unless there are ballots, unless there are, you
 5 know, other parts of the piece; right?
 6 A. Okay. That's correct. So once we --
 7 once that process is done we -- it's a multi,
 8 two-and-a-half month process from candidate
 9 certification by the party to candidate withdrawal
 10 date, of building the ballots. And as I said, it's
 11 a multistep, multi-stakeholder process, pulling
 12 information out of the VREMS system, Voter
 13 Registration and Election Management System, that
 14 contains, you know, candidate names and offices
 15 they're running for, what district, county,
 16 et cetera.
 17 So that data is used to build the
 18 ballots. We build the ballots, they are QA'ed
 19 in-house as well as looked at by the counties
 20 themselves to make sure the title of the offices
 21 are correct and, you know, the council members are
 22 correct and everything like that. Because
 23 sometimes counties will enter information into
 24 VREMS about their candidates or their offices
 25 that's not always correct. So that's why it's

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1 helpful to have this very intensive QA process.
 2 So once the ballots are done and
 3 they're approved and the candidates -- the
 4 candidates are who they're going to be, then UOCAVA
 5 ballots are sent out to all UOCAVA voters.
 6 Every two years we have to certify to
 7 the Department of Justice that our counties sent
 8 out their UOCAVA ballots by the UOCAVA deadline,
 9 and that has not always happened.
 10 We -- I know one or two years ago we
 11 had a county not send out UOCAVA ballots. They
 12 were one or two days late. So we had to, in our
 13 report to the DOJ, mention that county was late by
 14 this number of days.
 15 So, of course, after UOCAVA there is a
 16 number of internal processes of, you know,
 17 establishing the absentee process. You know, so
 18 technically the absentee period starts every year
 19 on January 1st. You could go -- in South Carolina
 20 it's that you qualified. South Carolina -- South
 21 Carolina voters can go into their county office and
 22 request -- or submit their requests for absentee
 23 ballots on January 1st, but for all practical
 24 matters the absentee period is 30 days before an
 25 election.

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1 So we start gearing up for the absentee
 2 period. Currently that's both in person and by
 3 mail. So while UOCAVA ballots are being sent out
 4 and everything there's like a 15-day period leading
 5 up to sending out absentee ballots to regular
 6 voters, domestic qualified voters.
 7 So that's that next step, mailing out
 8 absentee-by-mail ballots, opening
 9 absentee-in-person satellite locations for 30 days
 10 which currently is at the discretion of each
 11 county. And that's a -- in-person absentee process
 12 is kind of a laborious process at the polling place
 13 level, but at the satellite level that's fine. So
 14 that's done. Then we have election day. So that's
 15 kind of everything that leads up to election day.
 16 It's a very long process between us and the
 17 counties.
 18 And none of this -- and it's kind of a
 19 misconception among a lot of people in the state,
 20 is redistricting is not flipping a switch.
 21 Redistricting is a very long process that has
 22 historically taken approximately six months or
 23 longer to fully accomplish.
 24 And that's been -- that's been on our
 25 minds this whole time, is it takes about half a

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1 year to really do redistricting. We've been able
 2 to kind of shorten that a little bit this year with
 3 some of the improved technologies both within VREMS
 4 and in other ways, but it's a long process.

5 Q. And how does that work if there, for
 6 example, would be a special election? Would the
 7 UOCAVA deadlines still be tethered to the date of
 8 that election and be 45 days prior to?

9 A. Yeah. So correct. The special
 10 election is treated like a normal election. The
 11 same period of -- the candidate filing period,
 12 party certification, those same periods are applied
 13 accordingly to whatever the situation is.

14 We have two or three state-level races
 15 this year where that's occurred, and, you know, we
 16 establish -- once a vacancy occurs, we have to
 17 determine, No. 1, when was that vacancy -- when did
 18 that vacancy actually occur, and then we -- if it's
 19 a state-level race or the county establishes what
 20 the calendar is going to be for that election.
 21 So -- but it's the same period. Like I said,
 22 UOCAVA, absentee, it's all the same timeline. It's
 23 just within a random calendar period.

