

IN THE
Supreme Court of the United States

NICOLE MALLIOTAKIS, *et al.*,

Applicants,

v.

MICHAEL WILLIAMS, *et al.*,

Respondents.

ON APPLICATION FOR STAY TO THE COURT OF APPEALS OF THE STATE OF NEW YORK
TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT

**APPENDIX TO EMERGENCY APPLICATION FOR STAY
VOLUME III OF X (PAGES 801a - 1200a)**

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1 you're looking at, the 2024 plan or the illustrative map that I
2 drew.

3 Q. And do you consider core retention to be a traditional
4 redistricting criteria?

5 A. Not exactly, because you can have a perfect core
6 retention and have an unlawful map. So it's not at all unusual
7 for a petitioner or a plaintiff's group to have a core retention
8 score that is lower than the existing map that is being
9 challenged. It's quite common. It happens all of the time in
10 Gingles cases under Section 2 of the Voting Rights Act.

11 Q. You mentioned Figure 2.

12 MR. DODGE: Can we please call up Figure 1 of
13 Mr. Cooper's report.

14 Q. Mr. Cooper, does Figure 1 reflect the area of inquiry
15 for your report?

16 A. Yes. The -- this map shows the 2024 plan just
17 highlighting Districts 11 and 10. And you can see that
18 Congressional District 11 is in Staten Island, and a portion of
19 it on the other side of the bay is in Brooklyn. And 10 runs
20 from the midsection of Brooklyn up into Manhattan.

21 Q. And there is some thick black lines and also some thin
22 lines in Figure 1. Can you just tell the Court what those
23 represent?

24 A. The thick black lines represent the boroughs, the
25 boundaries of boroughs that go out into the bay. And then the

1 thin lines show the neighborhoods in -- in the focus area.

2 Q. And are those neighborhoods sometimes referred to as
3 NTAs in your report?

4 A. Yes. That's a term that is used by the New York City
5 Department of Planning. They are drawn to follow current census
6 tract boundaries that would approximate the areas that one would
7 consider to be a neighborhood if you lived in that neighborhood.

8 Q. So those NTA lines come from the City of New York and
9 not from you personally?

10 A. That's right. And they're not produced by the Census
11 Bureau either. They are a product of the New York City Planning
12 Department.

13 Q. So let's talk a little bit more about what District 11
14 currently looks like.

15 MR. DODGE: Can we pull up Figure 2 from
16 Mr. Cooper's report.

17 Q. Can you just tell the Court at a high level what
18 Figure 2 reflects? This is at page 8 of Tab 2 in your binder if
19 you want to look at it there instead of on the screen.

20 A. Yes. It's actually on page 9.

21 Q. Pardon me. You're right. Page 9.

22 A. So what was the question?

23 Q. Can you just tell the Court at a high level what
24 Figure 2 shows?

25 A. Well, Figure 2 shows the citizen voting age population

1 by race and ethnicity for Districts 11 and 10. It doesn't show
2 the entire gamut of possible columns. It shows the primary race
3 and ethnicity -- combinations in both 10 and 11, in other words.

4 Q. And just for clarity, can you tell the Court what the
5 term "CVAP" means in this context?

6 A. Citizen voting age population.

7 Q. What is the combined Black and Latino CVAP in
8 District 11 under the current version of District 11?

9 A. 22.7 percent.

10 Q. So roughly a quarter of the citizens voting age
11 population in District 11 is Black or Latino?

12 A. Right. It's a little short. It's closer to
13 20 percent.

14 MR. DODGE: Can we pull up Figure 3, also on
15 page 9.

16 Q. And what does Figure 3 show us?

17 A. Figure 3 shows the underlying total population in
18 Districts 11 and 10, broken out by the Staten Island components
19 and the Brooklyn components for both districts.

20 Q. What does Figure 3 show us as to the relative Black and
21 Latino share of the population in the Staten Island part of
22 District 11, versus the Brooklyn part of the district?

23 A. It is 30.01 percent in the Staten Island. And right at
24 18 percent for the Brooklyn portion.

25 Q. So there is a greater density of Black and Latino

1 people in the Staten Island part of District 11 than the
2 Brooklyn part?

3 A. Definitely.

4 Q. Just to be clear, though, did your report address
5 anything related to voting patterns by different racial groups
6 on Staten Island?

7 A. No.

8 Q. Let's turn to the compactness of the existing
9 districts.

10 MR. DODGE: Can we please pull up Figure 4, which
11 is on page 10 of the report.

12 Q. Can you walk me through what Figure 4 says about the
13 compactness of District 11?

14 A. Yes. Figure 4 shows the scores for the Reock,
15 R-e-o-c-k, and Polsby-Popper scores for both Districts 11 and
16 10, and then a two-district average. And you can see that the
17 districts are quite compact.

18 Q. Do you think it matters that current District 10 here
19 has a slightly lower compactness score than current District 11?

20 A. No. You can look at the map and see from Figure 1 that
21 it's reasonably compact.

22 Q. One last thing about the current maps. Let's talk
23 about communities of interest a little bit.

24 MR. DODGE: Could we please pull up Figure 5 on
25 page 10 of the report.

1 Q. And before we go through this figure, can you just tell
2 the Court what a split refers to when we talk about
3 redistricting or communities of interest?

4 A. Yeah. I think this is actually a figure on page 11, I
5 believe.

6 Q. Oh, my numbers are wrong.

7 But it is Figure 5?

8 A. Right. Yes.

9 Q. And can you just tell the Court what a split refers to
10 when we discuss communities of interest or neighborhoods or the
11 like?

12 A. Well, this particular table shows the total number of
13 splits that are populated in -- by neighborhood and by 2020
14 VTD -- in other words, there are two split neighborhoods in the
15 total -- in the '24 plan, creating four population splits.

16 Q. And can you -- are you aware of which neighborhoods in
17 the 2024 plan are currently split?

18 A. Those are two neighborhoods in Brooklyn: Bay Ridge and
19 Bensonhurst, of course.

20 Manhattan, because it is entirely within -- that
21 portion of the map is entirely Manhattan, there are no splits.

22 Q. So to put a finer point on it, the neighborhoods of
23 Bensonhurst and Bay Ridge are split in the current
24 configuration --

25 A. Yes, they are split.

1 Q. And are neighborhoods often considered communities of
2 interest in the redistricting contest?

3 A. Yes, they are.

4 Q. Are splits sometimes necessary when drawing boundary
5 lines?

6 A. More often than not.

7 Q. So how do you consider splits when determining where to
8 draw different boundary lines?

9 A. Well, you have to make a judgment call. Sometimes you
10 look at the potential boundary lines and see the way you can
11 split some other spot and have a more compact-looking district,
12 but you also have to look at the underlying population, which is
13 what I did in this instance.

14 Q. And while we have Figure 5 up, can you tell the Court
15 what a VTD is?

16 A. A VTD is a short version of voting tabulation district,
17 which is a census bureau term -- term.

18 At the end of the decade, the census bureau, in
19 partnership with the localities involved and state involved
20 creates a boundary file for a version of the precincts that were
21 in place at the time of the 2020 census, following 2020 census
22 geography, which may be different than the 2010 census
23 geography.

24 Q. So VTD is basically a precinct?

25 A. Right.

1 Q. And looking at Figure 5 again, can you tell us how the
2 current configuration of Districts 10 and 11 split these
3 precincts?

4 A. The current version split two VTDs in Brooklyn and
5 those VTDs are then divided into four parts, or four pieces,
6 under the 2024 plan.

7 Q. And how many people live in those precincts that were
8 split under the 2024 plan?

9 A. The actual number shown in the table is 133,535.

10 Q. So we've talked about the current districts a bit. I'd
11 now like to turn to what you were asked to do with those
12 districts in this case.

13 Can you start by just simply explaining to the Court
14 why Staten Island alone cannot serve as a congressional
15 district?

16 A. It's too small. In population size, it's 497,000
17 people and change, almost 500,000. And you need to have an
18 ideal district size of -- I believe it's 700- and -- I don't
19 remember, 707,000, something like that.

20 Q. And what are the most natural options for adding
21 population to a Staten Island-based congressional district?

22 A. Pardon me. Repeat that?

23 Q. What are the most natural options for adding population
24 to a Staten Island-based congressional district?

25 A. Well, there are really only two options, the Brooklyn

1 portion or a Manhattan portion.

2 Q. And why is that?

3 A. Because those are the two areas that are contiguous by
4 water.

5 THE COURT: Not Queens?

6 THE WITNESS: Not -- well, I don't think Queens
7 is -- is contiguous by land or water. But you know better
8 than I, so I could be mistaken about that. I was trying to
9 hold this constant, the two districts, to make clear the
10 approach I took.

11 Q. And to reach Queens --

12 THE WITNESS: I'm sure you're right, some part of
13 Queens is contiguous.

14 Q. And to reach Queens by water, you would have to bypass
15 a lot of the significant populated areas of New York City to
16 reach it from Staten Island. Is that -- is that your
17 understanding?

18 A. You'd have to, I guess, either go through Brooklyn or
19 you could cross the bridge, I think, maybe. I'm not sure if
20 directly from Queens or not. Again, I'm not that familiar with
21 the map.

22 THE COURT: I take the ferry every morning.

23 THE WITNESS: Okay.

24 Q. And on the subject of the ferry, is there a prominent
25 transit link between Staten Island and Lower Manhattan?

1 A. Well, yes. The Staten Island Ferry is direct,
2 Staten Island to Manhattan. Or you could cross the bridge into
3 Brooklyn and then drive into Manhattan.

4 Q. And is the ferry a longstanding transit link between
5 Manhattan and Staten Island?

6 A. Yes. It dates sometime back to the early 1800s, I
7 believe.

8 Q. And does it cost anything to ride the Staten Island
9 Ferry?

10 A. It's free.

11 Q. And how do you know that personally?

12 A. Because I took the ferry on Saturday. It is a lovely
13 trip, a little cold and breezy, but a wonderful trip. I really
14 enjoyed it.

15 Q. And the ferry operates 24 hours a day?

16 A. Yes, except on weekends. I don't think it runs quite
17 as frequently.

18 Q. And do you know how many people take the ferry into
19 Manhattan on a typical day?

20 A. According to the website of the Staten Island Ferry,
21 the total population on a given day in a workweek would be
22 somewhere in the range of 40- to 45,000. I think in the
23 summertime with the tourists, it may be as high as 70,000.

24 Q. And shifting gears somewhat. Are you aware of any
25 historical precedence for drawing Staten Island and Lower

1 Manhattan into a district together?

2 A. Yes, there are multiple historical examples.

3 MR. DODGE: Can we pull up Figure 6 on page 13 of
4 Mr. Cooper's report.

5 Q. And can you tell the Court what Figure 6 shows us?

6 A. Yes. This just shows a contemporary example, which is
7 Assembly District 61, that is showing the part of the
8 North Shore of Staten Island with Lower Manhattan.

9 Q. And so what, if anything, does this district
10 configuration tell you?

11 A. Well, it tells me that there's an election district in
12 the state legislature that joins Staten Island and Manhattan.
13 So it would seem to be entirely appropriate to do the same for a
14 congressional district. Even today, I just -- there seems to be
15 no reason not to.

16 MR. DODGE: Can we now pull up Figure 7 on page 14
17 of Mr. Cooper's report.

18 Q. Can you tell us what Figure 7 shows?

19 A. Well, this is a map showing a congressional district
20 that was in place in the 1970s, from '72, I guess, up until at
21 least the 1980 election, that joined Staten Island with Lower
22 Manhattan.

23 Q. And what, if anything, does this map tell you about
24 combining Staten Island and Lower Manhattan into a common
25 congressional district?

1 A. Well, it tells me that it's been done in the past and
2 the not-so-distant past. Anyone over 65 would probably have a
3 clear memory of that congressional district being configured
4 that way, if they were paying attention to the elections in that
5 era.

6 Q. Are you aware of any additional prior legislative
7 district configurations that combined Staten Island and Lower
8 Manhattan?

9 A. Well, yes. Beginning in the -- I think the 1940s,
10 going all the way back then to the late 18- -- 1890s, Staten
11 Island was always joined with Manhattan.

12 Q. So, in fact, Staten Island and Lower Manhattan were
13 part of a common congressional district for much of the
14 20th Century?

15 A. Yes.

16 Q. With that, let's get into the your illustrative map.

17 MR. DODGE: Can we please bring up Figure 8 on
18 page 16 of Mr. Cooper's report.

19 Q. Is this the illustrative map that you prepared in your
20 report?

21 A. Yes.

22 MR. DODGE: And can we now place this map alongside
23 Figure 1 for Mr. Cooper's report.

24 Q. Can you explain just at a high level what changes you
25 made to Districts 10 and 11 in the illustrative map relative to

1 the 2024 plan?

2 A. Well, yes. Staten Island stays in District 11 as a
3 single component. To create the illustrative map, I then
4 shifted most of Lower Manhattan into District 11.

5 You can't shift all of it into District 11 because that
6 would overpopulate the district, so a change had to be made. I
7 chose to take Chinatown out of the map configuration for CD-11
8 and returned it to CD-10.

9 Q. So that red portion of Lower Manhattan in the
10 illustrative map, that's the Chinatown neighborhood as defined
11 by the city?

12 A. Yes.

13 Q. And in your view, do the two districts formed in the
14 illustrative map conform with traditional redistricting
15 criteria?

16 A. Yes.

17 Q. Why don't we leave Figure 8 on the screen now and walk
18 through these traditional redistricting criteria.

19 A. I should point out that I failed to mention that I
20 also, of course, added a southern part of Brooklyn that had been
21 in CD-11 into CD-10 to create CD-10. It's not just adding
22 Chinatown.

23 Q. I appreciate that.

24 Do the districts in the illustrative map satisfy the
25 constitutional requirement for equal population?

1 A. Yes.

2 Q. Are the districts in the illustrative map contiguous?

3 A. Yes.

4 Q. And if we zoom in on the red portion of Lower Manhattan
5 in Figure 8, can you tell us from the map whether the Brooklyn
6 and Manhattan bridges are located within District 10?

7 A. Both are.

8 Q. So in other words, the two parts of District 10 remain
9 connected by both of those bridges?

10 A. Right.

11 Q. Are the districts in the illustrative map reasonably
12 compact?

13 A. Yes. Unquestionably.

14 MR. DODGE: Can we now pull up Figure 11, which is
15 page 20 of Mr. Cooper's report.

16 Q. What does Figure 11 show us, at a high level?

17 A. Well, just looking at the scores, you can see the Reock
18 is .30 in both CD-11 and CD-10, and that's the measure that
19 looks at the area of the circle.

20 And in the Polsby-Popper perimeter analysis, CD-11 has
21 a score of .28, and CD-10 is less compact at .19.

22 The average scores are 30 and 24, using another
23 approach to compactness called the DRA compactness score, which
24 is a composite methodology that one can see calculated on a Web
25 tool called Dave's Redistricting Application, which is used

1 extensively by experts and ordinary citizens to draw
2 plans -- not just congressional plans, but state legislative
3 plans -- for all states in the country.

4 Q. Are these scores lower than the scores in the 2024
5 plan?

6 A. Yes.

7 Q. Does that give you any concern or pause that the
8 illustrative map districts are not reasonably compact?

9 A. It gives me no concern at all. It's not unusual for an
10 illustrative map to have a lower score than an existing map.

11 Q. And on that point, could you just, you know, briefly
12 summarize for the Court why these scores don't give you any
13 pause as to the compactness of the districts?

14 A. Well, in this case, it is -- it's apparent, after you
15 look at the map, that the area of Manhattan is a very densely
16 populated part of the map. And, of course, Staten Island is the
17 same. So the question is, as drawn, is the area in Manhattan so
18 unusual that it wouldn't survive judicial scrutiny.

19 And I would argue that it certainly is reasonably
20 compact. It basically just excludes the -- or -- well, it moves
21 the Chinatown neighborhood back into CD-10. And so there would
22 really be no confusion for voters or campaigners or anyone else,
23 in terms of which district they're in. It's not the least bit
24 unusual in shape or difficult to understand.

25 Q. Are there existing congressional districts in the

1 nation with lower compactness scores than those reflected in
2 Figure 11?

3 A. There are tons of them.

4 MR. DODGE: In fact, can we call up Exhibit A from
5 Mr. Cooper's rebuttal report. This is Petitioner's 9.

6 Q. This is Tab 3 in your binder, Mr. Cooper. It will be a
7 little bit towards the back. It's Exhibit A.

8 A. Yes.

9 Q. Could you tell the Court what Exhibit A from your
10 rebuttal report shows?

11 A. If I can find it.

12 Q. As I say, it's on -- I don't know how well you can see
13 it. It's also on the screen, if you're having a hard time in
14 the binder.

15 A. I see Exhibit A now. Yes, okay. Never mind. Or do I?

16 THE COURT: Turn the page.

17 THE WITNESS: But that's --

18 THE COURT: One page. Behind that cover page of
19 Exhibit A.

20 THE WITNESS: Oh.

21 No. I know the table. So I don't have it
22 memorized. That is a list of the 25 least compact districts
23 in the country, congressional districts that were in place
24 for the 2024 election. So they're valid, lawful districts,
25 according to 2024 plans.

1 Q. And are the districts in the illustrative map -- do the
2 districts in the illustrative map have higher compactness scores
3 than these existing congressional districts?

4 A. No. They have much lower compactness scores.

5 Q. I'm sorry. I may have misheard your testimony.

6 Do the districts in the illustrative plan have higher
7 compactness scores than those --

8 A. Oh, yes, they have much higher scores.

9 Q. Are there other existing congressional districts, not
10 in Exhibit A, that also have lower compactness scores than the
11 illustrative map districts?

12 A. Well, there would be many, yes. These top out with a
13 Reock score I think of around .10, maybe. I'll look at the
14 table. I can't quite see it. But those are kind of in rank
15 order, you can see -- I don't think any of the Reock scores are
16 much above the .10. Am I right about that? There may be some
17 in the low teens.

18 And all of the Polsby-Popper scores are under .1. And
19 those are relatively low scores. Some of them can be justified;
20 some of them maybe not. But there you see the scores. I will
21 note that at least one is actually in New York.

22 Q. Are the compactness scores for the illustrative map
23 within the norm for the nation?

24 A. I believe so, yes.

25 Q. Are they within the norm for New York?

1 A. Yes.

2 Q. In your report, did you look at the compactness scores
3 for each borough component of the illustrative districts?

4 A. Yes.

5 Q. Dr. Trende and Dr. Bryan give you a little bit of grief
6 for that. Can you just tell the Court why you did that?

7 A. I don't know why they're giving me grief for it. All I
8 did was just point out that -- that if you just looked at the
9 two component parts, then the compactness score for CD-11, in
10 particular, is really quite high.

11 There are no voters between Staten Island and -- and
12 Manhattan. No one lives on houseboats out there. They both
13 said that -- it's just -- it's just important to understand that
14 from the voters' perspective, on the ground, the districts are
15 very compact and very, very easy to understand.

16 Really, in Manhattan, I kept all of -- all of Chinatown
17 intact and split part of the Financial District. I had to do
18 that to balance out the population to be 1 person, 1 vote.

19 THE COURT: Let me -- let me interject
20 because -- since you brought up splitting these NTAs. In
21 the illustrative district, how many NTAs are split as
22 compared to the existing district?

23 THE WITNESS: Two. The Financial District is
24 split, creating two populated splits of the Financial
25 District neighborhood.

1 The other -- the other split is a tiny piece of
2 Tribeca with 22 persons. So it's split into two parts. But
3 for all practical purposes, it's really not split. The 22
4 people were only split off and put into CD-10 to meet the
5 very strict requirement of plus or minus one person for
6 equal population.

7 Some states have equal population allowances that
8 go up into the hundreds still, and congressional districts
9 that are well over 700,000, it's almost equal populations.
10 But I -- there are states that actually require plus or
11 minus one. I think New York, by state law, may be one of
12 those states.

13 THE COURT: When you picked those 22 people, did
14 you look at their socioeconomic, or their race, or any other
15 variable?

16 THE WITNESS: No. I just -- they are right next
17 door to Chinatown and southern Tribeca, and I just put them
18 into --

19 THE COURT: It was a compactness or a contiguity
20 issue more than a race or a political issue?

21 THE WITNESS: Well, it was really almost none of
22 that. It was just I needed to get -- they had to be
23 contiguous, of course. And so I just wanted to look for 22
24 people, in effect, to make CD-10 a perfect deviation. And
25 fortunately, they were right there in Tribeca.

1 I tried to avoid splitting Tribeca and played
2 around with a bunch of large population tracks and census
3 blocks in the Financial District, but I just could never get
4 it to add up to zero or minus one or plus one, so I was just
5 stuck with those 22 persons in Tribeca.

6 (Senior Court Reporter Karen Perlman was replaced
7 by Senior Court Reporter Monica Hahn.)

8 (Transcript continues on the following page.)

1 Q. To put a bit of a finer point on your Honor's
2 question, would it be accurate to say that the illustrative
3 map and the 2024 map technically have the same number of
4 neighborhood splits?

5 A. Yes, but one of those splits is so de minimis that
6 it almost shouldn't even be a split, Tribeca.

7 Q. That was my next question.

8 Is one of the splits in the 2024 plan quite
9 incidental in terms of the number of people actually
10 impacted?

11 A. Yes.

12 Q. And we were talking about how you were looking at
13 the different borough components of the illustrative plan.

14 What did you concluded by looking at those
15 different borough components?

16 A. Um, the borough --

17 Q. When you looked at the individual, the compactness
18 scores for the individual --

19 A. I don't have them memorized. Let me go to my
20 report on that. They are quite compact. More compact than
21 the district as a whole, and I think if you average them
22 out, de-compact the scores for both the Manhattan component
23 and the Staten Island component would be slightly above the
24 statewide average score for all 23 congressional districts.
25 I would note that New York ranks number six in the country

1 in terms of compactness for the overall plan of 26
2 congressional districts.

3 Q. So bottom line, it is your opinion the illustrative
4 maps are reasonably compact?

5 A. Absolutely.

6 Q. So his Honor intuited where we were going next.
7 Let's turn to communities of interest in your map.

8 You testified earlier that economic ties can
9 reflect community of interest; is that right?

10 A. That's correct.

11 Q. Since submitting your report, did you become aware
12 of any census data reporting on the place of work, living in
13 Staten Island?

14 A. Yes, I found a report that the census bureau
15 produces showing the origin of a workforce and the
16 destination for the workforce by county, and that particular
17 table shows that more people in Staten Island who are part
18 of the workforce go to Manhattan than to Brooklyn, and
19 slightly more actually work in Manhattan than actually work
20 in, on Staten Island.

21 It is a complex array of data that the census
22 bureau gathers from state agencies around the country. If
23 you go to that website, you can then get an automatic census
24 bureau generated report, which I do think maybe we are able
25 to get into the record here so.

1 Q. And on that point, could you take a quick look at
2 Tab 4 in your binder?

3 A. Yes.

4 Q. Is this the census bureau information you are
5 describing?

6 A. Yes. It is called On The Map. It produces this
7 nice five page, I think it is five pages roughly.

8 Q. Do you consider census bureau data to be generally
9 reliable?

10 A. Yes. It is gold standard. It is not perfect, but
11 it is pretty reliable.

12 MR. DODGE: Your Honor, at this time, I would
13 move into evidence Petitioner's Exhibit 9, which is a
14 census bureau report entitled, "Destination Analysis on
15 the Place of Work, People Living in Richmond County."

16 THE COURT: Any objections? This is
17 Plaintiff's Exhibit 9.

18 THE WITNESS: Could I clarify --

19 THE COURT: Let's just wait. Let's just wait.

20 MR. MOSKOWITZ: Your Honor, if I could just
21 confer. The reason we are conferring, this is not in
22 his report.

23 THE COURT: Take your time.

24 MR. DODGE: I'll note for the record this
25 information was produced by the census bureau on

1 December 18th, which was the same date Mr. Cooper filed
2 his rebuttal report. And that is within the substantive
3 scopes of his report with respect to community of
4 interest analysis of the illustrative map.

5 MR. MOSKOWITZ: My problem here, basically
6 getting another supplemental expert analysis that we
7 were not on prior notice of.

8 In other words, it is, I get what they are
9 saying, this didn't exist, but there is no practical
10 difference to my, one of my experts saying, hey, we then
11 had him look at this other thing too, and he is going to
12 talk about it now and go to town.

13 MR. DODGE: The respondents had this exhibit in
14 their possession for since Sunday evening.

15 MR. MOSKOWITZ: I agree with that, your Honor.
16 That is not new notice.

17 MR. DODGE: Census bureau data. I don't hear
18 the other side questioning the reliability or accuracy
19 of it.

20 MR. MOSKOWITZ: I question all of it. I
21 haven't seen it before.

22 MR. DODGE: May I speak? In the records that
23 your Honor can consider it for whatever it is worth.

24 MR. MOSKOWITZ: We object. There is no due
25 notice. We don't know what the man is going to talk

1 about with respect to it. It is fundamentally unfair.

2 MR. DODGE: Frankly, he already described the
3 essence of it. Shows more residence in Staten Island
4 would have their place of work in Manhattan rather than
5 Brooklyn essentially.

6 THE COURT: Is this a government record?

7 MR. DODGE: It is.

8 THE COURT: Take judicial notice that it is a
9 government record and we can move on.

10 MR. MOSKOWITZ: That is not -- that is the
11 issue with the exhibit itself, I agree with that.

12 Issue is we are not on notice of whatever he is
13 now going to testify to about it. So perhaps if you
14 want we'll reserve our objections to say outside the
15 scope of his report.

16 THE COURT: Yeah, let's go with that. Let's
17 continue for now and allow counsel to reserve their
18 objections.

19 MR. DODGE: That makes sense, your Honor.

20 Is the exhibit admitted then subject to their
21 --

22 THE COURT: Marked for identification for now
23 and subject to their final decision on how to proceed.

24 THE WITNESS: This has no interaction on my
25 part. It is auto-generated from the On The Map

1 application on the census bureau website. There is a
2 lot of information there about how that count is made by
3 the census bureau, in cooperation with state agencies.

4 Q. With that, can we pull up on the screen proposed
5 Petitioner's Exhibit 9, which is Tab 4 of your binder,
6 Mr. Cooper, Tab 4 I gave to present counsel.

7 A. Sorry. Which exhibit?

8 Q. Tab 4. You were just looking at it?

9 A. Okay.

10 Q. There is the census bureau document you were
11 describing earlier, Mr. Cooper?

12 A. Yes.

13 Q. Can you briefly describe to the court what this
14 image shows?

15 A. The first page shows the map of where workers from
16 Staten Island go to work, or what company they are employed
17 by. And you can see the darker blue lines indicate a larger
18 figure and the largest figure would be almost 60 thousand,
19 59,459 in a fairly short distance into Manhattan.

20 THE COURT: Counsel, why do you rise?

21 MR. MOSKOWITZ: Objection. This proves my
22 point. I don't think anything about where Staten
23 Islanders go to work is in the report. If I'm mistaken,
24 I would glad to be pointed to that.

25 MR. DODGE: Mr. Cooper's report testified to

1 how the illustrative map was consistent with communities
2 of interest. He testified earlier that economic ties
3 between people can reflect community of interest. And
4 so this is within the scope of the opinion offered in
5 his report. My understanding of the New York rules is
6 that is all that is required.

7 MR. FASO: We also object. Our experts haven't
8 been put on notice of this. They haven't had a chance
9 to respond to the rebuttal notice. It is fundamentally
10 unfair for this expert to offer a new, more nuanced
11 opinion disclosed in the initial reports to which our
12 experts haven't had an opportunity to respond.

13 MR. MOSKOWITZ: I will just add one thing,
14 your Honor. We've been generous. Not playing hard
15 ball. Both sides had to do supplements. I believe
16 Mr. Cooper is the only one which two corrected
17 supplemental reports. I'll get to that on my cross,
18 came out. We allowed that. This happened. This is
19 beyond the pale though.

20 THE COURT: Okay.

21 MR. DODGE: What --

22 THE COURT: Hold on. I'm going to allow this.
23 I'm going to overrule the objections, but they are noted
24 and let's just keep it in the context of communities of
25 interest. Generally, for the purposes of that, I'll

1 allow it.

2 MR. DODGE: Thank you, your Honor. I think I
3 have one more question on this exhibit anyway.

4 Q. If we can turn to the next page --

5 THE COURT: Also, your experts will have the
6 opportunity to review this, if you have any questions to
7 follow up.

8 MR. FASO: Your Honor, our experts are
9 testifying potentially in a couple of hours.

10 THE COURT: It is just -- it is just a
11 government record.

12 MR. FARBER: Right. There could be other
13 government records out there. They haven't had the
14 opportunity to research them. That would bear further
15 on this. There is a lot that goes into the expert
16 opinions, more than a glance of the document in the
17 courtroom.

18 THE COURT: Noted. As I said, I'll allow it.
19 I would urge you to show this to your experts. Let them
20 have the opportunity to see it and speak to it, in the
21 context of communities of interest.

22 MR. DODGE: Really one more question on it, I
23 think, your Honor.

24 Q. This second page of the exhibit, Mr. Cooper, does
25 this reflect the numbers you spoke to a bit earlier about

1 the number of people, residents of Richmond County who have
2 their place of work in Manhattan as compared to Staten
3 Island itself and Brooklyn?

4 A. Right. That is a separate table at the bottom of
5 the pie chart.

6 MR. MOSKOWITZ: Sorry. I want to note an
7 objection. Mischaracterizes prior testimony, the
8 question before which we objected to. For the record it
9 was where people go to work. Now you are talking about
10 how many people work on Staten Island versus elsewhere.

11 MR. DODGE: I can spend more time going through
12 it in detail. I was trying to move through it
13 expeditiously for the benefit of opposing counsel.

14 MR. MOSKOWITZ: Nothing is for our benefit.
15 We objected to this. I clarify for the record what was
16 just done was not proper.

17 THE COURT: Sustained.

18 Q. I guess staying on this exhibit for a moment, make
19 clear of the record what it does reflect, Mr. Cooper, can
20 you tell the court what is reflected on this page of
21 Exhibit 9?

22 MR. FASO: Object. The exhibit was not offered
23 in evidence. It is marked for identification. If he is
24 going to testify to contents of it, a foundation needs
25 to be laid and admitted into evidence.

1 MR. DODGE: Well, a foundation has been played
2 for it. He found it from the census bureau website. My
3 understanding was your Honor had admitted it at this
4 point, subject to whatever weight you choose to give it.
5 My understanding is, it is in evidence.

6 THE COURT: Again, your objection is noted.
7 Overruled.

8 MR. DODGE: Okay.

9 Q. Again, not wanting to belabor the point, for
10 clarity on the record, can you describe, Mr. Cooper, what
11 this page of the exhibit shows?

12 A. It shows that the, of the Staten Island workforce,
13 approximately 60,000 or 59,459 persons in the year 2023
14 worked in New York County or Manhattan. And it shows that
15 55,168 worked in Richmond County or Staten Island, and then
16 these, the third highest would be Brooklyn at just
17 43 thousand. So the larger component of the workforce in
18 Staten Island is associated with Manhattan than Brooklyn.

19 MR. MOSKOWITZ: And I renew our objection.
20 Just for the record, that is exactly what I'm talking
21 about. That is a, finer nuance point, not raised in the
22 report. Our experts have not looked at census data
23 which is very voluminous. They are doing it because
24 they wish he had done it in the report.

25 MR. DODGE: We can move on at this point. As I

1 understand, the objection was overruled. I was about to
2 move on anyway. It is a five-page document their.
3 Experts will be able to review it I think in order.

4 THE WITNESS: It is auto-generated by the
5 census bureau's website. I had no interaction with it
6 beyond just printing it out.

7 MR. DODGE: I will note for the record --

8 THE COURT: Stop.

9 The objection again is noted and overruled.

10 MR. DODGE: We can take this down.

11 Q. You testified earlier, Mr. Cooper, that cultural
12 and linguistic ties can also reflect a community of
13 interest, did I have that right?

14 A. Yes.

15 Q. Recall you saying a moment ago the illustrative
16 maps keeps the Chinatown neighborhood of Manhattan in
17 District 10?

18 A. Yes.

19 Q. In preparing the report, did you review any
20 testimony to the independent redistricting commission for
21 members of the Chinese community regarding the configuration
22 of Districts 11 and 10?

23 A. Yes. You gave me a packet of information, of
24 testimony from the year 2021 before the Independent
25 Redistricting Commission. I reviewed that and found that I

1 think you also pointed them out, a couple of persons who
2 testified and made clear that they've believe that Chinatown
3 should stay in CD-10 connected to Brooklyn.

4 Q. Is it your understanding that that testimony was
5 cited in the Harkenrider decision which is a publically
6 reported decision?

7 A. Yes, yes.

8 Q. And that testimony to the Independent Redistricting
9 Commission would have been before it at the time it was
10 first redrawing New York's congressional district after the
11 most recent census?

12 A. Yes.

13 Q. Look at Tab 5 in your binder. Is this one of the
14 letters to the Independent Redistricting Commission that you
15 reviewed?

16 A. Yes. This was testimony by Dr. Wah Lee, L E E.

17 MR. DODGE: Your Honor, at this time --

18 THE COURT: Counsel, why do you rise?

19 MR. FASO: Can we get clarification whether
20 Exhibit 5 is referenced in Mr. Cooper's report?

21 MR. DODGE: Well, I can ask him that. I don't
22 believe it is cited directly in the report. It is
23 within the scope of the report to the extent he
24 describes keeping various Chinese neighbors configured
25 within District 10 which is extensively discussed in his

1 report.

2 MR. MOSKOWITZ: We join the objection. We are
3 having a pattern. Mentions community of interest.
4 Anything with community of interest can come in even if
5 it is not cited in the report.

6 MR. DODGE: His report does describe the
7 neighborhoods at issue here, as largely Chinese
8 neighbors that were kept within District 10. I would
9 emphasizes that, I believe it was Mr. Faso himself in
10 opening statement made a point of suggesting the
11 illustrative map discriminates against Asian voters
12 which is the opposite of what it does. So he opened the
13 door to these exhibits which go to a point he raised in
14 his opening statement.

15 THE COURT: Okay.

16 MR. FASO: That point is made in our expert
17 report and disclosed properly with time for your team
18 and your experts to analyze it.

19 This is just another example of us getting
20 sandbagged at trial with a new document, new information
21 that wasn't disclosed, wasn't relied upon by Mr. Cooper
22 in forming his opinions and our experts have not had an
23 opportunity to review rebutting those.

24 So we reiterate our objections. Fundamentally
25 unfair and improper.

1 MR. MOSKOWITZ: I'll make one more point, your
2 Honor. Ben Moskowitz. I gather what is good for the
3 goose, if they believe it is proper to do this, and
4 we're about to start with our experts, we can put in
5 whatever we want that they haven't seen before, as long
6 as it falls with some general concept of our reports.
7 Not asking for counsel, not only addressing the court,
8 but that has come to mind.

9 THE COURT: It is a fine point, and I would
10 say if it is beneficial to the determination that has to
11 be made here, I would allow it as long as it is relevant
12 and on point and related somehow to this matter and the
13 discussion we're having, I would allow it.

14 MR. MOSKOWITZ: Sounds like a limitless concept
15 to me, your Honor, and I'm -- I'll note again we have a
16 standing objection to either side being able to do this
17 and my saying that the good for the goose point is only
18 that I would expect if our objection continues to be
19 overruled, it will be applied equally.

20 MR. FASO: We join in the objection.

21 MR. DODGE: Two points.

22 THE COURT: Let me ask a question. This new
23 record, what is it?

24 MR. DODGE: Sure. So I should note, first of
25 all, this is cited in our briefing. So opposing counsel

1 had ample awareness of it. It is also cited in the
2 Harkenrider decent from I believe 2022 which I believe
3 opposing counsel was involved with personally.

4 These are letters submitted by individuals and
5 organizations to the Independent Redistricting
6 Commission, and I'll -- there are two we are going to
7 seek to move into evidence. That is, those are the only
8 remaining exhibits I seek to move into evidence with
9 Mr. Cooper, our final witness, and they are letters that
10 describe the interests of different Chinese community
11 organizations as to keeping certain neighbors within
12 Brooklyn in a common district.

13 MR. MOSKOWITZ: I'll also say, we also object
14 on the basis this is not inside the scope of this
15 expert's expertise or alleged expertise. He's a map
16 drawer. We heard all about that. He mentions
17 communities of interest. He is no New York expert of
18 communities of interest. In fact, your Honor may have
19 taken note, I did, he said I'm not that familiar with
20 Manhattan during the questioning.

21 Now, we're going to have through this expert
22 them jam in all these cherry-picked things of, you know,
23 select three people whatever it is from millions of
24 people who live in New York City so they can get it in
25 the record.

1 THE COURT: There is a trier of fact here.

2 MR. MOSKOWITZ: Agreed.

3 MR. FASO: Join in the objection, add it is
4 plainly hearsay.

5 THE COURT: Noted.

6 MR. DODGE: We are not relying on it
7 necessarily for the truth of the statement.

8 Not only that, but to the extent these are
9 cited in Harkenrider decision, if counsel is confident
10 there are counter letters to the IRC they are available
11 to them to cite in their post-trial briefing.

12 MR. FASO: We are getting sandbagged in the
13 middle of trial. Spend weeks preparing, not
14 understanding this would be part of the proof at trial.
15 Wasn't disclosed to us to that fact. Wasn't in the
16 expert reports. Sure, there may be voluminous data out
17 there to rebut this. Are we going to have time over the
18 lunch break to break that down and research it?

19 MR. DODGE: Your Honor, these letters were
20 cited in our petition which was filed two months ago.

21 THE COURT: Okay.

22 MR. DODGE: Sandbagging, you know --

23 MR. MOSKOWITZ: Which begs the question, if
24 they had it two months ago, why didn't they their
25 experts use this?

1 THE COURT: Hearing what we are talking about,
2 understanding the testimony that is gone on over the
3 past two days, I'm going to allow this dialogue to
4 continue.

5 Your objections continue to be noted and let's
6 see what we can do in the next 15 minutes.

7 MR. DODGE: I am optimistic we can wrap-up
8 close to that time, your Honor.

9 Q. With that, can we pull up what I understand to have
10 been admitted as Petitioner's Exhibit 10.

11 Mr. Cooper, before the colloquy with counsel, I
12 believe you said this was a letter from a Dr. Wah Lee on
13 behalf of an organization called OCA NY?

14 A. Yes.

15 Q. If we can turn to the next page of this document.

16 Do you see the portion that says position two
17 regarding congressional districts?

18 A. Which page?

19 Q. Second page of this document?

20 A. Yes.

21 Q. And letter says CD-11 --

22 MR. FASO: Has this document been admitted into
23 evidence?

24 MR. DODGE: My understanding is, yes.

25 MR. FASO: I mean, I didn't hear any foundation

1 laid on it. I don't believe that it was moved into
2 evidence and accepted into evidence. Can't testify as
3 to the contents until --

4 MR. DODGE: My understanding is both of those
5 things are wrong. Mr. Cooper explained he provided
6 counsel via Harkenrider decision. Your Honor should
7 correct me, but I understand it to be admitted.

8 MR. MOSKOWITZ: Your Honor, the references to
9 the Harkenrider decision, I trust the court gives no
10 weight to that. I don't know what to say. Has nothing
11 to do with whether it is properly here today. Make no
12 mistake, I've seen this story before in the election law
13 cases. Your Honor will get a post-hearing brief, and
14 you will see up front and center, Dr. Wah Lee, if I
15 pronounce that correctly said the following about
16 Chinatown. This is just a vehicle to jam this in there
17 after the fact.

18 MR. DODGE: That makes no sense. It is in our
19 petition. The idea it is some sort of thing we jammed
20 in after the fact.

21 THE COURT: Lay a foundation.

22 MR. DODGE: Sure.

23 Q. Am I correct, Mr. Cooper, you said these were,
24 these two letters we're going to discuss were brought to
25 your attention by counsel?

1 A. Yes, because they are mentioned in my report.

2 Bensonhurst and --

3 Q. Sorry. I mean --

4 A. -- Chinatown.

5 THE COURT: One at a time, please.

6 Q. The letters we're about to discuss were brought to
7 your attention by counsel?

8 A. Yes.

9 Q. You understand them to be cited in a prior judicial
10 decision that descent, in fact, in the Harkenrider case?

11 A. Right.

12 MR. DODGE: I understand the exhibit to have
13 been admitted, your Honor. Can I proceed?

14 MR. MOSKOWITZ: You have to move it.

15 MR. DODGE: I've done that.

16 At this time, I once again will move
17 Petitioner's Exhibit 10 into Evidence.

18 MR. MOSKOWITZ: Objection. Lack of foundation.

19 Just because an attorney gave you a letter
20 from something used in cases, that is not a foundation
21 for testimony.

22 MR. FASO: Mr. Cooper doesn't have any personal
23 knowledge as to the origin of this document, when it was
24 created, how counsel got it, whether it is authentic in
25 any respect.

1 MR. DODGE: I don't hear counsel's foundation
2 objection. Any suggestion it is not in fact a letter to
3 the redistricting commission.

4 MR. FASO: That is not how laying a foundation
5 works.

6 MR. MOSKOWITZ: Not our burden.

7 MR. FASO: Not our burden. We need a person
8 with knowledge to testify as to the foundational
9 elements before admitted into evidence.

10 Q. When you reviewed this letter, did you understand
11 it to be testimony submitted to the Independent
12 Redistricting Commission?

13 A. That was my understanding.

14 MR. MOSKOWITZ: Objection. Not how you lay a
15 foundation. If they wanted to call Dr. Lee, they could
16 have done that.

17 THE COURT: Noted. Overruled. Let's
18 continue.

19 Q. Lets try to get this done before lunch.

20 You see the portion of this document, Petitioner's
21 Exhibit 10, that position to regarding congressional
22 districts, do you see that, Mr. Cooper, I apologize?

23 A. Yes.

24 Q. On the second page?

25 A. Yes.

1 Q. And the letter says, CD-11 contains all of Staten
2 Island, small part of Brooklyn, include Bath Beach and
3 divides Bensonhurst. Bensonhurst and Bath Beach should not
4 be with Staten island. Bath Beach and the whole of
5 Bensonhurst should be kept together.

6 Did I read that correctly?

7 A. Yes. I specifically reference that reality in my
8 expert report.

9 Q. Does District 10 in the illustrative map that you
10 drew join Bensonhurst, all of Bensonhurst and Bath Beach in
11 the same congressional district?

12 A. Yes.

13 Q. Does your illustrative map in effect achieve what
14 this letter from OCA NY is asking for from the Independent
15 Redistricting Commission?

16 A. I believe so.

17 Q. If we can scroll down to the bottom of this page,
18 top of the next.

19 Did do you see the part that says Position 3,
20 Mr. Cooper?

21 A. Yes.

22 Q. And this portion says, there is an Asian American
23 largely Chinese community of interest between Manhattan's
24 Chinatown and Sunset Park, Brooklyn over the past ten years.
25 Many Manhattan Chinatown residents left and migrated to

1 Sunset Park. Current Sunset Park residents commute daily to
2 Manhattan Chinatown via the N train, did I read that
3 correctly?

4 A. Yes.

5 Q. Does the illustrative map that you drew preserve
6 both the Manhattan, Chinatown and Sunset Park within
7 District 10?

8 A. Yes.

9 Q. Does the illustrative map also join Chinatown,
10 Sunset Park, all of Bensonhurst and Bath Beach?

11 A. Yes.

12 MR. MOSKOWITZ: Only because your Honor said
13 you will listen to our continuing objections, that
14 proved my point.

15 None of this document was needed to ask those
16 questions which were already established about what the
17 neighbors illustrative map keeps together or doesn't.
18 It is just to jam this in.