24 Q. And in terms of -- as you know in this
 25 litigation the plaintiffs are challenging the

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1 approved maps.

2 In the event of a victory by the
 3 plaintiffs, how long would it take if one had to
 4 change or implement based on newly drawn maps by
 5 the legislature eliminating a number of state House
 6 districts? Would that take six months, or would
 7 the process be shorter because it's only a portion
 8 of your map?

9 A. I would say it would take anywhere from
 10 three to five months to accomplish. If that were
 11 to happen this year we -- it's an -- it would not
 12 be possible for us to implement that at this point
 13 this year.

14 But, you know, if that were to
 15 happen -- let's say a negotiated settlement or
 16 court-ordered new maps be drawn for any number of
 17 districts, we could implement those districts next
 18 year. That would be fine in about a three- to
 19 five-month period.

20 But we're too far into the calendar
 21 now, that we would have to move the general
 22 election at this point to establish -- you know,
 23 for that to be a possibility this year.

24 Q. And does the number of changes to the
 25 maps change the timeline if you have eight

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1 districts that change versus two?

2 A. It just makes the problem smaller. It
 3 doesn't really change the timeline. I mean, the
 4 problems that we would face in those eight or two
 5 districts, it would be -- it would not be good for
 6 those eight or two districts. They would not be --
 7 the issues that would -- that would pop up both
 8 with certifying those candidates, who was actually
 9 certified to run in these new districts, to --
 10 because you've got incumbents who have already
 11 filed according to the law, they've paid their
 12 certification fee and now you're opening it back up
 13 to other people. That would create issues both
 14 with us and probably those candidates.

15 You know, you're pushing back. It --
 16 you would have to push back the entire election.
 17 You can't have a general election for -- you can't
 18 have people in these two districts voting for
 19 governor on a different day than everybody else in
 20 the 43 other districts in the state.

21 So if you were to change even one
 22 district you would have to move the entire election
 23 calendar to marry those dates so that all voters
 24 are treated equal, and candidates.

25 Q. So if a settlement or a court order

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1 necessitated a change to the maps, your position
 2 would be in order to implement them in a effective
 3 way you would need at least three to five months
 4 after the date of those decisions to have been
 5 made?

6 A. At least. I would -- I would strongly
 7 recommend not making any changes to anything this
 8 calendar year at all.

9 Q. And so if changes were made via
 10 settlement or court order, those changes would have
 11 to be implemented in 2023?

12 A. Yes, and they -- they would be, yes.

13 Q. And, for example, if those changes
 14 necessitated a special election, how would that
 15 sort of work in terms of deadlines?

16 A. So it would depend. If there were a
 17 special election held today it would be held on the
 18 new lines. If there were special elections -- it
 19 would depend when the special election occurred.

20 If the new lines were ordered or passed
 21 by the General Assembly, or negotiated or whatever,
 22 if new lines were established by the powers that be
 23 we would need to see what the effective date of
 24 those lines are and when the vacancy of that office
 25 occurs to give you an answer to that.

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1 So it would be hard to say at this
 2 moment what lines would be used for what special
 3 elections without knowing when those vacancies
 4 would occur and when those lines would take effect.
 5 Right now if a House member died or
 6 resigned they would be -- the new special election
 7 would be held on the new lines, and that's just how
 8 that would work, so -- and I should say the caveat
 9 that the Senate is not being touched until 2024.
 10 So if there was a special election for the
 11 Senate -- I know this is not about the Senate.
 12 Q. Um-hum.
 13 A. But I need to make that caveat. That
 14 if there was a South Carolina Senate vacancy, they
 15 would be -- a special election would be held today
 16 on the old lines because those aren't being touched
 17 until 2024, so...
 18 Q. And when -- sort of the hypothetical
 19 that we were talking about. If that took place,
 20 how would the commission educate voters about the
 21 changes? What would that process look like?
 22 A. So we would have a vigorous social
 23 media, traditional media, newspaper campaign,
 24 radio. We would use every media outlet at our
 25 disposal to get the word out to voters about the