19 MR. DODGE: Your Honor, this is, I mean, it is
20 a little farcical to me. It is cited in our petition,
21 available online in a judicial decision. We can cite it
22 in our post-trial briefings anyway. They have complete
23 notice of it. As they said, what Mr. Cooper just
24 testified to as to how his district joins these various
25 just Chinese neighborhood together is undisputed by

1 opposing counsel. I'm done with the letter. We can
2 move on, unless there is another speech from opposing
3 counsel.

4 MR. FASO: I don't think raising an objection
5 is a speech.

6 MR. DODGE: Serial objections.

7 MR. FASO: The fact that the document is
8 referenced in the petition does not satisfy evidentiary
9 evidence at trial. We continue to maintain our
10 objection.

11 MR. DODGE: Fair enough.

12 THE COURT: Again, objections are noted. I
13 will say that both sides have talked about the issues of
14 Chinatown, the issues of the Chinese populations in
15 CD-11, CD-10, CD-12 and I believe this discussion is
16 tremendously relevant to making a proper determination.

17 MR. FASO: Which is all the more reason if
18 petition wanted to bring the proof in, they should have
19 called witnesses like Dr. Wah Lee or a witness to lay a
20 proper foundation for the document. It maybe important,
21 but petitioners charted their course in this case,
22 decided what proof and witnesses they are going to
23 proffer at trial and --

24 THE COURT: Thank you.

25 MR. DODGE: I'm ready to move on.

1 Q. Based often your experience, Mr. Cooper -- this
2 isn't about the letter.

3 Based on your experience, Mr. Cooper, being able to
4 attract candidates to community forums an important aspect
5 of community of interest?

6 A. Yes.

7 Q. Shifting gears, do you recall we talked about
8 Assembly District 61 earlier?

9 A. Yes.

10 Q. Does the illustrative map bring all or nearly all
11 of the Assembly District 61 within your illustrative
12 District 11?

13 A. It does. About 99 percent. I had to split part of
14 the financial district to meet one person, one vote. So in
15 that small little sliver, some of Assembly District 61
16 remains or would be combined with CD-10 and part of
17 Chinatown.

18 Q. With respect to Assembly District 61, is it more
19 substantially split under the current congressional district
20 plan?

21 A. Um --

22 Q. In terms of population?

23 A. Yes, yes, because all of Manhattan is in CD-10.

24 Q. Can a state assembly district be a community of
25 interest?

1 A. Pardon? Yes, it could be under certain
2 circumstances a community of interest.

3 Q. Can we call up Figure 12 on Page 22 of Mr. Cooper's
4 report. This goes to something your Honor asked you about
5 earlier. Can you just briefly tell us what Figure 12 says
6 at a high level?

7 A. Yes. This shows the populated splits between CD-10
8 and CD-11 for the neighborhood tabulation areas as defined
9 by the City of New York and the voting tabulation districts
10 as assigned by the census bureau and cooperation in
11 conjunction with the State of New York.

12 Q. Pull this up alongside Figure 5 from earlier in
13 Mr. Cooper's report.

14 You talked about this a bit with respect to
15 neighbors splits. I'll move on from that.

16 Can you tell us whether the number of people
17 impacted by precinct splits between the 2024 plan and the
18 illustrative plan changes or how it changes?

19 A. It is much higher in the 2024 plan than it would be
20 in the illustrative map. I had to make some splits of VTD's
21 in the illustrative map to keep Chinatown intact because
22 there are precincts or VTD's that split Chinatown. I was
23 following the boundaries of the NTA's to make sure that I
24 had all of Chinatown assigned to CD-10. In doing so, I had
25 to make some additional splits. I believe that Chinatown

1 itself would split five or six voting tabulation districts
2 resulting in ten to 12 populated splits. I don't have that
3 exact number in my hand. So that is why there are so many
4 splits there. I prioritize the Chinatown neighborhood to
5 make sure that everyone could be in CD-10.

6 Q. In Figure 12 you use 2020 precincts as a comparator
7 for the illustrative plan. I believe Mr. Bryan gives you
8 some brief for that.

9 Can you explain why you made that choice?

10 A. I wanted to put the two plains on level playing
11 field as if I developed this plan in 2021. It is time that
12 the redistricting process took place in New York State and
13 for that reason I used VTD's.

14 Q. Just to summarize the traditional redistricting
15 criteria, do you concluded the illustrative plan accounts
16 for equal population?

17 A. Yes.

18 Q. Do you conclude that the illustrative plan
19 satisfies the contiguity requirement?

20 A. Yes.

21 Q. Do you concluded the illustrative plan is
22 reasonably compact and within the normal range for
23 congressional districts?

24 A. Absolutely. It is unquestionable that it is a
25 compact district, a compact plan with compact districts.

1 The other experts will argue otherwise, but they would not
2 be truthful.

3 As you can see in the exhibit that I have that
4 shows at least 25 districts with incredibly low compactness
5 scores that are legal and valid as of the 2024 election.

6 Q. Did you concluded the illustrative plans account
7 for communities of interest?

8 A. Yes.

9 (Transcript continues on the next page.)
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1 MR. DODGE: Your Honor, I have about a page and a
2 half left. I estimate it would take five to ten minutes. I
3 can finish after lunch?

4 THE COURT: Let's finish now.

5 MR. DODGE: Great.

6 BY MR. DODGE:

7 Q. We've gone through the traditional redistricting
8 criteria.

9 I would now like to ask you a few questions about how
10 the illustrative plan changes the racial dimensions of the
11 districts.

12 MR. DODGE: And with that, if we can pull up
13 Figure 9 from page 18 of Mr. Cooper's report.

14 Q. Can you tell the Court at a high level what Figure 9
15 shows?

16 A. Well, Figure 9 just shows the citizen voting age
17 population of Districts 11 and 10 under the 2024 plan.

18 MR. DODGE: And can we call up Figure 2 from
19 earlier in Mr. Cooper's report alongside this table.

20 Q. Looking at Figure 2 and Figure 9, can you tell the
21 Court, approximately, how much the combined Black and Latino
22 population shared?

23 A. Yes, I'm sorry. I was looking at this thinking I was
24 looking at --

25 Q. Oh.

1 A. I referred to this as the 2024 plan. Figure 9 is
2 actually the illustrative map that you brought up, which is
3 the --

4 Q. I appreciate that clarification which I guess I missed.
5 I guess I'm thinking of lunch already.

6 Looking at these two figures, the 2024 figures and the
7 illustrative map figures, can you tell the Court approximately
8 how much the combined Black and Latino population share changes
9 in District 11 between the 2024 plan and your plan?

10 A. Yes. It goes from 22.7 in the 2024 plan to 24.71 in
11 the illustrative map. So it goes up just a bit.

12 Q. And what happens to the Asian population share in
13 District 10 under the illustrative map?

14 A. Let me refer back to my report itself, so I can see it
15 better.

16 It dramatically improves the -- or
17 enhances -- increases the Asian American C-map in District 10.

18 Q. So the Asian population share in District 10 becomes
19 fairly substantial?

20 A. That's right. It goes from, I believe,
21 16.38 percent -- I'm sorry. From 16.7 percent in CD-10, under
22 the 2024 plan, to 23.38 percent under the illustrative map. So
23 the Asian American population under the illustrative map would
24 have a much stronger presence in CD-10 than they currently have
25 under the 2024 plan.

1 Q. And just some final questions.

2 Were you asked to aim for any racial targets when
3 drafting the illustrative map?

4 A. No.

5 Q. Were you asked to aim for any partisan targets when
6 drafting the illustrative map?

7 A. No.

8 Q. What data principally drove your decisions when drawing
9 the illustrative map?

10 A. Well, I was working with the overall population by
11 census block, census tract. And I also had information about
12 the borough lines, of course, and the VTDs, and especially the
13 neighborhood tabulation areas, which I prioritized because
14 they're very important in the City of New York.

15 Q. And more broadly, what criteria drove your decision
16 making when drawing the illustrative map?

17 A. Well, I was trying to adhere to traditional
18 redistricting principles, which would include compactness,
19 contiguity, communities of interest, and so on.

20 MR. DODGE: With that, I pass the witness.

21 THE COURT: So let me thank you.

22 While you remain on the stand awaiting
23 cross-examination, please don't discuss your testimony with
24 your counsel, and we'll break for an hour. Come back at
25 2:00, we'll set up, and start at 2:15.

1 MR. DODGE: Right. Thank you, Your Honor.

2 THE COURT: Thank you.

3 We're off the record.

4 * * * * *

5 (Whereupon, a luncheon recess was taken.)

6 * * * * *

7 AFTERNOON SESSION

8 THE COURT: Okay. Back on the record, Counsel.

9 MS. BRANCH: Petitioner calls Mr. Cooper back to
10 the stand.

11 THE COURT: Let's bring Mr. Cooper back up.

12 THE COURT OFFICER: Please watch your step.

13 THE COURT: Welcome back.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Before counsel begins, while he's
16 setting up, I'll remind you that you're still under oath.

17 THE WITNESS: Yes, understood.

18 THE COURT: Okay.

19 Counsel, whenever you're ready.

20 MR. MOSKOWITZ: Thank you.

21 And for the court reporter, Bennet Moskowitz,
22 Troutman Pepper Locke, for the intervener respondents.

23 CROSS-EXAMINATION

24 BY MR. MOSKOWITZ

25 Q. Good afternoon, Mr. Cooper.

1 A. Good afternoon.

2 Q. I don't know if you were here in the opening statement
3 that my colleague gave. At one point he referred to you as
4 "Dr. Cooper." Let me clarify that you're not a Ph.D., correct?

5 A. Correct.

6 Q. And you don't have a JD either, correct?

7 A. Correct.

8 Q. You don't have a master's either, correct?

9 A. Correct.

10 Q. Now, in this matter, sir, the petitioners' attorneys
11 specifically asked you to, quote, develop an illustrative plan
12 that would join Staten Island with Manhattan in a reconfigured
13 CD-11, end quote, correct?

14 A. Correct.

15 Q. And that's exactly what you did; you developed an
16 illustrative plan that joined Staten Island with Manhattan,
17 correct?

18 A. Correct.

19 Q. You did not consider any alternative illustrative
20 plans, correct?

21 A. I looked at other possible entities; this is the one I
22 settled on. To be honest, that's what I did.

23 Q. Where in your report, sir, do you discuss other
24 possible entities that you looked at?

25 A. I did not because they're not meaningful with respect

1 to my report.

2 Q. Am I -- do I have it correct that you considered other
3 possible plans, but didn't use them; is that what you're saying?

4 A. No, no, no. I looked around and experimented with
5 different ways to split Manhattan and thought that the best way
6 to do it was -- simple Occam's razor solution -- was to add
7 Chinatown with the rest of CD-10 in Brooklyn, which is what the
8 Chinese American community wanted. And it resolved the issue of
9 how to divide up Manhattan.

10 Q. In determining to propose the illustrative plan that
11 you do propose in your report, did your comparison of that plan
12 versus the other plans that you just referenced bear on that
13 determination to use that one?

14 A. No. There's very, very little difference, if any, in
15 the overall part Black, Latino voting strikes.

16 I think it's basically the same, because if you look at
17 Exhibit B, you can see a map prepared by the New York City
18 Planning Department that shows where the different ethnicities
19 live in Manhattan. And you can see that no matter which way you
20 go, you're going to end up with the same results.

21 Q. So is it fair to say, sir, that in tasking you with
22 developing an illustrative plan that would join Staten Island
23 with Manhattan in a reconfigured CD-11, you basically had very
24 few options of how to do it; do you agree with that?

25 A. Well, I would agree with that, particularly since I

1 wanted to keep neighborhoods intact. There were a few options,
2 you're right.

3 Q. Your task in this matter was not to consider what plan
4 is best for voters in current CD-11, correct?

5 A. Well, that's up to the petitioners.

6 Q. So it was not something you considered, correct?

7 A. Well, I produced this plan, the illustrative map, and
8 it passed muster with the petitioners.

9 Q. Thank you, sir.

10 My question is different. Am I correct that in your
11 work in this case, you did not consider what plan -- what
12 illustrative plan would be best for voters in current CD-11? Am
13 I correct?

14 A. In current CD-11, well, I believe that I did. Because
15 I did know that -- that there are Chinese American communities
16 in current CD-10 that wanted to be joined with Chinatown.

17 Q. And that's --

18 A. That ended up being how I drew the plan.

19 Q. Is that --

20 A. But there are, as I mentioned, many other
21 possibilities, if the preference by the Court or whomever is to
22 include other neighborhoods and exclude Chinatown --

23 Q. Right. And --

24 A. -- in CD-11.

25 Q. Apologies.

1 And, again, you didn't consider any plans other than
2 one that would join Staten Island with Lower Manhattan, correct?

3 A. Correct.

4 Q. And just so I have a clear record, sir, you talked
5 about compactness on your direct. I just have a simple question
6 to sum it all up.

7 Am I correct that the illustrative CD-11 that you
8 proposed scores worse for compactness than the currently enacted
9 map?

10 A. Yes, you are correct.

11 Q. Do you agree that with respect to the congressional
12 plans, that compactness of a district is necessary?

13 A. I'm sorry. Can you repeat that?

14 Q. Do you agree that with respect to congressional plans,
15 the compactness of a district is necessary?

16 A. I agree. And I maintain that unequivocally CD-11 is
17 sufficiently compact according to my experience.

18 Q. Right. And the currently enacted CD-11 is more
19 compact, correct?

20 A. I agree.

21 Q. Okay. Do you agree with the following statement: "To
22 the extent practicable, election plans should keep the core
23 population in prior districts together in new districts"?

24 A. To the extent practicable, I can agree with that.

25 Q. Right?

1 A. It's a background factor. You're talking about core
2 retention; it's a background factor.

3 Q. You served as an expert witness for the plaintiffs in a
4 case entitled Christian Ministerial Alliance, et al., versus
5 Cole, C-o-l-e, Jester, J-e-s-t-e-r; Case Number 4:23-CV-471 in
6 the Eastern District of Arkansas, correct?

7 A. Correct.

8 Q. In that case, the plaintiffs were Arkansas citizens who
9 challenged how the Arkansas general assembly redrew the state's
10 congressional district line, correct?

11 A. Correct.

12 Q. In that case, the plaintiffs tried to prove racial
13 gerrymandering by proving the Arkansas general assembly could
14 have drawn district lines to achieve both legitimate political
15 objectives --

16 (Whereupon, the court reporter seeks a
17 clarification.)

18 Q. In that case, the Christian Ministerial Alliance case,
19 in which you served as an expert, the plaintiff tried to prove
20 racial gerrymandering by proving the Arkansas general assembly
21 could have drawn the district lines to achieve both legitimate
22 political objectives and significantly greater racial balance
23 without sacrificing traditional districting principles, correct?

24 A. Correct. And I believe I did so.

25 Q. And in that case, you created three illustrative maps

1 on plaintiffs' behalf to demonstrate that very point, correct?

2 A. Exactly.

3 Q. And in that case, a three-judge panel of the District
4 Court in a decision ruling for summary judgment in favor of the
5 defendant found that your three illustrative maps fell short,
6 correct?

7 A. They found that it fell short because I could not
8 produce an alternative plan.

9 And that case is very different from this one, where
10 the partisan balance was such that it matched the adopted plan.
11 In other words, I had to create a plan that had a Republican
12 advantage that mirrored the -- the adopted plan. And I couldn't
13 do that without splitting, in some fashion, the Black community
14 in Southern Pulaski County and, I'm sure you're aware of this,
15 Little Rock was ground zero of desegregation efforts in the
16 1950s.

17 And to this day, there's a significant population in
18 Pulaski County, Arkansas. And as a result of this ruling, which
19 in effect meant -- in effect it means that there will never ever
20 be an opportunity again for the Black population in Pulaski
21 County to vote together because they're now split between three
22 congressional districts, it's perhaps the worst gerrymandering
23 I've ever seen. And we were unavailable, because I could not
24 produce a plan -- an alternative plan like the Alexander case.
25 And this case is not the Alexander case in South Carolina. This

1 is something different.

2 Q. Other than the fact that -- that you confirmed that I
3 was correct in saying the three-judge panel felt that -- found
4 that your maps fell short, am I correct, sir, that the opinion
5 doesn't say any of the rest of what you just responded with?

6 A. Well, what I'm -- I -- I think it does. In
7 effect -- in effect, the opinion is about creating an
8 alternative map that had a partisan advantage to the Republicans
9 that was equal to the Republican-drawn plan in the state
10 legislature, and I was unable to do that without violating other
11 traditional redistricting principles, like splitting a bunch of
12 the rural counties, which I probably could have done but I
13 refused to do.

14 Q. Sorry. I get that you're explaining your thoughts on
15 why the court found that your maps fell short. I have copies of
16 the decision here.

17 Are you representing to the Court that what you're
18 explaining is in the words of the decision? And we can look at
19 it if you would like.

20 A. I -- I'm saying what I think. I'm not a lawyer and
21 maybe you have a different interpretation. But I developed -- I
22 developed those plans and I'm explaining to you how and why I
23 did that.

24 Q. So you're not purporting then to describe what the
25 opinion says?

1 A. Well, I'm not a lawyer, so I'm not going to even
2 attempt to describe what the opinion says. But I do understand
3 from what I understood as I read that opinion a year
4 ago -- maybe six months ago or whenever, that the key problem
5 with the plan I drew was that I could not match the partisan
6 balance in the adopted plan.

7 Q. Sir, turning back to the statement that I read to
8 you and asked --

9 A. It was -- you know, you've got an alternative --

10 THE COURT: Let him ask the question and then you
11 can answer.

12 THE WITNESS: Okay.

13 MR. MOSKOWITZ: Thank you, Your Honor.

14 BY MR. MOSKOWITZ:

15 Q. A moment ago -- I'm not trying to re-ask it but pivot
16 back to it -- I asked you if you agreed with the following
17 statement. And I believe you said you did; correct me if I'm
18 wrong. Let me just read the statement again.

19 "To the extent practicable, election plans should keep
20 the core population in prior districts together in new
21 districts."

22 Am I correct that you testified a few minutes ago that
23 you are in agreement with that statement?

24 A. To the extent practicable, right.

25 Q. Right.

1 Sir, isn't that the exact statement that was in your
2 expert report in the Arkansas case which you submitted
3 under -- under penalty of perjury?

4 A. It probably was.

5 Q. Right.

6 A. What's wrong with that?

7 Q. Right. Well, sir, isn't it a fact that in this case
8 you told the Court something different about core retention?

9 A. No, I said it's a background factor.

10 Q. Let's please look at paragraph 27 of your report, if
11 you still have it in front of you. I have copies too, but you
12 may still have it.

13 A. Yes, I have it.

14 MR. MOSKOWITZ: And if you want -- if anyone wants
15 copies of the expert opinion, that's fine. I want to pull
16 up that sentence that I just read from the Arkansas expert
17 report. If you want copies, we have.

18 Q. And if you want to look at it, sir, we can hand one up,
19 but we're going to put it on the screen. You tell me.

20 A. I would like to see a paper copy.

21 Q. Sure.

22 MR. MOSKOWITZ: I'll hand it to the court officer.

23 THE COURT: Please.

24 (Handing.)

25 Q. Now, first, let's look at what you said in this case.

1 THE COURT: Thank you.

2 Q. Read along with me. "Core retention of a previous
3 districting plan," and then in parenthesis, "or least changed,"
4 in quotes, least changed, end quote, parens, parenthesis, "is
5 always a background consideration as well but it should never
6 preempt traditional redistricting principles."

7 A. I believe that to be a true statement. I'm not a
8 lawyer. That's my opinion.

9 Q. That is what you told the court in this case?

10 A. Correct.

11 Q. Let's look next to what you told the court in the
12 Arkansas case. And you have it in front of you. It's
13 paragraph 15 of that report. We'll give Mr. Pealer just a
14 moment. I'm asking him to do some fancy-to-me work. Let's look
15 again what you told the court in that case, sir.

16 A. Paragraph 15?

17 Q. Yes.

18 "Though not typically identified as a traditional
19 redistricting principle, but always" -- sorry -- "but always in
20 the background, is that election plans should avoid paying
21 incumbents."

22 Different concept than core retention, correct?

23 A. Correct.

24 Q. Right?

25 A. It's always in the background, though.

1 Q. Then you go on and say, "Also, to the extent
2 practicable, election plans should keep the core population in
3 prior districts together in new districts."

4 Do you see that, sir?

5 A. Yes. That's consistent with this report that I filed
6 in this case.

7 Q. You're telling the Court that those two statements are
8 the same, sir?

9 A. Well, that's what I think. I mean, maybe -- maybe in
10 your opinion after reading it it's not correct. But I view it
11 as being essentially the same.

12 Q. Well, sir, don't you agree with me that what you told
13 the Court in this case is different than the sentence that's in
14 paragraph 15 from your report in the Arkansas case?

15 A. No, I agree they're -- as a background factor, if you
16 can keep the populations in prior districts together, one should
17 try to do that, absent other issues that are in play.

18 Q. Where does it say in your Arkansas report that core
19 retention is always a background consideration?

20 A. Well, the lead of the paragraph says, "Though not
21 typically identified as a traditional redistricting principle,
22 but always in the background, is that election plans should
23 avoid paying incumbents." Also -- "Though not typically
24 identified as a traditional redistricting principle," that is
25 when I say -- "Also, to the extent practicable, election plans

1 should not" -- "election plans should keep the core population
2 in prior districts together in new districts."

3 So what is -- what -- what is possibly confusing about
4 that?

5 Q. Sir --

6 A. What I said in this case is exactly what I said in
7 Arkansas.

8 Q. And where in your report in this case -- excuse me, in
9 the Arkansas case, do you tell the court there that core
10 retention should, quote, never preempt traditional redistricting
11 principles, quote, as you told the Court in this case?

12 A. I believe I did, towards the end.

13 Q. Why don't you show it to us, please, sir?

14 A. Let me see if I can find this. It may take a while.

15 What is your question, then, exactly?

16 Q. Where in your report in the Arkansas case do you state
17 as you do to the Court in this case that core retention, quote,
18 should never preempt traditional redistricting principles, end
19 quote?

20 A. I may -- I may not have said that exactly in the -- in
21 the Arkansas case, but that's what I understood to be
22 redistricting reality in the Arkansas case. It's
23 just -- Arkansas was a different case than this case, as I'm
24 sure you understand. It was in federal court; it involved
25 racial gerrymandering.

1 Q. Core retention didn't mean something else in the
2 Arkansas case than it does in this case, correct, sir?

3 A. No, it did not. That is why in both cases they are
4 background considerations.

5 Q. Right. Mm-hmm.

6 A. Get that in your head.

7 Q. And?

8 A. Sorry.

9 Q. No offense taken.

10 And, sir, so you said you do agree with your prior
11 statement, which at least one place you made it was to a court
12 in Arkansas, that to the extent practicable, you should keep the
13 core population districts together in new districts.

14 Isn't it a fact, sir, that it's practicable to keep
15 Lower Manhattan with Staten Island in CD-11?

16 A. It is practicable. But there are other issues
17 involved.

18 Q. In your -- in your illustrative map, you didn't do
19 that, though, even though it's practicable, right?

20 A. It's practicable to also put Manhattan with
21 Staten Island, right?

22 Q. Please answer my question, sir.

23 Even though it is --

24 THE COURT: Would you like it read back?

25 MR. MOSKOWITZ: I could summarize it.

1 Q. Even though it is -- you admit it is practicable
2 to -- sorry, as I trip over my words -- to keep Lower Manhattan
3 with Staten Island, you did not do that in your illustrative
4 plan in this case?

5 A. I did not because I had other factors to consider, like
6 the issue of uniting the Chinese American population with the
7 rest of the Chinese American population in Brooklyn and, of
8 course, also in effect following the mandates of the
9 Constitution, and, in particular, the New York State Voting
10 Rights Act to take into account the African American and Latino
11 voters in Staten Island.

12 Q. Sir, isn't the reason that you didn't keep
13 Lower -- excuse me, keep the parts of Brooklyn that are
14 currently in CD-11 with Staten Island because, as we spoke about
15 a couple of minutes ago, your task in this matter was to, quote,
16 develop an illustrative plan that would join Staten Island with
17 Manhattan?

18 A. Well, that's right. I mean I -- I did a plan that
19 joined Staten Island with Manhattan. Here it is, the
20 illustrative map.

21 Q. Right.

22 Notwithstanding that you could have kept Lower
23 Manhattan -- excuse me, that you could have kept the portions of
24 Brooklyn with Staten Island that are currently with
25 Staten Island in a new illustrative plan, correct?

1 MR. DODGE: Objection. Asked and answered.

2 MR. MOSKOWITZ: I'll move on.

3 Q. Sir, in -- if you need to look -- actually, let
4 me -- before we get there, Mr. Cooper, when was the
5 Verrazzano-Narrows Bridge built?

6 A. I believe around 1965.

7 Q. Okay. And on average, how many vehicles cross the
8 Verrazzano-Narrows Bridge on a daily basis?

9 A. Off the top of my head, I couldn't tell you, but I
10 could find it on a website.

11 Q. Sir, I could represent to you that according to the
12 MTA, in 2023, the bridge averaged more than 220,000 vehicle
13 crossings per day, 80.3 million for all of that year.

14 Do you have reason to doubt that?

15 A. Not really. I assume you know what you're talking
16 about.

17 Q. Right. And the bridge has how many decks, sir?

18 A. I never crossed the Verrazzano Bridge, as I can recall,
19 so I don't know.

20 Q. How many lanes does it have, sir?

21 A. I don't know. I think it may have eight, but I could
22 be wrong. I'm just guessing.

23 Q. I can represent to you, sir, it has 13 lanes.

24 A. Fine. Okay. Fine. I think it's immaterial of this
25 case, but go ahead.

1 Q. Is it your testimony that the Verrazzano Bridge is not
2 material to this case?

3 A. No, the lane question is an interesting side comment.
4 Never mind.

5 Q. And you don't discuss the Verrazzano-Narrows Bridge
6 anywhere in your report, correct?

7 A. No, I don't.

8 Q. Sir, in paragraph 43 of your report -- if you need to
9 look at it, it's fine -- you state that the illustrative map
10 that you created adds parts or the whole of the following parts
11 of Lower Manhattan into the illustrative CD-11: Chelsea,
12 Hudson Yards, the East Village, the Financial District,
13 Gramercy, Greenwich Village, the Lower East Side, Midtown South,
14 SoHo, Little Italy, Tribeca, and the West Village.

15 Do I have that correct?

16 A. I believe so. I think that's the totalis of
17 neighborhoods that are in the illustrative plan in CD-11.

18 Q. And you testified on direct in substance that cultural
19 ties are a consideration in terms of communities of interest; do
20 you recall that?

21 A. Yes, I think so.

22 Q. Right.

23 Do you agree with me, sir, that in terms of culture,
24 Chelsea and Staten Island are very different places?

25 A. Perhaps. I mean, I think both are maybe predominantly

1 White, but I have to look at the -- I mean, obviously,
2 Staten Island is predominantly White. I'm not sure about
3 Chelsea.

4 Q. Sir, Chelsea is known, among other things, as an art
5 district with many art galleries, correct?

6 A. Well, yes. I've heard of Chelsea; that's about the
7 extent of it. I don't think I have -- I don't think I've been
8 in Chelsea.

9 Q. And Staten Island is not known as an art district and
10 for its art galleries, correct?

11 A. Correct.

12 Q. And Chelsea is also known for upscale dining, correct?

13 A. Well, I'm going to take your word for it, if that's
14 okay. I don't follow the point you're trying to make because
15 it's got to either be joined with -- with some middle-class
16 neighborhoods in Brooklyn or some middle-class homes in -- and
17 voters in Staten Island.

18 Q. I take it, sir, that other than hearing something about
19 Chelsea being known for art, you don't know much at all about
20 Chelsea. Do I have that correct?

21 A. I think that's correct. I've not looked into the
22 details -- the details of Chelsea.

23 Q. Do you agree with me that in terms of culture, the
24 East Village and Staten Island are very different places?

25 A. I don't know. I -- I -- there would be some

1 similarities perhaps, but I think the East Village is also on
2 another socioeconomic pedestal.

3 Q. You said there may be similarities. Perhaps are you
4 speculating, sir?

5 A. Yes, I am. I mean, you're asking me open-ended
6 questions that I really didn't delve into as I was drawing up
7 the plan.

8 Q. Sir, I think the record will reflect that I'm asking
9 you questions that either have answers which include whether you
10 know or don't know, but we'll move on.

11 Do you agree with me, sir, that -- withdrawn.

12 Are you aware, sir, that when you drafted your report
13 in this matter that the East Village is known, among other
14 things, as being a counterculture hub?

15 A. No.

16 Q. Did you -- do you know what St. Marks Place is, sir?

17 A. No.

18 Q. Do you know what CBGB is or was?

19 A. What?

20 Q. CBGB?

21 A. No.

22 Q. All right.

23 Do you agree with me, sir, that in terms of culture,
24 the Financial District is very different than Staten Island?

25 A. Well, I've been -- I've been in the Financial District

1 and it's obviously loaded with a lot of businesses, and there
2 would be some evidence of socioeconomic similarities between
3 parts of Staten Island and parts of the Financial District.

4 I remember having a very tasty outdoor pizza in the
5 Financial District. I bought it from a Spanish-speaking
6 gentleman. And there are Spanish speakers in Staten Island.

7 Q. So do I have your testimony correct, sir, that -- well,
8 is the extent of your testifying here that there are some
9 similarities between parts of Staten Island, the Financial
10 District solely based on your eating of the pizza from the
11 Spanish-speaking person?

12 A. No. I actually, following my initial declaration, I
13 prepared a national-level map looking at all census tracts and
14 plot groups in the country where there were households with
15 children, where the households had less than 185 percent of the
16 poverty, which indicated that there is, of course, households
17 where the kids can apply for free and reduced-price meals. And
18 I saw that there were a lot in Staten Island. And there are a
19 surprising number, in a way, in Manhattan.

20 And if you want to look at that map, you can go to the
21 Food Research and Action Center. Look for their summer meals
22 map, it's the ACFP map. It's an interactive map. And you can
23 see all of the neighborhoods in Manhattan that are part of
24 census tracts or census tracts are part of neighborhoods in
25 Manhattan where there is a significant population that has less

1 than 185 percent of the poverty rate.

2 And those -- those census tracts are in a lot of parts
3 of Manhattan -- I realize that Manhattan has a lot of wealth and
4 fancy, fancy art museums, but there's also a lot of population
5 in Manhattan that is not so well off.

6 I'm sure you know that too. But I just want to direct
7 to you that map so that you can get it and look at that and see
8 what I'm talking about.

9 (Senior Court Reporter Karen Perlman was replaced
10 by Senior Court Reporter Monica Hahn.)

11 (Transcript continues on the following page.)

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1 Q. Thank you, sir. My question was limited to the
2 financial district.

3 Can you point me to any specific location on Staten
4 Island that you are here testifying is similar to the
5 financial district in Manhattan?

6 A. I'm fairly certain that some of the financial
7 district does have 185 percent census tracts and therefore I
8 would say there is a similarity there. 185 percent census
9 tracts, let me clarify, those are areas where at least 40
10 percent of the population lives between 185 percent poverty.

11 Q. Do you have any other basis to support your
12 testimony that the financial district has some similarities
13 to Staten Island?

14 A. I think that is similarity. Certainly similarity
15 of lower Manhattan. I'm under oath. So you go look at the
16 map. It is an interactive map. Prepared nationwide for the
17 national organization known as the Food Research and Action
18 Center. It is used by New York State Department of
19 Nutrition or whoever is responsible for determining
20 potential sites to establish summer meal programs, and you
21 will see a there are a bunch of them in Manhattan.

22 Q. Financial district is most known, if not solely
23 known for Wall Street being the financial hub of arguably
24 the world, correct, sir?

25 A. Well, there is Wall Street. I saw a bunch of

1 firms, walking off the ferry the other day, walking into the
2 financial district. There is the World Trade Center and
3 there are some lower income households even in the financial
4 district. I think it is more prevalent in other parts of
5 Manhattan, but I think they do exist in lower Manhattan.

6 Q. Do you agree with me in terms of culture, Greenwich
7 Village and Staten Island are very different places?

8 A. Depends on the household, right?

9 Q. Well, is it your testimony that you should judge
10 the similarity of two locations by each household?

11 A. Well, I -- your question is so open-ended I hardly
12 know how to deal with it. I will say I don't know. I don't
13 know.

14 Q. Sir, you propose a map that you want this court to
15 adopt that moves certainly locations in Manhattan into a new
16 district. Just asking about those districts. It is your
17 map.

18 And again my question, which I want to make sure,
19 did you complete your answer to my question that whether you
20 agree with me that in terms of culture, Greenwich Village
21 and Staten Island are very different places?

22 A. I think you are probably right. I heard of
23 Greenwich Village. That is such a broad, broad concept,
24 culture, that I hesitate to agree with you or disagree with
25 you. I assume you have your own ideas.

1 Q. You brought up culture on your direct, right?

2 A. Right. As in language, ancestry.

3 Q. Doesn't just mean those things, right?

4 A. No, means socioeconomic characteristics. Can mean
5 a lot of different things.

6 Q. You testified at length about your considerations
7 regarding certain, what you said were communities of
8 interests, correct?

9 A. Chinese American population in testimony before the
10 Independent Redistricting Commission said just that.

11 Q. Right. Let's talk about that exhibit for a moment
12 that you saw. There was a somewhat heated, use that term
13 lightly exchange.

14 Am I correct, sir, both the, let's start with the
15 census data, you didn't have that census data when you
16 created your report in this matter, correct?

17 A. Yes, I did. I saw the front page in Exhibit B
18 shows you where ethnicities live in New York City.
19 Exhibit B was prepared by the New York City Department of
20 Planning called communities of interest. You can see where
21 the Chinese American population lives and they clearly are
22 most numerous in percentage terms in Chinatown.

23 Q. Sir, I'm referring specifically to the census data
24 that was introduced today, which your counsel said was
25 published after you authored your report in this matter?

1 A. Oh, that is data presented. That is data released
2 by the census bureau, but it is not exactly census data in
3 the sense it is census. It is from various data points that
4 the state agencies provide to the census bureau so they can
5 show workforce patterns nationwide.

6 Q. My question, sir, is am I correct that that
7 specific exhibit that is now in evidence over objection was
8 not something you had and is not something you considered
9 when you authored your report?

10 A. Well, I actually had a different, a different
11 source from the census bureau, but it was somewhat dated.
12 So I didn't include it. It is the 2016/2020 commuting
13 inflow and outflow survey based on the American community
14 survey that confirms the report you see today, but because
15 it goes back to 2016 and 2020, the numbers are slightly
16 lower. There is still that differential where more of the
17 persons who live and work in Staten Island traveled to
18 Manhattan then to Brooklyn. And you can find that on the
19 census bureau website. That is what I had. It was sort of
20 dated so I decided not to include it.

21 The report you have in your hands this morning
22 is hot off the presses and it was just released on December
23 18th. Next one out will be in December of 2024.

24 Q. Right. So again, you didn't have that specific
25 report when you authored your report in this matter, right?

1 A. That's true. That is true. I had the ACS report
2 that says exactly the same thing.

3 Q. Is that cited in your report?

4 A. No, it is not is.

5 MR. MOSKOWITZ: Move to strike and object to
6 testimony on the basis of relying on something not
7 disclosed.

8 THE COURT: Move to strike.

9 Q. Okay.

10 MR. MOSKOWITZ: Just want to reserve the right
11 to the extent we look back at the transcript, realize he
12 was talking about --

13 THE COURT: Let me rephrase. Shall strike.

14 MR. MOSKOWITZ: Thank you. We reserve the
15 right to raise further objections to the extent we are
16 able to determine that that was improperly used.

17 THE COURT: Noted.

18 MR. MOSKOWITZ: I'll move on.

19 Q. Any other materials, sir, that you want to tell me
20 about that you considered in authoring your report, but
21 weren't listed in your report?

22 A. Not off the top of my head.

23 Q. Are there others?

24 A. I don't know. You have to ask me. Maybe it would
25 trigger a memory. I guess I shouldn't mention anything I

1 didn't actually cite in my report.

2 Q. Do you agree with me, sir, in terms of culture the
3 Lower East Side of Manhattan and Staten Island are very
4 different places?

5 A. The Lower East Side in Manhattan are very different
6 places? I thought they were in Manhattan.

7 Q. The Lower East Side and Staten Island -- I'll
8 restate it if I misspoke.

9 Do you agree with me, sir, in terms of culture the
10 Lower East Side of Manhattan and Staten Island are very
11 different places?

12 A. First of all, I'm not a sociologist, so I'm not in
13 a position to answer one way or the other.

14 Q. Sir, on direct, again, you discuss how culture is a
15 consideration when you are appraising communities of
16 interest within the scope of what you did do in this case,
17 correct?

18 A. What I could do in terms of taking into account
19 culture is that by joining Manhattan with Staten Island I
20 then had to move some population back into CD-10 and I chose
21 to move the Chinese American population in Chinatown back
22 into CD-10 joined with Bensonhurst, Bath Beach, Sunset Park.
23 So I was taking culture into consideration. I'm also aware
24 there are a number of census tracts in lower Manhattan that
25 are Latino. So there is a shared culture there that goes

1 beyond race to ethnicity and language.

2 Q. Are you aware when you created your report in this
3 matter, sir, the Lower East Side is known for it' indie art
4 and music scenes?

5 A. No.

6 Q. Sir, regarding the other of the two exhibits that
7 were introduced over our objection this morning, one was a
8 letter to a community board, do you recall that? Or excuse
9 me, it was a letter. I won't further characterize it.

10 A. Yes.

11 Q. Right. Am I correct?

12 A. You are talking about the testimony before the
13 Independent Redistricting Commission.

14 Q. Thank. You?

15 A. Right.

16 Q. Yes. Am I correct you have that testimony as you
17 call it when you authored your report in this matter?

18 A. I had seen it. I didn't cite it. I also -- you
19 can see if you look at Exhibit B in my report that there is
20 a clear break out of where the different ethnicities and
21 communities of interest live in New York City. It is
22 prepared by the City of New York Planning Department and I
23 did have access to that map. And Chinatown really stands
24 out.

25 Q. Asking about that specific document again, sir,

1 that you call testimony.

2 Did you have that document, that testimony, a copy
3 of it, whatever form, did you have that specific testimony
4 that you call when you authored your report in this matter?

5 A. I was aware of it, yes.

6 Q. But you didn't disclose that in your report?

7 A. Well, do I have to disclose everything under the
8 sun that I thought about?

9 MR. MOSKOWITZ: I'm sorry. Can you read that
10 back, madam court reporter?

11 THE COURT: You may.

12 (Whereupon, the record was read back by the
13 reporter.)

14 THE COURT: That's a question.

15 A. Well, to be honest, I was under the assumption
16 there would probably be petitioners here to testify as there
17 usually are in federal court. In this case, there are not.
18 So I was going to defer to their testimony, which I can only
19 do now by way of this exhibit. You smile. I must have said
20 something very damaging. I'm sorry.

21 Q. Just congratulating myself for being mature enough
22 to not say everything that comes into my head finally.

23 THE COURT: Next question.

24 Q. Do you agree with me, sir, that in terms of
25 culture, Soho and Staten Island are very different places?

1 A. I'm just -- I have no comment, no opinion.

2 Q. Are you aware, sir, when you authored your report
3 in this matter Soho is known for its high-end fashion?

4 A. Um, maybe. Among other things, I would assume.

5 Q. You did know that?

6 A. No, I said -- I'm confirming that you must know
7 that so I will take that as a -- okay. Sorry.

8 Q. My question is, did you know that Soho, you
9 authored your report, did you know -- were you aware that
10 Soho is known for its high-fashion culture?

11 A. No.

12 Q. Do you agree with me in terms of culture, Tribeca
13 and Staten Island are very different places?

14 A. Well, they are different places for sure.

15 Q. I meant culturally, sir?

16 A. Culture is very hard to define from my prospective,
17 so I don't agree or disagree.

18 Q. Do you agree with me, sir, that in terms of culture
19 the West Village and Staten Island are very different
20 places?

21 MR. DODGE: Your Honor, objection. These
22 questions are quite cumulative.

23 MR. MOSKOWITZ: I'm going area by area listed
24 in his report. That is the last one, by the way.

25 THE COURT: That is what I figured. We are

1 getting close to the end. All I was going to say is the
2 points have been taken and let's see if we can move on.

3 Q. I'll restate that, sir.

4 Do you agree with me in terms of culture the West
5 Village and Staten Island are very different places?

6 A. I don't agree or disagree.

7 Q. How do you know what the Chinese communities in New
8 York City want?

9 A. Well, I know where they live and I did see the
10 letters to the Independent Redistricting Commission, but
11 I've not made a personal survey of Chinatown to come to come
12 to a final conclusion as to what they want. I did not take
13 a poll.

14 Q. Referring to the letter that wasn't disclosed in
15 your report, but introduced today, right?

16 A. Right.

17 Q. I'm asking you, when you authored your report,
18 how did you determine what the Chinese communities in the
19 districts at issue in your redistricting analysis, how did
20 you determine what those Chinese communities want?

21 A. Well, what I did is, I identified where the Chinese
22 American community lives and I understood there had been
23 testimony before the Independent Redistricting Commission
24 that Chinatown wanted to remain joined with Sunset Park and
25 the only way to do that would be to bring Chinatown back

1 into CD-10 so that it is no longer separated as would have
2 been the case and is the case under the 2024 plan. 2024
3 plan splits the Chinese American community in Chinatown and
4 keeps them in CD-10.

5 Q. Other than that letter --

6 A. Sorry. The current plan keeps CD-10 and Chinatown
7 intact, right, but it does not include Bensonhurst and Bay
8 Ridge. Those are, those are in CD-11. So the separation is
9 actually on the south end of Brooklyn, not the north end
10 under CD-10.

11 Q. Other than testimony as you called it in the
12 exhibit that was introduced today over objection that wasn't
13 disclosed in your report, is there any other basis on which
14 you determined the illustrious plan, what to do in terms of
15 the Chinese communities at issue?

16 A. Well, I can say if I wanted to unite the Chinese
17 American community, obvious place to go is the neighborhood
18 in Chinatown based on the census bureau, New York City
19 planning office and their map showing the distribution of
20 communities of interest by race and ethnicity.

21 Q. Sir, in your illustrative plan, is the Staten
22 Island Ferry terminal within your illustrative new CD-11?

23 A. Yes, I believe so.

24 Q. Okay.

25 MR. MOSKOWITZ: No further questions, at this

1 time.

2 Pass to Mr. Faso.

3 THE COURT: Thank you. So we are continuing
4 on cross with co-counsel. You okay? Do you need a
5 break?

6 THE WITNESS: No. Shaken and still alive.

7 MR. FASO: May I proceed?

8 THE COURT: You may.

9 CROSS-EXAMINATION

10 BY MR. FASO:

11 Q. Good afternoon, Mr. Cooper. I'm Nicholas Faso, one
12 of the attorneys for the respondents, in this case?

13 A. Good afternoon.

14 Q. You were retained by petitioners counsel, right?

15 A. Yes.

16 Q. You generated a report?

17 A. Yes.

18 Q. Is that correct?

19 Your report references the materials and
20 information on which you relied in forming your opinions; is
21 that right?

22 A. Yes.

23 Q. We heard today there is some materials and
24 information that you relied on, but were not referenced in
25 your report, right?

1 A. I was aware of, right. I was aware of the
2 Independent Redistricting Commission.

3 Q. Aware of, are you distinguishing from that
4 information that you relied upon in forming your opinions,
5 in this case?

6 A. I don't think I did. I mean, I would have drawn
7 the same plan without that information.

8 Q. So you didn't --

9 A. All you had to do was go to Exhibit B.

10 Q. You didn't necessarily rely on this other
11 information that is not referenced in your report in forming
12 your opinion, right?

13 A. It is supplemental. It does make the point -- I
14 was aware of it, but I was also initially even aware of the
15 existence of Chinatown and the obvious fact that half of the
16 Chinese American population in Manhattan lives in Chinatown.

17 Q. You are not answering my question, Mr. Cooper. I
18 am asking you not whether you were aware of this
19 information. I'm asking whether you relied upon it in
20 forming your opinions?

21 A. Well, not -- I mean, I was aware of it. It was not
22 like a thing that was uppermost in my mind. I would say
23 that.

24 Q. It wasn't necessary to the inclusion that you
25 reached, this information not referenced in your report, is

1 that correct?

2 A. Um, it is supplemental.

3 Q. But --

4 A. But not necessary because I would have known where
5 the Chinese American population lived without it.

6 Q. Any information upon which you relied in forming
7 your opinions is referenced in your report; is that correct?

8 A. Um, by and large, yes.

9 Q. Now, petitioners counsel asked you to examine
10 Staten Island, lower Manhattan, Brooklyn; is that right?

11 A. Right.

12 Q. They didn't ask you to examine the entire 2024
13 congressional plan?

14 A. No.

15 Q. You didn't undertake independent statewide
16 evaluation of alternative remedies, did you?

17 A. No.

18 Q. And petitioners lawyers specifically asked you to
19 develop an illustrative plan that joined Staten Island with
20 lower Manhattan, right?

21 A. Right. Mechanical task in a way.

22 Q. You didn't concede of that idea on your own?

23 A. No.

24 Q. You did what you were asked to do?

25 A. Right.

1 Q. You communicated with petitioners counsel about the
2 plan as you were developing it?

3 A. Yes.

4 Q. They didn't instruct you to consider whether there
5 were other lawful configurations of CD-11 and CD-10, did
6 they?

7 A. No. We settled on just presenting the one
8 illustrious plan with the understanding there would be many
9 different options because Manhattan is a big place and you
10 can exclude Chinatown and cross the bridge somewhere else
11 and draw another plan.

12 Q. Petitioners counsel didn't ask you to exclude
13 Chinatown; is that correct?

14 A. They did not.

15 Q. And you testified that you considered other plans
16 that petitioners didn't ask you to configure; is that right?

17 A. Um, that is true up to a point, yeah.

18 Q. And those other plans included joining Staten
19 Island with Manhattan, right?

20 A. Yes.

21 Q. So different ways to join Staten Island to
22 Manhattan?

23 A. Um, right, or different ways to join Brooklyn with
24 Manhattan is better put.

25 Q. But in all events the plans that you considered for

1 CD-11 join Staten Island with Manhattan?

2 A. Yes.

3 Q. You didn't consider adding more of Brooklyn or
4 taking some of Brooklyn away from CD-11 without changing
5 anything about Manhattan, right?

6 A. Um, true.

7 Q. And you testified on cross I believe that the plan
8 you generated passed muster with petitioners, did I --

9 A. Pardon?

10 Q. You testified on cross with Mr. Bennett that the
11 plan you developed passed muster with petitioners?

12 A. I believe so, yes.

13 Q. And so you presented it to petitioners to ask
14 whether this met their requirements for the district they
15 asked you to draw?

16 A. Well, yes. I gave it to them as a potential
17 illustrious plan.

18 Q. Did you consider party affiliation in drawing your
19 illustrious district?

20 A. No.

21 Q. Did you consider race in drawing your illustrative
22 district?

23 A. No, other than extent to which I did look at the
24 map, that is Exhibit B, that shows basically where some of
25 the races and ethnicities live in Manhattan and elsewhere in

1 New York City. So kind of aware of that. I was not
2 referring to it at all other than to show that as part of an
3 exhibit which is a good synopsis of communities of interest
4 in New York City. Very well done report. It was used by
5 the New York City Districting Commission for drawing city
6 counsel district.

7 Q. You called it a superlative report?

8 A. I think it was.

9 Q. Exhibit B is the primary source in your report for
10 your communities of interests analysis; is that right?

11 A. Yes.

12 Q. Now, you said you drew your report, your map with
13 Maptitude; is that right?

14 A. Yes.

15 Q. Maptitude includes political data?

16 A. No, it does not.

17 Q. It is your testimony that Maptitude doesn't include
18 political data?

19 A. It does not include political data. Tell you that
20 with a hundred percent certainty. A lot of plan draws might
21 attach political data to it. I did not.

22 Q. It is possible to use political data with
23 Maptitude; is that right?

24 A. If you import it independently. If you just
25 purchase the New York City Maptitude redistricting file you

1 get the five boroughs and it is just the population data.

2 There is nothing attached in terms of political data.

3 Q. You also access Dave's Redistricting as part of
4 forming your illustrative plan, right?

5 A. Not exactly. I uploaded the data into Dave's
6 Redistricting. It is an interactive map. You can zoom
7 around, look at different things.

8 Q. You have access to Dave's Redistricting?

9 A. I have access to Dave's Redistricting as does
10 everyone. I believe the special master in the recent
11 congressional case used that for his actual redistricting.
12 I didn't use it for redistricting. I used it to present the
13 plan.

14 Q. Mr. Cooper, I'd appreciate just answer the question
15 I ask. All I asked was whether you have access to Dave's
16 Redistricting. Not talking about the special master in --

17 A. I know. I want to be clear --

18 THE COURT: One at a time. Let him finish
19 before you respond.

20 Q. This goes a lot quicker if you answer the questions
21 I ask?

22 A. Fire away.

23 Q. Can we call up Exhibit H2 to Mr. Cooper's report,
24 Page 255 in the PDF. I will direct your attention to H2 in
25 your report, Mr. Cooper?

1 A. Yes.

2 Q. Can we zoom in on the portion of lower Manhattan?

3 MR. DODGE: I apologize. Did counsel say what
4 exhibit this is?

5 MR. FASO: H2 to Mr. Cooper's report.

6 Q. Mr. Cooper, do you recognize this portion of your
7 report?

8 A. Yes.

9 Q. Looking at lower Manhattan and Brooklyn and the
10 purple shading is CD-11 in your illustrative plan, the red
11 shading is CD-10; is that correct?

12 A. Yes.

13 Q. And you drew the lines that separate CD-11 in your
14 illustrative plan from CD-10 in lower Manhattan, right?

15 A. Yes.

16 Q. You made the decisions as to which blocks to
17 include in CD-10 that are highlighted in red?

18 A. Yes. I was trying to even things out to get to
19 zero deviation, right.

20 Q. When you were drawing this map on Maptitude, what
21 other information did you have on your screen or on your
22 desk?

23 A. Exceptionally what you see there.

24 Q. You didn't have any political data on your screen?

25 A. No, I did not. I absolutely did not.

1 Q. No racial data on your screen?

2 A. I did not.

3 THE COURT: What about NTA maps?

4 THE WITNESS: I did have NTA. That is not
5 included with the Maptitude product. I got that from
6 the City Planning Department website.

7 Q. When I asked you what other information you had on
8 your screen, you said just this, that was incorrect. You
9 also had the NTA maps?

10 A. Isn't that NTA map overlaying the -- yeah, that
11 shows the neighborhood, so, yes, NTA maps.

12 Q. Did you have any other information on your screen,
13 available to you when you were drafting this portion of the
14 map?

15 A. Um, well, I had VTD's, 2020 VTD and the NTA
16 boundaries and I had block level data. You have to add
17 things up to get zero deviation. So that information,
18 census block level, or in the case of New York what amounts
19 to a census block is often equivalent to a block or census
20 tract.

21 Q. Fair to say you also had the New York City
22 Redistricting Commission Report as you were drawing this
23 map?

24 A. Um, I had reviewed it, but I was not referring to
25 it as I was drawing the map, no.

1 Q. You testified that you carved Chinatown out of
2 your proposed, let's say you left Chinatown in CD-10 to
3 unite the Asian communities in Chinatown with other Asian
4 communities in your proposed CD-10?

5 A. Yes, with Sunset Park and also with Bensonhurst
6 around Bay Ridge.

7 Q. Sole basis for that was the New York City
8 Redistricting Commission Report?

9 A. That and conversations with the attorneys about the
10 Asian American population, yes.

11 Q. Did the attorneys direct you to carve Chinatown
12 out?

13 A. No.

14 Q. Now, you left the Lower East Side in your proposed
15 CD-11, right?

16 A. Yes. However, to be clear, you could draw the map
17 differently and not include Chinatown in a CD-10 and leave
18 it in CD-11 and in turn put the Lower East Side or some
19 other part of Manhattan in CD-10. You have to add some part
20 of Manhattan in CD-10 to get to zero deviation because
21 recall, I put all of, all of Brooklyn, including areas that
22 were not part of CD-10, but rather part of CD-11 in the new
23 CD-10. In other words, Brooklyn losses a split and
24 Manhattan gains a split.

25 Q. Let's get back to my questions, Mr. Cooper. You

1 mentioned that in order to equalize the population you have
2 the carve out some of lower Manhattan with Chinatown
3 neighborhoods?

4 A. Yes.

5 Q. You could have just drawn your northern boundary of
6 CD-11 further south?

7 A. Well, then that would have changed, then changed
8 CD-12 which would have had ripple effect that would have led
9 to other complications. So this is the Occam's Razor
10 solution to solving and resolving the issue of keeping
11 intact a Black/Latino population that would have an
12 opportunity to elect a candidate of choice.

13 Q. Going back to the Asian population, just to be
14 clear, you didn't interview any community leaders in
15 determining to join Chinatown with Brooklyn?

16 A. No, when I develop illustrative plans in almost any
17 case I've been involved in, sometimes I have an opportunity
18 to meet the plaintiffs at trial would be extremely rare for
19 me to interact with the plaintiffs.

20 Q. You didn't collect any survey data with respect to
21 adding Chinatown to Brooklyn?

22 A. No. I've been involved in, you know, probably a
23 hundred different litigation-related matters as I've worked
24 over the years and I don't have any recollection of ever
25 doing any kind of survey.

1 Q. And we saw on direct that there is Petitioner's
2 Exhibit 5, the letter from Dr. Lee.

3 You didn't rely on that, I think we are clear on
4 that point?

5 A. It was in the background. It is not something that
6 I thought about beyond just looking at it at some point in
7 the process.

8 Q. Now, did you consider that the Asian Legal Defense
9 Fund treats Chinatown and the Lower East Side as one Asian
10 neighborhood?

11 A. I did not know that the, that that is the case, no.

12 Q. You found Dr. Lee's letter in the Harkenrider case
13 materials, right?

14 A. I saw that and also saw reference in the
15 plaintiff's complaint or brief at some point.

16 Q. So you didn't review the Asian legal defense fund
17 memo in the Harkenrider materials?

18 A. I don't recall reviewing that, no.

19 (Transcript continues on the next page.)
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1 CROSS-EXAMINATION

2 BY MR. FASO:

3 Q. Going back to the New York City redistricting committee
4 report, are you aware that the New York Redistricting Committee
5 also considers the Lower East Side as part of Chinatown?

6 A. Not aware of that. But I will say that I had no choice
7 because I couldn't put the Lower East Side into the map. Or at
8 least I couldn't put all of it into the map. I might have been
9 able to add part of it rather than the Financial District, but
10 not much of it.

11 MR. FASO: Can we go to Exhibit B of Mr. Cooper's
12 report, at page 52. It's page 91 of the PDF. Can we zoom
13 in to the PUMA chart.

14 BY MR. FASO:

15 Q. So I'm calling your attention now to the portion of the
16 New York City Redistricting Committee report with regard to the
17 Chinese communities. And you see very clearly they list Lower
18 East Side and Chinatown as part of one community?

19 A. Do I have that in my --

20 Q. It's Exhibit B to your report --

21 A. What page?

22 Q. Page 52. Pull up the New York City districting report.

23 A. What page is it on? I can't see quite very well. What
24 page?

25 Q. Page 52 of the report.

1 A. Page 52 of the report. I see numbers like 203, 205.

2 Q. The Bates number is PET 239, if you --

3 A. 239.

4 Q. -- if it is easier for you to look at those?

5 A. Okay. I'll find it now. Yes.

6 Q. So you reviewed this report in connection with
7 preparing your illustrative plan, right?

8 A. I scanned it, yes.

9 Q. When you say you scanned it, do you mean you didn't
10 read it thoroughly?

11 A. I did not read it thoroughly.

12 Q. And that's probably why you missed the fact that the
13 committee itself considers Chinatown and the Lower East Side to
14 be one Asian neighborhood, right?

15 A. Perhaps. And I would not discount the possibility of
16 at least being able to include part of the Lower East Side
17 in -- with Chinatown.

18 Q. And you split Chinatown from the Lower East Side in
19 your illustrative plan?

20 A. I put all of Chinatown in.

21 Q. That is not my question.

22 I said: You split Chinatown from the Lower East Side
23 in your illustrative plan? It's a "yes" or "no" answer.

24 A. That is true, yes.

25 Q. We can close this exhibit.

1 Mr. Cooper, you agree that a redistricting plan must
2 comply with the law, right?

3 A. Yes.

4 Q. And as a general practice in the field of
5 redistricting, you tried to understand applicable law in -- in
6 drawing your districts?

7 A. Well, I'm not a lawyer, but I try to understand, sure.

8 Q. Of course. But you can read, right?

9 A. Yes.

10 Q. Yes.

11 So I'm not suggesting that you need to have a legal
12 opinion about -- and I'm not going to ask you for one. But just
13 a proposition that you consider the applicable law when you're
14 drawing a district?

15 A. Yes.

16 Q. Okay. And that includes the traditional redistricting
17 principles?

18 A. Yes.

19 Q. In New York, you'd agree that complying with the law
20 includes the New York State Constitution's requirements?

21 A. Right.

22 Q. Your illustrative CD-11, it doesn't make Black or
23 Latino voters a numerical population majority, right?

24 A. Right.

25 Q. And you understand that that violates the first Gingles

1 condition? You're aware of that?

2 A. This is not a Gingles case.

3 Q. I understand.

4 Taking aside whether this is a Gingles case or not,
5 you're familiar with the first Gingles precondition?

6 A. Yes. It doesn't violate it, it just doesn't meet that
7 standard.

8 Q. And you've drawn many maps before with the intent of
9 meeting that first Gingles --

10 A. Yes.

11 Q. -- standard, right? So you're quite familiar with it?

12 A. Yes.

13 Q. Your proposed districting in the illustrative plan
14 makes the Black and Latino CVAP -- the citizen voting age
15 population -- may I call it CVAP?

16 A. Yes.

17 Q. -- CVAP at 24.7 percent?

18 A. I think you're right, yes.

19 Q. You can't point to any authority that says 24.7 percent
20 CVAP is enough to compel the creation of an influence district,
21 right?

22 MR. DODGE: Objection. Calls for a legal
23 conclusion.

24 THE COURT: Rephrase.

25 BY MR. FASO:

1 Q. You're not aware of any -- let's back up.

2 You testified that you tried to comply with the law in
3 drawing your maps, right?

4 A. Right. This is going through the attorneys for the
5 petitioner, so I assume I'm complying with the law.

6 Q. Right. And you tried to do that in this case?

7 A. Yes.

8 Q. And you had counsel available if there was any question
9 you had about whatever legal constraints there might be in
10 drawing your map?

11 A. Right.

12 Q. You're not aware of any authority, no one has ever
13 advised you that 24.7 percent requires the creation of an
14 influence district? It's a simple question.

15 A. Well, I never -- I never attempted to hit a racial
16 target. I -- sometimes I suppose in a Gingles case you do have
17 to exceed 50 percent.

18 Q. My question wasn't whether you tried to reach --

19 A. I'm trying to explain. Go ahead. Ask me again.

20 Q. You're not aware of any particular percentage of
21 minority population that triggers a requirement for an influence
22 district?

23 A. No.

24 Q. I want to talk a little bit about the traditional
25 redistricting principles. You followed them in following your

1 illustrative plan?

2 A. Yes, I did.

3 Q. And you agree that they include contiguity, and
4 compactness, and communities of interest, right?

5 A. Yes.

6 Q. Core retention?

7 A. It's a background factor.

8 Q. Now, compactness can be measured both qualitatively by
9 metrics, right?

10 A. Yes.

11 Q. Excuse me, quantitatively by metrics, but also
12 qualitatively by an eyeball test, right?

13 A. Yes.

14 Q. And you agree that the eyeball test is an appropriate
15 measure of compactness?

16 A. It is one of several measures that one can take into
17 account.

18 Q. And we heard on cross, I believe, that your
19 illustrative district is admittedly less compact than the
20 current plan, right?

21 A. That's right. I'm constantly balancing the traditional
22 redistricting principles, so it's inevitable that one or more
23 might not match up with the districts and plan at issue.

24 Q. To defend the relatively less compactness of your
25 illustrative district, you propose averaging compactness scores

1 of separate pieces of land, in this case Staten Island and
2 Manhattan, right?

3 A. Yes.

4 Q. You've never offered this sort of subpart averaging as
5 a measure of district compactness in your prior work, have you?

6 A. I don't recall doing so. But this was a good
7 opportunity to do so because Manhattan, as relied on the
8 illustrative district plan, is very compact and -- and so is
9 Staten Island in and of itself. So I have no -- no concerns
10 about using that as -- as an explanation as to how and why I
11 drew the plan.

12 I'm not suggesting that in the future disparate parts
13 of a district should be necessarily factored into another kind
14 of compactness equation like I think maybe Mr. Bryan or
15 Dr. Trende had suggested.

16 Q. So your --

17 A. It's not a novel approach; it's New York specific.

18 Q. Your subpart compactness averaging approach shouldn't
19 be applied in other cases?

20 A. It could be. It could be.

21 Q. But if I just heard you, you said it shouldn't be
22 applied in a future case?

23 A. Well, it certainly can be applied in, say, Louisiana,
24 CD-1, for example. You can do that.

25 Q. So you get to pick and choose?

1 A. Look at the north of Lake Pontchartrain and south of
2 Lake Pontchartrain. You can make assessments there. I've never
3 done that, but you could.

4 Q. Is there any guiding standard of when the subpart
5 compactness arranging test can be applied?

6 A. Well, the standard is just the compactness scores
7 themselves, and you can see that Lower Manhattan in the plan I
8 drew, the illustrative map, would be compact. I mean, it's a
9 very small, densely populated area.

10 Q. The standard --

11 A. The compactness score is completely acceptable.

12 Q. Mr. Cooper, I asked you whether there is a standard
13 that provides when you can apply this subpart averaging
14 compactness standard. What situations does it apply?

15 A. In the instant.

16 Q. In this particular case?

17 A. Yes.

18 Q. And this particular case alone?

19 A. Not necessarily alone, but certainly it's applicable to
20 this particular case. And it could be applied to CD-1 in
21 Louisiana. It could be applied to CD-1 in Alabama. And there
22 are probably other places in the country where it can be
23 applied.

24 Q. You're not aware of any authoritative source or
25 scholarly material that recommends applying this subpart

1 averaging compactness standard, are you?

2 A. This is basic common sense to show --

3 Q. Answer my question, Mr. Cooper.

4 A. No, no, I'm not making it out as a standard.

5 THE COURT: Answer the question as it's asked.

6 Q. My question to you was you're not aware of any standard
7 or -- excuse me -- scholarly source or authoritative material in
8 your professional field that provides for the application of
9 this subpart averaging compactness measure?

10 A. I've not seen one to date, but it's a good idea.

11 Q. You never testified in any other case in which you
12 applied this subpart averaging compactness standard --

13 A. No, I never had --

14 Q. -- correct?

15 A. -- occasion to do so.

16 Q. You suggest that the water between Staten Island and
17 Lower Manhattan doesn't count because there is no population
18 there, right?

19 A. Well, there is a population of eight on
20 Governors -- Governors Island. In late May it's five. I can't
21 remember.

22 Q. But in terms of measuring compactness, it's your
23 opinion that that water does not factor into the analysis?

24 A. Well, it does factor into the analysis. I developed a
25 compactness score reported in my declaration of the entire

1 Staten Island-Manhattan district. And it scores slightly lower
2 than the adopted plan, but it's clearly within the norm of
3 congressional districts in New York and especially nationwide.

4 Q. Let's talk a little bit more about that water aspect of
5 your district.

6 You agree that Staten Island -- the distance between
7 Staten Island and Manhattan, by ferry, is about 5 miles?

8 A. Yes.

9 Q. And you agree that it takes about 25 minutes dock to
10 dock --

11 A. I believe so. That was sort of my experience on
12 Saturday.

13 Q. And that doesn't take into account queueing and loading
14 and unloading from the ferry, right?

15 A. True.

16 Q. You agree that the ferry route is far longer than the
17 Verrazzano Bridge connection in the enacted plan, right?

18 A. Yes.

19 Q. And you agree that elongating a district across 5 miles
20 of water both reduces its geographic and its population
21 compactness?

22 A. Certainly the geographic compactness, yes. Well,
23 it -- but it may not. It would vary. In this case, it probably
24 does. But there would be situations where that would not be
25 true.

1 Q. Well, you say right in your report, the lower
2 compactness score is reflective chiefly of this geographic water
3 and shoreline feature.

4 A. Well, that's right. That's right. But in other -- in
5 other states and other circumstances, it would actually enhance
6 the compactness.

7 For example, you may remember the "snake on the lake
8 district" in Ohio from years back went from Cleveland to Toledo.
9 If you measure the compactness score because the census tracts
10 go out into Lake -- what is it? It's not Lake Michigan or
11 Lake Erie or whatever. The compactness score is really enhanced
12 even though it's a very narrow district, but I digress.

13 MR. FASO: Move to strike as nonresponsive.

14 THE COURT: You can strike that.

15 BY MR. FASO:

16 Q. You agree that your illustrative CD is elongated
17 relative to the existing plan, right?

18 A. I'm not so sure about that. CD-10 is -- is elongated
19 in the 2024 plan.

20 Q. Let's talk about CD-11. You agree that your proposed
21 CD-11 --

22 A. Oh, north-south it would be longer, that's right.

23 Q. And it's elongated compared to the current CD-11?

24 A. It is elong- -- it does point -- at some points it's
25 more elongated. But the compactness score is clearly within the

1 norm, there is no question about that.

2 Q. You're aware that courts have criticized districts that
3 reach out to grab small and isolated minority communities,
4 right?

5 A. I've seen reference to that in the occasional case,
6 right.

7 Q. And you agree that your illustrative CD reaches across
8 upper New York Bay to pick up pieces of Lower Manhattan?

9 A. Well, yes, it does. It goes across 5 miles and picks
10 up Lower Manhattan. But -- but it's not isolated population.
11 It's what? Almost 300,000 people, minus Chinatown.

12 Q. Okay. Let's turn back to communities of interest.

13 Your opinion is that your illustrative map preserves
14 Chinese American communities of interest by keeping Chinatown
15 with Sunset Park, right?

16 A. I believe so.

17 Q. And, in fact, you believe that your plan advances
18 communities, preserving communities of interest by adding
19 Bensonhurst and Bath Beach to CD-10 with Chinatown and Sunset
20 Park, right?

21 A. I believe so.

22 Q. You didn't perform any empirical analysis to determine
23 whether there are similarities or dissimilarities between those
24 various Asian neighborhoods, did you?

25 A. No.

1 Q. You just assumed they're all Chinese, so they must be
2 the same?

3 MR. DODGE: Objection. Argumentative.

4 A. No, I didn't do that.

5 THE COURT: Sustained.

6 Q. You didn't analyze differences in median income between
7 those various neighborhoods?

8 A. In a way I did. Looking at the map I discussed
9 previously showing pockets of 185 percent poverty census tracts
10 with households with children, so in a way, yes, I -- I did.

11 Q. In a way?

12 A. But I didn't go -- I didn't really drill down.

13 Q. Right?

14 A. Right.

15 Q. You didn't drill into the numbers to determine the
16 differences in median income between those various Chinese
17 communities?

18 A. No, I did not.

19 Q. Did you look at poverty rates between the various
20 Chinese communities in your illustrative plan?

21 A. No.

22 Q. You didn't look at homeownership rates of the various
23 Chinese communities in your illustrative plan?

24 A. No.

25 Q. You didn't look at language differences between the

1 various Chinese communities in your illustrative plan?

2 A. No.

3 Q. You didn't analyze differences in national origin
4 composition in the different Asian communities in your
5 illustrative plan?

6 A. No, other than to take a look at the community of
7 interest map prepared by the New York City Districting
8 Commission.

9 Q. So is it fair to say that you're not aware that
10 Chinatown has a significantly lower median household income than
11 Manhattan overall and the other Asian communities in your
12 proposed plan?

13 A. I'm aware that Chinatown has a somewhat higher rate of
14 185 percent poverty census tracts. I did not do an extensive
15 examination of Brooklyn, so I'm talking about Manhattan only.

16 Q. My question was about lower median household income.

17 A. I didn't look at lower median household income by
18 census tracts.

19 Q. Is it safe to say that you're not aware that
20 Sunset Park's median household income is substantially higher
21 than that of Chinatown?

22 A. I was not aware of that.

23 Q. Do you know that Sunset Park is majority Hispanic?

24 A. I knew there were a lot of Hispanics in Sunset Park,
25 yes.

1 Q. My question was did you know it was majority Hispanic?

2 A. I did not realize it's majority Hispanic, but I did
3 know it had a significant Hispanic population.

4 Q. And you know Bensonhurst is majority White, right?

5 A. I think I knew that at some point. Right.

6 Q. Historically, it's been known as Little Italy; did you
7 know that?

8 A. I believe I've seen that in some material, yes. It's
9 trending Asian, isn't it?

10 Q. Did you rely on any travel patterns, studies, showing
11 regular community ties between Chinatown and Bensonhurst or
12 Bath Beach?

13 A. No.

14 Q. And you agree that there is significant travel time
15 between Chinatown and Bensonhurst and Bath Beach?

16 A. Yes. It's certainly more than a walk around the block,
17 sure.

18 Q. Do you agree that there are multiple neighborhoods in
19 between Chinatown and Bensonhurst and Bath Beach?

20 A. Yes.

21 Q. Turning your attention back to the area of Lower
22 Manhattan where -- with Chinatown, you agree that your draw
23 splits contiguous Chinese communities in Lower Manhattan?

24 A. There is Chinese population in almost all of the
25 neighborhoods in Lower Manhattan, so I -- basically,

1 China -- Chinatown is like half of the Asian population in Lower
2 Manhattan, and -- so there are clearly other Chinese Americans
3 in other parts of Manhattan, including -- well, you can look at
4 Mr. Barns' map. You can see that there are Chinese-Americans
5 all over Lower Manhattan.

6 Q. Yes. In significant numbers?

7 A. Yeah, 50 percent of -- 50 percent of the -- almost
8 50 percent of the Chinese -- of the Asian population in Lower
9 Manhattan lives in Chinatown. 47 percent. And the remainder is
10 elsewhere in Lower Manhattan. It's in a -- it's in one of my
11 tables. I didn't -- it doesn't break it down by Chinese
12 American, but yeah.

13 Q. But your draw splits Chinese communities that are
14 literally across the street from one another in Lower Manhattan;
15 do you agree with that?

16 A. Well, I would agree that it -- the map I prepared
17 splits Lower Manhattan, and so there are going to be different
18 ethnicities -- ethnicities or people of the same ethnicity on
19 the same side of the street --

20 Q. Including Chinese --

21 A. -- there is no way to avoid that.

22 Q. Including Chinese?

23 A. I don't have that information, but it wouldn't surprise
24 me.

25 Q. I want to talk about the overall effect of Asian -- on

1 Asian voters in your proposed plan. You agree that Asians are
2 the largest single minority in CD-11?

3 A. Under which plan?

4 Q. Under your -- under the existing plan?

5 A. Yes.

6 Q. And on -- in the 2024 plan, Asian CVAP in CD-11 is over
7 16 percent?

8 A. Let me look at --

9 Q. I'll refer you to the report, to paragraph 29.

10 A. Paragraph 29 -- now, what's your question?

11 Q. Asian CVAP in the 2024 plan is almost 17 percent?

12 A. Yes. It's evenly split between 11 and 10 in the 2024
13 plan.

14 Q. But in your illustrative plan, Asian CVAP drops to
15 12.4 percent?

16 A. That's right. Because it jumps up in CD-10 to -- I
17 don't have it in front of me, but I think it's like 22 or
18 23 percent. So they're a larger bloc of voters in CD-10 now.

19 Q. And under your illustrative plan, Asian CVAP
20 drops -- excuse me -- in total population terms, you reduce the
21 Asian share in CD-11 in your illustrative plan, right?

22 A. Yes, it does in CD-11, but it strengthens it in CD-10.

23 Q. In fact, you increase Asian CVAP in CD-10 to
24 23.4 percent?

25 A. Right.

1 Q. Your plan moves Asians in far greater numbers than any
2 other racial or ethnic group; is that correct?

3 A. I'm not sure about that. But it does -- it does
4 significantly enhance the voting strength of Asians in CD-10, so
5 that -- in at least one congressional district, they're about a
6 quarter of the citizen voting Asian population, whereas
7 currently they're just 16 percent in both districts.

8 Q. And it reduces Asian voting strength in CD-11?

9 A. In CD-11. But it -- yes, but it strengthens it in
10 CD-10.

11 Q. That pattern, moving over half of the Asian voters out
12 of CD-11, you agree it reflects cracking, right?

13 MR. DODGE: Objection. That calls for a legal
14 conclusion.

15 MR. FASO: He's an expert in redistricting. It is
16 certainly within his field to understand what cracking --

17 Q. You had understand what cracking --

18 A. I understand what you're saying, and I would argue that
19 perhaps the 2024 --

20 THE COURT: Let me rule on the objection.

21 So the objection is noted and I'll allow the
22 answer.

23 A. Yeah, normally when I think of cracking, I think of
24 significant populations that are divided into two pieces when
25 you could unite them into one piece and have a stronger

1 component of that particular ethnicity. So I would argue that
2 the 2024 plan at least on the surface appears to crack the Asian
3 population between CD-11 and CD-10, whereas the illustrative
4 plan uncracks it and makes for a much stronger voting bloc in
5 CD-10, from 16 percent to 23.38 percent. I mean, that is the
6 way I would analyze it if I were looking at a Black or Latino
7 district in a Gingles case.

8 Q. Thank you, Mr. Cooper.

9 MR. FASO: Could we take a five-minute break?

10 THE COURT: Definitely.

11 The witness can step down.

12 Please don't talk about your testimony with your
13 attorneys.

14 THE WITNESS: I'll just stay right here.

15 THE COURT: No, it's okay, you should step down. I
16 like to clear the space.

17 THE WITNESS: Oh, okay. Right. Okay.

18 (Whereupon, a recess is taken.)

19 * * * * *

20 THE COURT: Let's go back on the record.

21 BY MR. FASO:

22 Q. Okay. Mr. Cooper, I just have a few more questions.
23 You testified that you didn't consider any political data in
24 drawing your map, right?

25 A. Correct.

1 Q. So you're not aware whether your map either makes CD-11
2 more competitive for Republicans or less competitive for
3 Republicans, or more competitive for Democrats or less
4 competitive for Democrats?

5 A. Only to the extent that I listened to Dr. Palmer's
6 testimony.

7 Q. But as you were drawing your map --

8 A. No.

9 Q. -- as you were finalizing your report --

10 A. No.

11 Q. -- you weren't aware of whether there was any partisan
12 impact from your proposed plan?

13 A. Right. I had no partisan data. I understand Dave's
14 Redistricting does have partisan data, but I paid no attention
15 to it. It's all historical going back five years, so no data.

16 Q. And we talked about earlier how in drawing a map you
17 tried to comply with the relevant law, right?

18 A. Yes.

19 Q. And so in this case, you didn't consider the New York
20 Constitution's provision which says, "Districts shall not be
21 drawn to discourage competition or for the purpose of favoring
22 or disfavoring incumbents or other political candidates or
23 political parties," right?

24 A. No, I believe that's up to the lawyers.

25 Q. So you finalized your map without considering whether

1 it can potentially violate that provision of the constitution?

2 A. I prepared a map and it was pre-cleared by the
3 attorneys for the petitioners, that's all I have to say. I'm
4 not a lawyer.

5 Q. I understand you're not a lawyer.

6 I'm saying you drew your map without any attention to
7 whether it complies with this provision?

8 A. Read it again.

9 Q. Well, were you aware that the New York Constitution --

10 A. I was aware that there is language in the constitution,
11 yes.

12 Q. "Districts shall" --

13 A. Go ahead.

14 Q. "Districts shall not be drawn to discourage competition
15 or for the purpose of favoring or disfavoring incumbents or
16 other political candidates or political parties."

17 A. Right.

18 Q. You didn't consider that provision in drawing your map,
19 right?

20 A. I drew the map, and I'm leaving it up to the attorneys
21 to interpret.

22 Q. It's a simple question. You did not consider --

23 A. Okay. I did not. I did not.

24 Q. In fact, you couldn't consider it because you didn't
25 rely on any political data, true?

1 A. That's true. I did not rely on political data.

2 MR. FASO: Okay. Final line of questioning. Could
3 we turn back to I think it's Exhibit H2 to Mr. Cooper's
4 report.

5 BY MR. FASO:

6 Q. Now, in cross, my friend asked you whether the
7 Staten Island Ferry Terminal in Staten Island is within CD-10 or
8 CD-11. Do you recall that?

9 A. Yes, I believe it's in CD-11.

10 Q. It's in CD-11, but on the Manhattan side, the
11 Staten Island Ferry Terminal that lands at
12 Whitehall Street/South Ferry, right?

13 A. I believe so.

14 Q. Right?

15 A. Which is CD-11.

16 Q. But you drew the Whitehall Street terminal in CD-10?

17 A. I did. Okay. Well, it's easily remedied. Not very
18 much population there.

19 Q. And do you see -- do you understand where that terminal
20 is?

21 A. You'd have to point it out exactly.

22 Q. Well, 478 is there. Do you see that?

23 A. Yeah, I know it's right on the shore.

24 Q. That is the Hugh Carey Tunnel?

25 A. Pardon?

1 Q. The Hugh Carey Tunnel?

2 A. Sorry. I didn't hear.

3 Q. Is 478 -- do you see --

4 A. Yeah.

5 Q. We agree that that is the Hugh Carey Tunnel?

6 A. Well, it's -- 478 goes into Manhattan and I guess
7 that's the Hugh Carey Tunnel -- Tunnel, excuse me.

8 Q. And just to the right of it, in red, is the
9 Whitehall/South Ferry terminal where the Staten Island Ferry
10 lands, right?

11 A. If so, then I inadvertently put South Ferry -- the
12 ferry in CD-10, but that is a low-population
13 district -- low-population census bloc. That could be removed.

14 Q. So you inadvertently put it in, did I hear you
15 correctly?

16 A. Well, if -- if it is -- I meant for it to be in CD-11,
17 yes.

18 Q. So this is another error in your illustrative plan?

19 MR. DODGE: Objection. Argumentative.

20 A. If it is an error --

21 THE COURT: I'll allow it.

22 You may answer.

23 A. If it is an error, it's easily remedied.

24 MR. FASO: No further questions, Your Honor.

25 THE COURT: Okay.

1 Redirect?

2 MR. DODGE: Yes. Just a few minutes.

3 THE COURT: Take your time.

4 REDIRECT EXAMINATION

5 BY MR. DODGE:

6 Q. Just a few more questions for you, Mr. Cooper.

7 You were asked some questions on cross about the number
8 of illustrative maps you drew in this case. Can you recall
9 that?

10 A. Yes.

11 Q. And ultimately your report produced a single
12 illustrative map, correct?

13 A. Right.

14 Q. And why was it in this case that you drew just a single
15 illustrative map?

16 A. Because it's a simple solution. It resolves the issue
17 of Chinatown not being part of the rest of the Chinese-American
18 community in CD-10. So it -- it puts them back into CD-10
19 as -- as they are in the current plan.

20 Q. And you understand that the petitioners in this case
21 have made certain legal claims about the current configuration
22 of District 11, correct?

23 A. Correct.

24 (Senior Court Reporter Karen Perlman was replaced
25 by Senior Court Reporter Monica Hahn.)

(Transcript continues on the following page.)

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1 Q. And so do you recall that you were also asked some
2 questions on cross about why you didn't present any
3 illustrative plans joining Staten Island with Brooklyn?

4 A. Um --

5 Q. Do you recall being asked questions about that?

6 A. Well, yes, yes.

7 Q. And is it the case that you were asked to draw an
8 illustrative map in Manhattan in part because the legal
9 issues in this case contest whether it is lawful to draw a
10 map as to Brooklyn?

11 MR. MOSKOWITZ: Objection.

12 THE COURT: What is the objection.

13 MR. MOSKOWITZ: Can we hear the question?

14 THE COURT: Can the court reporter read back
15 the question.

16 (Whereupon, the record was read back by the
17 reporter.)

18 MR. MOSKOWITZ: I will admit I'm on the border
19 here.

20 THE COURT: Why don't we have counsel rephrase
21 the question.

22 Q. Sure. Were you aware of possible legal issues in
23 this case that may have complicated drawing an illustrative
24 map into Brooklyn?

25 A. Yes.

1 Q. And you understand that if petitions were to
2 prevail here, ultimately the legislature would be
3 responsible for drawing new districts?

4 A. Absolutely. That is usually the case. Very rarely
5 would an illustrious plan ever become a final plan.
6 Happens, not often.

7 Q. It is not the case that your illustrative map is
8 being printed as some kind of a take it or leave it option?

9 A. Absolutely not. It is just one way to bring
10 Manhattan and Staten Island together.

11 Q. And you were asked questions on cross about whether
12 certain community members and Chinatown may have been across
13 the street from each other, one in the district, one out, do
14 you recall that?

15 A. I do.

16 Q. And if the legislature were given the opportunity
17 to draw a new district, could they make the choice about
18 whether to amend the particulars of that order?

19 A. Well, absolutely.

20 Q. And so they could theoretically choose to draw in a
21 manner that went broader than the Chinatown neighborhood or
22 less broader, fair?

23 A. Right.

24 Q. You were asked a question at the end of cross there
25 about the Staten Island Ferry Terminal in Manhattan, do you

1 recall that?

2 A. Well, yes.

3 Q. To your understanding, do a lot of people live at
4 the Staten Island Ferry Terminal in Manhattan?

5 A. It would be a low population number if it is any at
6 all.

7 Q. Again, if the legislature were given the
8 opportunity to draw a new district in this case, they would
9 have the choice about how to draw that particular boundary?

10 A. Yes. It would be easily remedied because the VTD
11 that is in is fairly low population and some of the blocks
12 are zero.

13 Q. You were asked some questions on cross about your
14 views on core retention, do you recall those?

15 A. Yes, but it also seems to veer off into the issue
16 of the alternative plan in the Arkansas case which was
17 really high. Go ahead.

18 Q. Just at a high level, it is consistently our view
19 that core retention can be a background consideration when
20 drawing a reasonably configured district?

21 A. Exactly. I didn't really see core retention
22 reported in these cases until some time in late 2010's.
23 Prior to that, it was maybe mentioned or suggested one
24 should draw at least change plan, but there was no
25 quantitative measure.

1 Q. Do you recall on cross, you were taken on a tour of
2 lower Manhattan from its fashion ends to its trendy
3 eateries, do you recall that?

4 A. Yes, yes.

5 Q. Can you remind the court how many cases you've been
6 an expert mapmaker in?

7 A. A lot. Over 60, sometimes multiple appearances.
8 That was for trial testimony. I don't know, 30 or more that
9 I filed a declaration in, the case resolved basically for
10 the plaintiffs before even going to trial.

11 Q. Were every single one of those cases in your
12 backyard?

13 A. None of them were.

14 Q. So you have routinely drawn illustrative maps in
15 different regions of the country?

16 A. Right. I made an effort to kind of get to know
17 Manhattan and Staten Island a little better. At least that
18 is how I got into the city this term, this week.

19 Q. And in your experience, can a district remain
20 reasonably configured under traditional redistricting
21 criteria even if it includes neighbors that are different
22 culturally?

23 A. Well, yes.

24 Q. In other words, no reasonably configured district
25 has to be a cultural monolith?

1 A. Exactly.

2 Q. You were asked some questions as well about the
3 Lower East Side neighborhood, do you recall those?

4 A. Yes.

5 Q. Would whether or how to include the Lower East Side
6 neighborhood in either District 10 or 11 be a choice
7 available to the legislature if it were given an opportunity
8 to redraw a district as a result of this case?

9 A. Absolutely.

10 Q. Are you aware of any practical or legal principle
11 that says an illustrative map in a case has to be at least
12 as statistically compact as the existing district?

13 A. No.

14 Q. You were asked some questions I think by Mr. Faso
15 about looking at the constituent borough pieces of the
16 proposed districts, do you recall that?

17 A. Yes.

18 Q. Were you proposing some kind of new legal test or
19 standard with that analysis?

20 A. No. I just was trying to make the point that
21 voters and campaign workers and potential candidates would
22 find it very easy to determine what district they lived in
23 and campaigned in in Manhattan because it is a very compact
24 area.

25 Q. And why is this case one where it is helpful to

1 understand that the constituent parts of a district remain
2 compact?

3 A. Well, I mean, there are two land based parts of
4 that map, and Staten Island is the same in both illustrative
5 plan and the 2024 plan, and I wanted to make the point that
6 CD-11 under the illustrative plan was reasonably compact at
7 a fairly high compactness score that is on average equal to
8 the compactness score for all congressional districts in the
9 state if you just look at that component.

10 Q. To be clear, you did report in your opening report
11 the Reock, R E O C K, and Polsby-Popper scores for proposed
12 District 11 that include the water between Manhattan and
13 Staten Island?

14 A. Yes.

15 Q. And you found that those scores, including the
16 water feature, remained within the normal range for
17 congressional districts both within New York and in the
18 nation?

19 A. Absolutely. No question about it.

20 MR. DODGE: Your Honor, if I could have 30
21 seconds briefly, confer with my colleagues?

22 THE COURT: Absolutely.

23 (A brief pause.)

24 MR. DODGE: Your Honor, with that, I pass the
25 witness, if there is any re-redirect. Otherwise, I

1 believe Petitioners rest.

2 THE COURT: Counsel?

3 MR. MOSKOWITZ: Nothing, your Honor.

4 MS. BRANCH: I would note for the record, your
5 Honor, if time permits --

6 THE COURT: State your name.

7 MS. BRANCH: Aria Branch, for the petitioners.

8 The petitioners are going to rest. If time
9 permits, we would reserve the right to have the
10 opportunity to make a rebuttal case, but I don't know
11 if that will be.

12 THE COURT: All right. Any objection for
13 that?

14 MR. MOSKOWITZ: Yeah, I guess the practical
15 concern we have, your Honor, that we all know what we
16 went through to get the schedule we have. I don't
17 understand when that would be done in theory.

18 THE COURT: Right. Understood. Let's, if
19 there is any rebuttal and we run out of time, it would
20 just be on submission.

21 MS. BRANCH: Thank you, your Honor.

22 THE COURT: Both sides given the opportunity to
23 submit. Okay. All right. I think we're finished with
24 the witness.

25 THE WITNESS: Thank you, your Honor.

1 THE COURT: You may step down.

2 (Whereupon, the witness steps off the stand.)

3 THE COURT: Please be careful.

4 Are we done for today?

5 MR. FASO: That is my impression, your Honor.

6 THE COURT: All right. We were scheduled today
7 to four. That is fine. Done for the day. Everybody
8 have a good afternoon.

9 MR. FASO: Thank you.

10 MS. BRANCH: Just given the amount of time that
11 we have is it possible to start the direct today? You
12 have five witnesses.

13 MR. MOSKOWITZ: I think it I will be more
14 efficient if I don't do that because --

15 THE COURT: We were scheduled until four.
16 I'm happy to go over any other day. I think it is good
17 organic time to stop and pick up tomorrow.

18 MR. MOSKOWITZ: Thank you.

19 (Whereupon, is court recessed and the case
20 adjourned to Wednesday, January 7, 2026 at 10 a.m.)
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Exhibit D

Transcript
January 7, 2026

In The Matter Of:
MICHAEL WILLIAMS, et al. v.
BOARD OF ELECTIONS OF THE STATE OF NEW YORK, et al.