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1 changes.
 2 And, you know, we kind of did that in
 3 2020 when the General Assembly made some emergency
 4 and temporary changes to the absentee laws to allow
 5 people to vote absentee during Covid, and we did a
 6 vigorous PR campaign at that point, which is about
 7 all we can do. We -- that's what we would do in
 8 this situation.
 9 And that's what we have been doing,
 10 frankly, since the -- all three plans were passed
 11 into law we have been educating voters, hey,
 12 you're -- you may be -- you need to check your
 13 voter registration to make sure that you understand
 14 what offices you're voting for, what district you
 15 live in, it's possible you've been moved.
 16 So another way that that's handled is
 17 by the counties, because the general rule is people
 18 do not get new voter registration cards after this
 19 process unless their polling place has changed.
 20 Because you'll still go to your same polling place
 21 and you'll still be given a ballot. It may be for
 22 the different offices than you thought it would be,
 23 but you're still going to the same polling place.
 24 And that's really the purpose of the voter
 25 registration card, is to tell people where they go

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1 to vote.
 2 Some counties take it upon
 3 themselves -- because that voter registration card
 4 also lists, by the way, the districts that you're
 5 in, House district, Senate district, et cetera, but
 6 primarily it tells you where to go vote.
 7 But some counties have taken it upon
 8 themselves and have budgeted funds for new voter
 9 registration cards to their voters to let everybody
 10 know, hey, this is your new polling place, if it's
 11 new, or here are your new offices.
 12 So it's a vigorous effort on behalf of
 13 the SEC and the counties to educate as many voters
 14 as possible, because we are very much in favor of
 15 promoting participation.
 16 Q. And that prior three to five months
 17 estimated time frame we discussed, do you think
 18 that's sufficient to educate voters?
 19 A. I do, I do. With the way media is
 20 today and the fact that so many people have more
 21 access to information than ever before in probably
 22 human history, I believe that that is sufficient,
 23 yes.
 24 Q. And do you also believe that three- to
 25 five-month time frame would be sufficient to

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1 recruit and train poll workers if need be?
 2 A. I do.
 3 Q. And would it also be sufficient to
 4 prepare ballots?
 5 A. I do. I do think so, yes.
 6 MR. INGRAM: Thank you for your time.
 7 Those are all of my questions.
 8 THE WITNESS: Thank you.
 9 MR. INGRAM: I don't know if there's
 10 any redirect.
 11 MS. CRUM: None by the commission
 12 defendants, the election defendants.
 13 MR. TRAYWICK: A brief question real
 14 quick.
 15 EXAMINATION
 16 BY MR. TRAYWICK:
 17 Q. Hey, Mr. Knapp. As I introduced myself
 18 earlier, my name is Lisle Traywick, and I represent
 19 the Senate defendants in this action.
 20 I don't recall if you went into great
 21 detail about the cost of the special election. I
 22 know you gave a time frame. It costs money, does
 23 it not, to order special elections for multiple
 24 districts outside the context of a normal general
 25 election, doesn't it?

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1 A. It does. It does cost more. I don't
 2 know the exact figure, but conducting a special
 3 election costs as much as that election would cost
 4 in a regular election because it's the same office.
 5 So you're having poll workers. It would just be a
 6 pro rata share of whatever that office would cost
 7 in a regular election year. I don't have those
 8 figures in front of me, but it is an additional
 9 cost to the counties, it is an additional cost to
 10 the state.
 11 There is a threshold, I should say, if
 12 you ordered, you know, an X number of special
 13 elections for the House or Senate that we could not
 14 reimburse the total amount or any amount. There is
 15 a threshold. I don't know what that threshold is.
 16 But we reimburse the counties a percentage of those
 17 election costs because they're state-level races.
 18 It could get to the point -- again, I
 19 don't know the number, but it could get to the
 20 point where we couldn't afford to reimburse the
 21 counties.
 22 I cannot speak to the cost burden of
 23 the counties, but knowing the counties, it would --
 24 you know, there is a number of special elections
 25 that, if ordered, would be unbearable for the

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1 counties without additional funds from the General
 2 Assembly.
 3 Q. And, Mr. Knapp, in your experience is
 4 turnout typically lower in special elections --
 5 A. Yes.
 6 Q. -- of voters? And does the commission
 7 receive more phone calls or any expressions of
 8 confusion from voters when there are special
 9 elections outside the context of a general
 10 election?
 11 A. We get a number of phone calls from
 12 confused voters wondering why they have a special
 13 election, what does this mean, and that's not --
 14 that's for any special election. They'll see a
 15 notice for a special election being held.
 16 Of course, depending on the office --
 17 for an example, everyone knew that Hugh Leatherman
 18 died. So when his seat became vacant nobody was
 19 surprised. But sometimes people don't hear about
 20 House reps resigning or their sheriff. Well, they
 21 hear about their sheriff resigning. But, you know,
 22 it depends on the office. If there's a special
 23 election ordered, the bigger the office, the more
 24 turnout, the more confused voters, yes.
 25 MR. TRAYWICK: Thank you. That's all

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1 the questions I have. I appreciate your time this
 2 morning.
 3 THE WITNESS: No problem.
 4 MR. INGRAM: I just have one follow-up
 5 based on Mr. Traywick's question.
 6 EXAMINATION
 7 BY MR. INGRAM:
 8 Q. Mr. Knapp, when we talked about the
 9 cost of elections, correct me if I'm wrong, you
 10 communicated to me that it would -- because special
 11 elections were built into the budget, that it would
 12 not cost additional funds; is that correct?
 13 A. Yes. Because there is a normal amount
 14 of special elections that we more or less budget
 15 for in regular, non-redistricting years.
 16 Q. Okay. So it would not incur additional
 17 fees to have a special election that would require
 18 additional budgetary support, would it?
 19 A. I can't say. During a normal election
 20 year we can absorb those costs and we can pass
 21 those reimbursement dollars to the counties, but if
 22 through redistricting we were ordered to hold a
 23 certain number of special elections the costs could
 24 become unbearable because that's not the typical
 25 course of business.

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1 And again, I don't have the number of
 2 what that is. I just know that we have so many
 3 dollars and counties have so many dollars and it
 4 costs so many dollars to have a special election.
 5 There is a threshold. I don't know what it is, but
 6 there is a threshold by which we could not
 7 reimburse anything more. We could not reimburse
 8 our normal amount, and they could not afford it.
 9 Now that being said, it's more of a
 10 bigger deal for us than it is the counties.
 11 Because let's say we were ordered to have 15
 12 special elections. Well, those are 15 counties,
 13 ostensibly, or a portion thereof. You're not
 14 having one county do 15 races.
 15 So it would be a bigger impact on the
 16 state than it would the locals, I think, because
 17 the locals could do one or two House races. It
 18 would probably be okay. It would have a bigger
 19 impact on the state. Because when it comes to
 20 state-level races we have to reimburse all counties
 21 at a certain level, so...
 22 Q. And would there be a way for you to
 23 request additional funds from the General Assembly
 24 if that were to occur?
 25 A. Yes, if that were to occur there's a

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1 way that agencies can request additional funds from
 2 the General Assembly in the case of unanticipated
 3 issues like this.
 4 If this were to happen I would go
 5 before the Other Funds Committee and explain to the
 6 Other Funds Committee I've been ordered to
 7 reimburse for X number of special elections. My
 8 current budget will not allow me to do that and
 9 continue to function as the agency. I need X
 10 number of dollars to pass along to the counties for
 11 reimbursements.
 12 MR. INGRAM: Thank you.
 13 EXAMINATION
 14 BY MR. RICARD:
 15 Q. Good afternoon, Mr. Knapp. This is
 16 Rhett Ricard. As I've introduced myself earlier, I
 17 represent the House defendants in this case and
 18 I've just got a few questions for you.
 19 A. Sure.
 20 Q. Can you hear me okay?
 21 A. Yes.
 22 Q. Okay. Perfect. So, you know, the
 23 first question: Is it fair to say that the
 24 implementation of new plans takes time and
 25 expertise?