Dr. Sean Terne & Thomas Mark Bryan
January 7, 2026

MONICA HAHN and KAREN PERLMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PT. 44

-----x
MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO,
AIXA TORRES and MELISSA CARTY,

Index: 164002/2025

Petitioners,
-against-

BOARD OF ELECTIONS OF THE STATE OF NEW YORK, KRISTEN ZEBROWSKI
STAVISKY, IN HER OFFICIAL CAPACITY AS CO-EXECUTIVE DIRECTOR OF
THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; RAYMOND J.
RILEY, III, IN HIS OFFICIAL CAPACITY AS CO-EXECUTIVE DIRECTOR OF
THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; PETER S.
KOSINSKI, IN HIS OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER
OF THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; HENRY T.
BERGER, IN HIS OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF
THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ANTHONY J.
CASALE, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE BOARD OF
ELECTIONS OF THE STATE OF NEW YORK; ESSMA BAGNUOLA, IN HER
OFFICIAL CAPACITY AS COMMISSIONER OF THE BOARD OF ELECTIONS OF
THE STATE OF NEW YORK; KATHY HOCHUL, IN HER OFFICIAL CAPACITY AS
GOVERNOR OF NEW YORK; ANDREA STEWART-COUSINS, IN HER OFFICIAL
CAPACITY AS SENATE MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF
THE NEW YORK STATE SENATE; CARL E. HEASTIE, IN HIS OFFICIAL
CAPACITY AS SPEAKER OF THE NEW YORK STATE ASSEMBLY; AND LETITIA
JAMES, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF NEW YORK,

Respondents.

-and-

NICOLE MALLIOTAKIS; EDWARD L. LAI, JOEL MEDINA, SOLOMON B.
REEVES, ANGELA SISTO AND FAITH TOGBA,

Intervenors-Respondents.

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January 7, 2026
60 Centre Street
New York, New York 10007

B E F O R E:

HONORABLE JEFFREY PEARLMAN
Justice of the Supreme Court

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1 THE COURT: This is the matter of Williams et al.,
2 versus the Board of Elections of the State of New York.
3 It's Index Number 164002/2025.

4 May I have appearance of counsel, please, starting
5 with the petitioner.

6 MS. BRANCH: Good morning, Your Honor.

7 My name is Aria Branch on behalf of the
8 petitioners.

9 I have my colleagues Christopher Dodge, Lucas
10 Lallinger, and Nicole Wittstein. Thank you.

11 THE COURT: Thank you. Good morning.

12 MR. FASO: Good morning.

13 Nicholas Faso of Cullen and Dykman for Respondents
14 Kosinski, Casale, and Riley. I'm here with my partner
15 Chris Buckey, and my client's counsel Kevin Murphy is here
16 in the courtroom today.

17 THE COURT: Good morning.

18 MR. MOSKOWITZ: Good morning, Your Honor.
19 Bennet Moskowitz, Troutman Pepper Locke, counsel for the
20 intervenor respondents.

21 Here with me at counsel's table is Misha Tseytlin;
22 our colleague, hot seat operator, Robert Pealer. My other
23 colleagues who are here today who the Court may hear from
24 are Andrew Braunstein and Lauren Miller.

25 THE COURT: Good morning.

1 MR. FARBER: Good morning, Your Honor.

2 Seth Farber from the Office of the Attorney
3 General, for Respondents Hochul, Stewart-Cousins, Heastie,
4 and James.

5 Thank you.

6 THE COURT: Thank you. Good morning.

7 Okay. Any preliminary matters? All right. Let's
8 get going.

9 MR. MOSKOWITZ: Again, for the court reporter, I'm
10 Bennet Moskowitz of Troutman.

11 Your Honor, Intervener Respondents call
12 Dr. Sean Trende to the stand.

13 THE COURT: Let's bring up the witness.

14 Watch your step on the way up. Your microphone is
15 on. Put your water down and remain standing and I'll swear
16 you in.

17 Raise your right hand. Do you swear or affirm to
18 tell the truth?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: And then please be seated.

21 And for the court reporter, kindly state your name
22 and your address.

23 THE WITNESS: My name is Sean Patrick Trende,
24 T-r-e-n-d-e. I live at 1146 Elderberry Loop, Delaware,
25 Ohio.

1 THE COURT: Good morning.

2 THE WITNESS: Good morning, Your Honor.

3 S E A N T R E N D E ,

4 having been first duly sworn/affirmed by the Court, took the
5 stand and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MOSKOWITZ:

8 Q. Good morning, Dr. Trende. Can you please introduce
9 yourself to the Court by explaining what you do for a living?

10 A. So my day job is I'm the senior elections analyst for
11 RealClearPolitics. We're a company of around 50 people that
12 produce website, covering polling, elections, and congressional
13 races across the country.

14 I also -- I'm a lecturer at -- I have to say it this
15 way -- the Ohio State University. I teach a variety of classes
16 there.

17 Q. Do you teach any classes regarding redistricting?

18 A. Yeah. So I have -- I do teach the Intro to American
19 Politics class, and we cover redistricting there.

20 More detailed is in a class, kind of my own creation,
21 Voter Participation and Turnout, where we cover -- we spend the
22 first half of the class talking about the theoretical political
23 science of voting, how you decide whether or not to vote, how
24 you decide who you vote for. The second half moves over to kind
25 of the intersection of that with some of the contemporary legal

1 problems. So we talk about redistricting. We spend a couple of
2 weeks on 14th Amendment claims and the Voting Rights Act.

3 Q. So just to be clear, you teach classes regarding the
4 Federal Voting Rights Act, correct?

5 A. Yes.

6 Q. And have you ever been qualified as a redistricting
7 expert in any other court cases?

8 A. Yeah. I've -- I haven't counted in a while, but it's
9 probably going on. I'm not at Mr. Cooper's level but I've
10 testified at about 30 cases.

11 Q. Thank you.

12 And has a court ever appointed you to draw any
13 congressional maps?

14 A. Yes. So I was appointed actually as the court's expert
15 in Belize by their Supreme Court in their case. It was their
16 version of Baker v. Carr.

17 More domestically I was one of two experts appointed to
18 draw the Virginia congressional state senate and state house
19 maps when their independent redistricting commission deadlocked.
20 And they are -- it is the only set of maps in the South that was
21 not challenged as either a political or racial gerrymander or
22 Voting Rights Act violation in the cycle.

23 Q. Have you ever done any work with any redistricting
24 commissions?

25 A. So I was appointed by the Arizona Independent

1 Redistricting Commission as one of the two VRA experts for
2 counsel in that matter.

3 Q. Great. And have you been retained as an expert in this
4 matter?

5 A. I have been.

6 Q. Right. And who retained you?

7 A. I believe it is Intervener Respondents in New York.

8 Q. Right. Counsel for Intervener Respondents retained you
9 as an expert in this matter. Do I have that correct?

10 A. I believe that's correct.

11 Q. Right. Are you being compensated for this engagement?

12 A. I am.

13 Q. Does your compensation depend on the outcome of this
14 case?

15 A. It does not.

16 MR. MOSKOWITZ: Right. And we've stipulated,
17 Your Honor, as Your Honor may recall, to qualifications.
18 But for good measure we tender Dr. Sean Trende as a
19 redistricting expert in this case.

20 THE COURT: No objection.

21 BY MR. MOSKOWITZ:

22 Q. Did you author a written report in this case, sir?

23 A. I did.

24 MR. MOSKOWITZ: Your Honor, if I can have the court
25 officer hand up a binder. I appreciate it. Thank you,

1 Mr. Court Officer.

2 (Handing.)

3 MR. MOSKOWITZ: If you need it, it's his report.

4 MR. DODGE: I'll take a copy.

5 THE COURT: Thank you. Thank you.

6 BY MR. MOSKOWITZ:

7 Q. And Dr. Trende, let me know, do you recognize that
8 document?

9 A. I do.

10 Q. What is this?

11 A. This is the expert report that I authored in this
12 matter.

13 MR. MOSKOWITZ: And we had already stipulated,
14 Your Honor, to the admission of this document which has been
15 introduced in the evidence room as IRX 01. So we hereby
16 move it into evidence, for good measure.

17 THE COURT: Without objection, we can admit it.

18 Q. Now, we're going to go into a lot of your findings in
19 your report today, Dr. Trende. Let me just upfront ask you a
20 key question in this lawsuit.

21 In your expert opinion, are Black and Hispanic
22 preferred voter candidates of choice in current CD-11
23 effectively locked out of winning?

24 A. I think there's kind of two ways you have to look at
25 that. There is no doubt that Nicole Malliotakis,

1 Congresswoman Malliotakis, is a strong incumbent and she has
2 deep roots in the district. But that's something different from
3 the district itself. Right? You can have a district that's a
4 swing district, that's locked down by an incumbent. You can
5 have a district that's otherwise safe where you have a bad
6 incumbent who loses there.

7 If you look at CD-11, there is history of Black and
8 Hispanic candidates of choice either winning or coming very
9 close to winning.

10 Q. So in your career, sir, am I correct you've examined
11 numerous congressional districts across the country?

12 A. That's right.

13 Q. Right. Could you even provide a count?

14 A. No. Well, 435 for this cycle. But it's across several
15 cycles.

16 Q. Are there -- do you find that there are sometimes
17 districts where minority-preferred candidates are, in your
18 expert opinion, effectively locked out of winning?

19 A. Yeah. There's -- there's districts in Alabama, there's
20 just no way. In fact, one of the illustrative districts that I
21 drew is an example of one that you can actually somehow draw in
22 southwestern Brooklyn that is more Republican than Alabama.
23 That's an example. But this isn't it.

24 Q. Right. So just for the record, in your expert opinion,
25 is CD-11, the currently enacted CD-11, one of those lock-out

1 districts?

2 A. No.

3 Q. Now, what were you asked to do in connection with this
4 lawsuit?

5 A. Two things. I was asked to examine the usually
6 defeated analyses that have been conducted, especially in light
7 of previous experience and Voting Rights Act cases; to examine
8 Mr. Cooper's map; and to give some examples of some of the
9 consequences of how his opinion could come out.

10 Q. Right.

11 MR. MOSKOWITZ: And can I ask the court officer to
12 hand up what we're going to -- I'll put it for
13 identification. This is Mr. Cooper's original report. And
14 we're just going to move it into evidence because I actually
15 don't think that was done yesterday. And this is the one he
16 responded to because the supplement came out after. I want
17 to be upfront why I was doing this.

18 MR. DODGE: Well, I don't think we can agree to
19 submit -- to have a prior iteration of the report, which all
20 parties agreed has been corrected. I don't understand what
21 purpose that would serve to the Court.

22 We certainly have no objection to you asking him
23 about it. Why would a since-replaced report with,
24 admittedly, information containing typographical errors that
25 has since been corrected be put into the record? That can

1 only cause confusion. You will essentially would have two
2 versions of the same report on the record that
3 are intentional --

4 MR. MOSKOWITZ: No. The opposite would be
5 confusing.

6 I have to say, candidly, I'm shocked to hear this
7 objection.

8 Yes, there are corrected versions, just like when
9 you have amended pleadings, the prior ones don't disappear.
10 The issue here -- this is not a frivolous thing I'm doing.
11 The corrections -- however you want to characterize
12 them -- came out after Dr. Trende submitted his rebuttal
13 report.

14 So of course we have to get into the record the
15 thing he actually responded to. They were free to explain
16 when Dr. Cooper was on the stand what he changed.

17 MR. DODGE: They're also free to put this on their
18 exhibit list, which they neglected to do. This was an
19 expert report that was filed with the Court nearly two
20 months ago. They obviously knew they wanted to ask this
21 witness about it. It's been -- it's been filed on the
22 docket. They can ask about the docket entry for the exact
23 same purpose, to elicit, you know, what Mr. Trende was
24 looking at. We have no objection to that.

25 Why they didn't put it on their exhibit list when

1 they've had it for two months and knew that they would ask
2 this witness about it is inexcusable, and rather remarkable,
3 given the statements they made to the Court yesterday,
4 frankly.

5 So we have no objection to them asking about this
6 or using the docket entry. But why should we have two
7 versions of the same report on the docket just to generate
8 confusion?

9 THE COURT: Let's wait for the ambulance or
10 the -- let's just wait for the siren to pass.

11 Whenever you're ready.

12 MR. MOSKOWITZ: Thank you, Your Honor.

13 Again, I'm -- I'm only going to address the Court.
14 I don't need to address the attacks on what we're doing.

15 Your Honor was very clear that there should be a
16 complete record here. Candidly, I didn't realize until the
17 trial started that they didn't put the prior iterations in.
18 This is part of the record; it's been briefed. I don't get
19 the strong objection to this. If, as they say -- if I could
20 finish, please, sir -- that all what happened is a minor
21 correction, then what's the problem? I'm not understanding.
22 That's not a question to counsel.

23 But in any event, Your Honor had a very permissive,
24 as I understood, view to what comes in. We brought in
25 things that were never on our radar. They're now telling

1 you that it's prejudicial to them to have their own expert's
2 report, original report, be part of the trial record?

3 THE COURT: Why don't -- for now, why don't you ask
4 the questions and then move for its admission. And so let's
5 go through it without admitting it. And the objection is
6 noted.

7 But I -- I'm leaning towards Mr. Moskowitz's
8 admission at this point. But let's just proceed.

9 MR. MOSKOWITZ: What I'll do, if it's okay,
10 Your Honor, I'll go through the rest of my presentation with
11 Dr. Trende, at the end I'll ask for it to be admitted so I
12 don't interrupt, and maybe the totality will show it's
13 really not something that opposing counsel may need to
14 see -- to fight about.

15 THE COURT: Understood.

16 Let's continue.

17 MR. MOSKOWITZ: If I just may -- Mr. Court Officer,
18 I couldn't see your tag from there.

19 Thank you.

20 (Handing.)

21 THE WITNESS: Thank you.

22 BY MR. MOSKOWITZ:

23 Q. Dr. Trende, do you recognize that document that's just
24 been marked for identification but it's not in evidence?

25 A. This is Mr. Cooper's original report with the

1 attachments.

2 Q. Is that the report that you responded to with your
3 written report?

4 A. Yes.

5 Q. Thank you.

6 Are you aware, sir, that Mr. Cooper issued two
7 corrected versions of his report in this matter?

8 A. I knew he did one. I've learned since that there were
9 two.

10 Q. Right.

11 And does anything about those corrections change your
12 ultimate conclusions and findings that we're going to discuss
13 today?

14 A. No.

15 Q. Right. Now, let's turn to Section 3.1 of your report,
16 sir, and if --

17 MR. MOSKOWITZ: Mr. Pealer, if you want to put it
18 on the screen.

19 Q. If you look at that, sir, you say that you looked at
20 results at various levels. Do you see where I'm talking about
21 that?

22 A. Yes.

23 Q. Yeah. Please just explain to His Honor what are you
24 talking about here, that you looked at various levels?

25 A. So one of the things that I was asked to do was to

1 examine -- my understanding is that usually defeated isn't
2 something the courts have weighed in on. And so there's -- I
3 think lawyers -- and this isn't something that I want to weigh
4 in on, but lawyers are going to fight about where the analysis
5 should be conducted. Should it be conducted at the district
6 level? At a -- at a citywide level? Statewide level?

7 And so I took the analysis and expanded it beyond
8 CD-11.

9 Q. Right. So are you aware, sir, that one of the issues
10 in this case is the -- withdrawn.

11 So is one option you can do to look at an individual
12 district?

13 A. Yes.

14 Q. Could you look at a particular area, a geographical
15 area?

16 A. That's right. So I heard Dr. Palmer, sorry, testifying
17 yesterday about in Georgia looking at an area. Sometimes when
18 you're doing Voting Rights Act cases, you don't just constrain
19 yourself to a particular district, you look at districts in an
20 area. And so that was one level of analysis that I conducted.

21 Q. And do you recall, sir, that Dr. Palmer looked at
22 mayoral races?

23 A. Yes.

24 Q. Did you do that in your analysis?

25 A. So, no, because I expand my analysis to the

1 statewide -- there is a couple of reasons. First, because I
2 expand my analysis to the statewide level. Obviously, New York
3 City races aren't conducted in Suffolk County, so it becomes an
4 apples-to-oranges comparison when you do that expansion.

5 And the second point is that at the end of the day,
6 these are congressional races that occur in even-year elections
7 for federal office. And so the mayoral races may be something
8 you're interested in, but they -- I think they're not as crucial
9 as the elections that actually occur in the even-numbered years.

10 Q. So sticking with Dr. Palmer, do you have any overall
11 opinions regarding his analysis?

12 A. So for the most part, that's -- that's in the
13 ecological inference question that I understand other experts
14 are retained to opine on.

15 I do think if you expand -- depending -- again, the
16 analysis depends on which level of jurisdiction the Court
17 ultimately determines is appropriate for conducting the
18 analysis. And I think you get different answers at different
19 levels of granularity.

20 THE COURT: It's relentless here.

21 MR. MOSKOWITZ: I'll attempt to talk through it.

22 If at any time Your Honor wants me to pause, that's fine.

23 Q. In terms of this analysis you did related to the
24 different levels, this is in relation to the usually defeated
25 question that you said was part of your task in this matter?

1 A. Correct.

2 Q. Right. And before we break it down -- your
3 findings -- in a more granular level, did you reach any overall
4 conclusions?

5 A. Again, it -- the -- the outcome or the answer depends
6 on how granular and specific you're going to be in your
7 analysis.

8 Q. To be clear, in your analysis, do you take a position
9 on the ultimate issue in this case of how broadly or narrowly
10 the, quote, usually wins, end quote, standard should be defined?

11 A. No, no. That is something for you-all to fight about.

12 Q. For all of the opinions that we are discussing that are
13 yours, do you hold them to a reasonable degree of professional
14 certainty?

15 A. Yes.

16 Q. I believe you -- you read -- we've already established
17 that you read Mr. Cooper's report. And did you analyze his
18 maps, his illustrative map?

19 A. I did.

20 Q. Do you have any overall conclusions about that map?

21 A. I mean, overall, there -- there's some unique analysis
22 to it that I've never heard employed before. And
23 there -- there's some serious implications to the way that he
24 suggests conducting the compactness analysis for -- for New York
25 that if taken literally would write compactness out of the

1 New York Constitution.

2 Q. What do you mean by that?

3 A. Well, he was -- if you take the range of compact
4 districts to be what's been done nationally, and there are
5 districts nationally with Reock scores below .1, that's
6 extremely non-compact under Reock, then you can draw whatever
7 you want more or less in New York because New York has different
8 geography than some of the districts he's comparing to, like
9 California, which has islands, which are going to affect your
10 compactness measure, or -- like small islands far off the coast.
11 I understand Long Island is an island, or Manhattan.

12 Or if you're going to use Maryland, which has a
13 panhandle, that's always going to have a low Reock score because
14 of the way the district is shaped.

15 Mr. Cooper is from Bristol, which is in the Virginia
16 panhandle, Virginia 9 is always going to have a bad Reock score
17 and a mediocre Polsby-Popper score because of the mountain
18 ridges it follows.

19 So taking every congressional district in the country
20 as a permissible range for compactness in a state like New York
21 is going to have some serious implications for the idea of
22 compactness in New York.

23 Q. Do you recall that somewhere in your report you refer
24 to the term "guardrails" in relation to the New York VRA?

25 A. Yes.

1 Q. Please explain to the Court what your opinion is on
2 that issue.

3 A. So this is something that does grow out of experience
4 in these Voting Rights Act cases. But one thing that can
5 happen, and if the Court is writing an opinion and a
6 strong -- interpreting this, this is something that I understand
7 lawyers want the Court to understand, I think it's well taken is
8 that without some type of limitation on how these cases can be
9 brought, you can get caught in what I kind of call doom loops,
10 where the -- assuming the -- the New York Voting Rights Act
11 covers Whites as well as racial minorities, where you draw a
12 district, you reconfigure to favor the minority candidate of
13 choice, but then the White voters now no longer have their
14 candidate represented so they can countersue, draw a district
15 that is -- would allow them to elect their candidate of choice.
16 And it would be well taken, as long as there is racially
17 polarized voting present. Without some type of guardrails
18 either on what usually defeated means, where the threshold is
19 set or polarization, you -- you get in this endless loop of
20 litigation.

21 Q. And what majority of the population in New York City
22 are -- is composed of White voters?

23 A. They are in the minority, no matter how you look at it,
24 if you -- if you're strict to the city, or you look at some of
25 the broader metropolitan area statistics, they're not a

1 majority.

2 Q. To hone in more specifically on the concept you just
3 explained, in your expert opinion, how would the adoption of the
4 petitioners' experts, Mr. Cooper's illustrative map, in your
5 expert opinion, how would that impact White voters?

6 A. So in New York City there would be no more
7 congressional representatives, at least with respect to the
8 preferred candidate in the 11th District, that reflects their
9 candidate of their choice.

10 In federal Voting Rights Act cases, you have some type
11 of guardrail at the level of proportionality to keep it from
12 maxing out. That's a possibility here, I guess. But, again,
13 that's something you-all can fight about.

14 Q. I just want to ask you, is what this -- this loop of
15 litigation -- I don't know -- I can't remember if you called it
16 a death loop or something like that, is this a hypothetical
17 concern, in your view?

18 A. No. So I draw some -- I drew some examples of how this
19 can happen. This -- this really wasn't meant to be like a
20 preview of a complaint that's being filed, or anything like
21 that. It's just an illustration of -- I understand that people
22 would fight back and have disagreements about it, but it's just
23 an illustration of how these doom loops can get started,
24 particularly in southwest Brooklyn, where you can now draw a
25 congressional district that's more Republican than Alabama.

1 Q. Right. And I believe you were here during Mr. Cooper's
2 testimony, correct?

3 A. Yeah.

4 Q. Do you recall there was discussion, in substance,
5 concerning the potential for the New York Legislature to adopt
6 CD-11 -- reconfigured CD-11 that has Lower Manhattan and
7 Staten Island, but maybe is somewhat different from the
8 illustrative map? Do you recall that?

9 A. Yes.

10 Q. In your opinion, does that possibility allay the issues
11 that you're raising?

12 A. So there's a literalist answer and then there's the
13 practical answer.

14 Literally -- so, for a 10-by-10 grid, there are more
15 ways to create 10 district out of their -- there's 8 quintillion
16 ways to arrange those 10 squares into groups -- or those hundred
17 squares into groups of 10.

18 So literally speaking, there is almost an
19 incomprehensible number of ways you can combine the census
20 blocks; that's literally speaking.

21 Practically speaking, in this district, it's about a
22 little more than 700,000 people, you've got around 500,000
23 people on Staten Island, and you're crossing over into one of
24 the most densely populated places in the United States.

25 Practically speaking, there are not -- there are more -- a lot

1 of different ways you can kind of quibble with how that district
2 gets drawn. But, realistically, they're going to end up looking
3 more or less the same.

4 Even if you do start getting into other congressional
5 districts, you're just -- you're -- you're in kind of a
6 bottleneck when you come into Manhattan.

7 Q. And am I correct that you said earlier that one of the
8 things you looked at in reaching this conclusion were
9 statewide -- New York statewide results?

10 A. Yes.

11 Q. Let's take a look -- if you need to refer to your
12 report, that's fine. What did you find regarding statewide
13 results concerning congressional elections?

14 A. There's no great surprise -- oh, for the congressional
15 elections.

16 Q. We can --

17 A. Yeah. For the congressional elections, I think
18 you -- there are seven districts in New York represented by
19 Republicans; the other 19 would be Democrats, the party favored
20 by Black and Hispanic candidates in this district. So well
21 beyond proportionality in this state.

22 And one of those districts is a -- is an example of a
23 district that if you look at the guts of it is a Democratic
24 district but there's a Republican candidate who has been
25 successful in it.

1 Q. And did you also examine presidential election results
2 statewide?

3 A. Yeah. So statewide, obviously, Democrats have carried
4 the state for a very long time.

5 Q. Who was the last Republican to carry New York in
6 a -- statewide in a presidential election?

7 A. Reagan in '84.

8 Q. Who was the last Republican to win a gubernatorial
9 election in New York?

10 A. Pataki in 2002.

11 Q. Do you know the last time that a Republican won a
12 senate election in New York?

13 A. "Senator Pothole," Al D'Amato in 1992.

14 Q. Do you know who the last Republican was to win attorney
15 general election in New York?

16 A. Vacco in '94.

17 Q. And how about the last Republican to win comptroller,
18 when was that, statewide?

19 A. Regan in 1990.

20 Q. And let's look at Figure 1 on page 6 of your report.
21 Again, just briefly explain to His Honor, what is this chart?

22 A. So in retrospect, this is probably a little denser than
23 it needed to be. But it conveys a lot of information. It's
24 got -- for each of the statewide races that Dr. Palmer refers to
25 for all of the congressional districts in New York, it shows how

1 the Democratic candidate performs.

2 Q. And what does it show with respect to District 11?

3 A. So District 11, it does show that there are races where
4 the Black and Hispanic preferred candidate has won. It showed
5 there are races -- like the 2020 presidential -- where it's been
6 reasonably close.

7 So this isn't a district -- like, you know, District 12
8 is for Republicans, where it's just not going to happen; they're
9 absolutely locked out. There have been instances of Black and
10 Hispanic candidate of choice winning.

11 Q. What does this chart reflect, if anything, concerning
12 statewide results for congressional elections in New York City?

13 A. So if you want to take -- if you -- if you look at the
14 congressional elections in New York -- in New York City, for the
15 districts that are wholly within, the 11th is the only district
16 where the Black/Hispanic preferred candidate is -- in
17 District 11 has lost.

18 If you want to expand to districts partly within, it's
19 a little bit more ambiguous in District 3.

20 Q. In -- let's stick with the districts wholly within
21 New York City but outside District 11.

22 In the data you looked at, have Democrats ever lost
23 statewide election in those New York City districts
24 which -- again, excluding District 11?

25 A. No. I think Meng's district, I think is 6, is the only

1 district where it's become reasonably competitive in recent
2 years, which is kind of the movement of Asian voters over the
3 past few cycles.

4 Q. Am I correct that in your chart, though, Districts 5
5 through 15 are the ones wholly within New York City limits?

6 A. That's right.

7 Q. So you were just referring to District 6. I want to be
8 clear for the Court that's --

9 A. That's Meng's district, which is wholly within.

10 THE WITNESS: M-e-n-g.

11 Q. And talking about Democrats winning or losing, can you
12 please explain to the Court some of your findings regarding the
13 Democratic performance in these elections that we're looking at?

14 A. Well, again, outside of District 6, these are
15 over -- these aren't close. These are districts where Democrats
16 are winning in excess of 60 percent of the vote.

17 Q. Sometimes is the margin much higher than that?

18 A. Yeah, I forgot my reading glasses in my coat. But they
19 get into the 80s.

20 (Senior Court Reporter Karen Perlman was replaced
21 by Senior Court Reporter Monica Hahn.)

22 (Transcript continues on the following page.)
23
24
25

1 Q. And again just overall, does this information you
2 just discussed show with respect to democrats winning
3 statewide elections?

4 A. So this isn't a situation like Alabama with the
5 Merrill case where you had Blacks being around 25 percent of
6 the state, response were asking for additional
7 minority/majority district which would bring the democratic
8 winning the Black preferred candidate win to about
9 proportionality in the delegation, which is what the Supreme
10 Court talks about in the Merrill opinion. Proportionality
11 is kind of the touchstone.

12 This is a situation where the Black and
13 Hispanic preferred candidate wins almost every race in the
14 jurisdiction and wins 19 or 20 out of 26 districts. Looking
15 at statewide candidates 19 to 26 if you look at the actual
16 results.

17 Q. Are there any districts where a democratic
18 candidate in the status that we're looking at ever even got
19 below 60 percent in the elections you looked at?

20 A. Again, in District 6 there is some examples of
21 that. Again, Asian voters swung rightly recently. Outside
22 of that in District 11, no.

23 Q. So only the District 6 example?

24 A. Yes.

25 Q. Just to be clear which districts -- withdrawn.

1 What percent of your New York City's congressional
2 delegation is from the democratic party?

3 A. It would be, um, 89 percent, somewhere in the high
4 80's, low 90's.

5 Q. Sorry. Let me re-ask the question now that you
6 have glasses.

7 What percent of New York City's congressional
8 delegation is from the democratic party? I know I just
9 asked that. Since he just got his glasses, if he wants to
10 look, confirm what he said?

11 A. This is a new development. It is around 90
12 percent.

13 Q. Thank you.

14 Of those current members of Congress from the
15 New York City Delegation, approximately what percent are
16 minorities?

17 A. About two-thirds. This isn't the New York
18 Congressional Delegation of the 70's where it was
19 overwhelmingly democratic, but it as bleached.

20 You have four members who are Hispanic.
21 Velazquez, Espaillat, Ocasio-Cortez, and Ritchie Torres
22 identifies as Black and Hispanic. You have three or four
23 Black representatives, Meeks, Jeffries, Clarke, and again
24 Torres identifies as both Black and Hispanic. Then Meng is
25 Asian American.

1 Q. So when you said two-thirds, referring statewide,
2 correct?

3 A. Um, right, right, right, right, yeah. 80 percent within
4 the city.

5 Q. I was going to ask, for a clean the record, if you
6 stick with just New York City of the current members of
7 Congress, sticking with New York City, approximately what
8 percent are minorities?

9 A. Yes. It is 80 percent.

10 Q. And how many members, not percentage, how many
11 members from New York City currently in Congress identify as
12 white?

13 A. Four. Suozzi, Goldman, Nadler, and Latimer.

14 Q. Something unique about any of those four individual
15 districts?

16 A. Latimer and Suozzi both represents districts that,
17 that are only partly within the city. Most of the
18 population is outside.

19 Q. So just to be clear, does your analysis and
20 opinions change if the relevant jurisdiction is New York
21 Statewide Congressional Delegation?

22 A. No, you still have minorities representing
23 two-thirds of the delegation.

24 Q. Am I correct, you also examine the citywide
25 level?

1 A. Yes.

2 Q. And what are your findings with regard to
3 examination of the citywide level?

4 A. Are we talking about --

5 Q. Sorry. I'll withdrawn. I'll ask a clearer
6 question.

7 If you talk about New York City elections, how is
8 the performance of the minority preferred candidates of
9 choice in District 11?

10 A. So in District 11 I don't know the entire history,
11 but if you are talking about statewide -- if you are saying
12 the minority candidate, minority District 11 candidate of
13 choice, the democratic candidate citywide, republicans
14 haven't won the mayors office since Bloomberg in 2005.
15 Last time they won a comptroller race one was 1938. I don't
16 think there has ever been a republican public advocate.
17 That was created in the early 90's. It has been democratic
18 ever since.

19 Q. Make any findings concerning the citywide level
20 data with respect to Dr. Palmer's data?

21 A. Again, this is a city where the question isn't
22 can minority preferred candidates choice win. It is more
23 whether white preferred Staten Island candidates can win.
24 It is a democratic city. Giuliani coalition is gone.

25 Q. So let's turn now, when we were talking

1 about these, again, forgive me, I don't recall if you
2 said death loops or doom loops. Which do you prefer,
3 Dr. Trende?

4 A. Either one. I think I used doom loops, but.

5 Q. Talk about the doom loops, you said you created
6 some examples. Let's look at Figures 2 and 3, starting with
7 Figure 2 on Page 11 of your report.

8 Please walk the Court through Figure 2 is and what
9 Figure 3 is, what they show?

10 A. You know, so this is just a general view of the
11 republican voting percent by precinct using this index of
12 statewide elections in New York City. As you can see there
13 is a huge blob of republican voters in southwestern Brooklyn
14 that is currently split across four or five districts
15 depending how you count it.

16 Q. What does this show in terms of the, the doom loop
17 concept?

18 A. Well, so what I did was say, okay, if we're going
19 to take this seriously, and this is a representation that I
20 had that there is, assume there is racially-polarized voting
21 in Districts 5, 7 and 8, I understand that might be
22 contested, but is there a facial -- if it really is just
23 50 percent for different sides of the 50 percent line for
24 racially-polarized voting, would the Whites in this area be
25 able to draw a district that you could put up in make

1 litigation about.

2 Again, I'm not trying to start litigation
3 within litigation, this is illustrative. So I did draw some
4 maps that, reasonably compact compared to the enacted
5 districts and they provide -- they create a district where
6 the White preferred candidate would win.

7 THE COURT: I apologize. I don't mean to be
8 picky. I'm looking at this map. I heard you describe
9 four districts in Brooklyn, and what I'm looking at, I
10 see are three districts in Brooklyn and one in Queens
11 County that are predominantly shaded blue in the
12 southwest corner of the map.

13 I also want to say that I see a lot of yellow
14 there that is described as non-republican voting and
15 much of it to the south is in the Atlantic ocean where
16 there are no voters. I just wanted to point that out
17 because, while I appreciate the map very much, I just
18 wanted to clarify it for everybody here.

19 THE WITNESS: So the mistake I made, and you
20 are correct, is that I counted the Staten Island,
21 District 10. And you are right, District 10, most of
22 the population is in Staten Island. This is --

23 THE COURT: What we're looking at is the
24 Rockaway peninsula, where I live, and I live in Queens
25 County. And that whole southern portion, that blue tip

1 that runs from Breezy Point, through the ponds at Belle
2 Harbor, Rockaway Park, Rockaway Beach, Arverne, Far
3 Rockaway. Those are the shades moving from left to
4 east by neighborhood in Queens county.

5 So what I see are three leaning republican
6 districts by the shades of this map in Brooklyn, and
7 what you would describe as one in Queens County in the
8 southwest corner of that map.

9 THE WITNESS: So I'm -- these are the enacted
10 districts. Those are actually all democratic districts.

11 THE COURT: I get it. I didn't want to be
12 picky. I'm sorry, everybody. I really am. It was very
13 -- this is minor. This is not a big deal, but I just
14 wanted to clarify we're talking about three Brooklyn
15 districts and a Queen district as I hear you're
16 description. Not four Brooklyn districts.

17 THE WITNESS: Okay. Yeah, yes.

18 Q. Doctor, take a step back, what kind of map is this?

19 A. This is the enacted map, and when I guess to be
20 more specific, that 10th District is actually a good chunk
21 of the population is in Manhattan right now. So that is how
22 I was counting four in Brooklyn.

23 There are two wholly with in Brooklyn, I think,
24 and then that 10th District goes over to Manhattan and the
25 11th District goes into Staten Island. You have the Queens

1 district, that comes down. I did not know it was the
2 Rockaway peninsula.

3 Q. What the judge, understandably pointed out change
4 any of your ultimate opinions?

5 A. Yeah, I wasn't -- I wasn't very good in my
6 explanation there. No, it does not change any opinions.

7 Q. Thank you.

8 If you could go to Figure 3, please explain what
9 that figure is. It is on the next page, Page 12?

10 A. Right. So three is an example of reconfiguration
11 of the district lines in this area.

12 Q. Right. Well, we're talking about these potential
13 reconfigurations outside of, that go beyond CD-11, correct?

14 A. Correct.

15 Q. Let's just stick with CD-11.

16 In your opinion, does the death loop -- excuse me.
17 The doom loop -- I know. Sorry. The doom loop concept
18 apply just sticking with CD-11 as it is, if it is
19 reconfigured in the way Mr. Cooper proposes?

20 A. This is an example how it kinds of depends what
21 your unit of analysis is. If it is just within the specific
22 congressional district, maybe not. If you are doing it in
23 kind of a regional area or cluster of districts like
24 sometimes done in voting rights act cases, it is little bit
25 more ambiguous, whether Whites on Staten Island can turn

1 around and sue for their old done congressional district
2 back.

3 Q. Well, let me ask you, you are redistricting expert
4 correct?

5 A. Yes.

6 Q. Is redistricting a zero-sum game?

7 A. Yeah, if you take it with no guardrails at a very,
8 like, 50/50, yes/no level, it is an exercise in robbing
9 Peter to pay Paul. Anything you move to reduce republican
10 performance or White preferred candidate performance in one
11 district is going to change it in another. It is all by
12 trade-offs within groups, within parties, and that is just
13 an inevitable exercise.

14 Q. Do I understand, is your testimony the impacts of
15 what Mr. Cooper proposes, the impacts go beyond CD-11
16 necessarily, do I have that correct?

17 A. Yes.

18 Q. In your opinion, did Mr. Cooper's maps depart at
19 all from traditional redistricting criteria, his
20 illustrative map, excuse me?

21 A. Yes.

22 Q. In what ways?

23 And if you need to turn to Table 2 on Page 16 of
24 your report for reference, feel free.

25 A. Yeah, so again, Mr. Cooper's map, it does decrease

1 the compactness of these districts. That is just the math
2 of it. And so these districts are reconfigured in a way
3 that not as compact as it is suppose to be. I heard the
4 argue, the suggestion, well, you can just look at the
5 portion that is on land. Um, I've never encountered that
6 before but, you know, that is something completely novel.

7 Q. Let me take a step back, unpack what you just said.
8 When you say you heard the argument, talking about what you
9 heard Mr. Cooper say --

10 A. Yes.

11 Q. -- during his testimony?

12 A. And in his report.

13 Q. And his report. Are you referring to the concept
14 of ignoring the water portion of the illustrative map?

15 A. That's right. And I know he said, you know,
16 getting all up in arms, I'm not. This is just novel. I've
17 never heard of it before, and I think if that is going to
18 become a precedent it should be pointed out this is new.
19 Ignoring -- the water is part of the district, and so if you
20 are measuring the compactness of the district, I get no one
21 lives there, but it is still within the district. It is
22 what makes the district continuous.

23 Q. Are there other places in the state or nation where
24 districts have low Reock scores because of such geography
25 issues?

1 A. Well, that is just it. In some places you do have
2 geography commands a low Reock Score. The panhandle of
3 Maryland, I'm from Oklahoma. It has a panhandle. Some of
4 the Channel Islands in California, far off the coast of LA,
5 those have to be put into a district and it is going to make
6 the district less compact.

7 THE COURT: You don't count the whole ocean in
8 between, or in this case you might draw the line, narrow
9 down two lanes of a highway of a bridge. So that would
10 eliminate all the water.

11 THE WITNESS: So if Mr. Cooper --

12 THE COURT: Just, my question, because I think
13 you are referring to the prior illustrations in the
14 rating of that score counting all the water and if you
15 took the water out and used the bridge, would that
16 change the numbers on your scores?

17 THE WITNESS: So --

18 THE COURT: Just yes or no?

19 THE WITNESS: If you just -- if --

20 THE COURT: If you took the water out, used the
21 Verrazzano-Narrows Bridge should draw the lines, would
22 that change the compactness score that you are citing
23 here?

24 THE WITNESS: It would make it worse because
25 you would fill less of the bounding circle if you kept

1 the bridge in but removed the water, it would make it
2 worse.

3 Q. Right. Just to, I'll ask you, does what Mr. Cooper
4 propose make compactness worse?

5 A. If you were to keep like the Staten Island Ferry
6 line in, connecting the two pieces of math for District 11,
7 you would have a less compact district.

8 What Mr. Cooper is suggesting, just ignoring
9 everything, only looking at the land and averaging the two
10 distant pieces. And even in California, if there are water
11 blocks, you count the water blocks to the Channel Islands.
12 I don't know if there are census blocks all the way out
13 there, but Hawaii always has a terrible Reock score.

14 THE COURT: I've seen districts get drawn that
15 go out into the water, come back, go down the Van Wyck
16 Expressway. You know, they get very narrow. And all
17 that affects the compactness score, but if you capture
18 just water and not homes, voters, that is going to
19 affect the score as well.

20 THE WITNESS: Right. As long as you are not
21 treating the Staten Island and Manhattan as discrete
22 entities, that you just average those, completely ignore
23 everything else, narrowing down that water block is
24 going to make the compactness score worse. It is that
25 Mr. Cooper just wants to ignore that completely, that

1 part of the district completely and just look at the
2 land portion. I've never encountered that.

3 THE COURT: Okay.

4 Q. Thirty, you said 30 years you've been --

5 A. No, 30 cases.

6 Q. Sorry. I didn't mean to age you, sir.

7 How many years have you been involved in
8 redistricting?

9 A. About a decade.

10 Q. And 30 cases, and you teach courses involving
11 redistricting, I want to be clear, you never encountered
12 that concept?

13 A. No. And if, like I said, if Mr. Cooper said he
14 wanted to keep in the connector of the Staten Island Ferry
15 path or just the Verrazzano-Narrows Bridge and eliminate the
16 water block, that is a different thing. That is treating --
17 that is not treating the district, the district chunks as
18 not being geographically distant.

19 Q. So let's use the specific example of how that,
20 using that concept, ignoring the water could impact the real
21 world, use Puget Sound as an example, please explain what
22 the impact would be?

23 A. There are ferry lines all over Puget Sound, and you
24 can have a chunk of a district on the Olympic Peninsula, a
25 chunk across in Seattle, actually do what was suggested,

1 keep the actual ferry pathway in the district. That would
2 be a barbel-shape district, it would get bad Reock Score
3 because it wouldn't fill the surrounding circle.

4 If you just treat the land chunk as the only
5 thing in the district and average it, you would get actually
6 a very good Reock Score doing it that way. Maybe that is
7 New York law, but I just never encountered it before.

8 Q. Are you aware, do you recall that Mr. Cooper's task
9 in this matter was to create an illustrative plan that has
10 lower Manhattan, Staten Island, and centered around the
11 ferry, correct?

12 A. That is my understand.

13 Q. Is the Staten Island Ferry the only ferry around
14 New York City area?

15 A. It is not.

16 Q. Ferries around Long Island?

17 A. Oh, yes. My understanding there is one that might
18 be seasonal that runs to Coney Island.

19 THE COURT: Not Coney Island, but close.

20 There is more than one ferry in Staten Island today,
21 and it runs to Brooklyn.

22 Q. Right. So just to summarize, the ferry that goes
23 between Staten Island and/or Manhattan is not the only ferry
24 around, correct?

25 A. Correct.

1 Q. And do you recall reading Mr. Cooper's reply
2 report?

3 A. I do.

4 Q. And do you recall he responds to your concerns that
5 you raise, your findings about the water issue?

6 A. Yes.

7 Q. Do you recall he cites an example about that?

8 A. Yes.

9 Q. And do you recall what lake he refers to?

10 A. What?

11 Q. Excuse me. Do you recall what his example was?

12 A. There are two examples. He refers to older maps in
13 New York, and then he refers to Congressional District 1 in
14 Louisiana that goes across Lake Pontchartrain.

15 Q. What is the name of that lake?

16 A. Lake Pontchartrain.

17 Q. Where is that?

18 A. Just north of New Orleans.

19 Q. Right. What is your response, please explain to
20 his Honor your response to that example of that lake above
21 New Orleans is?

22 A. I didn't get it because there is a causeway. It is
23 famous Huey Long project going across Lake Pontchartrain
24 that connects the portion of the district that is to the
25 north with the portion that is to the west of New Orleans in

1 Matairie. So that is the district that is continuous by a
2 roadway would be like crossing the Verrazzano-Narrows
3 Bridge.

4 Q. For example, he cites is comparable in this
5 situation, your opinion, to the part of -- 11 that he is
6 removing from CD-11?

7 A. Right.

8 Q. Because there is a bridge there?

9 A. There is a bridge there. If you look at his
10 illustration in his reply, you can see the bridge.

11 Q. So your opinion, was not a good example for
12 Mr. Cooper to use?

13 A. I, again, I didn't entirely get it because that is
14 -- I mean everyone agrees that Staten Island doesn't have
15 enough population for a congressional district on it's own.
16 Question is how you get off of it, and there is a bridge
17 right there. Just like to get across Lake Pontchartrain in
18 Louisiana you can use a bridge.

19 Q. And let's talk about now Mr. Cooper's point, do you
20 recall about historic precedent, do you recall Mr. Cooper
21 makes findings about precedent for joining lower Manhattan
22 with Staten Island in a congressional district?