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1 A. Yes, very much so.
 2 Q. Okay. If there were to be a negotiated
 3 settlement or court order, I believe you testified
 4 that your office would not be able to implement
 5 districts this year. Is that a fair -- is that a
 6 fair summation of your prior testimony earlier
 7 today?
 8 A. Yes.
 9 THE REPORTER: I'm sorry. There was
 10 one word. That your office would not be able to
 11 implement what districts?
 12 MR. RICARD: Implement districts this
 13 year.
 14 THE REPORTER: Okay.
 15 THE WITNESS: And yes. The answer is
 16 yes.
 17 BY MR. RICARD:
 18 Q. What are the reasons for that,
 19 Mr. Knapp?
 20 A. Because the timeline that we have
 21 built -- and it's available on our website.
 22 There's an election calendar. The way the election
 23 calendar is built, there are certain timelines that
 24 are either mandated by the state code of laws or by
 25 federal statute that we have to meet.

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1 And we start with the general election
 2 and we work back from there. So unless the general
 3 election was moved back a certain amount of months,
 4 we would not be able to meet those statutorily
 5 required deadlines.
 6 Q. Okay. Is one of those deadlines the
 7 date by which you have to mail absentee ballots to
 8 military and overseas citizens?
 9 A. Correct, the UOCAVA deadline is one of
 10 those deadlines.
 11 Q. Are you aware of what that deadline is
 12 for the 2022 election cycle?
 13 A. The primary deadline is April 30th, I
 14 believe and -- yes, April 30th. And then the --
 15 the general election is September 24th.
 16 Q. Okay. So just so I understand you
 17 correctly, those primary absentee ballots to the
 18 UOCAVA voters, that's here in a matter of days.
 19 A. That's correct.
 20 Q. And so would you agree that that's an
 21 indication of how far we are along in this
 22 timeline?
 23 A. I'd say that's a very fair illustration
 24 of how deep we are into the process, yes.
 25 Q. Would the accuracy of the election be

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1 put at risk if deadlines were to move at this
 2 point?
 3 A. That would be a concern of mine, that
 4 not only the results of the election may not be
 5 accurate, but the ballots themselves would not be
 6 accurate. So it is a possibility that we would
 7 have the wrong voters voting on the wrong ballots,
 8 electing the wrong people.
 9 Q. Okay. And, you know, a similar vein.
 10 Would there be a likelihood of confusion for both
 11 candidates and voters in affected areas that might
 12 be altered by a negotiated settlement or court
 13 order?
 14 MS. CRUM: I'm going to object to the
 15 form of that question. You can answer. I'm sorry.
 16 THE WITNESS: Okay. The -- it's my
 17 opinion that there would be extreme confusion. If
 18 there were -- a negotiated settlement were
 19 established for this year it would cause extreme
 20 confusion amongst candidates and voters.
 21 BY MR. RICARD:
 22 Q. Okay. And, you know, I'm certainly not
 23 asking you to speculate on, you know, individual
 24 voters or anything like that, but, you know, based
 25 on your experience in this office, you know, would