23 A. Yes.

24 Q. Do you have an opinion about that?

25 A. I mean, so, he is right. I'm not trying to dispute

1 that. I think he overstates it when he says there is ample
2 precedent because every congressional district since the
3 1970's has crossed over the Verrazzano-Narrows Bridge.

4 Q. When was the Verrazzano-Narrows Bridge built?

5 A. It was built in '65.

6 Q. So I understand you correctly, that relatively
7 shortly compared to the time frame up until now, after being
8 built, most -- vast majority of the precedent is that the
9 district runs from southwest Brooklyn to Staten Island?

10 A. That is right. Since the 70's mostly since the
11 bridge has been built. I understand that prior to the
12 bridge being built the most easiest, only way to get via
13 roadway Manhattan is to cut through New Jersey, and that is
14 the only way to get to someplace in New York from Staten
15 Island, but that has changed.

16 Other example is the assembly district and
17 that is a, that is an example where you have two, they use
18 two exits to get off the island. So they still use that
19 Verrazzano-Narrows Bridge example to get over to Brooklyn
20 and then they take, use the ferry for connection on a
21 different exit from the island.

22 Q. Let's look at Figure 6 in your report. Like you to
23 walk the court through that figure to Figure 10.

24 What is this Figure 6? When ready, we can move to
25 the next one?

1 A. Yes. This is the -- this is the 1982 map.

2 Q. Right. Let's go to the next one, Figure 7?

3 A. That is the 1992 map.

4 Q. Let's go to Figure 8?

5 A. The 2002 map.

6 Q. Look at Figure 9?

7 A. The 2012 map.

8 Q. Let's look at figure 10?

9 A. That is the 2022 map, the one that was struck
10 down.

11 Q. Collectively, what do these maps show us?

12 A. They all connect Staten Island to Brooklyn.

13 Q. Even the map that was struck down?

14 A. Yes.

15 Q. That was struck down as a partisan gerrymander?

16 A. Yes.

17 Q. And it still has, telling us it still has Staten
18 Island connected to southwest Brooklyn?

19 A. Correct.

20 Q. And you mentioned that Mr. Cooper uses the example
21 of Manhattan and Staten Island being linked in the New York
22 assembly district. Do you have an opinion specifically
23 about his reliance on that?

24 A. Yeah. So that is a map that the current assembly
25 map does connect one of the districts on the assembly in the

1 assembly map to Staten Island -- to lower Manhattan, but it
2 also has a district that goes across the Verrazzano-Narrows
3 Bridge. Can't use that for two districts. So it still
4 employs that linkage.

5 Q. Did anything in Mr. Cooper's reply report cause
6 you to change any of your opinions and findings in this
7 matter?

8 A. No.

9 Q. Anything in Mr. Cooper's reply report further
10 confirm any of your opinions?

11 A. If anything, the example from District 1 in
12 Louisiana is just another example of trying to, using
13 bridges to connect, cross large bodies of water.

14 Q. You said that Mr. Cooper believed, did some things
15 that you had not seen before. Were you referring only to
16 putting aside the water concept or anything else?

17 A. That was the major one.

18 Q. Were there others?

19 A. That is the one that I can think of.

20 Q. Were you here when Mr. Cooper was talking about
21 the -- withdrawn.

22 MR. MOSKOWITZ: Your Honor, can I confer with
23 my colleagues?

24 THE COURT: Please. Do you need a break?

25 THE WITNESS: I'm good.

1 THE COURT: Confer with your colleagues, I'll
2 sit tight.

3 (A brief pause.)

4 (Transcript continues on the next page.)
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1 MR. MOSKOWITZ: Your Honor, other than moving
2 Mr. Cooper's original report into evidence, we pass the
3 witness.

4 MR. DODGE: May I have one final point on that,
5 Your Honor?

6 I understand Your Honor has been flexible with
7 evidence. We have just one final point. Every single thing
8 that Petitioners have moved into evidence was timely
9 disclosed on our exhibit list Sunday evening; Mr. Cooper's
10 report -- and this is a bit of a preview of something that I
11 think we may get into a bit more this afternoon.
12 Mr. Cooper's report, which they've had for a month and a
13 half, or two months, not timely disclosed on their exhibit
14 list, I'm am well aware of it, and I think that's the
15 difference here.

16 I can't imagine it came as a surprise that they
17 wanted to present it to the witness. They could have
18 disclosed it Sunday evening, per the Court's order; they did
19 not.

20 MR. MOSKOWITZ: The final response to that.

21 To conflate the disclosure of something brand-new
22 on Sunday evening, which is what they did, with our asking
23 the Court to introduce their own expert's document, which is
24 not prejudicial, no surprise to them, which no good deed
25 goes unpunished, so we -- results from the fact that we did

1 not make issue of their submission of two corrections after
2 our expert, I mean, his report is remarkable.

3 MR. DODGE: I have to put on the record that their
4 experts also submitted corrected reports.

5 THE COURT: Okay.

6 MR. DODGE: Several.

7 THE COURT: Thank you, everybody.

8 So I'll allow that.

9 Your objection is noted.

10 We'll admit the additional record. Before you
11 finish, though, I'd -- I have a few questions.

12 MR. MOSKOWITZ: Sure.

13 THE COURT: It's really just so that -- I want us
14 all to level-set here because I'm somewhat hung up on the
15 traverse what -- to get across Staten Island. And I want
16 to -- I want to kind of bring a little reality into it,
17 right?

18 Most of you aren't from here. You don't make that
19 traverse. I'm on New York Harbor 75 percent of the days I
20 come to this part. So I'm aware of what's going on.

21 And I just am so curious about your familiarity
22 with the traverse in comparison to the others that you used
23 to compare the traversed districts.

24 For example, do you know how many people commute to
25 work via the Verrazzano-Narrows Bridge from Staten Island as

1 opposed to the same number of people -- or the number of
2 people that take the ferry to work? I would venture that
3 it's a significant difference. I don't know.

4 But when we're talking about connecting
5 Staten Island for communities of interest, keeping the
6 compactness score as compact as we can, don't we want to
7 look at where these people work as opposed to whether they
8 both have driveways?

9 THE WITNESS: I suppose that just depends on
10 states. Some states are very emphatic about being able to
11 drive everywhere in a district. Some states are not. And
12 I -- I don't know New York City well enough to really opine
13 on the type of thing --

14 THE COURT: What I hear -- I'm sorry to interrupt.
15 What I hear is your elaboration about the need to
16 use the bridge as opposed to the ferry, and it's a
17 respectable position. But I just want to understand, is it
18 because you think they're commuting to Brooklyn?

19 Because the way I see it is the -- both of those
20 communities in CD-11, from Staten Island and from the Bay
21 Ridge/southwest Brooklyn -- and it's changed over
22 time -- they all commute to Manhattan. So they're either
23 driving or taking mass transit from Brooklyn into Manhattan,
24 or they're taking the ferry. But nobody's driving -- a
25 de minimis number are driving. For pure time purposes, it

1 just takes too long. You get on the ferry, you go, you're
2 there in the Financial District where they work.

3 So I just -- I put all of that out there because I
4 want everybody to level-set here. Let's try to figure out
5 what we're talking about here.

6 It's that what is the community of interest? Why
7 is it a community of interest that they're being joined?
8 And then we can talk about, you know, the ratios and scores.

9 So I just wanted to put that out there so that you
10 understand that if you use the Lake Pontchartrain example,
11 the Huey Long project, that was to get people from the north
12 part of the lake into New Orleans to work, so they're
13 commuting down that, whereas the Verrazzano-Narrows
14 Bridge -- some may argue differently, I don't know the
15 answer, but I grew up on Long Island and it was just to get
16 to New Jersey. It was to get out around the city without
17 going through it. It's not really a commuter pathway.

18 I don't mean to throw these conclusions out there.
19 The statistics speak for themselves. But I just wanted to
20 edify all that this is what I'm hearing from you, and what
21 I'm seeing and living as -- as a lifelong
22 New Yorker -- sometimes you're right, sometimes you're wrong
23 on these population descriptions.

24 But I just -- what I'm hearing in the argument is
25 you use a bridge because it's a community of interest

1 because one side is going to work at the other end, and
2 you're trying to make that example for Brooklyn. But very
3 few people commute from Staten Island to Brooklyn to go to
4 work. A de minimis number.

5 MR. MOSKOWITZ: I -- well, if Your Honor is
6 finished?

7 THE COURT: I'm finished.

8 MR. MOSKOWITZ: Let me ask a couple of follow-up
9 questions based on Your Honor --

10 THE COURT: Please. Thank you.

11 DIRECT EXAMINATION

12 BY MR. MOSKOWITZ:

13 Q. Dr. Trende, why do you look at compactness scores?

14 A. Because they're a traditional redistricting criteria.
15 I mean, they're traditionally what's used when -- as something
16 in drawing maps. They're something that Mr. Cooper brings up in
17 his report, so I thought they needed some more context.

18 Q. Is compactness sometimes a requirement in
19 redistricting?

20 A. My recollection from Harkenrider, it's a requirement in
21 New York.

22 Q. And in examining the compactness issue, do you have an
23 opinion for His Honor about how compactness will fare if you
24 join Lower Manhattan with Staten Island in whatever
25 configuration, versus Brooklyn and Staten Island?

1 A. The latter turns into one of the least compact
2 districts in the state. I understand that there's communities
3 of interest stuff. I stayed away from that. I'm not from
4 New York.

5 Q. You said "the latter," which of the connections turns
6 into the least compact district in the state?

7 A. One of the least, using the ferry.

8 Q. The Manhattan-Staten Island connection?

9 A. Right.

10 Q. Right. So in your expert opinion, if you dictate, "You
11 got to join Lower Manhattan and Staten Island," are you going to
12 have a compactness improvement or is it going to be worse?

13 A. Worse.

14 Q. Necessarily, correct?

15 A. Yes.

16 THE COURT: Thank you.

17 MR. MOSKOWITZ: Thank you, Your Honor.

18 THE COURT: Thank you, Counsel.

19 Cross? Do you want to take a quick break?

20 MR. DODGE: I'm glad to continue, but I defer to
21 the Court, the witness, and the court reporter.

22 THE COURT: Does anyone need a break?

23 All right. We're good. All right. Let's
24 continue.

25 CROSS-EXAMINATION

1 BY MR. DODGE:

2 Q. Good morning, Mr. Trende. Christopher Dodge on behalf
3 of the petitioner, for the record.

4 I know we crossed paths in Los Angeles not too long
5 ago. I hope you're getting some time off after this?

6 A. That would be nice.

7 Q. I want to start today by asking you some questions
8 about your usually defeated analysis. You were asked to examine
9 whether minority candidates of choice, as identified by
10 Dr. Palmer, are, quote, Usually defeated in CD-11 and in
11 New York more broadly; do I have that right?

12 A. Well, I don't actually opine on what "usually defeated"
13 means. But I did look at success rates more broadly.

14 Q. And in your report, you discuss the results of many
15 elections across New York City and statewide?

16 A. Correct.

17 Q. And as you just indicated, you agree with me that
18 ultimately it's a legal question whether the ability of Black
19 and Hispanic voters to elect candidates of their choice outside
20 of District 11 matters at all here, right?

21 A. A --

22 MR. MOSKOWITZ: Objection, Your Honor. That itself
23 calls for a legal conclusion, whether something is a
24 legal --

25 THE COURT: You can rephrase.

1 MR. DODGE: The witness was about to agree with me.

2 Q. Do you agree with me that the ability to -- the ability
3 of a minority group to elect its candidate of choice outside of
4 a particular jurisdiction, the impact of that on usually
5 defeated analysis is ultimately a legal question?

6 MR. MOSKOWITZ: Objection. Again, that's asking
7 him to make a legal conclusion.

8 THE COURT: Sustained.

9 Q. You're not here to testify today as to the proper
10 jurisdictional lens to use when conducting usually defeated
11 analysis; is that right?

12 A. That's right.

13 Q. And you don't offer any opinion on that topic in your
14 report?

15 A. That's right.

16 Q. I'd like to start by focusing on the elections you
17 looked at in District 11.

18 You reviewed the election results that Dr. Palmer
19 included in his report?

20 A. Correct.

21 Q. And Dr. Palmer applied ecological inference to
22 determine who the candidate of choice was for Black, White and
23 Hispanic voters within District 11, correct?

24 A. Correct.

25 Q. And you're familiar with ecological inference?

1 A. Correct.

2 Q. And you've conducted ecological inference to determine
3 whether racially polarized voting exists in other cases?

4 A. That's right.

5 Q. But you weren't asked to do that in this case?

6 A. That's right.

7 Q. And you don't dispute any of Dr. Palmer's estimates
8 about racial voting patterns in the elections he reviewed?

9 A. I don't have an opinion one way or the other.

10 Q. And you also don't dispute his conclusions as to which
11 candidates reflected the candidate of choice for Black and
12 Hispanic voters in District 11?

13 A. I don't have an opinion one way or the other.

14 Q. And do you have a view as to what percentage of
15 cohesion is required to show racial performance?

16 A. No.

17 Q. Do you agree that Dr. Palmer looked at the results of
18 20 city- and statewide elections?

19 A. I'll believe you on the count.

20 Q. He looked at two congressional elections within
21 District 11, specifically 2022 and 2024?

22 A. I think that's right.

23 Q. And those are the only congressional elections that
24 have been held under the current district configuration?

25 A. That's correct.

1 Q. He also looked at seven citywide elections from 2017,
2 2019, and 2021?

3 A. Again, I'll trust you on the count, but yes.

4 Q. And he also looked at 11 statewide elections from 2018,
5 2020, 2022, and 2024?

6 A. Correct.

7 Q. And you agree that of those 20 elections, the Black and
8 Hispanic candidate of choice won only five of those elections?

9 A. That's my recollection.

10 Q. And of those five, all of those victories occurred in
11 2018 or earlier?

12 A. Yes.

13 Q. So to put it another way, looking from 2020 to today,
14 Black and Hispanic candidates of choice have won zero statewide
15 elections within District 11?

16 A. Correct.

17 Q. And that's reflected in Figure 1 of your report?

18 A. Yes.

19 Q. In your report, you only cite the results of 11
20 statewide elections?

21 A. Correct.

22 Q. You report that the Black and Hispanic candidate of
23 choice won 4 of 11 of the statewide elections in the data set
24 Dr. Palmer reviewed?

25 A. In District 11.

1 Q. Correct?

2 A. Yes.

3 Q. And that conclusion excludes the election results in
4 District 11 from 2022 and 2024?

5 A. The congressional district, yes.

6 Q. And the Black and Hispanic candidate of choice lost
7 both of those elections?

8 A. Correct.

9 Q. Your report also excludes the seven citywide election
10 results that Dr. Palmer included in his analysis?

11 A. That's right.

12 Q. You would agree with me that all of District 11 itself
13 is entirely within the boundaries of New York City?

14 A. Oh, yes.

15 Q. And you would also agree with me that every eligible
16 voter in District 11 was also eligible to vote in those citywide
17 elections?

18 A. I suspect so.

19 Q. And the Black and Hispanic candidate of choice lost six
20 of those seven citywide elections as within the boundaries of
21 District 11?

22 A. That's my recollection from Dr. Palmer's testimony.

23 MR. DODGE: If we could briefly pull up Figure 1
24 from Dr. Trende's report, which is on page 7.

25 Q. This is Figure 1 from your report, correct, Doctor?

1 A. Yes.

2 Q. And just to be clear, you didn't conduct any racially
3 polarized voting analysis as to any of the districts reflected
4 in Figure 1, correct?

5 A. Correct.

6 MR. DODGE: Can we now pull up Section 3.2.1, which
7 I believe is also on page 7.

8 Q. You write here, Dr. Trende, quote, The minority
9 candidate of choice, however, is capable of winning elections in
10 District 11, end quote?

11 I got that right?

12 A. Yes.

13 Q. You agree with me that the usually defeated analysis
14 does not require the minority candidate of choice to always be
15 defeated, correct?

16 MR. MOSKOWITZ: Objection.

17 THE COURT: What is the objection?

18 MR. MOSKOWITZ: I apologize. Can I have the
19 question read back.

20 THE COURT: The court reporter may read it back.

21 (Whereupon, the court reporter read the requested
22 portion of the record.)

23 MR. MOSKOWITZ: It not only calls for a legal
24 conclusion, we've already established at length that he
25 doesn't offer an opinion on that.

1 MR. DODGE: That's within the scope of his
2 expertise.

3 THE COURT: Well, I'll allow it, based on what's
4 highlighted on the screen.

5 So you may answer that question.

6 A. I honestly don't know what the usually defeated
7 analysis requires in New York. I understand that is in part
8 what this is about; I'm just noting that the minority candidate
9 of choice can win elections in District 11.

10 Q. And we can agree that -- just plain English -- the
11 terms "usually" and "always" are not synonymous?

12 A. Plain English, I don't think you would always use them
13 the exact same way, no.

14 Q. Let's turn to your discussion about guardrails, doom
15 loop, death loop, apocalypse loop, some kind of loop.

16 I know you're a lawyer by training. But we can agree
17 that you're not offering any opinion here on the legal meaning
18 or the construction of the NYVRA, correct?

19 A. That's correct. It's been a while since I practiced.

20 Q. Fair. I'm envious.

21 And the same would go for the meaning and construction
22 of the New York Constitution as it pertains to this case, fair?

23 A. Absolutely.

24 Q. To your knowledge, has any party in this case asserted
25 a claim under the NYVRA?

1 A. I don't know. I haven't read the complaint or
2 petition.

3 MR. DODGE: Could we pull up, on page 9, the
4 paragraph under Section 4 in Dr. Trende's report.

5 Q. You write here that the NYVRA, quote, Can be triggered
6 upon a showing that the minority candidate of choice would
7 usually be defeated and that either (A), racially polarized
8 voting exists or (B), the totality of circumstances demonstrates
9 that the protected class member suffers from an impaired ability
10 to influence the outcome of elections.

11 I got that right?

12 A. Yes.

13 Q. So you would agree with me, as described in your
14 report, an NYVRA claim has multiple preconditions or elements
15 that need to be satisfied?

16 A. Yeah. My understanding at least is it has to be either
17 racially polarized voting or totality of circumstances.

18 Q. As well as usually defeated?

19 A. Right. Fair.

20 Q. And you discussed usually defeated a bit earlier in
21 your report?

22 A. Correct.

23 Q. You have conducted racially polarized voting analysis
24 in the past, fair?

25 A. Yes.

1 Q. And presumably, you consider yourself qualified to
2 perform that analysis?

3 A. Yes.

4 Q. And when performing racially polarized voting analysis
5 yourself, do you sometimes rely upon ecological inference
6 analysis?

7 A. Yes.

8 Q. You didn't perform any ecological inference analysis in
9 your report here?

10 A. I did not.

11 Q. And you did not perform any other kind of racially
12 polarized voting analysis in your report?

13 A. That's correct. My understanding was another expert
14 was doing that portion.

15 Q. You also didn't conduct any totality of the
16 circumstances analysis in your report, fair?

17 A. That's correct.

18 MR. DODGE: Can we bring up page 10 and zoom in on
19 the middle paragraph of Mr. Trende -- Dr. Trende's report.

20 Q. You write here, quote, If the NYVRA protects White
21 voters, then it would appear that White voters could have viable
22 claims all over New York's congressional map.

23 Did I get that right?

24 A. Yes.

25 Q. You would agree with me, based on what you said in your

1 report, that for those claims to be viable, the White voters you
2 are describing would have to satisfy the usually defeated prong?

3 A. Yes.

4 Q. And then they would also have to satisfy either the
5 racially polarized voting element or the totality of the
6 circumstances element, fair?

7 A. Correct.

8 Q. And you would agree with me, I believe as you just
9 testified, that you did not perform any racially polarized
10 analysis in your report?

11 A. Correct.

12 Q. Even though you consider yourself qualified to perform
13 that analysis?

14 A. That's right.

15 Q. You also did not perform any ecological inference here?

16 A. Right. That wasn't what I was asked to do.

17 Q. And you also consider yourself qualified to conduct
18 that analysis?

19 A. Yes.

20 Q. But you did not to do it here?

21 A. Again, outside of what I was asked to do.

22 Q. And you didn't perform any totality of the
23 circumstances analysis here?

24 A. That's correct. I don't know if I've ever done that.

25 Q. Setting aside District 11, we can also agree that you

1 did not reach any conclusions in your report as to whether a
2 minority racial group is able to elect their candidate of choice
3 in any particular congressional district?

4 A. Can you repeat that?

5 Q. Setting aside District 11, you did not reach any
6 conclusions in your report as to whether a minority racial group
7 is able to elect its candidate of choice in any specific
8 New York congressional district?

9 A. So I heard Dr. Palmer testify that with Black voters,
10 it's probably the Democrat in every district. And I do give
11 ability to elect analysis for every congressional district, so
12 I'm not sure I'll agree with that. But Black and Hispanic, no.

13 Q. What about White voters?

14 A. No, I didn't conduct that either.

15 Q. So looking at page 10, then, when you write, quote,
16 White voters would have viable claims all over New York's
17 congressional map, that was not based on analysis in your
18 report?

19 A. No. There's various places on New York's congressional
20 map in different -- in different areas of the state where it
21 appears to be viable. So -- I understand the "all over"
22 language wasn't as precise as it probably should be. But in
23 various places, yes.

24 Q. Well, Dr. Trende, you just testified that you didn't
25 conduct racially polarized analysis of White voters anywhere in

1 New York, fair?

2 A. Right. I had a representation that other experts were
3 going to demonstrate that in other districts there was racially
4 polarized voting.

5 Q. And I believe you just acknowledged that you never
6 conducted totality of the circumstances analysis, ever?

7 A. Right. That would be an alternate way to get to that
8 that I don't look at here.

9 Q. So your assumption about the viability of claims from
10 White voters was not based on any analysis you performed in this
11 case of the necessary elements to establish such a claim?

12 A. No. It was from a -- work from a different expert.

13 Q. And which expert was that?

14 A. I understand it to be Mr. -- Dr. Voss.

15 Q. Did you review Dr. Voss's report before submitting your
16 report in this case?

17 A. No.

18 Q. Did you review any of his ecological inference
19 analysis?

20 A. No.

21 Q. At the time you prepared your report, how did you
22 understand which districts in New York have White racially
23 polarized voting if you had not reviewed Dr. Voss's report at
24 that time?

25 A. It was represented through counsel.

1 Q. So you relied on a representation from counsel to reach
2 the conclusion that White voters would have viable NYVRA claims,
3 fair?

4 A. Through information from Dr. Voss's report. I've
5 worked with him before. He was Gary King's research assistant
6 developing ecological inference so I assume he's going to do a
7 competent job of it.

8 Q. So you assumed?

9 A. I trust him. And if not, I would assume we would hear
10 to the contrary from other experts.

11 Q. If there turned out to be issues with his analysis,
12 would that change the conclusions in your report?

13 A. It could.

14 Q. Sticking with this paragraph, you write towards the
15 middle of it, quote, White voters are not a majority of the
16 population, however measured in New York City, in the New York
17 portion of the New York City Metropolitan Division -- and then
18 you continue to list some other areas of New York.

19 Did I get that basically correct?

20 A. Yeah.

21 Q. And then you say, "Yet one can see that the
22 illustrative map is drawn in such a way that they -- referring
23 to White voters -- would not usually elect their candidate of
24 choice in any district in the city under any definition."

25 A. Correct.

1 Q. Now, you say "any district in the city," right?

2 A. Yes.

3 Q. Did you perform any analysis to determine -- strike
4 that.

5 Setting aside District 11, did you perform any analysis
6 to determine whether there even is a White candidate of choice
7 in any other congressional district in New York City?

8 A. No.

9 Q. And then I believe starting on the next paragraph --

10 MR. DODGE: If we can pull that up.

11 Q. -- you write, "This is not purely a hypothetical
12 concern. It is my understanding that a separate expert report
13 demonstrates racially polarized voting in the area covered by
14 Districts 5, 8, and 9."

15 Did I get that right?

16 A. Correct.

17 Q. And that's referring to Dr. Voss's report?

18 A. Yes.

19 Q. We can agree there are many other districts in New York
20 City beyond 5, 8, and 9, and 11, fair?

21 A. Correct.

22 Q. So when you said "the White candidate of choice in any
23 district in the city," were you perhaps overstating things a
24 bit?

25 A. I don't know. Because I don't know what the result

1 would be in those districts.

2 Q. Well, how could you reach the conclusion that the White
3 candidate of choice couldn't be elected in any district in the
4 city without looking at those districts?

5 A. No, I get what you -- I'm answering the way you asked
6 the question. I don't know if it's overstating because I don't
7 know if that -- if in other districts there would be a White
8 candidate of choice or which one it would be. It could be
9 wrong.

10 Q. So you didn't look at the White candidate of choice in
11 Astoria?

12 A. Right. I didn't do any ecological inference analysis
13 in my report.

14 Q. Or the Upper West Side?

15 A. Correct.

16 Q. Or Chelsea?

17 A. Correct.

18 Q. Or Crown Heights?

19 A. Or anywhere in New York.

20 Q. Fair enough.

21 A. I didn't do any ecological inference anywhere.

22 MR. DODGE: Could we pull up Figure 3 of
23 Dr. Trende's report on page 12.

24 Q. Is it fair to say that this figure reflects a
25 reconfiguration of districts to create a Republican-leaning

1 District 8 in southern Brooklyn?

2 A. I believe it includes parts of Queens, but yes.

3 Q. I appreciate that clarification. Thank you,
4 Dr. Trende.

5 And then in the paragraph I believe under this figure,
6 you write, "It's not perfect -- it's meant to be conceptual and
7 not a demonstration map for actual litigation -- but it actually
8 makes the districts here more compact on balance than those in
9 the Cooper maps for these districts."

10 And then you also write, "It would seem to satisfy all
11 of the requirements of the NYVRA, at least under a very
12 permissive construction."

13 Did I get that right?

14 A. Yes.

15 Q. But again you acknowledge that you did not actually
16 perform any of the analysis necessary to establish the NYVRA
17 claims that you identified in your report?

18 A. Well, I said early -- earlier what I was relying on
19 from that, which is a representation that another report would
20 demonstrate the ecological -- or the racially polarized voting.

21 Q. Well, and my question is whether you performed that
22 analysis. And I think we can both agree then that you did not?

23 A. No, I -- I completely agree, I did not perform that
24 analysis. It's my understanding that that was the method
25 established separately.

1 Q. If we could turn to the next page, page 13, and pull up
2 I guess the only paragraph on the page.

3 You write, "Or, assume that Plaintiffs were to win
4 their claims now. Conservative White residents of newly created
5 District 10 are not content with their new district. They can
6 offer an even stronger map, changing only Districts 7, 8, 9, and
7 10."

8 Did I get that right?

9 A. Yes.

10 Q. So it's fair to say your hypothetical there is focusing
11 specifically on conservative White residents in Mr. Cooper's
12 illustrative District 10, fair?

13 A. Right.

14 Q. But, again, you didn't perform any analysis to
15 determine what share of White residents in illustrative
16 District 10 are conservative?

17 A. No, that's true. But, again, it gets to the question
18 of what level of analysis you -- what -- what level you're doing
19 the analysis at. Is it within the individual district? Is it
20 within a grouping, like Dr. Palmer did in Georgia, and has been
21 done in other cases which I'm involved?

22 You can get different answers that way. And that's
23 just one of the things I'm trying to point out is that when
24 you're writing -- crafting the opinion or looking at the -- it
25 matters where you do this analysis.

1 (Senior Court Reporter Karen Perlman was replaced
2 by Senior Court Reporter Monica Hahn.)

3 (Transcript continues on the following page.)
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1 Q. I take your point on jurisdiction, but there is a
2 conservative White residence, fair?

3 A. Yeah.

4 Q. I mean, would the lens ever focus on the ideology
5 of the racial group?

6 A. It is fair to say that it would probably be more on
7 republican White residents who tend to be conservative these
8 days, um, maybe not 40 years ago in New York, but today,
9 yeah.

10 Q. Sitting here today, you don't know how White voters
11 in the illustrative District 10 tend to vote, fair?

12 A. Right. This is a hypothetical. Assume that the
13 conservative White residents in District 10 are not content
14 with their new direct.

15 Again, this is not meant to preview litigation
16 to be brought in Brooklyn in the event of a loss here. I
17 wouldn't want to do that. It is just to illustrate how you
18 craft the opinion matters because you can end up with these
19 doom cycles. It is a hypothetical.

20 Q. So you also sitting here today don't know whether
21 there even is White, racially-polarized voting within
22 illustrative District 10, fair?

23 A. That is fair.

24 Q. So your hypothetical truly is just that, it is a
25 hypothetical?

1 A. It is a hypothetical.

2 Q. As you acknowledge, you have not done the work
3 necessary to prepare a possible lawsuit to that end, fair?

4 A. That is right. Now, maybe if you do, if you do the
5 work in the area of the district that is more republican
6 than Alabama, maybe it is non-white residents that are
7 bringing about that result, though I would be pretty
8 surprised. So if the unit of analysis is a regional level,
9 you could get a different answer than if the unit of
10 analysis is restricted to the particular district.

11 Q. I guess what I'm getting at here, Doctor, we heard
12 doom loop, death loop, whatever else loop, at the end of the
13 day it is a hypothetical loop, fair?

14 A. It is a concern. It is a legitimate concern for
15 how this can work out if you write the law a particular way.
16 Maybe that is not helpful, but it is what I was asked to
17 analyze. That is for you all to fight about.

18 Q. Can we pull up Figure 4 on Page 14 of Dr. Trende's
19 report.

20 Correct me if I'm wrong, as I understand it,
21 Figure 4 reflects reconfigured districts to satisfy a
22 hypothetical claim from conservative White residents of
23 illustrative District 10, fair?

24 A. Right.

25 Q. Where would District 11 be on this map?

1 A. It would be Mr. Cooper's version of District 11.

2 Q. So in this hypothetical, Staten Island and
3 Manhattan are joint in a congressional district?

4 A. Right. This is if petitioners were to be
5 successful.

6 Q. Can we pull up Figure 5 now. Just to orient
7 ourselves here we are sort of in Westchester County, Hudson
8 River Valley in Figure 5?

9 A. Correct.

10 Q. And here you are showing a reconfiguration of
11 District 16 and 17 to create an additional democratic
12 performing district in Hudson River valley, fair?

13 A. Correct.

14 Q. I guess just for clarity, I think you wrote
15 republican performing district in your report. That was a
16 typo?

17 A. Yeah.

18 Q. Fair enough. Experts make typos in their reports
19 sometimes?

20 A. Sometimes more significant than others, but, yeah.

21 Q. And if we can move to the paragraph, I think right
22 under this one, you wrote here that under this map quote,
23 "then conservative Whites would have been shut out of every
24 district in the northern suburbs and -- of New York City if
25 they can establish racially-polarized voting they would be

1 able to countersue," did I get that right?

2 A. Right.

3 Q. Has any expert in this case perform analysis to
4 determine whether voters in District 17 engage in
5 racially-polarized voting?

6 A. No. Again, this is not meant to be a threat of
7 litigation. This is an illustration of the risks involved
8 with how something, how the opinion is ultimately crafted.

9 Q. And you didn't do any analysis to determine if
10 White voters in the Hudson River Valley or Westchester
11 engage in racially-polarized voting?

12 A. Correct.

13 Q. And you didn't do any totality of the circumstances
14 analysis of District 17, the Hudson River Valley or
15 Westchester County?

16 A. Yeah, I didn't explore any alternate paths to get
17 there.

18 Q. Sitting here today, you cannot actually express an
19 opinion one way or the other on whether an NYVRA claim for
20 White voters in this area would be viable?

21 A. Right. That is why I have it in the conditional.
22 If they can establish racially-polarized voting they would
23 be able to countersue.

24 Q. With that, let's turn to your discussion of
25 Mr. Cooper's maps.

1 If we can pull up the first paragraph in Section 5
2 of Dr. Trende's report, this is asked to determine -- in
3 this case you are asked to determine whether Mr. Cooper's
4 maps are compact or historically grounded, did I get that
5 right?

6 A. Yes.

7 Q. You acknowledge right off the bat that quote,
8 "compactness is a tricky determination, that there are no
9 widely agreed upon measures for when a district becomes
10 compact, and when districts are similarly compact," fair?

11 A. Correct.

12 Q. And in your report, do you actually reach any
13 ultimate conclusion as to whether or not the districts in
14 the illustrative map are suitably compact?

15 A. No, that is a question for the fact-finder
16 ultimately.

17 Q. On that point, you testified in other cases as
18 well, that ultimately you think it is a matter for the court
19 to determine whether a district is suitably compact?

20 A. Yes.

21 Q. And you agree ultimately that whether a specific
22 district is reasonably configured depends on whether it
23 adheres to traditional redistricting criteria?

24 A. At least in the federal voting rights act case, I'm
25 assuming it is going to be the same in New York.

1 Q. With respect to traditional redistricting criteria,
2 the only one you look at in your report is compactness,
3 fair?

4 A. Correct.

5 Q. And when looking at --

6 A. Well, so, this, this bridge versus ferry issue, I
7 don't know if that is a traditional redistricting principle
8 or criteria, but it is another aspect of the -- it can be
9 because contiguity sometimes demands road connections. I
10 don't know about New York.

11 Q. Does the bridge/ferry issue ultimately fall under
12 the umbrella of compactness?

13 A. It would be a contiguity analysis and I guess given
14 how it is framed by Mr. Cooper as a kind of precedential
15 thing, I think that would fall under a traditional
16 redistricting things in New York.

17 Q. You agree with me that when it comes to
18 compactness, there is no agreed upon best metric of district
19 compactness?

20 A. Completely agree.

21 Q. And you further agree with me there is no bright
22 line rule for when a district becomes reasonably compact?

23 A. Completely agree. I wish there were. Make my job
24 easier, but.

25 Q. No magic line?

1 A. There is not.

2 Q. No magic number?

3 A. There is not. But, if you take that seriously
4 enough, you end up making compactness a non-issue or a dead
5 letter. So the fact-finder does have that job, not me.

6 Q. Coming at it from a different angle, there is also
7 no bright line rule when a district becomes not reasonably
8 compact?

9 A. Correct.

10 Q. And so it is your view that there is no minimum
11 Reock Score, R E O C K, for example, there would be, per se,
12 not reasonably compact?

13 A. That is correct.

14 Q. Likewise, there is no minimum Polsby-Popper score
15 that you would consider to, per se, not be reasonably
16 compact?

17 A. Correct.

18 Q. Your report does not set forth any thresholds or
19 standard by which to judge whether a map is considered
20 reasonably compact?

21 A. That is right. I don't think such a threshold has
22 ever been suggested.

23 Q. Sitting here today, do you know whether there are
24 existing congressional districts in New York with lower
25 Reock scores than those in the illustrative map?

1 A. No.

2 Q. Sitting here today, do you know whether there are
3 existing New York congressional districts with Polsby-Popper
4 scores lower than those in the illustrative map?

5 A. No. And that is where the compactness comparisons
6 get tricky because you are always going to have a low --
7 District 1, assuming we take the traditional numbering is
8 also going to have low compactness scores, is Suffolk
9 county, going to be distended. Reock scores measure how
10 distended a district is. Following Suffolk County, you can
11 it split in half and will be even more distended, split
12 horizontally in half, but that demands a low Reock score and
13 if you are following a river boundary that is going to --
14 Polsby-Popper is a perimeter-based measure. Follow river
15 boundary, it is going to increase your Polsby-Popper score.
16 So what is kind of normal or typical or whatever you want to
17 use in one area of the state might be different than in
18 another area of the state.

19 Q. Your counsel on direct asked you a question about
20 whether or not Mr. Cooper's maps results in one district
21 having the lowest Polsby-Popper score in the state; do you
22 recall that?

23 A. No.

24 Q. Do you know the answer to that question?

25 A. I believe it does, but I don't know if he fixed

1 that in a later report.

2 Q. Just so it is clear, it is your testimony here
3 today you believe that the illustrative map would have the
4 lowest Polsby-Popper score in the state?

5 MR. MOSKOWITZ: Objection. Asked and answered.

6 Restating the testimony.

7 THE COURT: Sustained.

8 Next question.

9 Q. You agree with me there is no objective standard
10 about when a district is objectively compact versus not
11 compact?

12 A. Yes.

13 Q. And there is no numeric score to indicate for
14 certain whether a district is compact or not?

15 A. I promise you, I don't think there is a magic
16 number.

17 Q. Are you aware of any requirement under the NYVRA,
18 New York Constitution, or any other New York law that an
19 illustrative map must be as compact or more compact than an
20 enacted plan?

21 A. I guess that is technically a question for the
22 court, but I'm not aware of it.

23 Q. In your experience have you seen illustrative maps
24 accepted by courts that have lower compacted scores than the
25 enacted plans?

1 A. That is actually a good question. I don't know.
2 They usually try to get the illustrative map as good or
3 better, or at least in the same ball park. I don't know if
4 they've ever been lower.

5 Q. Shifting gears, am I right in thinking that you
6 were retained as an expert by plaintiffs to examine state,
7 senate, house districts, Agee, A G E E, V. Benson, Michigan
8 case?

9 A. Yes.

10 Q. You were asked to prepare an illustrative map in
11 that case?

12 A. Yes.

13 Q. And you presumably did your best to make the
14 districts in your illustrative map reasonably configured
15 under traditional redistricting criteria?

16 A. Yes.

17 Q. Did you calculate Reock and Polsby-Popper scores
18 for the districts in those illustrative maps?

19 A. Yes.

20 Q. And why don't we pull it up just so we don't turn
21 this into a memory test. Tab 3, Mr. -- Dr. Trende's report
22 from that case. We have a copy for whoever wants it.

23 Does this appear to be your report from that case,
24 Dr. Trende?

25 A. Yeah.

1 MR. MOSKOWITZ: Sorry. I want a copy before --
2 thank you.

3 Q. Can we go to Page 26 and zoom in on the first
4 paragraph under the table.

5 You write here, "the least compact district under
6 the Linden plan is .245 of the Reock scores and .202 for the
7 Polsby-Popper metric. This compares to .233 and .206 for
8 the demonstration map."

9 Did I read that correctly?

10 A. Yes.

11 Q. The Linden map there is the plan prepared by the
12 Michigan legislature?

13 A. This is the Hickory plan. It is more -- the
14 demonstration map is more compact on both.

15 Q. I believe the paragraph refers to the -- oh.

16 A. I am positive it says Hickory.

17 Q. We may have gotten -- well, this is just as well,
18 the trial text ahead of me which is good.

19 So this is the Hickory plan, another map prepared
20 by the Michigan legislature?

21 A. No, it is by the commission.

22 Q. And you prepared a demonstration map to contrast
23 with the commissions map, fair?

24 A. Correct.

25 Q. And the demonstration map you prepared had a .227

1 Reock Score and a .189 Polsby-Popper score, did I get that
2 right?

3 A. So we're like an hour into cross. I will trust
4 you.

5 Q. Fair enough.

6 Have you ever prepared an illustrative map with a
7 Polsby-Popper score of around .2?

8 A. Is that what you just told me, the Hickory --

9 Q. Maybe about the Linden plan, but?

10 A. Like I said, it depends on the area, what is
11 reasonable or demanded in one place might be different than
12 in another.

13 In Michigan it is required that you follow
14 municipal boundaries and there are a ton of municipalities
15 in Wayne county that can affects your Polsby-Popper score in
16 particular since it is a perimeter base map. Yeah, I may
17 have drawn a district that low. There are districts even
18 lower in the United States. Like I said, different areas.
19 It is it becomes an apples oranges comparison when you go
20 across areas.

21 Q. My question is a little more straight forward.

22 You wouldn't disagree with me that you have in the
23 past proposed illustrative maps with Polsby-Popper scores as
24 low as say .206?

25 A. That wouldn't surprise me, but in different areas

1 sometimes a Polsby-Popper score that low is required.

2 Q. You've testified in the past that splitting hairs
3 over small differences in Reock or Polsby-Popper scores is
4 not typically helpful in assessing compactness, fair?

5 A. It sounds like you are quoting from something, so I
6 believe you. I don't remember that, but.

7 Q. Sitting here today, do you think small differences
8 in Reock Polsby-Popper scores, I think splitting hairs, is
9 helpful in determining compactness?

10 A. It becomes -- so what I've learned over the years
11 is if you concede that, then you get into like Sorites
12 Paradox thing where you know, I know that I'm relatively
13 clean shaven and your tech has a period. Can't tell you
14 exactly when clean shaven becomes stubble and stubble
15 becomes a beard. There is obviously differences. So I
16 would be happy to concede that like hundredth or thousandth
17 of a Reock point is successful.

18 The problem is experience has taught me when
19 you do that, then what about two thousandth or five
20 thousandths or hundred, next thing you know you say there is
21 no difference between Reock scores. Like I said, if we're
22 talking about a thousand, I'm not going to sit here and
23 quibble about fill in extra tenth of a percent of a minimum
24 bounding circle.

25 Q. Is that because compactness is ultimately a

1 practical analysis?

2 A. I think that is how it should be done. We use
3 these scores in every case to analyze the districts. And
4 all I can tell you objectively is whether a Reock Score is
5 higher or lower, and like I said, years of getting beaten up
6 over a thousandth of a percent, why not two thousandths, why
7 not five thousandths, at this point I know it is higher and
8 I know it is lower.

9 Q. I think the point for the court is that you would
10 agree with me, those compactness scores are not the be all,
11 end all of compactness, fair?

12 A. Oh, yeah. I concede that.

13 Q. I thought it was Zeno's paradox, but you are
14 probably right on that.

15 You testified on direct about Mr. Cooper's choice
16 to look at the borough components of his illustrative
17 districts, do you recall that?

18 A. Yes.

19 Q. He also produced Reock and Polsby-Popper scores for
20 those districts that included the water feature, correct?

21 A. Oh, sure, sure. Yeah.

22 Q. He didn't rely exclusively on this borough
23 component analysis, did he?

24 A. No. And I'm sorry if I suggested otherwise. It is
25 just that particular analysis is new and was like, okay,

1 this is different.

2 Q. But you agree with me he performed the traditional,
3 vanilla-style Reock, Polsby-Popper analysis?

4 A. Yes. I did not mean to suggest the contrary.

5 Q. You actually cite those numbers in your report,
6 fair?

7 A. Yes.

8 Q. You said you watch Mr. Cooper testify yesterday.
9 Did you hear him testify that those numbers are within the
10 normal range both in the nation and New York State?

11 A. Yes.

12 Q. And it sounds like sitting here today, you are not
13 entirely sure what the range of those scores is for New York
14 State?

15 A. Yeah, he has redone his report a couple of times
16 and so I would like to see the latest version of his table
17 to clarify that, but not off the top of my head. I don't
18 know the answer to that.

19 Q. Would you believe me there were districts in New
20 York with lower Polsby-Popper scores even under the
21 inaccurate number in his first report?

22 A. Oh, I believe that because it is a perimeter-base
23 measure, anything that follows a lake or seashore will have
24 a bad perimeter.

25 Q. You talked about Puget Sound a little bit with your

1 counsel, do you recall that?

2 A. Yes.

3 Q. Do you know if there are congressional districts
4 today that traverse Puget Sound?

5 A. I don't know, actually.

6 Q. Do you know if there are multiple districts in
7 Washington State that traverse Puget sound?

8 A. Maybe to reach the islands, in the small islands in
9 the middle, you have to put them somewhere, but I don't
10 think the Sixth goes across into Seattle.

11 Q. We'll leave the testimony at that.

12 Would such a district be connected by a ferry?

13 MR. MOSKOWITZ: Objection. Sorry, I -- vague
14 question.

15 MR. DODGE: Just referring to a district
16 traversing Puget Sound that is in his report.

17 MR. MOSKOWITZ: I thought I heard would such a
18 district. If it was that district, I would withdraw my
19 objection.

20 Q. Would a district that traverses Puget -- are you
21 aware of any bridges going over Puget Sound?

22 A. Like, from the tip of the Olympic Peninsula to the
23 mainland, no, but I don't think that is what the Sixth
24 District does.

25 Q. You discussed Assembly District 61 a bit with your

1 counsel, fair?

2 A. Which one?

3 Q. Assembly District 61 here in New York?

4 A. Okay, yes.

5 Q. I think it was your testimony, correct me if I'm
6 misstating it, that the legislature used both exits from
7 Staten Island to draw districts, meaning the Verrazzano
8 Bridge and the Staten Island Ferry?

9 A. Yes.

10 Q. So the legislature chosen to use the ferry as a
11 method for connecting a legislative district?

12 A. Yes.

13 Q. Do you know whether it is faster to get to
14 Manhattan during rush hour from Staten Island using the
15 ferry versus driving across the Verrazzano Bridge?

16 A. I would guess the ferry, but I don't know.

17 Q. His Honor already knows the answer, so there is no
18 need.

19 Looking at compactness scores, compactness doesn't
20 exist just for its own sake, right?

21 A. You are going to have to be a little more specific
22 than that.

23 Q. The purpose of the compactness inquiry is to insure
24 that there is a reasonably configured district, fair?

25 A. I'm just thinking because this transcript follows

1 me the rest of my life.

2 Q. I hear you.

3 A. Um, that is certainly part of it, and like voting
4 rights act context is part of the reason we configured
5 analysis. Sometimes it is the law says you have to be
6 compact, and in that case it is whatever purpose the
7 legislature had for putting it in there, but I understand
8 what you are getting at.

9 Q. And where people live and how they get about
10 walking around, taking public transit, that is ultimately
11 the sort of, informs whether a district is reasonably
12 compact, fair?

13 A. Can you repeat that?

14 Q. How a voter or citizen actually interacts with the
15 district, moves around it, et cetera, that also informs the
16 compactness analysis, fair?

17 A. I don't -- I don't know. I don't think I've
18 encountered that as being a way to measure compactness.
19 That sounds like communities of interest analysis to me.

20 Q. And you didn't address communities of interest in
21 your report, correct?

22 A. No, no.

23 Q. Besides this case, have you previously produced
24 reports and offered testimony in response to Mr. Cooper?

25 A. Yes.

1 Q. Would that include the case of Singleton v. Allen
2 case from Alabama?

3 A. Yes.

4 Q. Again, if I'm mischaracterizing something, please
5 correct me.

6 Is it fair to say that part of your testimony in
7 that case was that Mr. Cooper had proposed illustrative maps
8 that were insufficiently compact or less compact than
9 enacted districts?

10 A. I think insufficiently compact, yeah.

11 Q. Can we pull up the Singleton case at PDF Page 137,
12 Tab A. Give a copy to opposing counsel.

13 The first paragraph here says quote, "we assigned
14 less weight to the testimony of Dr. Trende for two reasons.
15 First compared to the work of Dr. Duchin and Mr. Cooper,
16 Dr. Trende's work was limited," did I get that right?

17 A. I'll be pedantic and say it is Duchin, but, yes.

18 Q. I appreciate the clarification. Duchin.

19 Does it go on to say, "Dr. Duchin and Mr. Cooper
20 base their opinions on a wide-ranging consideration of the
21 requirements of federal law in all or nearly all traditional
22 districting principles, but Dr. Trende studied only
23 geographic compactness scores and splits allegedly along
24 racial lines."

25 Did I read that correctly?

1 A. Yes.

2 Q. I believe we previously agreed that what makes a
3 district reasonably configured at the end of day is whether
4 it adheres to traditional redistricting criteria, fair?

5 A. Correct.

6 Q. But as in Singleton, in this case you did not
7 conduct any analysis of the illustrative map using all
8 traditional districting criteria, fair?

9 A. That is right. There are other experts as in
10 Singleton who are going to cover other aspects, is my
11 understanding.

12 Q. In Singleton, the three judge court there gave
13 your compactness testimony less weight as a result of the
14 same choice not to consider all traditional redistricting
15 criteria, fair?

16 A. That's correct.

17 Q. The court in Singleton ultimately found
18 Mr. Cooper's illustrative maps to be reasonably compact,
19 fair?

20 A. Correct.

21 Q. It is fair to say that the Singleton court gave
22 your work more limited weight because it was limited in
23 scope?

24 A. Yes.

25 Q. Can we go to PDF Page 149, Tab A. If we can zoom

1 in on, thank you.

2 This part of the opinion, the Singleton court
3 giving its findings about traditional redistricting criteria
4 in Mr. Cooper's maps, fair?

5 A. Yes.

6 Q. The court ultimately concluded that Mr. Cooper's
7 maps respected traditional redistricting criteria, fair?

8 A. Correct.

9 Q. If we can zoom in on the paragraph that begins
10 second.

11 In this part of the opinion, the Singleton court
12 rejects your criticisms about the compactness of
13 Mr. Cooper's illustrative maps, fair?

14 A. Yes.

15 Q. And goes onto say -- well, actually, strike that.

16 You also testified against Mr. Cooper in Nairne v.
17 Ardoin in federal court in Louisiana in 2023?

18 A. Yes.

19 Q. Correct me if I mispronounce those names?

20 A. Not even going to try that one.

21 Q. Can we pull up PDF Page 20 of that decision. This
22 is Tab 9, if you would like to give a copy to opposing
23 counsel.

24 Do you recall that in this case Mr. Cooper also
25 prepared illustrative maps?

1 A. Yes.

2 Q. And the court here I believe says, "Cooper affirmed
3 that he adhered to the traditional redistricting principles
4 listed above."

5 Did I get that right?

6 A. Yes.

7 Q. And then the court says, "defendants argue that
8 plaintiffs have failed to satisfy the beginning Gingles I
9 inquiry, in part because the districts in the illustrative
10 plan produced by Cooper are not sufficiently compact. At
11 trial, defendants offered Dr. Sean Trende to support this
12 argument."

13 Did I get that right?

14 A. Yes, but the next part is important that I didn't
15 opine on the compactness of the districts, per se. It was
16 opinion on the compactness of the population which was a
17 legal theory the defendants were floating about how you
18 should do it under the Federal Voting Rights Act.

19 Q. I appreciate that. We can agree here today that
20 the court ultimately did not accept your criticisms of the
21 compactness of Mr. Cooper's maps?

22 A. Right. The court rejected the idea that the Voting
23 Rights Act requires a consideration of population
24 compactness, and at that point anything I do is irrelevant
25 and unhelpful.

1 Q. If we can zoom in on the next paragraph.

2 In fact, here the court says it found your
3 compactness analysis quote, "fundamentally flawed and
4 completely useless in evaluating Gingles I compactness."

5 Did I read that correct?

6 A. I actually think given the legal conclusion, the
7 court got that right. I might have been a little gentler in
8 it, but if you don't think the population compactness has
9 anything to do with district compactness under the Voting
10 Rights Act, then a population compactness analysis really is
11 completely useless.

12 Q. Would it be fair to say in this Louisiana case you
13 also did not consider all traditional redistricting criteria
14 when opining on Mr. Cooper's maps?

15 A. Yeah, all I was asked to do was consider the
16 population of, the compactness of population within the
17 districts.

18 Q. So you again focused just on compactness?

19 A. Yeah, that is what I was asked to do.

20 (Transcript continues on the next page.)
21
22
23
24
25

1 MR. DODGE: If we can go to -- I think it's the
2 bottom of the page 20 here and the top part of the next
3 page.

4 CROSS-EXAMINATION

5 BY MR. DODGE:

6 Q. Here the court -- the Louisiana court writes,
7 "Accordingly, the Court rejects Dr. Trende's approach to
8 addressing compactness, and accepts Cooper's approach."

9 Did I get that right?

10 A. That's what it says. And this -- I think I've been
11 pretty careful here about not trying to play lawyer and I
12 typically am. So it's really not my approach to addressing
13 compactness. That was the legal theory and I talk about how you
14 express -- how you address population compactness. But I
15 actually -- I've testified to this before. I'm actually
16 agnostic on whether you look at the compactness of the
17 population under the Voting Rights Act. So I don't want to
18 getting tagged with that legal theory.

19 Q. We can agree that the court ultimately found
20 Mr. Cooper's illustrative maps to properly adhere to traditional
21 redistricting, correct?

22 A. It did.

23 Q. Do you recall that there was an appeal in the Nairne
24 case?

25 A. Yes.

1 Q. And that would have gone up to the Fifth Circuit?

2 A. Yes, I think it's on bond petition right now.

3 MR. DODGE: Could we pull up the Fifth Circuit
4 opinion, which is Tab 10 in the binder. And go to page 12.
5 Stop on the bottom paragraph.

6 Q. The district -- the -- excuse me, the Fifth Circuit
7 here summarized, quote, The District Court found Dr. Trende's
8 testimony and analysis fundamentally flawed, oversimplistic,
9 unhelpful, untested, and completely useless."

10 Did I read that correctly?

11 A. Yeah. And, again, I agree, if population compactness
12 isn't part of the VRA analysis, then a population compactness
13 measure is going to be oversimplistic and unhelpful and
14 completely useless.

15 Q. And if we can go two paragraphs down. The Fifth
16 Circuit then wrote, quote, In drawing a full map, in balancing
17 all the criteria as mandated by the Supreme Court, the
18 illustrative maps balanced all of the required factors, whereas
19 Dr. Trende's approach ignores communities of interest,
20 traditional boundaries, and the legislature's mandate of equal
21 population among districts.

22 Did I read that correctly?

23 A. Yes.

24 Q. You would agree that the Fifth Circuit agreed with the
25 District Court's observation that you did not sufficiently

1 consider all traditional redistricting criteria?

2 A. Yes.

3 Q. And then at the bottom here the court says,
4 "Ultimately, the district court had before it two experts, one
5 of whom considered and balanced all the required factors and one
6 who did not. And the expert who the district court found to
7 have balanced all the factors was Mr. Cooper," right?

8 A. Yes.

9 Q. And the expert who had not sufficiently balanced all of
10 the required factors was yourself?

11 A. That's what the court found, yeah.

12 MR. DODGE: Can we go back to Dr. Trende's report.
13 Go to the conclusion section.

14 Zoom in on that final paragraph.

15 Q. This conclusion reflects your conclusions in your
16 report here, correct?

17 A. Yes.

18 Q. The first conclusion is, quote, The outcome of the
19 analysis of usually defeated can vary based upon the
20 jurisdiction looked at as well as the threshold employed.

21 I got that right?

22 A. Yes.

23 Q. But we agree that your report does not ultimately reach
24 any specific conclusion as to what the appropriate jurisdiction
25 or threshold is for performing the usually defeated analysis?

1 A. A hundred percent.

2 Q. That's because it's ultimately a legal question?

3 A. That's my understanding, yes.

4 Q. And your next conclusion is that, quote, With too loose
5 of guardrails, the NYVRA standards can collapse upon themselves
6 and give rise to endless litigation loops, correct?

7 A. Yes.

8 Q. But we've agreed here today that you did not perform
9 the analysis necessary to demonstrate how the NYVRA could in
10 fact create a litigation loop?

11 MR. MOSKOWITZ: Objection. Misstates prior
12 testimony.

13 THE COURT: Rephrase.

14 Q. We established earlier that you did not conduct a
15 usually defeated analysis of any district beyond District 11,
16 fair?

17 A. I don't think I conducted a -- hold on. I don't -- I
18 didn't look at a particular threshold, but I looked at who wins
19 and losses -- loses in each district. But without knowing where
20 that threshold is going to be set, I guess no one can do a
21 usually defeated analysis.

22 Q. I think your report stated that it just reported the
23 numbers, fair?

24 A. Yeah, I think that's all an expert can do until we know
25 what the threshold is in New York. Maybe other people try, but

1 that's not something -- I honestly don't think an expert can do
2 that.

3 Q. That's fair. So in view of that, we can agree that you
4 did not reach any ultimate conclusion about whether or not a
5 candidate of choice in any particular district is usually
6 defeated, fair?

7 A. I don't think any -- any expert here has that. The
8 point is to illustrate -- again, the first part really is
9 important. With too loose of guardrails, depending on where
10 things are set, you could get these doom loops.

11 Q. And we agreed earlier that you did not
12 establish -- that you did not perform any racially polarized
13 voting analysis?

14 A. I did not.

15 Q. And that you also did not perform any totality of the
16 circumstances analysis?

17 A. Correct.

18 Q. Your last conclusion is, quote, Moreover, Mr. Cooper's
19 maps depart from traditional redistricting criteria in several
20 respects, end quote.

21 But we agreed earlier that your report does not
22 actually reach any ultimate conclusion as to whether the
23 illustrative districts are suitably compact?

24 A. At the end of the day, that's something that the Court
25 has to decide.

1 Q. You used the term "traditional redistricting criteria"
2 here in the last sentence of your report, fair?

3 A. Correct.

4 Q. We agree that the -- we agree that the only
5 redistricting criterion that you evaluated in your report was
6 compactness?

7 A. No. I think we came back and said that -- or I came
8 back and said that the method of connecting Staten Island
9 was -- fell into the definition of contiguity and whether it was
10 really amply supported by New York precedent.

11 Q. Does your report contain significant analysis of that?

12 A. I thought it did.

13 Q. Does the term "contiguity" appear anywhere in your
14 report?

15 A. I don't know.

16 Q. Would you believe me if I said it only does once, in
17 the introductory portion describing your background?

18 A. I don't have a reason to disagree with you.

19 Q. Did you conduct any communities of interest analysis in
20 your report?

21 A. No. I would be getting way out of my skis and bad
22 things happen when you do that.

23 Q. Does the term "traditional redistricting criteria"
24 appear anywhere else in your report, beyond the last sentence?

25 A. Again, I don't know.

1 Q. Would you believe me if I said it didn't?

2 A. I wouldn't have a reason to disagree with you.

3 MR. DODGE: If I can have just a brief moment to
4 confer with my colleagues?

5 (There is a pause in the proceedings.)

6 MR. DODGE: I'm glad to pass the witness for
7 redirect. Thank you.

8 A. Okay.

9 MR. MOSKOWITZ: Not too much.

10 REDIRECT EXAMINATION

11 BY MR. MOSKOWITZ:

12 Q. Thank you.

13 Dr. Trende, you were asked on cross about two other
14 court cases where the fair reading of some of the opinions
15 contained criticisms of aspects of your reports in those cases,
16 correct?

17 A. Yes.

18 Q. Are there many more examples of your serving as an
19 expert in other cases where the opposite happened, where the
20 court credited your expert testimony?

21 A. Yeah. Courts have to declare winners and losers, and
22 sometimes you're the windshield, and sometimes you're the bug.

23 Q. You're the windshield more often than not, though, in
24 your experience, correct?

25 A. I think, probably.

1 Q. Right. And you were here -- right? -- when I asked
2 Mr. Cooper about the fact that in an Arkansas matter he swore
3 under penalty of perjury, or declared under penalty of perjury,
4 that election plans should keep core population prior districts
5 together in new districts to the extent practicable?

6 A. I remember that.

7 Q. Right. And talking about compactness, you went over on
8 cross how there is no bright-line rule of when something is
9 compact versus not sufficiently compact, right?

10 A. Correct.

11 Q. But there is a guiding principle, correct?

12 A. I mean, it's -- we use these scores for a reason, and
13 they give us something to use as comparators in a given -- in a
14 given region.

15 Q. But something being more compact is desirable, correct?

16 A. Generally speaking, yes.

17 Q. And isn't it a fact, sir, that the New York VRA, in
18 relation to drawing districts, says, "Each district shall be as
19 compact in form as practicable"?

20 A. That's my recollection.

21 Q. Right. And isn't it your testimony that a Lower
22 Manhattan-Staten Island district will necessarily not be as
23 compact as practicable because you get more compactness with the
24 southwest Brooklyn-Staten Island combination?

25 A. That's getting a little legal-y for what "as

1 practicable" means, but it's going to be less compact than the
2 Staten Island-Brooklyn connection.

3 Q. And you were asked some questions on cross about
4 whether your doom loop conclusions would apply if there was no
5 racially polarized voting in a particular district. Do you
6 recall that?

7 A. Yes.

8 Q. In your experience, sir, as racial- -- is racially
9 polarized voting a rare condition in the United States?

10 A. It always seems to pop up in every -- they always seem
11 to find it in every VRA case that I've ever been in.

12 Q. So in your experience it's a common condition?

13 A. It's certainly not rare.

14 Q. Would your doom loop opinion and concern apply to any
15 district or ward, whether congressional, county or town-level,
16 where there is a common condition of racially polarized voting,
17 assuming that one conducts the NYVRA analysis on a
18 district-specific basis?

19 A. Again, that's why it's important where these thresholds
20 get set because if it's weak guardrails, kind of minimum
21 thresholds, then, yes, you have racially polarized voting and
22 the NYVRA covers Whites, they -- there's either -- it's going to
23 be frequent or at least not inconceivable that they're going to
24 be able to come back and say, well, we want our old district
25 back where we -- we got the candidate of choice.

1 Q. Right. And you went over on cross the key map figures
2 in your report, correct?

3 A. Yes.

4 Q. And you were asked questions about those being
5 hypotheticals, correct?

6 A. Right.

7 Q. But just again for clarity, now that you've had that,
8 even though I asked this on the record, I need to clarify. Am I
9 correct that the doom loop concern is not a hypothetical
10 concern?

11 A. I don't think it's purely hypothetical, no.

12 MR. MOSKOWITZ: Pass the witness.

13 MR. FASO: We don't have any questions for this
14 witness.

15 THE COURT: Any last redirect?

16 Thank you for your testimony. You may step down.
17 Please be mindful of the steps.

18 THE WITNESS: Thank you, Your Honor.

19 (Witness excused.)

20 THE COURT: Why don't we take a break for lunch now
21 and come back at 2:00? Or do you want to go for another
22 half hour? We can.

23 MR. FASO: So we'll call our expert, Thomas Bryan.

24 THE COURT: All right. Let's bring the witness up.
25 Welcome. Have a step up here. I'll swear you in

1 and then we'll have you seated.

2 So kindly raise your right hand. Do you swear or
3 affirm to tell the truth?

4 THE WITNESS: I do.

5 THE COURT: Thank you. Please be seated. And then
6 for the court reporter, state your name and address.

7 THE WITNESS: Thank you very much.

8 Good afternoon. My name is Thomas, T-h-o-m-a-s,
9 Mark, M-a-r-k, Bryan, B-r-y-a-n. And I reside at 15161 Deep
10 Spring Drive -- three separate words -- in Montpelier,
11 M-o-n-t-p-e-l-i-e-r, Virginia.

12 THE COURT: Thank you. Please be seated.

13 THE WITNESS: Thank you. Good afternoon.

14 T H O M A S M A R K B R Y A N,
15 having been first duly sworn/affirmed by the Court, took the
16 stand and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FASO:

19 Q. Good afternoon, Mr. Bryan.

20 I want to briefly introduce you to the Court. We've
21 all stipulated to your expert qualifications. But I just want
22 to get into a brief discussion of your background.

23 What is your profession?

24 A. I'm a professional demographer.

25 Q. Does your work concern redistricting?

1 A. Oftentimes, yes.

2 Q. How would you describe your areas of expertise?

3 A. Sure. In my role as a professional demographer, I have
4 expertise in the areas of geographic information systems,
5 statistical analysis, census, demographic an- -- analytic
6 techniques, as well as the analysis of voting data and voting
7 statistics.

8 Q. Would you describe for the Court what the field of
9 demography concerns?

10 A. Sure. The field of demography is the study of
11 population. There are many different areas of specialty within
12 the area of demography.

13 My area of specialty is what is known as geodemography,
14 hence the name, Bryan Geodemographics. And that specifically
15 focuses on the location of people and special analytics of the
16 characteristics of people in relation to each other.

17 Q. What type of information do you rely on for a
18 demographic analysis?

19 A. The work that we do is extremely data intensive. We
20 rely on both data sets that have demographic information as well
21 as voting data.

22 And this demographic and voting data would include
23 things such as the decennial, d-e-c-e-n-n-i-a-l, census, it
24 would also rely on, commonly in redistricting cases, on
25 something called the American Community Survey.

1 Part of my background and experience is that I worked
2 as an employee, as a statistician of the US Census Bureau. I
3 was also part of the development team of the American
4 Communities Survey during the process when the census bureau was
5 transitioning away from the long form, which you all remember
6 was the one-in-seven sample, to this continuous measurement
7 survey that we have today.

8 That is the information that -- the record of source
9 for what we call the CVAP, C-V-A-P, or citizen voting age
10 population, that is frequently used to measure potential voting
11 strength of the population.

12 In addition to those data, we will commonly use other
13 demographic economic and voting data sets. These can include
14 things such as the CPS, or the current population survey, or the
15 CES, which is the cooperative election study, which is based out
16 of Harvard.

17 And there's another variety of statistics that we use
18 on voting data and election data as a common part of our work.

19 In addition to those data, we have an extensive amount
20 of spatial data, which we use in our geographic information
21 systems to help us place all of those demographic and voting
22 data in a real-time space to see where these people are by
23 characteristic in relationship to each other.

24 Q. You mentioned that -- your employment with the census
25 bureau?

1 A. Yes.

2 Q. Could you briefly summarize your other professional
3 experience for the Court?

4 A. Sure. So throughout my career over the last 30 years,
5 I've had executive-level leadership positions with both Altria,
6 based in Richmond, Virginia, as well as with Microsoft. Both of
7 those roles involved experience with demography marketing
8 science and population studies.

9 Q. Do you serve on any committees?

10 A. I -- during my tenure working in those organizations, I
11 worked for a variety of different professional organizations and
12 participated actively in the professional organizations that are
13 part of my field.

14 Q. And I believe you worked for or you served with the
15 Census Advisory Committee; is that correct?

16 A. I did. In addition to the professional committees that
17 I have -- communities that I have served in, a group of my peers
18 nominated me to be 1 of 20 professionals in the United States to
19 serve on the 2030 Census Advisory Committee. That appointment
20 was accepted and I was chosen by the director of the census
21 bureau to participate on that committee.

22 I served honorably and until the completion of those
23 committees, until the new administration disbanded those
24 committees shortly after -- shortly after the election.

25 Q. What is the Census Advisory Committee?

1 MS. WITTSTEIN: Objection, Your Honor. We've
2 stipulated to this expert's qualifications, and I just want
3 to be conscious of the Court's time and our limited time
4 today and --

5 THE COURT: All right. Let's --

6 MR. FASO: All of the experts have given a brief
7 summary of the background. We're going to move on very
8 quickly here, Your Honor.

9 THE COURT: Okay. Noted. Thank you.

10 Let's continue.

11 BY MR. FASO:

12 Q. You were explaining the Census Advisory Committee.

13 A. Sure. So my role is, in the Census Advisory Committee,
14 is to serve as 1 out of 20 experts in the nation, and to be
15 independent objective factual adviser to the census bureau,
16 informing them on decisions that they make on how to execute the
17 2030 census. That includes the process of collecting, managing,
18 analyzing, and reporting census data to the public.

19 Q. I have just one brief background question and we'll
20 move on.

21 A. Thank you.

22 Q. Do you have any publications in your field?

23 A. I do. I have several. I think the ones that are most
24 relevant to my work in redistricting is that I've got a
25 publication with Dr. M.V. Hood and Dr. Peter Morrison on the

1 practical theory to execution of analysis on -- vote dilution
2 analysis, that was in Social Science Quarterly in 2018.

3 I've also coauthored a book for practitioners on it.
4 It's essentially a how-to of doing redistricting exercises.

5 Q. Thank you, Mr. Bryan.

6 MR. FASO: Your Honor, we'd like to proffer
7 Mr. Bryan as an expert witness.

8 THE COURT: As it's stipulated.

9 BY MR. FASO:

10 Q. You've been retained as an expert in this litigation,
11 Mr. Bryan?

12 A. Yes, I have.

13 Q. Who retained you?

14 A. Cullen And Dykman.

15 Q. When were you retained?

16 A. It was approximately November 18th, sometime late in
17 that afternoon, 4:00 to 5:00 PM.

18 Q. In retaining you, did my law firm ask you to reach any
19 particular conclusions?

20 A. They did not.

21 Q. What were you asked to evaluate?

22 A. I was provided with copies of the petition, as well as
23 the expert reports. And I was asked to review the petition and
24 the expert report, specifically of Mr. William Cooper, and to do
25 assessments of the demographic, geographic, and some of the

1 political findings therein.

2 Q. And did you render an expert report?

3 A. I did.

4 MR. FASO: Can we put that on the screen, please.

5 Q. Does this appear to be a copy of your expert report?

6 A. It is.

7 MR. FASO: Your Honor, the parties stipulated to
8 the admission of this document, so at this time I would like
9 to move it into evidence.

10 THE COURT: Does it have an exhibit number or
11 letter?

12 MR. FASO: Yes. It's Respondents' 1. Thank you to
13 my friend here.

14 THE COURT: Okay. Without objection, Respondents'
15 Exhibit 1 is admitted.

16 BY MR. FASO:

17 Q. How long after you were retained was your report due
18 and completed?

19 A. It was -- I was told that it was due on December 8th.

20 Q. So you just had a matter of weeks to complete it?

21 A. Yes. It was -- I was given 20 days to generate the
22 report. During that time I'd had a previous commitment. I
23 served in a group that does international human rights work. I
24 made a commitment to spend a week in Kosovo fulfilling my
25 responsibilities to them during these 20 days. It was also

1 notably over the Thanksgiving holiday.

2 Q. How long does a report of this nature usually take to
3 complete?

4 A. Typically, for all of the elements that are in here,
5 between three and four months.

6 Q. Are the opinions that you offered today and in your
7 report to a reasonable degree of professional certainty in your
8 field?

9 A. They are.

10 Q. What sources did you consider in forming your opinions
11 in this case?

12 A. So I relied on -- let me characterize them in two
13 groups. One was a set of documents that I mentioned earlier. I
14 also relied on the US Census Bureau's statistical data that they
15 provide from the decennial census in order to do a total
16 population analysis, to make sure that the population and
17 quality thresholds were met in Cooper's report and to confirm
18 them against the existing plan.

19 I also used American Communities Survey, or ACS, data
20 with which to do an assessment of the citizen voting age
21 population. Again, both confirming the existing plans, as well
22 as Mr. Cooper's analysis.

23 There were also a variety of statistics that I pulled
24 from different sources on things such as the electoral
25 performance of different candidates over different elections.

1 Q. You analyzed Mr. Cooper's illustrative map in this
2 case?

3 A. I did.

4 Q. Did you attempt to draw any illustrative maps of your
5 own?

6 A. I did.

7 Q. What was your objective in attempting to draw other
8 illustrative maps?

9 A. So in reading the petition, I sought to draw a
10 district, taking all of the other traditional redistricting
11 criteria away, except for contiguity, to try and determine if
12 there is any way that a majority Black and Hispanic district
13 could potentially be drawn between the current boundaries of
14 District 10 and District 11. And some of the leniency that I
15 applied was splitting Staten Island.

16 Q. Were you able to draw a district that meaningfully
17 increased the percentage of Black and Hispanic CVAP?

18 A. Even in splitting Staten Island and violating the basic
19 tenets of compactness, I was not able to come up with any
20 configuration that meaningfully changed the Black and Hispanic
21 population between the existing boundaries of District 10 and
22 District 11.

23 MR. FASO: Could I have the first demonstrative,
24 please.

25 Q. Okay. Do you recognize the document that's on the

1 screen here?

2 A. I do.

3 Q. What is this document?

4 A. So this is a map of what we would call census
5 block-level data, that shows the percent of citizen voting age
6 population which is Black and Hispanic.

7 In this map, the green colors represent lower
8 percentages of Black and Hispanic CVAP; the red colors represent
9 higher concentrations of Black and Hispanic CVAP.

10 Q. Is this a fair and accurate representation of the CVAP
11 data that you analyzed in your report?

12 A. I believe it is a hundred percent accurate, yes.

13 Q. And do you believe this demonstrative will help the
14 Court understand your testimony?

15 A. I believe it does.

16 Q. Using this demonstrative, can you explain for the Court
17 why you couldn't draw a map that meaningfully increases?

18 MS. WITTSTEIN: Object, Your Honor. Lack of
19 foundation. May I be heard?

20 THE COURT: Sustained.

21 You can continue.

22 MR. FASO: I'm sorry? Sustained?

23 THE COURT: Yeah, it's sustained. So lay more
24 foundation.

25 MR. FASO: Can we get more specific on the

1 objection to foundation? We've established it's a fair and
2 accurate representation; we've established it's based on
3 data that Mr. Bryan used in his report; he's established
4 that it's a fair and accurate representation and it will be
5 helpful for the Court in understanding his testimony.

6 If there is an objection to foundation, so be it,
7 but I think it needs to be a little more specific.

8 MS. WITTSTEIN: I'm happy to specify. This
9 particular diagram did not appear in Mr. Bryan's report.
10 And we just heard no foundation about what information in
11 the actual report, what tables or anything this is supposed
12 to be depicting. So I'm just trying to follow along with
13 the conclusions.

14 Q. Mr. Bryan, can you describe for the Court the
15 information in your report that you used to generate this
16 demonstrative?

17 A. Sure. The data that are in this map are from the
18 database that I used to do my assessment of the existing plan,
19 as well as Cooper's illustrative plan. These are the exact same
20 data that I used in my report and for all of my analysis.

21 Q. And, specifically, what were those data sets?

22 A. Yes. So this is from the 2019 to 2023 American
23 Community Survey, and it is what is known as the CVAP, C-V-A-P,
24 variable.

25 Q. And did you disclose that information in connection

1 with this litigation?

2 A. I did.

3 Q. Is it your understanding that we, as counsel, produced
4 that information to Petitioner's counsel?

5 A. It is.

6 MR. FASO: May I proceed, Your Honor?

7 THE COURT: Please.

8 BY MR. FASO:

9 Q. So using this demonstrative, could you explain for the
10 Court why you couldn't draw a map that meaningfully increases
11 Black and Hispanic CVAP between Districts 10 and 11?

12 A. Okay. Would you like me to describe it from here or
13 may I point to the map?

14 Q. If you can describe it from here, but, you know,
15 indicate on the map where your -- what you're referring to.

16 A. Okay. So work from here?

17 Q. Yes.

18 THE COURT: Yes, please.

19 A. Thank you.

20 So when we --

21 MS. WITTSTEIN: Objection, Your Honor. I'm sorry.
22 Lack of foundation, again. We have not received any notice
23 in his report whatsoever of any other maps that Mr. Bryan
24 attempted to draw. There's no maps contained in the report;
25 there's no description of how he tried to draw any maps. So

1 we're entirely unaware of the foundation for the opinion
2 he's about to offer.

3 MR. FASO: His opinion is that it's not possible to
4 draw a map that meaningfully increases Black and Hispanic
5 CVAP in Districts 10 and 11. This is like replete
6 throughout his report. It's a fundamental element of the
7 defense of this case. And we disclosed these
8 documents -- unlike the exhibits that, you know, came
9 yesterday, we disclosed these several days ago to opposing
10 counsel. There's been -- we haven't heard any objection to
11 them.

12 You know, given the way evidence has flowed
13 in -- and, by the way, this is a demonstrative. We're not
14 offering it into evidence. It's only used to illustrate his
15 testimony and to aid the Court in understanding his
16 testimony. So it's not going to be moved into evidence.
17 It's just used to describe his testimony.

18 MS. WITTSTEIN: If I may, Your Honor?

19 Well, just to make sure the record is clear, we did
20 disclose the exhibits that were admitted yesterday by the
21 Court's deadline for submission. We did receive
22 these -- Mr. Faso did provide these demonstratives by email
23 ahead of time. We're not objecting to the witness's ability
24 to use the demonstrative. We are simply looking for the
25 appropriate foundation based on what was disclosed in the

1 report.

2 And, again, the report did not disclose any
3 additional maps, any methodologies that were used to draw
4 additional maps, or the conclusions that were drawn off of
5 maps that we have never seen. And, particularly, what
6 "meaningfully increased Black and Latino voting age
7 population" means. So there is just zero foundation laid
8 whatsoever for the basis of these opinions that we're on
9 notice for.

10 MR. FASO: Now we're hearing a different objection.

11 The first one was an objection to the use of the
12 demonstrative. Why don't we let Mr. Bryan get into his
13 testimony, and if they believe there's any testimony that's
14 outside the scope of his report, then we can hear that
15 objection. But he hasn't even had a chance to answer the
16 question.

17 MR. MOSKOWITZ: I am not a microphone hog. I do
18 think it's important for me to very briefly put on the
19 record the intervenor-respondents' position which is this is
20 exactly what I meant when I said what's good for the goose.

21 And, in fact, this is far less prejudicial because
22 it's a demonstrative based on raw data that was produced
23 long ago, and you have the man himself under oath,
24 testifying as to its authenticity, as opposed to a letter
25 with someone else's testimony, Dr. Lee, who is not part of

1 this case and whose testimony is now going to be cited at
2 length through the rest of these proceedings.

3 MS. WITTSTEIN: Your Honor, this is not the
4 intervenor-respondents' witness.

5 THE COURT: Okay. Thank you.

6 The objection is overruled.

7 Let's continue.

8 MR. FASO: Thank you, Your Honor.

9 BY MR. FASO:

10 Q. So my question to you, Mr. Bryan, was, using this
11 demonstrative, can you explain for the Court why you couldn't
12 draw a map that meaningfully increases Black and Hispanic CVAP
13 in Districts 10 and 11?

14 A. Yes. Thank you.

15 What I did -- and this is part of my background and
16 experience in drawing illustrative or remedial maps, and I've
17 drawn illustrative and remedial maps under state Voting Rights
18 Act cases in Washington and California before. So I've had
19 experience and background in doing this type of work.

20 I began with the place that I saw has the highest
21 concentration of Blacks and Hispanics, of course, which was in
22 the northern part of Staten Island.

23 And then what I did was I worked in a clockwise fashion
24 up through the -- what you see as in the northwest corner of the
25 Hudson River until I got to Manhattan. Then I turned east and I

1 worked, avoiding as many areas that were White, non-Hispanics as
2 I possibly could.

3 I tried to grab the neighborhood that Mr. Cooper grabs
4 in his illustrative plan and connects with District 11, so I
5 it's kind of over on the Lower East Side, just above Chinatown.

6 And then again, just as an exploratory exercise, I
7 continued to work my way down into Brooklyn and just threaded a
8 needle trying to connect any of these neighborhoods that I
9 possibly could that are highlighted in red here. That captures
10 concentrations of Blacks and Hispanics that are the highest
11 concentrations of anywhere in this area.

12 The problem is that we need to be able to get to a
13 minimum population, a balanced population of approximately
14 777,000 people.

15 So when you connect those populations, which, you know,
16 we know are a minority population in this area, there is no way
17 to avoid adding in many of these areas that are shown as being
18 very dark green, as additional population. You know, and I
19 tried to add in the ones that were the least green, the most
20 favorable to this situation, and even cutting off the top of
21 Staten Island and connecting it with some of these disconnected
22 pieces of geography into the far end of Manhattan, and then kind
23 of down in the Sunset Park -- as you can see, in the Sunset Park
24 area of Brooklyn, there was no way that when I connected those
25 with some different configurations that I was able to change,

1 you know, a CVAP percentage in -- when I say a "meaningful way,"
2 this would be -- again, this was an exploration. I don't have a
3 demonstrative map. This was just an exercise.

4 But I was not able in any configuration to get the
5 25 percent to move, for example, to 30 percent or 35 percent or
6 40 percent. And that's what I mean by "meaningful." Is there a
7 way to thread it and make it very irregular and change it by
8 several more percent than Cooper did? Sure.

9 Is there a way to do this in a way that's going to push
10 this towards any kind of a significant influence or towards a
11 majority? There is not.

12 Q. Thank you, Mr. Bryan.

13 MR. FASO: Your Honor, this is a good breaking
14 point before I move to another subject, if we wanted to.

15 THE COURT: All right. Let's break for lunch.

16 MR. FASO: Thank you.

17 THE COURT: The witness may step down. Let me
18 remind you not to discuss your testimony with your attorneys
19 while you're on the stand.

20 THE WITNESS: I understand.

21 Thank you, sir.

22 THE COURT: Be careful on your way down.

23 Everybody, have a good lunch.

24 (Whereupon, a luncheon recess was taken.)

25 * * * * *

1 THE COURT: Don't run. Don't trip. Take your
2 time.

3 (Whereupon, the witness takes the stand.)

4 THE COURT: All right. Hope everybody had a
5 good lunch.

6 Back on the record, I remind you, you are
7 under oath.

8 Counsel, when ready, you may continue.

9 MR. FASO: Thank you. May I have Mr. Bryan's
10 report.

11 Q. Mr. Bryan, in your field, do map drawers rely on
12 the applicable laws and whatever jurisdiction they are
13 drawing their maps?

14 A. Yes, we do.

15 Q. Why is that?

16 A. The combination of the laws and traditional
17 redistricting criteria guide the drawing of maps in
18 different areas. Of times, they are the same and sometimes
19 they are different.

20 Q. I want to call your attention to Page 31 of your
21 report. Excuse me. Page 11.

22 Do you recognize this page of your report, sir?

23 A. I can't read it from here, but I recognize it.

24 Q. Okay. You are not an attorney, right?

25 A. I am not.

1 Q. You are not offering any legal opinions?

2 A. I am not.

3 Q. And this portion of your report, did you do have a
4 discussion of the New York Constitution, the New York Voting
5 Rights Act, and other legal authorities, why is that?

6 A. Each one of these frameworks is relevant to this
7 case. The U.S. Voting Rights Act is the framework for
8 Section 2 which is the framework that I am used to working
9 in other voting rights act cases.

10 In this specific case, both the New York
11 Constitution, as well as, the New York Voting Rights Act are
12 discussed in the documents that I was presented with and
13 asked to evaluate.

14 Q. Which framework did you perform your analysis
15 under?

16 A. Under the New York Constitution, Article 3.

17 Q. You read the New York Constitution redistricting
18 provisions?

19 A. Generally Article 3, Sections 3, 4 and 5, if I
20 recall correctly.

21 Q. And what did you find is required by the New York
22 Constitution --

23 MS. WITTSTEIN: Objection, your Honor. Calls
24 for legal conclusion.

25 THE COURT: Rephrase.

1 Q. What did you read in that section of the
2 constitution that you found relevant to redistricting?

3 A. So it, as a demographer and map drawer, we commonly
4 rely on tradition redistricting criteria, and in some places
5 and cases those criteria are just general guidance that we
6 are suppose to follow.

7 In other cases, what I found in the New York
8 Constitution is that much of that guidance is codified. So,
9 for example, it states specifically that contiguity is
10 required. It states that compactness is, does not need to
11 be reasonable. Compactness needs to be --

12 MS. WITTSTEIN: Objection, your Honor.

13 I have no objection to the witness talking
14 about the principles that he applied. However, to opine
15 on what the extent of any constitutional requirement is
16 is a legal conclusion.

17 THE COURT: Sustained.

18 So let's just keep your analysis to what you
19 did in your report or how you used the constitution to
20 assist you in map making, but not doing analysis of the
21 constitution itself.

22 THE WITNESS: I'll do my best. Thank you.

23 Q. To be clear, that is all I was asking for,
24 Mr. Bryan.

25 Your report at Page 20, here you have a section

1 labeled demographics analysis?

2 A. Yes.

3 Q. Why does the report look at demographics?

4 A. So there is really two major pieces of demographic
5 analysis here.

6 One, is the use of the 2020 decennial census.
7 That gives us information on the number and characteristics
8 of the total population. It helps us understand the overall
9 characteristics of the existing and the illustrative
10 districts proposed by Mr. Cooper. Separately from this, we
11 have information on, from the American community survey on
12 what is known as the citizen voting age population, again in
13 total, as well as, by race and ethnicity.

14 Q. Let's pull up Table 4H1 on Page 35, please.

15 Describe for us what is depicted in this table of
16 your report?

17 A. This admittedly very colorful table is designed to
18 show different percentages of citizen voting age population
19 in each one of the current 13 congressional districts in and
20 around New York City. Each row represents the current
21 congressional district, and across the top you will see some
22 shorthand WNH is for White Not Hispanic. APBNH, is Any Part
23 Black Non-Hispanic. ANH is the Asian Non-Hispanic.

24 Again, I calculated these to be mutually
25 exclusive from the Hispanic population which can be of any

1 race. So the fourth column HISP is Hispanic. Then what
2 I've done is I've created a summary column there of the Any
3 Part Black Non-Hispanic plus Hispanic, and just to help the
4 reader understand the table, I added a couple of extra
5 columns to flag where districts had more than 25 percent,
6 which is an arbitrary cut-off, as well as, a 50 percent
7 cut-off to help see where there were potentially an
8 influenced district and where there were majority, absolute
9 majority minority districts in these 13 different
10 congressional districts.

11 Q. With respect to Districts 10 and 11, what did you
12 find about the CVAP percentages for Black and Hispanic
13 voters?

14 A. Both Districts 10 and 11, highlighted in the center
15 of the page, there is approximately 57 percent White
16 non-Hispanics in District 10 and there is nearly 60 percent
17 White non-Hispanics in District 11. You can see between
18 both of the districts there is approximately seven and half
19 percent any part Black non-Hispanics. There is a much
20 higher number. In fact, the highest, the largest minority
21 population in either one of those districts are the Asians.
22 So it is fractionally higher in District 10 than 11. Let's
23 say it is about 17 percent in both districts.

24 We go over to Hispanics, you see slightly
25 higher percentage of Hispanic in District 10 at 17.1. Then

1 you see in District 11 at 15.3.

2 In total, the Any Part Black Non-Hispanic plus
3 Hispanics are nearly 25 percent in District 10 and
4 approximately 22.7 percent in District 11.

5 Q. Did you look at the demographics of Mr. Cooper's
6 illustrative district?

7 A. I did.

8 Q. Let's turn to Table 4J2 on Page 39.

9 Describe for the court what is depicted in this
10 table?

11 A. Sure. Again, it is a colorful table that the red
12 numbers are here are indicating relatively lower values.
13 The green numbers are indicating relatively higher values.

14 So what is happening, in comparing the previous
15 table we just looked at where White non-Hispanics were 57 to
16 59 percent, the White non-Hispanic population in District 10
17 has been reduced. The White non-Hispanic population in
18 District 11 has been increased.

19 Just as a point of reference for the
20 convenience of the reader, I just added a total number so
21 you can see an aggregate for the district, what the whole
22 numbers were for both pieces of geography.

23 Q. Let me stop you there. So Mr. Cooper's
24 illustrative districts adds White voters to District 11?

25 A. It does, yes.

1 Q. Describe for us what the changes are for Black and
2 Hispanic voters in District 11?

3 A. So the change for the Black non-Hispanics is a
4 reduction of approximately one percentage point from
5 District 10 and an increase of approximately one percentage
6 point in District 11 raising the Black non-Hispanics there
7 to 8.4 percent.

8 There is a really significant change in the
9 Asian non-Hispanics. They go from relative parity at
10 approximately 17 percent as we just discussed to 23 and half
11 percent in District 10.

12 District 11's Hispanic population gets taken
13 down to approximately 12.4 percent.

14 I've added the other non-Hispanic just to round
15 out the numbers so they add to a hundred.

16 The Hispanic population as you can see here is
17 very tightly concentrated around low 16, about 16.2 percent.

18 Q. Did you make any findings about the growth of the
19 Asian population?

20 A. Restate the question again?

21 Q. Did you make any finding in your report about the
22 growth numbers of the Asian population?

23 A. I did. I examined the growth of the Asian
24 population throughout this part of my report.

25 Q. Generally speaking, what was your finding with

1 respect to Asian population growth?

2 A. Sure. So the Asians are the largest and fastest
3 growing minority population. They are by far the fastest
4 growing population in Staten Island. They are also very
5 quickly growing in Brooklyn, although not quite as fast.