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1 you anticipate there to be calls and anticipate
 2 there to be confusion amongst candidates and voters
 3 in affected areas?
 4 A. Absolutely.
 5 Q. And would that undermine the confidence
 6 that you might have in the election results?
 7 A. Yes.
 8 MR. RICARD: Mr. Knapp, I appreciate
 9 your testimony and your time today. I don't have
 10 any further questions for you.
 11 THE WITNESS: Okay.
 12 MS. CRUM: The election defendants have
 13 no questions.
 14 MR. INGRAM: Perfect. I think we can
 15 end this then.
 16 THE VIDEOGRAPHER: All right. One
 17 second, please. We are off the record at 12:33,
 18 and this concludes today's testimony given by
 19 Howard Knapp, 30(b)(6) corporate representative of
 20 the South Carolina State Election Commission.
 21 The total number of media units used
 22 was two and will be retained by Veritext Legal
 23 Solutions.
 24 Okay. We're off the record. If
 25 counsel could stay on Zoom so we could ask about


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1 your orders, if you don't mind.
 2 MR. INGRAM: Sounds good. I'll have a
 3 copy of the transcript.
 4 THE REPORTER: Okay. And did you want
 5 a rough draft?
 6 MR. INGRAM: Yes, please.
 7 THE REPORTER: Okay. Thank you.
 8 Mr. Traywick?
 9 MR. TRAYWICK: Just a final PDF in the
 10 ordinary course will be good.
 11 MS. CRUM: And on behalf of the
 12 election defendants we would like a rough draft and
 13 to read -- well, we'd like to read and sign.
 14 THE REPORTER: Okay.
 15 MR. RICARD: And this is Rhett Ricard
 16 on behalf of the House defendants. We'd like a
 17 rough draft.
 18 (The right to read and sign this
 19 transcript was not waived.)
 20 (The deposition was concluded at
 21 12:33 PM.)
 22
 23
 24
 25

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CERTIFICATE OF REPORTER

I, Sandra K. Bjerke, Registered
 Professional Reporter and Notary Public for the
 State of South Carolina at Large, do hereby certify
 that the foregoing transcript was transcribed to
 the best of my ability using the Zoom technology
 platform, including, but not limited to, its
 inherent shortcomings of garbled speech,
 overmodulation, and voice-overlap cancellation;
 I further certify that I am neither
 related to nor counsel for any party to the cause
 pending or interested in the events thereof.
 Witness my hand, I have hereunto
 affixed my official seal this 22nd day of April,
 2022 at Charleston, Charleston County, South
 Carolina.



Sandra K. Bjerke

 Sandra K. Bjerke, RDR, CRR, CBC
 My Commission Expires
 May 6, 2030

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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

(No Exhibits Proffered)

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1 M. ELIZABETH CRUM
 2 lcum@burr.com
 3 April 22, 2022
 4 The South Carolina State Conference Of The NAACP v Alexander
 5 4/19/2022, Howard M. Knapp (#5189994)
 6 The above-referenced transcript is available for
 7 review.
 8 Within the applicable timeframe, the witness should
 9 read the testimony to verify its accuracy. If there are
 10 any changes, the witness should note those with the
 11 reason, on the attached Errata Sheet.
 12 The witness should sign the Acknowledgment of
 13 Deponent and Errata and return to the deposing attorney.
 14 Copies should be sent to all counsel, and to Veritext at
 15 erratas-cs@veritext.com.
 16
 17 Return completed errata within 30 days from
 18 receipt of testimony.
 19 If the witness fails to do so within the time
 20 allotted, the transcript may be used as if signed.
 21
 22 Yours,
 23 Veritext Legal Solutions
 24
 25

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1 The South Carolina State Conference Of The NAACP v Alexander
 2 Howard M. Knapp (#5189994)
 3 ACKNOWLEDGEMENT OF DEPONENT
 4 Howard M. Knapp, do hereby declare that I
 5 have read the foregoing transcript, I have made any
 6 corrections, additions, or changes I deemed necessary as
 7 noted above to be appended hereto, and that the same is
 8 a true, correct and complete transcript of the testimony
 9 given by me.
 10
 11 _____
 12 Howard M. Knapp Date
 13 *If notary is required
 14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
 15 _____ DAY OF _____, 20____.
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1 The South Carolina State Conference Of The NAACP v Alexander
 2 Howard M. Knapp (#5189994)
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