6 The Asian population in Manhattan is, I can
7 speak, even though the focus of this case is on lower
8 Manhattan, I can say that Manhattan as a whole, Asian
9 population is also growing there. And the one notable
10 exception in all these areas is that Chinatown, and I say
11 Chinatown as the formal definition of boundaries of the NTA,
12 the Neighborhood Tabulation Area, of Chinatown is showing
13 the only part of this area that is showing a population
14 decrease.

15 Q. Thank you.

16 So you heard a lot from other witnesses about the
17 concept of compactness. I don't want to retread that.

18 A. Sure.

19 Q. That testimony. Let's pull up the demonstrative
20 block CVAP Black and Hispanic 10 and 11.

21 This is the demonstrative we were looking at
22 earlier?

23 A. Yes.

24 Q. Can you enlarge a little bit, please. Thank you.

25 You understand concepts of geographic compactness

1 and population compactness?

2 A. Yes, that's correct.

3 Q. Can you describe what the differences are between
4 those two concepts?

5 A. Sure. In really general terms, geographic
6 compactness, we talked about some of the different measures
7 such as Reock, R E O C K, Polsby-Popper P O L S B Y -
8 P O P P E R, they all measure geographic compactness
9 slightly differently. Basically, the concept is what is the
10 relationship of the shape by its area or boundary to what we
11 would call a perfect geographic shape, which would be a
12 circle. So it is that relationship of what is a district to
13 a circle. That is why those numbers are generally
14 represented on a scale from zero to one.

15 The difference from that compared to population
16 compactness is that you can have an area that is perfectly
17 geometrically compact. You can have an exact circle. But,
18 with in that circle, you can have enclaves or local areas of
19 concentration of population that are located in different
20 areas and can be separated far from each other around an
21 area that geographically would appear to be very compact.

22 Q. And using those demonstratives, what does it tell
23 us about the population compactness of Black and Hispanic
24 voters in Congressional Districts 10 and 11?

25 A. My overarching compression here is that the

1 geographic compactness of the existing districts were quite
2 high, but the population compactness of the Blacks and the
3 Hispanics are quite disperse.

4 You can -- disperse, not diverse. They are
5 dispersed, as you can see, just by focusing on the areas in
6 red, the northern part of Staten Island, there is very high
7 concentrations there, and then setting aside the whole
8 discussion of the water. As you go through the lower part
9 of Manhattan, you go through the financial district, you go
10 through the Financial District, Battery Park, Tribeca, Soho
11 over to Greenwich village and, working your way over to the
12 east side, you can see that it is almost solidly green,
13 which means that there are large, very large numbers, high
14 concentrations of White non-Hispanics. Not to say there
15 aren't other populations, but you have to go through a lot
16 of high population, White non-Hispanics to get over to this
17 very small concentration on the Lower East Side of the
18 Blacks and Hispanics, Coopers illustrative map, yes.

19 Q. In your opinion is there a population compactness
20 of Black and Latino voters in this geography?

21 A. Yeah. So let me answer that in two parts.

22 There are three areas where the Black and
23 Hispanic population are geographically compact. Each one of
24 the three boroughs here offers an area that seems to have
25 very high compactness of Blacks and Hispanics. That again

1 is the top of Staten Island, the lower east end of the
2 Manhattan and then around the Sunset Park area of the
3 Brooklyn borough.

4 But in totality, these are quite separated from
5 each other and there is, there is no mathematical equation
6 to explain population compactness. When they are separated
7 by large numbers of other populations, this would suggestion
8 a low level of population compactness for the Black and
9 Hispanic population.

10 Q. Thank you. So you talked about some of these
11 empirical measures of compactness, Reock, Polsby-Popper, et
12 cetera. We are not going to go through all of those again.
13 Are there any other measures of compactness?

14 A. As we've heard in testimony earlier, defining what
15 compactness is is a very difficult thing. It is hard to
16 agree upon by experts and the courts. Only very reasonably,
17 a couple of years ago for the first time in my 30 years of
18 doing this that I see a court provide a framework and an
19 opinion how to think about compactness and that using a
20 specific framework to determine whether districts were
21 compact or not. That framework was from the Alpha Phi Alpha
22 Raffensperger case which has I believe was 2023, and in that
23 case the court prescribed a three-part framework. That
24 framework was the geographic --

25 MS. WITTSTEIN: Objection, your Honor. I again

1 think we are venturing into legal conclusions, correct
2 legal framework for compactness. Again, I have no
3 objection if the expert wants to talk about factors that
4 he considers relevant to compactness, what he viewed,
5 but venturing into the judicial opinions.

6 MR. FASO: I'm not asking the witness to
7 testify as to what the correct legal framework is. The
8 witness can read. He read in the case that there were
9 certain things considered with respect to compactness.

10 THE WITNESS: Yeah.

11 MR. FASO: Those are -- that is information
12 upon which experts in this field generally rely. We
13 heard from Mr. Cooper and we heard from Mr. Bryan today.
14 And if opposing counsel takes any issue with the
15 characterization, they have cross-examination to explore
16 it. We are not --

17 THE COURT: So let's, let's keep our opinions
18 about the case. You said defining compactness is
19 difficult.

20 THE WITNESS: Yes.

21 THE COURT: Okay. You said the court provides
22 specific framework. Okay. But once you go into
23 analysis or interpretation that is your view of the
24 court, how the court ruled, counsel is going to stand up
25 and object.

1 THE WITNESS: I understand.

2 THE COURT: So I do, I do want you to be able
3 to explain how you draw the maps based on the guidance
4 of the cases, but avoid the analysis.

5 THE WITNESS: I understand. Thank you.

6 Q. Mr. Bryan, I think we can cut to the chase on this.
7 What was the test that the court wrote about in the
8 Alpha case that you mentioned?

9 A. So geographic compactness, population compactness,
10 as well as something they referred to as being an eyeball
11 test.

12 Q. What is the eyeball test?

13 A. So it is a visual examination of a district that a
14 reasonable person would look at a shape and make an
15 assessment that there was any unusual or bizarre appendages
16 or tentacles that would stick out from an otherwise
17 geometric shape.

18 Q. It is a subjective assessment?

19 A. It is a subjective test.

20 Q. May we have Figure VC1 on Page 47, please.

21 What is depicted in Figure VC1?

22 A. So what this is is a side by side comparison of the
23 existing plan, District 11. I tried to draw it as simply as
24 possible for the clarity and explanation that on the left if
25 you look at Staten Island the water blocks that are between

1 it and Brooklyn and then the boundary of Brooklyn, that is a
2 relatively compact geometric shape. It has a high
3 compactness score like that.

4 On the right-hand side, the illustrated
5 district proposed by Cooper starts with the Staten Island
6 and then reaches up and as we discussed there are a series
7 of water blocks that are about five, five miles before you
8 get over to Manhattan, before it grabs Manhattan. What the
9 map doesn't show, but what we just saw in the other
10 demonstrative is that the minority population of Black and
11 Hispanic population that is attempting to be connected to
12 Staten Island is in a small fore-corner of Manhattan, again
13 through which there are large numbers of White
14 non-Hispanics.

15 Q. And you find the eyeball test to Mr. Cooper's
16 district, what is your opinion?

17 A. My opinion is that it appears to be an appendage or
18 a tentacle that reaches out to grab a piece of population.

19 Q. In other words, it doesn't pass the eyeball test?

20 A. My opinion is that that does not pass the eyeball
21 test.

22 Q. We can take down this table for now.

23 Let's talk about communities of interest.

24 What is the communities of interest principle in
25 redistricting?

1 A. So a community of interest is a geographically
2 concentrated group of people who have similar beliefs, needs
3 or values that can be well served by being united into a
4 district.

5 Q. How do political and administrative geographies fit
6 to the communities of interest analysis?

7 A. Sure. So there is different levels of political
8 geography, for example, cities, towns, school districts,
9 county boundaries, often times it is codified, other times
10 it is traditional redistricting criteria that we want to try
11 to minimize the splits of those political and administrative
12 pieces of geography.

13 Q. Can I have Page 51 of the report, please.

14 In New York City, what are the relevant geographies
15 in determining, in your analysis of communities of interest?

16 A. In this case, as I mentioned earlier, very little
17 time to prepare the report.

18 New York is a rich mosaic of numerous, very
19 interesting, very diverse neighbors, some of which overlap.
20 There is a variety of different definitions of communities
21 of interest in neighbors in New York City. The simplest one
22 and the most accessible one are what is called NTAs. This
23 was the same geography that William Cooper used in his
24 analysis, was most readily accessible to me for use in mine.
25 Although there are other lawyers, for example, NTAs into

1 what are called community districts, which are also
2 important pieces of community of interest analysis for the
3 city.

4 Q. Briefly, what is an NTA?

5 A. It is a tabulation area. It is a neighborhood tab
6 area. It is a group of US census tracts. In that regards
7 it doesn't always fit the exact boundaries of what people in
8 those neighbors would call are the boundaries of their
9 neighborhoods, but they are useful for providing statistics
10 because the city and the census bureau report statistics on
11 those pieces of geography, so it is a relatively accessible
12 and easy way to compare.

13 Q. Can we zoom into 6A1 on that page, please.

14 So in your report you looked at NTA and VTD splits
15 with respect to the existing congressional plan, right?

16 A. Yes.

17 Q. Describe for us what you are reporting here in your
18 report?

19 A. Between the congressional Districts 10 and 11 there
20 is a remarkably small number of NTA and VTD splits and
21 relative size of the population that are in those splits,
22 you know, looking at a population of 1.5 million total in
23 combination, that is a relatively small number that are
24 impacted by being in those split geographies.

25 Q. You also looked at Mr. Cooper's illustrative plan

1 --

2 A. I did.

3 Q. -- with respect to this factor?

4 Zoom into 6A2, please on that page.

5 What did you find with respect to Mr. Cooper's
6 illustrative map in terms of NTA/VTD splits?

7 A. Again, there is a comparable number of NTA splits.
8 In terms of the VTDS what are called the voting districts in
9 listening to Mr. Cooper's testimony yesterday, he chose VTDS
10 because it facilitated a comparison with some other plans.

11 My experience is that in drawing a current and
12 legal explain, what needs to do is not facilitate
13 comparisons with other plans, but rather use the current
14 voting precincts from the city to insure the plan is lawful.

15 Q. And using the current plan, what did you find with
16 respect to NTA/VTD splits in Mr. Cooper's illustrative plan?

17 A. So the number of splits of NTAs between the
18 existing plan and Mr. Cooper's plan or comparable, the
19 number of the splits in the voting district, in the current
20 voting districts, there are no splits in the current enacted
21 plan. There are about 20 splits in Mr. Cooper's plan.

22 Q. I think you touched on this, Mr. Cooper relied on
23 2020 data in assessing NTAs?

24 A. That's correct.

25 Q. In your opinion, does the illustrative map split

1 political administrative geographies in New York City?

2 A. Insofar as splitting the current voting precincts
3 it does, yes.

4 Q. Okay. You can take down this figure, please.

5 There has been a lot of discussion about ferry
6 travel during this trial?

7 A. There has.

8 Q. How, if at all is that relevant to the communities
9 of interest?

10 A. I've been fortunate to spent a lot of time in New
11 York in my life. I have traveled the ferry previously. I
12 traveled the Verrazzano-Narrows Bridge many times, so I'm
13 familiar with them. Just this past weekend I went and took
14 the ferry from Chinatown just to reenact the experience of
15 somebody traveling by ferry versus somebody driving.

16 So my experience is that the travel on the
17 ferry, if you are going from Manhattan is, you know, one way
18 that you can get to Staten Island by the time you walk
19 there, you queue, you take the ferry, you get off. The time
20 for me to get from the southern part of Manhattan was
21 roughly an hour and 15 minutes. The alternatives are to
22 either go drive to the west and go take the 78/278
23 interstate of New Jersey, or you can go obviously to the
24 east Brooklyn, over the Brooklyn/Manhattan Bridges and take
25 the Verrazzano-Narrows Bridge.

1 The total amount of time to get down to Staten
2 Island by driving those longer routes versus taking the
3 direct ferry route, again from my personal experience of
4 having done each one of those independently, it is roughly
5 the same on average.

6 Q. You mentioned Chinatown and we've heard some other
7 testimony about the Chinatown or Asian communities in the
8 illustrative plan, the current plan.

9 Petitioners contend their configuration advances
10 Chinese American communities by joining Chinatown with
11 Sunset Park, Bensonhurst and Bath Beach?

12 A. Sure.

13 Q. What does your analysis show about how the
14 illustrative map treats the Asian population?

15 A. So we look very carefully at the impact of the
16 draw of the illustrative plan on Asian population. The
17 Asian population is unique and interesting. It differs in
18 different parts of the city. But what we saw is that if you
19 go and draw a plan that goes up and around Chinatown, that
20 separates Chinatown from other Asian-Americans, primarily
21 Chinese, but also some others of different Asian origin who
22 are literally across the street from each other.

23 Q. Let's show your Figure 6C3 on Page 59. I think it
24 will help you explain this analysis?

25 A. Thank you.

1 Q. Can we zoom in just a click? Great.

2 What is depicted in the Figure 6C3 here?

3 A. Sure. So what we are looking at here is lower
4 Manhattan. There is a blue line. This is the boundary of
5 Cooper's illustrative district. You see a red swatch
6 somewhat in the middle. This is the Chinatown, two bridges
7 NTA, and then what you can see in these large green circles,
8 these are circles that represent the size of the Chinese
9 population, then you see some smaller circles show the
10 Korean population and the Indian population. There are many
11 others. These are the most prevalent down in this area.

12 So what we can see is the way that this is
13 drawn is it takes the Asian population and Chinatown, both
14 the Chinese, as well as, Koreans and Indians and draws a
15 line separating them from large numbers of other Asians that
16 are, you know, basically across the street from each other
17 and adjoining neighbors.

18 (Transcript continues on the next page.)
19
20
21
22
23
24
25

1 DIRECT EXAMINATION

2 BY MR. FASO:

3 Q. You were here for Mr. Cooper's testimony yesterday,
4 right?

5 A. I was.

6 Q. And do you recall that he testified that the
7 legislature can fix the split of Asian communities by making
8 changes to the map?

9 A. Please say it one more time.

10 Q. Do you recall that he suggested the legislature can fix
11 any splits of Asian communities by adopting a map different than
12 his illustrative map?

13 A. I do.

14 Q. Is it possible to connect Staten Island with Lower
15 Manhattan without splitting Asian communities?

16 A. It is not.

17 I'd like to focus specifically on some testimony I
18 heard with regards to the Lower East Side and the possibility of
19 adding that. The Lower East Side neighborhood has approximately
20 50,000 or so people in it, give or take. And so if one wraps a
21 district around Lower Manhattan in this way to capture that, the
22 Lower East Side -- or move the Lower East Side population out of
23 11 and into 10, then you're going to have a significant
24 imbalance of the total population.

25 Q. And that imbalance means you'd violate one person, one

1 vote, right?

2 A. That's correct.

3 MR. FASO: Okay. We can take this down.

4 I'd like to look at Petitioners' Exhibit -- I
5 believe it's 9 from yesterday. It was admitted into
6 evidence. Could you zoom in on the main map portion,
7 please.

8 BY MR. FASO:

9 Q. So I want to address this exhibit, which was discussed
10 yesterday, and -- and Your Honor's question earlier today about
11 where people from Staten Island commute for work.

12 Did you examine this Exhibit 9?

13 A. I did not.

14 Q. You've seen it since yesterday?

15 A. I saw it yesterday, yeah, but I don't have it that I
16 personally examined as a document on my own computer or on
17 paper.

18 Q. Right. You understand what it depicts, though?

19 A. It -- I only saw it very briefly, so I can't offer a
20 good explanation of what it's showing.

21 Q. Well, you understand it's from census data, right?

22 A. I do understand it's from census data, yes.

23 Q. You're familiar with the data that this exhibit was
24 created from, right?

25 A. I am not familiar with this specific website and

1 I -- not having seen this before, I can't speak to my knowledge
2 of the source of the data that was used to create this.

3 Q. But you understand it was represented that it was
4 developed through census data, right?

5 A. It is. I heard a passing reference to it being somehow
6 related to the American Communities Survey. In my experience,
7 that is not where these data typically come from. So I am
8 uncertain about the origin or the sources of this.

9 Q. You agree that the document purports to represent where
10 people from Staten Island commute to work, right?

11 A. It -- it appears to. I believe that's what it is
12 attempting to represent.

13 Q. After hearing the testimony yesterday on that topic,
14 did you do any investigation on where workers from Staten Island
15 and other places in the city commute to work?

16 A. I did.

17 Q. And what did you do to perform that analysis?

18 A. Sure. So I have performed this analysis before in
19 multiple other cases to help measure and identify the strength
20 in the interaction of communities of interest. An example of
21 that case was Banerian v. Benson and others.

22 So what I did is I went to the source where I have
23 gotten those data before that the courts have used. It's a page
24 developed by the household economics -- Household and Economics
25 Division. It's a site where they merge census data with state

1 and local data in order to provide estimates of workflows
2 between different geographic areas.

3 Q. Is the data produced by that division the type of data
4 that experts in your field commonly rely upon?

5 A. That is the -- the page and source that experts,
6 including myself, have used and have submitted as expert
7 testimony in other cases.

8 Q. And that's government data?

9 A. The -- the household and economic data from the census
10 bureau, yeah.

11 Q. That is government data?

12 A. Yes.

13 MR. FASO: Let's put up VEC Document 1-48 for
14 identification.

15 Q. Do you recognize this document?

16 A. I do.

17 Q. And just so you can see it all, it's a five-page
18 presentation.

19 MR. FASO: Can we just quickly shift through the
20 pages.

21 Q. Do you recognize all of the pages of this document?

22 A. I do.

23 Q. Who prepared this?

24 A. I prepared this.

25 Q. And what information did you use to prepare it?

1 A. Yes. So you can see the source in the lower right-hand
2 corner. It's a hyperlink to the exact webpage where this data
3 came from. But as you can see, it's Business and Industry
4 Center For Economic Studies, and LEHD is the shorthand for it,
5 because longitudinal, you know, employer and household dynamics
6 is a lot -- a lot of letters. So we call it LEHD.

7 Q. When did you prepare this document?

8 A. Yesterday afternoon.

9 Q. Is it a true and accurate representation of the data
10 that you pulled from the government source?

11 A. It is. And it's the most recent data available.

12 MR. FASO: At this time, Your Honor, I would like
13 to offer Petitioners' Exhibit Marked 1-48 into evidence.

14 MS. WITTSTEIN: Your Honor, on the pain of
15 triggering another response about what's good for the goose
16 is good for the gander, we're not going to object to this.
17 But I would just like to make a record that the witness
18 testified that this is not coming directly from a government
19 source, but instead a third-party service that uses
20 government data. And it's not being presented in its
21 judiciously noticeable form as Dr. Cooper -- Mr. Cooper's
22 testified yesterday. So we would like the differences in
23 that approach noted on the record. But we're not going to
24 object to it.

25 THE COURT: Without objection and noting the

1 differences. VEC 1-48, Respondents' Exhibit Number 4; is
2 that correct?

3 MR. FASO: Yes.

4 THE COURT: It's admitted.

5 MR. FASO: Thank you, Your Honor.

6 Q. The source is listed as census.gov, right?

7 A. Yes, these are screen captures directly off the LEHD
8 website, when one uses the website and generates these results,
9 these are screen captures that one would get from exactly going
10 to that website.

11 Q. And the data was obtained from a government agency?

12 A. Directly, without any adjustment. This is literally a
13 picture of what is on the website.

14 Q. So let's look at this first slide. It is labeled where
15 Brooklynners live.

16 What is being described on this page of the exhibit?

17 A. Can I ask a favor? Can you go back one page and
18 forward one page so I can orient myself to -- yeah.

19 So what we're -- I want to be clear that what we're
20 looking at is pairs of slides. One says where -- where workers
21 work from a location, and where those workers live. So the
22 people who work in Brooklyn, where they live come from a variety
23 of different counties around the New York area.

24 Q. And what does this tell us about the Brooklyn
25 workforce?

1 A. Yeah. So the Brooklyn workforce, it's approximately
2 883,000 people, roughly half of them are from Brooklyn. They
3 live in Brooklyn. And then you have declining numbers of the
4 Brooklyn workforce from other parts of the New York Metropolitan
5 area.

6 Q. Almost half of the Brooklyn workers live in Brooklyn,
7 right?

8 A. That's correct.

9 Q. And 6.8 percent live in Manhattan, is that what we're
10 seeing here?

11 A. Yeah, with about roughly 60,000 people.

12 Q. And a similar number live in Staten Island?

13 A. Yes.

14 Q. Richmond County?

15 A. Yes, 43,000, a few less.

16 Q. Let's go to the next slide.

17 Okay. This is where Brooklyners work. What is
18 depicted on this slide?

19 A. So instead of where Brooklyners live, this is where
20 Brooklyn -- where workers are employed. As you can see, there
21 is a larger number here indicating there is more people that are
22 going from Brooklyn out into other areas, and that is primarily
23 driven by Manhattan or New York County. So you can see there
24 is, you know, 476,000 people, roughly 40 percent of the people
25 are going into New York. Again, you see that same number there

1 for Kings County, Brooklyn, about 400,000 that live in
2 Kings County, work in Kings County, and then other declining
3 numbers for other parts of the city.

4 Q. Let's go to the next slide. This is where Manhattan
5 workers live. So people who work in Manhattan, where they
6 reside, right?

7 A. Yes. That's correct.

8 Q. And what does this tell us about folks who work in
9 Manhattan?

10 A. Sure. So as you can see, there's a very big number of
11 workers, you know, that come from the New York area that come
12 into New York in Manhattan, out of New York County. There's,
13 you know, 500,000, roughly -- you know, it's an interesting
14 statistic, that one in five of the workers in Manhattan are from
15 Manhattan.

16 As you go down this list, again, we see this same
17 number, this large number from Brooklyn, about another
18 20 percent. And then again other declining numbers from other
19 counties in and around the New York Metro area.

20 Q. What does this say about Staten Islanders working in
21 Manhattan?

22 A. So what this says down here at the bottom is that there
23 is approximately 60,000 people from Staten Island who are coming
24 into Manhattan to work every day.

25 THE COURT: In your opinion, does 60,000 people

1 constitute a community of interest?

2 THE WITNESS: You know, what is interesting about
3 that population, to answer your question directly, is that's
4 a relatively small share of all of the adults. It's a
5 subset of the adults that live in Staten Island. It's
6 obviously a community of interest insofar as that group of
7 people needs to get from Staten Island up to Manhattan to be
8 able to work. Just -- and I'm not citing this from any
9 other source.

10 But what is interesting to me is that the
11 Staten Island Ferry, in numbers that I've seen and heard
12 discussed in the courtroom, had a daily flow of 45,000
13 people. I'm sure you know the number more precisely than I,
14 but about 45,000.

15 So what's notable to me about this number is that
16 this number is much higher than the daily flow of traffic on
17 the Staten Island Ferry. So this suggests to me -- and I'm
18 not providing any direct testimony or citing anything, but
19 just the numbers would say there have to be other people
20 from Staten Island, a large number of Staten Island that are
21 having to find other ways to get up -- or choosing to find
22 other ways to get up into Manhattan. Even if every person
23 on the Staten Island Ferry were an employee, that still
24 leaves 15,000 Staten Islanders that are finding some other
25 way. Of course not everybody on the Staten Island Ferry

1 is -- is an employee coming into Manhattan to work.

2 THE COURT: So you look at it here as a percentage,
3 a small percentage, 2.4 percent?

4 THE WITNESS: It's -- it's a small contribution to
5 the workforce that goes into the City of New York to work
6 every day, for sure.

7 THE COURT: Understanding New York is a unique
8 place, would 59,459 people that travel from Staten Island to
9 New York County, to Manhattan to work, would that amount,
10 without considering the share in another jurisdiction,
11 constitute a community of interest?

12 THE WITNESS: Sure. I mean, it's an excellent
13 point. The size of that population is -- you know, the size
14 of the population is a consideration in a community of
15 interest. It's not just the size. There could be very
16 small communities that are very strong communities of
17 interest; big communities that are pretty loose.

18 But if I think about local areas in concentrations
19 of people who need to migrate from certain parts of the city
20 to commute each day, they all face the same battle of how to
21 get in and out of the city.

22 So aside from the size, which is -- it's small
23 by -- in context of New York, but it's large in context of
24 the size of Staten Island, it's a community of interest that
25 is going into and out of the city every day.

1 THE COURT: Thank you.

2 THE WITNESS: Thank you.

3 MR. FASO: Let's go to the next slide.

4 BY MR. FASO:

5 Q. So this is where Manhattanites work, people who live in
6 Manhattan. What does this slide depict?

7 A. Sure. So, again, we start from the top, kind of in
8 decreasing numbers and percentages, compared to Brooklyn,
9 compared to Staten Island, a much higher percent, you know,
10 nearly 70 percent of people who live in Manhattan work in
11 Manhattan. You see that 532,000 number there, it corresponds to
12 the 68 percent.

13 As you go down from there, there is a smaller number,
14 we saw a number of -- 400-some-thousand that go from Brooklyn
15 into the city, you see a smaller number, but it's still a
16 significant number that go from Kings County, you know, go from
17 New York over into Brooklyn, a similar number the way we just
18 looked at for Staten Island.

19 As you go down further, you can see there are some
20 different parts of the New York Metropolitan area. Again, you
21 see at the very bottom Richmond County, Staten Island, there is
22 a large number, you know, 50-some-thousand, almost 60,000 that
23 go from Staten Island up into the city. It should be no
24 surprise to you that few people go from Manhattan down into
25 Staten Island to work every day.

1 MR. FASO: Let's go to the next slide, please.

2 Q. So now we're focusing on Staten Island?

3 A. Yes.

4 Q. Describe for the Court what is depicted on this slide.

5 A. So, again, you start from the top, you can see there is
6 128,000 workers, you can see roughly half of these folks -- just
7 under half of them stay in Staten Island to work. You've got a
8 large number -- Kings County, you got 18-some-thousand that go
9 over to Brooklyn to work every day. And you can see as you work
10 your way down the list, you also have Queens County, Nassau,
11 Suffolk. And it's notable, you go all the way down, you see
12 New York County and Bronx, Middlesex, and so forth as you go
13 down.

14 So the conclusion from this is, you know, the majority
15 of the people who, you know, work in Staten Island, you know,
16 live and work in Staten Island.

17 MR. FASO: Go to the next slide, please.

18 Q. What is depicted on this slide?

19 A. Right. So, again, this is just looking at the same
20 picture the other way around, where do Staten Islanders work?
21 So you can see here that the highest number, again,
22 Staten Island people that are going somewhere to work besides
23 home is up to New York, they're going up to Manhattan. As you
24 work your way down, you see a very large number, 43,000.

25 Just, again, a little bit less than Manhattan going

1 over into Brooklyn, and then you see declining numbers for the
2 other counties in and around New York City.

3 Q. And almost an equal number of Staten Islanders work in
4 Staten Island as commute to Manhattan?

5 A. That's correct.

6 Q. I think that's the last -- is there one more slide?

7 A. If I can add, on the bottom, just as a basis of
8 comparison, I think it's useful as a demographer that not all
9 adults are employed. It's a population, but it's not the only
10 population.

11 So on these slides, for example, I like to show at the
12 bottom that the adult population in Staten Island is roughly
13 400,000 in population.

14 So when you look at the workforce, that's something
15 just slightly more than half of the workforce. There is many
16 other adults in Staten Island not in the workforce that we need
17 to consider here.

18 Q. What is your opinion here with respect to communities
19 of interest, based on your analysis of this workforce data?

20 A. Yeah. So, you know, it's a surprise to me that there
21 are more Staten Islanders as a community of interest, as a
22 group, that are going up into New York than is the capacity of
23 the Staten Island Ferry. So it suggests to me that there are
24 other ways that people from Staten Island are getting up to
25 Manhattan.

1 This also tells me that there are large numbers of
2 people that are interconnected with and are going over to work
3 in Brooklyn, which is obviously a much closer and easier commute
4 than people trying to get all the way up to Manhattan.

5 Q. If I'm reading this correctly, there are far more
6 Staten Islanders who work in Staten Island and Brooklyn than who
7 work in New York County?

8 A. Correct.

9 MR. FASO: Okay. We can take down this exhibit,
10 please.

11 Q. Let's move on to core retention.

12 MR. FASO: Can we put page 60 of his report up,
13 please.

14 Q. What is core retention?

15 A. Core retention is a concept in traditional
16 redistricting criteria that says that the cores of existing
17 districts considering other redistricting criteria should be
18 maintained. The reality is that any existing redistricting plan
19 is a starting point for future redistricting plans done during
20 redistricting.

21 Q. Core retention tells us how much people are being moved
22 between districts, right?

23 A. That's correct. It's two parts. It says how many are
24 retained and stay in the same district that they were in
25 previously. A second number is how many are moved into

1 different districts.

2 Q. Let's look at Table VII.B.1 on page 63.

3 You analyzed core retention under Mr. Cooper's
4 illustrative plan; is that right?

5 A. I did.

6 Q. And the results of your analysis are depicted in
7 Table VII.B.1?

8 A. Yes, they are.

9 Q. Describe to the Court your conclusion about core
10 retention with respect to the illustrative plan.

11 A. Again, I understand this is a large and colorful table
12 but I'll try to break it down.

13 Each one of these columns represents a different
14 population. Core retention has traditionally been measured as
15 just the total number of people that are moved between different
16 districts.

17 In a series of cases we've been involved in, there were
18 questions about whether different racial or ethnic groups were
19 being moved in order to satisfy the population equality
20 standards that were required by the courts, which is why we
21 developed this approach that enables us to look at each one of
22 the individual racial and ethnic groups in addition to the
23 total.

24 Reading from the top, what this tells us is for
25 District 10, how many people in Cooper's plan were -- compared

1 to the existing plan, how many people were retained, and how
2 many people were moved.

3 Similarly, in the rows below in District 11, how many
4 were retained, how many were removed.

5 And then in total -- and this is illustrative when
6 you're doing a plan that has multiple districts, we always like
7 to summarize it and say, "In total, how many people are impacted
8 by these moves?"

9 At the bottom, what I share are the percentages, or the
10 relative percentages of those populations.

11 Q. What is the population that is moved most significantly
12 under the illustrative plan?

13 A. Right. So when you were looking at the absolute
14 numbers of the population, the biggest -- numerically, the
15 biggest number of the population, by far, are White
16 non-Hispanics. And there are many more White non-Hispanics that
17 are moved from D-10 into D-11 than are moved from D-11 back into
18 D-10.

19 Q. What about minority groups?

20 A. Sure. So proportionally speaking, there is -- you
21 know, commensurate with the large numbers of the White
22 non-Hispanics that are moved, there are large percentages that
23 are moved. When we look at Blacks non-Hispanics, what we
24 see -- especially with D-11, I draw your attention to the red
25 square in the middle, is that essentially the Black non-Hispanic

1 population, very little of that was moved, an extraordinarily
2 high retention rate.

3 There is no standards to this. But when you say that,
4 you know, 85 or 90 percent of the population is retained, that's
5 the majority -- a vast majority of the population is retained.

6 By comparison, when we look over at the Asian
7 population, we see that there is very large numbers of the
8 Asians who were moved.

9 So, for example, I draw your attention to the number 2
10 blue circle, so in D-11 what this says is that nearly 60 percent
11 of the Asian population was moved out of D-11 in this process.

12 When you go down to the circle that has the number 3 on
13 it, what that says is that in totality, about half of the Asian
14 population were moved.

15 What's notable about that number, again, as you look
16 across the bottom row, is that compared to Black non-Hispanics,
17 there is twice as many Asians who were moved and significantly
18 more Asians who were moved than in total for White non-Hispanics
19 or for the Hispanics, which are in the far right row.

20 Q. In your opinion, does Mr. Cooper's illustrative map
21 satisfy the principle of core retention?

22 A. My assessment of the core retention is that there were
23 vast numbers of the population who were moved. I'll just say as
24 a summary static, there is roughly one-third of the population
25 that were moved in order to generate two percentage points of

1 change in District 11, which was the district that I understood
2 he was seeking to remediate to increase their voting strength
3 there.

4 So the -- the size of these moves for such a small
5 change in the number of Black and Hispanics does not meet the
6 concept of core retention in my opinion.

7 Q. Okay. Let's move on to political performance. That
8 could be page 64 of the report, please.

9 Why did you assess political performance?

10 A. I think having an understanding of the context, the
11 history, and the landscape of the political performance of this
12 area is important to understanding how these districts have
13 performed individually and in relationship to each other, and
14 also to understand what the political impact are of any proposed
15 illustrative districts.

16 Q. You assess the political performance of the current
17 district and also the illustrative plan, right?

18 A. I do. The historic districts also preceding the 2020
19 redistricting cycle.

20 Q. And just briefly for the Court, how did you assess the
21 political performance of a district that is yet to be created of
22 the illustrative plan?

23 A. Sure. So we have access to the voting statistics by
24 voting precinct from the State of New York. So what we did is
25 we took the individual precincts and then we aggregated them for

1 the -- the state-level and the federal-level races. So we
2 basically replicated what the illustrative plan would be, using
3 the individual precincts. Some of these were the same,
4 obviously for Staten Island; the precincts that represent
5 Manhattan and Brooklyn, those were traded out.

6 Q. I just want to try to move quickly through this. Can
7 we do Figure VIII.A.1 on page 65. I just want to look at the
8 prior elections that you have listed in your report.

9 And just describe for us what you observed with each of
10 them, and this is the 2018 House results for the New York City
11 area. And what is depicted in this figure here?

12 A. So what this is illustrating is the configuration prior
13 to the 2020 redistricting in the 116th Congressional cycle of
14 the 13 congressional districts in and around the City of
15 New York. And what it demonstrates is that every one of these
16 districts was won by a Democrat in the 2018 race.

17 Q. Let's go to Figure VIII.B.1 on page 66.

18 A. Sure.

19 Q. This is the 2020 race?

20 A. It is.

21 Q. And what did you observe in this election?

22 A. Right. So in this race, again, this was held under the
23 same boundaries as the 2018 race. Redistricting had not yet
24 taken place here.

25 And so what we see is that one of these races in the

1 11th was won -- that was won by a Republican,
2 Nicole Malliotakis.

3 Q. Otherwise a landslide for the Democrats?

4 A. So there is still -- 12 out of the 13 districts that we
5 addressed are still controlled by Democrats in 2020.

6 Q. Let's go to Figure VIII.D.1 on page 70. What did you
7 find for the 2022 US House results?

8 A. Similar to the 2020, in the 13 districts, you've got
9 one Republican-performing district with
10 Representative Malliotakis, and then you have Democrats
11 performing across the rest of the city.

12 Q. Now, you also assessed the political performance of
13 Mr. Cooper's map, as you said?

14 A. I did.

15 Q. Let's go to that discussion on page 71.

16 (Senior Court Reporter Karen Perlman was replaced
17 by Senior Court Reporter Monica Hahn.)

18 (Transcript continues on the following page.)
19
20
21
22
23
24
25

1 Q. Perfect.

2 What did you find about Mr. Cooper's plans in his
3 political performance?

4 A. Would it be possible to zoom in just a little
5 further to the table, please? Thank you very much.

6 So what I did here is I evaluated the 137
7 precincts from D-10 to D-11 and my assessment here was what
8 percent democrat were the precincts that were moved from
9 District 10 to District 11.

10 What I found is that those precincts were
11 almost uniformly, extremely high performing democratic
12 districts.

13 Conversely, when I look at the districts that
14 were swapped to from District 11 back out to District 10,
15 what I found is that in the Presidential and US House races
16 there was approximately 42 percent democrat or previously
17 half the percent democrat in those, and a little bit higher,
18 about 47 percent in the U.S. senate. So there is a very
19 strong political difference in the precincts that were moved
20 from 10 to 11 compared to the ones moved from 11 to 10.

21 Q. Let's move to Figure 8E1 on Page 72. Can we zoom
22 in a little bit, please.

23 A. Thank you.

24 Q. What is depicted on this figure?

25 A. So this is a map I put together that shows the

1 percent republican highlighted in red versus the percent
2 democrat that is highlighted in blue. I believe this was
3 for the 2024 race, and I believe this is showing the voting
4 precincts, and so what the map is showing is with the kind
5 of bright green line going from the northwest to the
6 southeast, this is the existing boundary. It is roughly
7 along 61st, I think. As you go through Brooklyn, it divides
8 the 10th and 11th, north and south.

9 I also add a purple line there to enable the
10 reader to see what is happening with Mr. Cooper's
11 illustrative 11 is going up the Hudson River across the top
12 end of the lower part of Manhattan.

13 What you can see from this map is that in the
14 southern part of Brooklyn, kind of the southeastern part
15 there, that there are concentrations of, very high
16 concentrations of republican voters, and obviously with the
17 draw of this purple line all of those voters are gone, then
18 replaced by this area in Manhattan which is almost 100
19 percent as we saw on the table democratic voters.

20 Q. Thank you.

21 Let's focus on the draw in Manhattan. Can we have
22 demonstrative label democrat share of votes 2024 Manhattan?

23 THE COURT: You've been going an hour. How are
24 you doing?

25 THE WITNESS: I'm doing good, sir.

1 THE COURT: Everyone else okay?

2 THE WITNESS: Thank you.

3 (Displayed in open court.)

4 Q. Okay. Did you prepare this document?

5 A. I did.

6 Q. And what data did you use to prepare it?

7 A. So this is a zoomed in map similarly using precinct
8 level analysis of percent democrat to percent republican
9 from New York election data focused in on the southern part
10 of Manhattan.

11 Q. Is it a fair and accurate representation of the
12 political performance data you analyzed in your report?

13 A. It is.

14 Q. Do you believe it will help the court understand
15 your testimony?

16 A. I believe it does.

17 MR. FASO: May we proceed in using the
18 demonstrative?

19 MS. WITTSTEIN: No objection.

20 THE COURT: Proceed.

21 Q. What is depicted here, Mr. Bryan?

22 A. So this -- zoom in. Map shows the precincts level
23 democratic performance southern Manhattan. You can see
24 there is the northern boundary by both plans and all of the
25 precincts up to and approaching that northern boundary are

1 very heavily democratic. There are some concentrations of
2 lighter blue. The blue represents 50 to 75 percent
3 democratic voters. So those concentrations slightly less
4 democratic voting strength are concentrated on the lower
5 west side and then also then in Chinatown, couple of
6 precincts down on the Lower East Side.

7 Q. What does it show by, about the political
8 performance of Chinatown?

9 A. So it shows that there, relative to the rest of
10 lower Manhattan, that Chinatown has relatively lower
11 performing precincts for democrats than the remainder, than
12 this part of Manhattan.

13 Q. So the portion of lower Manhattan Mr. Cooper carved
14 out is the lowest performing for democrats?

15 A. It appears so, yes.

16 Q. As a redistricting expert, any logical explanation
17 for the courses of Mr. Cooper's draw carving out Chinatown?

18 A. I understand the selection of Chinatown and
19 potentially a community of interest, but this draw doesn't
20 just include Chinatown, it includes numerous blocks that go
21 outside of Chinatown, kind of down to the southwest that
22 have highly irregular moves, block by block that contain
23 other relatively low performing democratic precincts as
24 well. I studied different layers of geography to come up
25 with potential explanations with those draws. I was unable

1 to identify what would explain those lines going where they
2 did in this plan.

3 Q. Thank you, Mr. Bryan. We're finished with this.

4 Your conclusions are explained in detail in your
5 report. I'm not going to have you go through all of them
6 here, but just ultimately, in your opinion, is Petitioner's
7 illustrative map superior or inferior to the existing plan?

8 A. By the law of the New York Constitution --

9 MS. WITTSTEIN: Objection, your Honor.

10 THE COURT: Hold on.

11 State your objection?

12 MS. WITTSTEIN: He's stating once again, I
13 think getting into legal conclusions, saying that it is
14 inferior based off the laws of the New York
15 Constitution.

16 THE COURT: Sustained.

17 Rephrase.

18 Q. Just answer based on the redistricting principles
19 that we've discussed during your testimony?

20 A. Based on the traditional redistricting criteria
21 that I used in the framework I used to assess Mr. Cooper's
22 plan, no.

23 Q. You said you assess Mr. Cooper's plan? I didn't
24 hear?

25 A. Just please restate the question.

1 Q. My question is, in your opinion, is Mr. Cooper's
2 map superior or inferior to the existing plan?

3 A. It is inferior to the existing plan.

4 MR. FASO: Thank you.

5 THE WITNESS: Thank you.

6 MR. FASO: I pass the witness.

7 THE COURT: Let's take a five minute break.
8 Let the witness stand down.

9 Don't speak with your attorneys about your
10 testimony while we're on break.

11 THE WITNESS: Crystal clear. Thank you, sir.

12 (Whereupon, the witness steps off the stand.)

13 (Whereupon, a short recess is taken.)

14 THE COURT: Let's go back on the record.

15 MS. MILLER: For the benefit of the court
16 report, I'm Lauren Miller, for the
17 intervenor-respondents.

18 CROSS-EXAMINATION

19 BY MS. MILLER:

20 Q. Good afternoon, Mr. Bryan.

21 A. Good afternoon.

22 Q. I know you've up there for a while. I'll keep the
23 questions brief.

24 I believe I heard you said you reviewed the
25 petition, in this case?

1 A. Sorry, can you speak a little louder?

2 Q. Did you review the petition, in this case?

3 A. I did.

4 Q. Is it your understanding that petitioners seek to
5 combine what they call communities of interest --

6 A. Yes.

7 Q. -- Staten Island with lower Manhattan? Great.

8 I would like to pull up the demonstrative that you
9 talked about respondents counsel a little bit ago with the
10 Manhattan workers. Great.

11 So you testified about those who live in Staten
12 Island and 59,000 a little over that work in Manhattan; is
13 that right?

14 A. That is correct.

15 Q. Okay. Do you have any reason to believe that all
16 59,000 plus work in the proposed congressional district that
17 Mr. Cooper has created?

18 A. I have no way of knowing that. My instinct and
19 that alone would say probably not.

20 MS. WITTSTEIN: Objection, your Honor. I
21 think he said he has no fact basis for knowing that. It
22 is purely speculative.

23 THE COURT: I'll allow the answer.

24 Q. Thank you. Even if the 59,000 people who work in
25 Manhattan, live in Staten Island were considered a community

1 of interest to some extent, there is no reason to think that
2 most or even half of these people are working in
3 Dr. Cooper's demonstrative CD-11?

4 A. That is correct.

5 Q. Great. Okay. Let's talk about -- we can take this
6 down. Thank you.

7 I would like to talk about the Asian population in
8 Staten Island now. I believe you said the Asian population
9 is growing; is that right?

10 A. It is significantly fastest growing population in
11 the region and in fact the Asians in Staten Island are the
12 fastest growing among the Asian population.

13 Q. Is the same true of lower Manhattan?

14 A. No, it is not.

15 Q. What about the Asian population in Brooklyn?

16 A. The Asian population in Brooklyn is also growing
17 and changing but not at the same rate that it is in Staten
18 Island.

19 Q. Okay. Are there differences between the Asian
20 population in Staten Island and the Asian population in
21 lower Manhattan?

22 A. Yes, there are. It is a dynamic population. They
23 have been growing and changing in Staten Island very rapidly
24 and very recently in the last four to five years there has.
25 Been significant growth of the Chinese population in Staten

1 Island. Staten Island historically was a very strong Sri
2 Lankan population, Bangladeshi, some Pakistani. They also
3 had some Cuban population from which there representative
4 was from. That Chinese population has --

5 THE COURT: Wait. She is not from there. She
6 is --

7 THE WITNESS: Her parents, one of her parents.

8 THE COURT: Thank you.

9 THE WITNESS: Thank you for the clarification.

10 A. One of her parents is from Cuba and there is a
11 Cuban population in Staten Island. There are some neighbors
12 in Staten Island, most notably Midland, New Dorp, along the
13 coast, just south of where the Verrazzano Bridge is where
14 the Chinese population has grown significantly in the last
15 five years.

16 Q. Does it make sense to combine the Asian community
17 in Staten Island with the Asian community in lower
18 Manhattan?

19 MS. WITTSTEIN: Objection, your Honor.

20 THE COURT: Sustained.

21 Rephrase.

22 Q. In your opinion, is there a community of interest
23 between the Asian population that can be linked with the
24 Staten Island and lower Manhattan populations? Or are they
25 different enough that it doesn't make sense to bring them

1 together?

2 MS. WITTSTEIN: Objection.

3 THE COURT: Sustained.

4 Answer the first question. Do you need that
5 read back?

6 THE WITNESS: Yes. Please read it back.

7 THE COURT: Would the court reporter please
8 read the first question.

9 THE WITNESS: Thank you.

10 (Whereupon, the record was read back by the
11 reporter.)

12 A. The current Asian population of Staten Island is
13 different than the Asian population in lower Manhattan, and
14 if that were the only criteria for defining a community of
15 interest would not make sense to combine those two.

16 Q. Okay. What about the Latino populations in lower
17 Manhattan and Staten Island, are there differences between
18 those two communities?

19 A. Yes, there are.

20 Q. What kind of differences?

21 A. So in Staten Island, um, the Latino, Hispanic and
22 Latino I use the terms interchangeably here, it is almost
23 exclusively Puerto Rican here. When you look at Manhattan,
24 the Hispanic population is different. When you look at the
25 southern Manhattan, there is a combination of Puerto Ricans,

1 as well as the Dominicans, and then you have different
2 sorry -- rephrase. There are combinations of the Puerto
3 Ricans and Mexicans, and you have larger concentrations of
4 Dominicans on the upper west side.

5 So there is different types of Hispanics that
6 are in different parts of the city. The relevant difference
7 with lower Manhattan is that there are more enclaves of
8 Mexican population, especially around Battery Park.

9 Q. Thank you. And does Dr. Cooper's proposed map
10 extend the 11 Congressional District additional miles to
11 reach out to Staten Island than it currently is from
12 Brooklyn?

13 A. Yes.

14 Q. And if you have to combine Staten Island to another
15 place separated by water, is it reasonable to disregard that
16 distance between Staten Island and the place that it is
17 combined to?

18 A. I didn't hear you very well. One more time.

19 Q. If you have to combine Staten Island to another
20 place separated by water, is it reasonable to disregard the
21 distance between Staten Island and the place that is going
22 to be combined to?

23 A. The -- in the context of compactness one should
24 always consider the distance of the different pieces of
25 geography to each other.

1 Q. Why is that?

2 A. Because it is important to understand the
3 connectivity of the communities of interest and the ease
4 with which those communities can interact with each other.
5 It also is relevant besides the population compactness to
6 the geographic compactness to the area.

7 THE COURT: When you talk about communities
8 earlier and described the ferry basically being about
9 the same time as driving, even though the distance is
10 more --

11 THE WITNESS: That's correct.

12 THE COURT: -- by car then by ferry, should we
13 take that into consideration even though the time frame
14 is the same?

15 THE WITNESS: Yeah, so, I look at the time that
16 it takes for residents of Staten Island to get to
17 Manhattan as a balance, weighing the pros and cons of
18 getting back and forth between those locations.

19 If you do it by ferry, you are obviously a
20 pedestrian. You don't have your car when you get there.
21 If you do it with a car, you do.

22 I weight that when we are talking about the
23 distance and these communities of interest. If that is
24 a, let's take Brooklyn for example, if you are somewhere
25 in Brooklyn, obviously you are going from Manhattan

1 through Brooklyn, you have to go all the way through
2 Brooklyn before you go over the Verrazzano-Narrows
3 Bridge to get to Staten Island. So it is a longer
4 connect to go from Manhattan to Brooklyn relative to
5 going from Manhattan to any route to get down to Staten
6 Island.

7 THE COURT: Thank you.

8 MS. MILLER: Thank you. Those were all my
9 questions we were going to talk about how long it takes
10 to get place to place.

11 THE WITNESS: I didn't mean to do that.

12 THE COURT: Neither did I.

13 MS. MILLER: We're all speeding it up it is
14 okay.

15 Q. So it takes longer to get, from Staten Island to
16 lower Manhattan than it would to get to Brooklyn?

17 A. Yes.

18 Q. Okay. And does that distance, is it relevant to
19 communities of interest?

20 A. The distance between different communities of
21 interest is relevant in every regard. The basic concept of
22 a community of interest is that it is geographically, you
23 know, geographically concentrated with similar needs,
24 beliefs and values and interests, and you can have identical
25 populations that that, exhibit those characteristics. You

1 can take Asians from New York or you can take Black African
2 Americans. You can take Hispanics from New York that have
3 identical characteristics in needs and values and beliefs as
4 those same people in other states. Doesn't mean they are
5 community of interest because they could be separated by a
6 thousand miles.

7 So the proximity of these people to each other
8 and especially a very densely concentrated place like New
9 York is important to determining whether a community is
10 geographically concentrated, you can identify them or not.

11 MS. MILLER: That is very helpful. I think
12 those are all of my questions. So, thank you.

13 THE COURT: Thank you.

14 MS. WITTSTEIN: Your Honor, before I begin
15 cross-examination, can I get clarity how late we can go
16 today? I don't have too much, but probably past four.

17 THE COURT: I have an allocution at 4:15.

18 MS. WITTSTEIN: Okay.

19 THE COURT: We can -- I can go until about
20 4:30, 4:40. The allocution shouldn't take more than 15
21 minutes. If it is something that we need to step back,
22 I don't know if it is a virtual or not -- virtual. So
23 you can all participate, you can sit there. We'll do
24 the allocution and then continue. I'll go as long as we
25 can today, but let's say hard stop 4:30.

1 MS. WITTSTEIN: Okay. Thank you.

2 CROSS-EXAMINATION

3 BY MS. WITTSTEIN:

4 Q. Good afternoon, Mr. Bryan?

5 A. Good afternoon.

6 Q. This is Nicole Wittstein. I represent the
7 petitioners, in this case. I would like to begin by talking
8 about the scope of your engagement, in this case, okay?

9 A. Yes.

10 Q. So you were retained to respond to the expert
11 report submitted by Mr. Cooper, petitioners expert, right?

12 A. I did.

13 Q. In this case, you responded only to Mr. Cooper's
14 analysis, correct?

15 A. I do.

16 Q. You did not review Max Palmers report to come to
17 your conclusions in the case?

18 A. I read the reports of the other experts. I didn't
19 consider them in my report.

20 Q. So you weren't retained to examine racial voting
21 patterns within the 11th Congressional District, right?

22 A. That's correct.

23 Q. And you offer no opinion on whether this
24 racially-polarized voting in Congressional District 11 or
25 the illustrative map, right?

1 A. I do not.

2 Q. You also did a review the report of Tom Sugrue in
3 this case, correct?

4 A. I briefly reviewed it. I did not read it in detail
5 or respond to it.

6 Q. You didn't examine whether under the totality of
7 the circumstances Black and Hispanic voters on Staten Island
8 have an unequal opportunity to elect their candidates of
9 choice?

10 A. I did not. I was not asked to.

11 Q. You have no opinion on that issue?

12 A. I do not.

13 Q. I would like to begin with the demographic analysis
14 you conducted of the existing map and Mr. Cooper's
15 illustrative map, okay.

16 So the first thing you looked at was how
17 Mr. Cooper's illustrative map changed the racial composition
18 of Congress District 11, right?

19 A. Yes, I did.

20 Q. And to be clear, your report included both total
21 population numbers and citizen voting age population or
22 CVAP, right?

23 A. Yes, it did.

24 Q. To be clear, make sure our terminology is clear,
25 CVAP essentially refers to the portion of the population

1 that is eligible to vote, correct?

2 A. The population that is potentially eligible to
3 vote. That population we think of as being an outer
4 universe, can also be limited by things such as, you know,
5 incarceration, felony, disenfranchisement, other things. It
6 is the broadest possible universe of people who can possible
7 vote.

8 Q. Understood. Now, your report compares the racial
9 makeup of Mr. Cooper's illustrative map to the 2024 plan,
10 correct?

11 A. It does, yes.

12 Q. It doesn't compare it to the plan that the
13 legislature had before it when it first went about
14 redistricting in 2021?

15 A. The report does not have that. I did do that
16 analysis through a series of events in my analysis.

17 Q. Okay. Let's recap. I know you went through on
18 direct-examination the changes in the population
19 demographics between those two maps. I want to quickly
20 recap?

21 A. Sure.

22 Q. You found that the illustrative map would increase
23 the White non-Hispanic population in CD-11 by 2.6 percent?

24 A. The CVAP population was up, that's correct, about
25 2.6.

1 Q. And would increase the Black CVAP population by 1.1
2 percent?

3 A. That's correct.

4 Q. And Hispanic CVAP by .9 percent?

5 A. That sounds right.

6 Q. It would decrease the Asian CVAP by 4.6 percent,
7 correct?

8 A. That's correct.

9 Q. Let's talk about how exactly those changes came
10 about.

11 I would like to call up Figure 411 from Page 36 of
12 Mr. Bryan's report.

13 Mr. Bryan, do you recognize this figure from your
14 report, I believe you discussed on direct-examination?

15 A. Yes, I did.

16 Q. Now, this figure specifically shows the differences
17 in the boundaries between Congressional Districts 10 and 11
18 in the 2024 map, as well as, Mr. Cooper's map, correct?

19 A. That's correct.

20 Q. So the outer black line basically shows that
21 Mr. Cooper's map would not affect any districts in New York
22 beyond Districts 10 and 11, correct?

23 A. That's correct, yes.

24 Q. Now, the green line is the current divide between
25 the districts under the 2024 map?

1 A. Yes, that's correct.

2 Q. And the purple line is the divide between the
3 districts under the Cooper map, correct?

4 A. That is correct.

5 Q. Now, you agree with me that both maps contain all
6 of Staten Island, right?

7 A. Sorry. You spoke just quickly. Can you say it one
8 more time.

9 Q. Common issue, Mr. Bryan.

10 Both maps contain all of Staten Island, correct?

11 A. They do, yes.

12 Q. And you agree with me that Staten Island comprises
13 the majority of the population of the 11th Congressional
14 District under either map, right?

15 A. That is correct.

16 Q. But Staten Island's population alone is not enough
17 to constitute it's own congressional district?

18 A. It is not close.

19 Q. So it has to be the case that Staten Island needs
20 to join with some other borough in order to form a complete
21 congressional district under total population requirements?

22 A. It does.

23 Q. The only difference between these two maps is that
24 the 2024 map joins Staten Island with Brooklyn whereas the
25 Cooper map joins Staten Island with Manhattan, right?

1 A. That is correct.

2 Q. So all of the White, Black, and Hispanic voters
3 added to the illustrative Congressional District 11 come
4 from the lower Manhattan segment of the district, right?

5 A. That is correct.

6 Q. And the reduction in the Congressional District 11
7 Asian population is the product of moving several neighbors
8 in Brooklyn such as Bath Beach and Bensonhurst into
9 Congressional District 10, correct?

10 A. That is correct.

11 Q. Now, I notice in your report which is in evidence
12 that you were very critical of the reduction in Asian
13 population under the illustrative map; is that right?

14 A. Yes.

15 Q. In fact, you even express some concerns about
16 whether that impacts Asian voters representational rights?

17 A. Yes.

18 Q. But I just want to be clear about one thing, you
19 are not a lawyer, right?

20 A. I am not a lawyer.

21 Q. And you have not analyzed whether Asian voters
22 would be unable to elect candidate choice in Congressional
23 District 11?

24 A. I have no idea.

25 Q. Also have not analyzed whether Asian voters would

1 be unable to elect their candidate of choice in
2 Congressional District 10?

3 A. That is correct.

4 Q. You have not conducted ecological inference to
5 determine whether Asian voters are even cohesive in this
6 area to begin with?

7 A. That is correct.

8 Q. You don't know how to perform those kind of
9 analysis, right?

10 A. That is correct. I am not a political scientist
11 and I have no opinion on that.

12 Q. Thank you. While we are on the subject of Asian
13 voters, I want to pivot and talk about communities of
14 interest, okay?

15 A. Sure.

16 Q. Now, one of Mr. Cooper's conclusions that you
17 criticized is that the illustrative map improves upon the
18 2024 map by uniting Chinese American communities in
19 Bensonhurst, Brooklyn -- Bensonhurst, Bath Beach, Sunset
20 Park and Chinatown all into Congressional District 10,
21 right?

22 A. That's correct.

23 Q. Mr. Cooper described these neighborhoods as
24 forming a community of interest, right?

25 A. That's correct.

1 Q. You disagree with that conclusion, correct?

2 A. I do.

3 Q. I want to talk about the reasons you disagree with
4 that conclusion, okay?

5 A. Thank you.

6 Q. One reason you disagree is you put in your report
7 is that the illustrative map unites part of lower
8 Manhattan's Chinatown with discontinuous Sunset Park; is
9 that right?

10 A. That is correct.

11 Q. But you are aware, Mr. Bryan, that Chinatown and
12 Sunset Park are already connected in Congressional District
13 10 under the 2024 map?

14 A. Yes, I understand that.

15 Q. So the illustrative map makes no changes to the
16 10th Congressional District in this regard?

17 A. That is correct. That would -- when I said it was
18 discontinuous I meant that it was geographically distant and
19 separated from Chinatown. They are not adjacent pieces of
20 geography. I am aware they are in the same district.

21 Q. Thank you. Now, your second critique is that the
22 predominantly Chinese neighbors in southwest Brooklyn are
23 two different from Sunset Park and Chinatown to constitute
24 community of interest, right?

25 A. Yes.

1 Q. Now, as one example, you note in your report, I
2 believe you stated on direct-examination that the median
3 income in Bensonhurst is higher than in Sunset Park and
4 Chinatown, right?

5 A. Significantly.

6 Q. You also note that despite their predominantly
7 Chinese population, Bensonhurst is majority White whereas
8 Sunset Park is majority Hispanic, right?

9 A. That's correct.

10 Q. Something I did not see if your report is any sort
11 of personal account from members of the Chinese American
12 community in this neighborhood to tell whether they believe
13 they share a community of interest with Sunset Park or
14 Chinatown, do you disagree with that?

15 A. That's correct.

16 Q. Like to call up Williams Exhibit 10 which is
17 already admitted into evidence.

18 Mr. Bryan, to form your conclusions in this case,
19 did you research evidence that was presented to the
20 independent redistricting commission about communities of
21 interest in Staten Island and Brooklyn?

22 A. I am so sorry. A little bit slower I am having
23 trouble keeping up.

24 Q. Of course, Mr. Bryan. I apologize to you and the
25 court reporter?

1 A. I apologize.

2 Q. When you were conduct being research to form your
3 conclusions in this case, did you look into or consider
4 evidence that was presented to the Independent Redistricting
5 Commission about communities of interest in this area?

6 A. Yes, I did.

7 Q. You did?

8 A. I did.

9 Q. Did you review the letter put up on the screen here
10 as Williams Exhibit 10, a letter to the IRC by Dr. Wah Lee?

11 A. I did not review this letter.

12 Q. So this didn't come up when you were looking at
13 evidence from the Independent Redistricting Commission?

14 A. If I may, I reviewed the documents that were in the
15 inventory of the case online and I went, and I looked at the
16 ones that were cited because of the need for speed as being
17 AALDEF, Asian American Legal Defense Education Fund, so as
18 fast as I could. I went and I looked at what they said
19 about Asian American communities of interest.

20 (Transcript continues on the next page.)

21

22

23

24

25

1 CROSS-EXAMINATION

2 BY MS. WITTSTEIN:

3 Q. I appreciate that, Mr. Bryan.

4 I would like to talk a little bit about this letter
5 that did not come up in the research that you conducted.

6 Would you agree with me that this letter was authored
7 by a member of the advisory board of an organization dedicated
8 to protecting and advancing the rights of Asian Americans in New
9 York City?

10 MR. FASO: He has no foundation to answer this
11 question. He has no personal knowledge of this letter. He
12 testified he hasn't reviewed it.

13 MR. MOSKOWITZ: I would like to state this goes
14 back to my concerns about the Dr. Lee letter. They're going
15 to use this as if Dr. Lee was here to testify. This is not
16 appropriate.

17 MS. WITTSTEIN: If I may, Your Honor? This expert
18 has stated that he conducted research to determine whether
19 there are relevant communities of interest in this area.
20 And he offered conclusions on that subject.

21 If there's an additional evidence that he didn't
22 consider that either relates to those con- -- conclusions or
23 undermines those conclusions, particularly as compared to
24 Mr. Cooper's conclusions, which is what he's here to testify
25 to, then I submit that that is -- apologies. I would say

1 that's perfectly permissible and goes to help the Court
2 determine the weight of his conclusions.

3 MR. FASO: We've established what he has reviewed,
4 and what he hasn't reviewed. And it's clear he hasn't
5 reviewed this letter. So there is no reason to ask him
6 additional questions about it, particularly given that he
7 has no knowledge of what's in this letter. And so it's
8 totally improper.

9 THE COURT: Okay.

10 MR. FASO: If you want to ask him about things that
11 he reviewed or things that are within his scope of his
12 expertise -- demographics -- that's fair game. But this is
13 far beyond. It's also beyond the scope of his direct.

14 MS. WITTSTEIN: Your Honor, if I may briefly
15 respond on that ground?

16 THE COURT: You may.

17 MS. WITTSTEIN: I think his direct examination dove
18 pretty deep into whether there are Asian American
19 communities in this area. This is directly to that topic.
20 And if Mr. Bryan doesn't think that this would impact his
21 conclusions, then he's free to say so.

22 THE COURT: I don't think this is outside the
23 scope. Understanding he hasn't reviewed this record, let's
24 just keep that in mind when we're asking questions in the
25 context of Asian American communities of interest.

1 MS. WITTSTEIN: Yes, Your Honor.

2 BY MS. WITTSTEIN:

3 Q. So, Mr. Bryan, as we were saying, I want to make sure
4 that the record is clear on this. Do you agree that this letter
5 was authored by an advisory board member of an organization
6 dedicated to, quote, advancing the rights --

7 THE COURT: Sustained.

8 Next question.

9 MS. WITTSTEIN: I'd like to call up the third
10 paragraph up from the the bottom -- I'm sorry. Go to page 2
11 of the letter, paragraph 3. I'm sorry. Paragraph 1.

12 BY MS. WITTSTEIN:

13 Q. Mr. Bryan, will you agree with me that this letter
14 suggests or offers an account that Staten Island should not be
15 joined with Bensonhurst and Bath Beach for lack of a shared
16 community of interest?

17 MR. FASO: Are we asking him to read the letter? I
18 mean, it says what it says.

19 MS. WITTSTEIN: If I may, Your Honor?

20 THE COURT: Please.

21 MS. WITTSTEIN: I'm only asking whether it affects
22 his conclusions.

23 THE COURT: I will allow it to continue. But your
24 objection is noted.

25 BY MS. WITTSTEIN:

1 Q. Mr. Bryan, do you have any reason to dispute that
2 this -- the account from this letter suggests that Bensonhurst
3 and Bath Beach should not be joined with Staten Island for lack
4 of a community of interest?

5 A. I have never seen this before. I performed current
6 demographic analysis and research that showed what the changes
7 in the Asian population are in Staten Island, in the very most
8 recent years, which show that there have been significant
9 increases and changes to these Chinese populations nearby the
10 Verrazzano Bridge easily accessible to these areas.

11 I don't believe that this letter reflects the most
12 recent demographic analysis and historic analysis. I have no
13 reason to dispute that this is an accurate reflection of the
14 history. I am not sure, and I would have to refer to the doctor
15 and her opinion on what the most current information says about
16 the connectivity of these new Chinese populations in
17 Staten Island with these existing Chinese populations in
18 Bensonhurst and Bath Beach.

19 Q. I understand, Mr. Bryan. So just to be clear, your
20 opinion was limited to demographic research only, correct?

21 A. I'm a demographer, and it is, yes.

22 Q. Of course, Mr. Bryan. So it did not include personal
23 accounts of what the on-the-ground experience is like of people
24 living in these communities?

25 A. That's correct.

1 Q. All right. Thank you.

2 MS. WITTSTEIN: We can take down the exhibit.

3 Q. I do want to discuss one more source on this subject
4 that you do cite in your report. To form your conclusions in
5 this case, you reviewed a 2023 report on communities of interest
6 in New York, correct?

7 A. That is correct.

8 Q. Would you recognize a copy of that report if it were to
9 be shown to you today?

10 A. Are you speaking to the excerpt that is contained in my
11 report, or if you just show me the report as it is from the
12 community of interest report?

13 Q. For now I'm asking if you would recognize the report
14 itself, and then we can get into the specific portions you
15 relied on.

16 A. It's a big report but I probably will.

17 Q. Thank you, Mr. Bryan.

18 MS. WITTSTEIN: I would like to call up
19 Williams Exhibit 12, and I have copies both for opposing
20 counsel and if I could hand it to the courtroom officer for
21 the witness.

22 (Handing.)

23 THE WITNESS: Thank you.

24 Can I take just one minute to --

25 MS. WITTSTEIN: Absolutely.

1 THE WITNESS: Thank you.

2 THE COURT: Off the record while he's looking.

3 (Whereupon, a discussion is held off the
4 stenographic record.)

5 THE COURT: Back on the record.

6 A. Okay. Yes. So I -- I'm familiar with the document. I
7 did not heavily rely on this. I don't think I even cited
8 statistics out of it. It was a reference point.

9 Q. Mr. Bryan, do you have any basis to dispute that you
10 cited it in paragraphs 165 to 166 of your report? Do you
11 disagree with that?

12 A. I'm so sorry. 155 and 166 of this report?

13 Q. Of your report. Sorry, lots of reports.

14 A. Can you please bring up one --

15 Q. Would you like a copy of your report?

16 A. I don't have a copy of my report with me. I'm sorry.

17 (Handing.)

18 THE WITNESS: Thank you, sir.

19 A. You referred me to 155?

20 Q. Paragraphs 165 to 166 of your report.

21 A. Okay. Thank you. Okay. Okay. This is coming
22 back -- this is coming back to me.

23 Q. So you cite certain demographic information from this
24 community of interest report in your report for this case,
25 right?

1 A. That's correct.

2 Q. And you cite specifically the chapter on Chinese New
3 Yorkers?

4 A. That's correct.

5 Q. Now, Mr. Bryan, I do presume that you read the whole
6 section on Chinese New Yorkers when drafting your report in this
7 case?

8 A. I was -- I went through this document to find
9 information to help my understanding of Chinese New Yorkers
10 rather than using the entire document.

11 Q. Thank you, Mr. Bryan.

12 Can I direct your attention to page 54 of the
13 Communities of Interest Report?

14 A. Yes. Thank you.

15 Q. Do you see where on that page -- if you need a moment
16 to get there?

17 A. Which page again?

18 Q. Page 54.

19 A. I'm getting there. This -- yes, I am on page 54.
20 Thank you.

21 Q. Do you see where in that report it discusses migrant
22 civil leaders within the Asian community in Brooklyn, the third
23 full paragraph down?

24 A. I'm reading it quickly. Yes. I -- I'm just skimming
25 it. But, yeah, I can see it.

1 MS. WITTSTEIN: And apologies, Your Honor, I
2 skipped a step.

3 I would move Williams Exhibit 12 into evidence as
4 part of this expert's underlying facts and data. And if
5 counsel would like to confine that to the chapter on Chinese
6 Americans that he discussed with you, I would be happy to do
7 that.

8 MR. FASO: No objection, but I'll just note that I
9 believe it was yesterday we had objections to doing
10 precisely the same thing. So we just hope that there's
11 consistency today.

12 THE COURT: Hearing no objection. The report is
13 admitted.

14 BY MS. WITTSTEIN:

15 Q. So, Mr. Bryan, so do you see that paragraph on page 54,
16 discussing migrant civil leaders within the Asian community in
17 Brooklyn?

18 A. Yes, I see that.

19 Q. Do you see that it discusses a Mr. John Chan, the owner
20 of The Golden Imperial Palace and the chairman of the American
21 Chinese Commerce Association?

22 A. I see -- yes, that's in the first sentence, correct?

23 Q. It is. Do you see that --

24 A. Okay.

25 Q. -- it also says that Mr. Chan founded two Asian

1 American empowerment organizations?

2 A. Okay.

3 Q. Now, this report later describes, at the bottom of this
4 paragraph, a letter that Mr. Chan submitted to a 2022 Brooklyn,
5 New York City districting commission hearing.

6 Do you see that at the bottom of the paragraph?

7 A. I do, at the August 21, 2022, section, yeah, I've got
8 that.

9 Q. And at that hearing, Mr. Chan presented the commission
10 with a petition, signed by 7,000 people, in support of
11 one district that united Sunset Park, Dyker Heights, Bay Ridge
12 and Bensonhurst, right?

13 A. I see that.

14 Q. In fact, this petition specifically cited concerns that
15 Asian Americans in these neighborhoods had been splintered? Did
16 I read that correctly?

17 A. Yes.

18 Q. And it states that splintering these communities
19 dilutes the representation and subverts their priorities and
20 concerns.

21 Do you see that?

22 A. I do.

23 Q. You didn't mention any of this testimony in your report
24 for this case about communities of interest?

25 A. No. For the sake of time that I had to do this, I got

1 as much as I could as fast as I can, yes.

2 Q. Well --

3 A. Correct. Yes.

4 Q. In this passage, this was on the page or two following
5 the demographic information you cited, right?

6 A. I believe so.

7 Q. And just to be clear, Mr. Cooper's illustrative map
8 would unite all of the neighborhoods into one congressional
9 district, right?

10 A. They would, yes.

11 Q. But the 2024 map does not?

12 A. That's correct.

13 Q. All right. Thank you, Mr. Bryan.

14 I want to stay on the topic of communities of interest.
15 You discussed on direct examination about the census data where
16 people in New York live and work and we heard a lot about that
17 today, right?

18 A. Are we done with that?

19 Q. We're done with that. You can set that aside.

20 A. I'm sorry for interrupting.

21 Q. That's all right.

22 A. All right, no problem.

23 Q. Okay. Mr. Bryan, so are we ready to talk about
24 some -- where people work and live data, right?

25 A. Yes.

1 Q. Now, you mentioned on direct examination that this
2 where people live, where people work analysis, you've done that
3 before, right?

4 A. I have, yes.

5 Q. You've done it in other cases?

6 A. Yes. Several.

7 Q. Several cases?

8 A. Yes.

9 Q. You did not do it in this case until Mr. Cooper's
10 testimony yesterday, right?

11 A. That's correct.

12 MS. WITTSTEIN: Okay. Can we please call up the
13 demo. I believe it was admitted as Respondents' Exhibit 4.
14 I might be wrong about the numbering there. Fantastic.
15 Thank you.

16 Can we go to the second page about where
17 Brooklynners work.

18 So it looks like Kevin Brown would like to --

19 THE COURT: Yes, those are probably my allocution
20 for the next matter.

21 Thank you.

22 BY MS. WITTSTEIN:

23 Q. So this particular page depicts where people who live
24 in Brooklyn work, right?

25 A. That's correct.

1 Q. Now, Richmond County is the county that includes
2 Staten Island?

3 A. Yes.

4 Q. And it shows that 1.5 percent of Brooklyn -- of
5 Brooklynners work on Staten Island, right?

6 A. That's correct.

7 Q. So it's safe to say that not all that many people are
8 commuting from Brooklyn to Staten Island to go to work, right?

9 A. That is true, yes.

10 Q. I'd like to call up Slide 6 of this exhibit where
11 Staten Islanders work.

12 Now, this slide depicts where people who live on
13 Staten Island go to work, right?

14 A. Yes.

15 Q. Now, you discussed this both on your direct examination
16 and on the follow-up examination with my colleagues for the
17 interveners.

18 Now, what is the top county for Staten Island workers?

19 A. It's New York County.

20 Q. So, Mr. Bryan, does that mean that more people on
21 Staten Island are going to Manhattan to work than any other
22 county in New York?

23 A. That's correct.

24 Q. And that includes Richmond County, which is
25 Staten Island itself, right?

1 A. That is correct.

2 Q. And Brooklyn is ranked third, right?

3 A. That is correct.

4 Q. Now, you stated on direct examination that you were
5 surprised by the number of people that were going from
6 Staten Island into Manhattan to work?

7 A. Yes, since that's based on the number of the 59,000
8 relative to the ferry capacity that we were talking about
9 earlier in the case.

10 Q. But you acknowledge that some people might be getting
11 to work through other -- through paths other than the ferry?

12 A. They -- they have to be.

13 Q. And this report doesn't account for remote jobs or
14 people who may be going into the office two or three days a
15 week?

16 A. For sure.

17 Q. Thank you.

18 And just to mirror a question that you were asked
19 before, the number of people on Staten Island who work in
20 New York County and Richmond County combined is much higher than
21 the amount that work in Kings County; is that right?

22 A. Yes. That's correct. I think when we looked at the
23 statistics for the City of New York, we saw that the jobs that
24 are in New York County, Manhattan, was vastly higher than the
25 number of people who are employees there.

1 So New York is bringing in employees from all different
2 parts of the New York Metropolitan area at a much higher rate
3 than they are going to get from individual places.

4 Q. While we're on the subject, I want to talk a little bit
5 about the methods of transportation available between
6 Staten Island and Manhattan, and Staten Island versus Brooklyn?

7 A. Sure.

8 Q. Now, you said you did that trip
9 yourself -- right? -- over the ferry?

10 A. I have, many times.

11 Q. And you said it takes about 25 minutes just to ride the
12 ferry, right?

13 A. Just -- as one part of the trip, yes.

14 Q. And you say it's faster to get into Brooklyn, correct?

15 A. For -- it is not faster. I think that I characterized
16 it as being about the same amount of -- I'm sorry. I thought
17 you were talking about going from Manhattan to Staten Island.
18 Please say the question again.

19 Q. So you stated in your follow-up examination with the
20 intervenors that it's faster to get to Brooklyn than it is to
21 get to Manhattan -- it's faster to drive to Brooklyn than take
22 the ferry into Manhattan -- I should put it that way -- is that
23 correct?

24 A. There's peak rush hour times that it can take longer to
25 get across the bridge. But generally, if you average out all

1 times of day, then it is faster to get across that bridge than
2 it is to get across the ferry.

3 Q. Well, Mr. Bryan, you anticipated my next question.

4 A. I did?

5 Q. That bridge can get pretty crowded during rush hour,
6 right?

7 A. Yes, even with 13 lanes and 2 decks, it can still be
8 quite busy.

9 Q. And rush hour in New York is little bit more than an
10 hour, isn't it?

11 A. I've been an unfortunate victim of that many times.

12 Q. So during your average work commute, it might be a
13 little faster to take the ferry than it is to take the
14 Verrazzano-Narrows Bridge?

15 A. It could -- I looked at great length for studies of the
16 different times that it took to get from different parts of
17 Manhattan by the ferry versus going across the Verrazzano Bridge
18 by times of day. New Jersey, for example, has lots of data that
19 says how much it takes you to do this. I couldn't find any
20 comparable analysis like that in New York, so I'm just speaking
21 anecdotally from my experience.

22 MS. WITTSTEIN: If Your Honor needs to break at
23 4:15, I'm about to transition to a new subject, so this
24 would be a fine place to do that.

25 THE COURT: Let's do that then. I'm going to have

1 the witness step down.

2 I'm going to release you then because I'm told that
3 my allocution is going to take 15 minutes and we would end
4 at 4:30 anyway.

5 MS. WITTSTEIN: Okay.

6 THE COURT: Let's -- this is a good time to end.

7 So let's have the witness step down. We'll pick it
8 up first thing tomorrow morning.

9 MR. TSEYTLIN: Your Honor, do you have a minute
10 before your allocution?

11 THE COURT: Sure. You want to approach? You can
12 approach.

13 (Discussion is held off the record.)

14 (Whereupon, the proceedings are adjourned for
15 January 8, 2026, at 9:30 a.m.)
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Exhibit E

Transcript
January 8, 2026

In The Matter Of:

Williams v.

BOE

Thomas Bryan D. Stephen Voss John Alford Joseph Borelli
January 8, 2026

Monica Hahn

Original File 1826Williams.txt

Min-U-Script® with Word Index

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PT. 44

-----x
MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO,
AIXA TORRES and MELISSA CARTY,

Index: 164002/2025

Petitioners,
-against-

BOARD OF ELECTIONS OF THE STATE OF NEW YORK, KRISTEN
ZEBROWSKI STAVISKY, IN HER OFFICIAL CAPACITY AS
CO-EXECUTIVE DIRECTOR OF THE BOARD OF ELECTIONS OF THE
STATE OF NEW YORK; RAYMOND J. RILEY, III, IN HIS OFFICIAL
CAPACITY AS CO-EXECUTIVE DIRECTOR OF THE BOARD OF ELECTIONS
OF THE STATE OF NEW YORK; PETER S. KOSINSKI, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF THE BOARD
OF ELECTIONS OF THE STATE OF NEW YORK; HENRY T. BERGER, IN
HIS OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF THE
BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ANTHONY J.
CASALE, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE
BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ESSMA
BAGNUOLA, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE
BOARD OF ELECTIONS OF THE STATE OF NEW YORK; KATHY HOCHUL,
IN HER OFFICIAL CAPACITY AS GOVERNOR OF NEW YORK; ANDREA
STEWART-COUSINS, IN HER OFFICIAL CAPACITY AS SENATE
MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE NEW YORK
STATE SENATE; CARL E. HEASTIE, IN HIS OFFICIAL CAPACITY AS
SPEAKER OF THE NEW YORK STATE ASSEMBLY; AND LETITIA JAMES,
IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF NEW YORK,

Respondents.

-and-

NICOLE MALLIOTAKIS; EDWARD L. LAI, JOEL MEDINA, SOLOMON B.
REEVES, ANGELA SISTO AND FAITH TOGBA,

Intervenors-Respondents.

-----x
January 8, 2026
60 Centre Street
New York, New York 10007

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HONORABLE JEFFREY PEARLMAN
Justice of the Supreme Court

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1 THE COURT: Let's bring the witness up.

2 (Whereupon, the witness takes the stand.)

3 THE COURT: Welcome back.

4 THE WITNESS: Good morning, your Honor.

5 THE COURT: You are sworn in from yesterday,
6 so without objection, we'll keep the oath the same. You
7 maybe seated.

8 Reminding you, you are under oath. I'll turn
9 on my mic.

10 THE WITNESS: Good morning.

11 THE COURT: When you are ready?

12 MS. WITTSTEIN: Nicole Wittstein for the
13 Williams petitioners.

14 Good morning, your Honor, Mr. Bryan.

15 THE WITNESS: Good morning.

16 CONT'D CROSS-EXAMINATION

17 BY MS. WITTSTEIN:

18 Q. Good morning, Mr. Bryan. I would like to resume
19 our conversation today with the subject of compactness,
20 okay?

21 A. Sure.

22 Q. I'm going to follow Mr. Faso lead from yesterday
23 and save us all a lengthy discussion of Reock, of
24 Polskby-Popper scores, so we'll keep it to this.

25 Were you present for Dr. Trende's testimony

1 yesterday?

2 A. I was.

3 Q. Did you hear him testify that there is no magic
4 number that makes a district sufficiently compact on either
5 metric?

6 A. Yes, that is correct. I heard the entire dialogue
7 and understood all of it.

8 Q. Do you agree with that?

9 A. I do.

10 Q. Did you hear Dr. Trende testify what is reasonable
11 in one place might be different in another?

12 A. That is correct.

13 Q. Do you disagree with that?

14 A. I do not.

15 Q. Great. Did you hear him testify that a reasonable
16 compactness score might vary even within different areas of
17 one state?

18 A. That is true, and I agree with that.

19 Q. I think we can move on from Reock and Polsby-Popper
20 scores then.

21 Let's turn to your discussion of the eyeball test
22 that you conducted on direct-examination?

23 A. Yes.

24 Q. So this eyeball test basically looks at whether a
25 district is oddly shaped, right?

1 A. That is correct.

2 Q. Now, you described the illustrative map as
3 elongated and irregular?

4 A. It is.

5 Q. I would like to call up Figure 5C1 on Page 47 of
6 Respondent's Exhibit 1.

7 Mr. Bryan, this is the figure from your report that
8 you discussed on direct-examination, correct?

9 A. That's correct.

10 Q. And this figure basically depicts clean silhouettes
11 of Congressional District 11 in the 2024 plan and under the
12 illustrative map?

13 A. That's correct.

14 Q. So both of these districts cross a body of water,
15 right?

16 A. Yes, they do.

17 Q. And they both capture the coastal area of a borough
18 besides Staten Island?

19 A. They do.

20 Q. So the only differential between these two
21 districts is the amount of water between the boroughs,
22 right?

23 A. There are two differences. There is an amount of
24 water and the distance from Staten Island to Brooklyn versus
25 the distance to Manhattan, plus there is the geographic

1 compactness of the section that represents Brooklyn compared
2 to the geographic section that represents Manhattan.

3 Q. So just to clarify though, in between the
4 districts, the difference is essentially the amount of water
5 or the distance of water that you have to traverse?

6 A. That is one of the differences, yes.

7 Q. Now, to conduct this eyeball test of these
8 districts, you used another district as a basis for
9 comparison, right, Mr. Bryan?

10 A. As an illustrative example, yes.

11 Q. This illustrative example you used was a senate
12 district from the State of Georgia, the one from Alpha Phi
13 Alpha case, right?

14 A. That's correct.

15 Q. I would like to call up 5C1, Page 48 of Mr. Bryan's
16 report.

17 Is this the district that you used as a basis for
18 comparison for the illustrative map?

19 A. It is.

20 Q. Mr. Bryan, this area of Georgia looks nothing like
21 Staten Island, right?

22 A. That's correct.

23 Q. And do you remember Dr. Trende testifying that
24 compactness becomes an apples to oranges comparison when you
25 go across different states and areas?

1 A. It is. And that conversation with regards to the
2 apples to oranges comparison goes across all three of the
3 different compactness measures; physical, population, as
4 well as an eyeball test.

5 In my experience, an eyeball test is something
6 that transcends different areas of geography. You can look
7 at something, any reasonable person can look at something
8 whether it is in California or Florida or Georgia or New
9 York and say that shape doesn't look right.

10 Q. Well, you didn't eyeball the illustrative map as
11 compared to the remainder of New York's congressional
12 districts, did you?

13 A. Sorry. Please restate the question.

14 Q. When you discussed this eyeball test in your
15 report, you didn't give a comparison to New York's other
16 congressional districts, did you?

17 A. I actually did. I looked, I made an assessment of
18 the what we call SLDU, the lower house, the upper house, the
19 senate districts, as well as, the congressional districts,
20 both the contemporary ones, as well as, the historic ones,
21 and in my assessment when I look, for example, at the
22 Historic District 10, the one that was in place prior to
23 2020 redistricting, that district is the one that I showed
24 the very, very low merit compactness scores for also. I
25 would also say that that district does not pass an eyeball

1 test as well.

2 So my assessment of the eyeball test was not
3 only just using this because this was subject to a court
4 order, but also an examination of other geographies in and
5 around New York.

6 Q. Well, Mr. Bryan, the only district that you know in
7 your report as a basis for comparison under this eyeball
8 test was the senate district from Georgia, right?

9 A. I'm sorry. Say the last part again.

10 Q. The only district that you mention in your report
11 as a basis for comparison for this eyeball test --

12 A. Yes.

13 Q. -- was the senate district from Georgia, correct?

14 A. Yes, that's correct.

15 Q. You did not discuss under this eyeball test in your
16 report previous configurations of this district, right?

17 A. No, I did not.

18 Q. Mr. Bryan, would you agree with me previous
19 versions of Staten Island's congressional district looked
20 very much like the illustrative map?

21 A. Previous versions have had the same configuration
22 including Manhattan, that's correct.

23 Q. I would like to call up Figure 7, Page 14 of
24 Williams Exhibit 3, Mr. Cooper's report.

25 Mr. Bryan, do you recall reviewing this map of the

1 old Congressional District 17 when you reviewed Mr. Cooper's
2 report?

3 A. I do, yes.

4 Q. And you agree with me that the old Congressional
5 District 17 combined Staten Island and lower Manhattan in a
6 congressional district from around 1972 until after the 1980
7 census?

8 A. That's correct it does.

9 Q. You don't mention this previous configuration of
10 Staten Island's congressional district in your report, do
11 you?

12 A. No, I understand that this is the configuration
13 that was in place. My assessment of the compactness of the
14 district was under the 2014 amendment, and the language in
15 that amendment says that the districts should not be
16 reasonably compact. The language in a, in the constitution
17 that I use as my basis of comparison which was after this
18 1970 to 1982 period is the district needs to be as compact
19 as practicable.

20 Q. Thank you for that, Mr. Bryan.

21 Just to make sure the answer to my question is
22 clear, you did not consider this configuration of the
23 district when measuring the illustrative map against the
24 eyeball test?

25 A. Yes. I'm aware it to be that that was the case for

1 the 1970 to '82 and I, I did not include in my report that I
2 would offer the same assessment because also does not pass
3 an eyeball test, the same configuration.

4 Q. Thank you. We can take down this exhibit.

5 I would like to call up Figure 6 on Page 13 of
6 Williams Exhibit 3.

7 Do you recall seeing this map when you reviewed
8 Mr. Cooper's report?

9 A. I did.

10 Q. And are you aware that this is the current Assembly
11 District 61?

12 A. Yes. I reviewed several of the assembly districts
13 in and around the area that are either contained by or
14 adjacent to Congressional Districts 10 and 11.

15 Q. So this is the currently operative Assembly
16 District 61 under the 2024 map?

17 A. That is my understanding, yes.

18 Q. This map spans Staten Island's north shore to the
19 lower part of Manhattan?

20 A. That's correct.

21 Q. Your report does not mention this district either,
22 does it?

23 A. No. I had sufficient time, certainly additional
24 analysis of assembly and senate districts compactness would
25 have contained in my report.

1 Q. Thank you. You can take down the exhibit.

2 Mr. Bryan, just one more thing to discuss with you.
3 We heard a lot yesterday about the fact that Mr. Cooper had
4 to correct some typographical errors in his opening report.
5 Were you present for that?

6 A. Yes.

7 Q. And you were critical of that in your report,
8 weren't you?

9 A. Yes.

10 Q. You recently had to correct your own report before
11 trial, right?

12 A. Yes.

13 Q. On January 2nd?

14 A. Yes.

15 Q. And that is because you included information in
16 your report that had been copied from a recently published
17 paper without proper attribution?

18 A. Yes, and that page in my report, there were
19 multiple attributions in the same place, including an
20 attribution to that author and that paper, and I neglected
21 to add multiple attributions for the same text from that
22 author's paper on the same page.

23 Q. So mistakes happen in fast-paced litigation like
24 this?

25 A. In the appendix of reference missing a citation to

1 me, yes, that is absolutely a mistake and I own that a
2 hundred percent. The numbers that are used to decide
3 whether a plaintiff's complainant with the law or not is the
4 most important, number is the most important information in
5 a report, and the data that I consider the most important to
6 be accurate.

7 MS. WITTSTEIN: Thank you.

8 Nothing further. I pass the witness.

9 THE WITNESS: Thank you.

10 THE COURT: Okay.

11 MR. FASO: We see no need for redirect.

12 THE COURT: Perfect. Thank you so much for
13 your testimony.

14 THE WITNESS: Thank you, your Honor.

15 THE COURT: Have a good day. Safe travels
16 back. Be mindful of the steps going down.

17 (Whereupon, the witness steps off the stand.)

18 Counsel, when you are ready, call your next.

19 MR. BRAUNSTEIN: Thank you. The
20 intervenor-respondents call Stephen Voss.

21 THE COURT OFFICER: Please remain standing.
22 Raise your right hand.

23 Do you swear or affirm to tell the truth, the
24 whole truth, and nothing but the truth?

25 THE WITNESS: I do.