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 VII OF X (PAGES 2401a - 2800a)

BENNET J. MOSKOWITZ
ELIZABETH A. LOIZIDES
TROUTMAN PEPPER LOCKE LLP
875 Third Avenue
New York, NY 10022

MISHA TSEYTLIN
  Counsel of Record
KEVIN M. LEROY
KAITLIN O'DONNELL
CARSON A. COX
LAUREN H. MILLER
DYLAN J. DEWITT
TROUTMAN PEPPER LOCKE LLP
111 South Wacker Drive, Suite 4100
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

Attorneys for Applicants

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Ruth M. Greenwood
Nicholas O. Stephanopoulos
Election Law Clinic at Harvard Law School
6 Everett Street, Suite 4105
Cambridge, MA 02138
Telephone: 617-998-1010

Counsel for Amici

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INTERESTS OF THE AMICI

Amici curiae are law professors who research, write about, and litigate using federal and state voting rights acts.

Amicus curiae Nicholas O. Stephanopoulos is the Kirkland & Ellis Professor of Law at Harvard Law School. His works on federal and state voting rights acts include *Race, Place, and Power*, 68 Stan. L. Rev. 1323 (2016), *The Race-Blind Future of Voting Rights*, 130 Yale L.J. 862 (2021) (with Jowei Chen), and *Voting Rights Federalism*, 73 Emory L J. 299 (2023) (with Ruth M. Greenwood).

Amicus curiae Ruth M. Greenwood is an Assistant Clinical Professor of Law at Harvard Law School and the Director of the Election Law Clinic, also at Harvard Law School. Her works on federal and state voting rights acts include *Fair Representation in Local Government*, 5 Ind. J.L. & Soc. Equal. 197 (2017), and *Voting Rights Federalism*, 73 Emory L.J. 299 (2023) (with Nicholas O. Stephanopoulos).

Together, Amici offer this Court a summary of the legal doctrine and academic scholarship that are relevant to evaluating Petitioners' claim for a "coalition crossover district." Amici also outline the contours of a judicially manageable standard, based on nearly forty years of federal and state jurisprudence, for this type of racial vote dilution claim.

INTRODUCTION

Over a period of several decades, courts and scholars have developed a taxonomy of the different kinds of claims and districts that may be available in voting rights cases. This taxonomy is now clear enough in federal litigation. But it continues to confuse litigants in state voting rights suits. Amici thus write with no particular outcome in mind for this case, but rather to elucidate the state of voting rights law and how best to understand Petitioners' claim here.

Amici first describe the federal courts' long and tortuous history grappling with the array of racial vote dilution claims that minority voters may bring. Misunderstandings were common for many years as courts repeatedly conflated "crossover," "coalition," and "influence" districts. By about 2009, however, consensus finally emerged as to a workable taxonomy. Federal courts now distinguish between "minority opportunity" districts in which minority voters have an opportunity to elect their preferred candidates, and "influence" districts in which minority voters have some electoral sway but *not* enough to elect their candidates of choice. In turn, the broad genus of minority opportunity districts includes three species of seats: (1) majority-minority districts in which minority voters comprise an outright majority; (2) crossover districts where minority voters can elect their preferred candidates with support from some majority voters; and (3) coalition districts where minority voters from two or more racial or ethnic groups, together, can elect their mutual candidates of choice.

Amici then address Petitioners' claim in this case. Petitioners' filings do not adhere to the above taxonomy. In a throwback to the pre-2009 era when confusion reigned among federal courts, these materials freely mix the concepts of "opportunity," "crossover," and "influence." Nevertheless, in Amici's view, the crux of Petitioners' grievance is reasonably clear. They contend that New York's Eleventh Congressional District is racially dilutive, in violation of New York's Constitution, because a "coalition crossover" district could have been—but was not— drawn in the area. A coalition crossover district is a minority opportunity district, *not* an influence district. Specifically, it is a minority opportunity district in which minority voters from two or more racial or ethnic groups, in combination with some majority voters, can elect the minority coalition's preferred candidates.

Finally, Amici set forth a legal standard for crossover claims (like Petitioners') derived from existing case law and scholarship. For a potential district to qualify as a crossover district, minority voters, not majority voters, must effectively determine which candidates prevail. Minority voters hold this level of electoral clout when their candidates of choice are typically nominated in the primary election over majority voters' preferred candidates (and when minority-favored candidates ultimately win the general election). Whether minority voters outnumber majority voters in the relevant primary election is a proxy for this degree of political strength. If possible, though, it is better to examine voters' choices (and candidates' success) than to rely on voters' raw numbers.

Again, Amici take no position on whether Petitioners can satisfy this standard for crossover claims. Amici merely seek to clarify what Petitioners are arguing and how their suit should be assessed.

ARGUMENT

I. **Federal Law Supplies a Specific Taxonomy for Racial Vote Dilution Claims that Should Be Used to Classify Petitioners' Suit.**

A. **The *Gingles* Framework Has Governed Racial Vote Dilution Claims Under the Federal Voting Rights Act ("VRA") Since 1986.**

The United States Supreme Court introduced the still-operative framework for assessing whether an electoral system (including a district plan) results in the dilution of the right to vote based on race in the seminal case of *Thornburg v. Gingles*, 478 U.S. 30 (1986). There, the Court was asked to interpret, for the first time, a newly written section of the federal VRA, Section 2, now codified at 52 U.S. § 10301 (hereafter "Section 2"). Section 2 provides that a political subdivision may not apply a voting practice that "results" in "less opportunity" for members of any racial or ethnic group "to elect representatives of their choice" on account of race. This

wording begs two questions. What is the right amount of opportunity that a racial or ethnic group should have to elect a preferred representative? And how does one determine if a voting system does, in fact, abridge that right level of opportunity? The Court initially answered these questions in *Gingles* and courts across the country added nuance to these answers in subsequent cases.

The Court's framework for racial vote dilution claims under Section 2 starts with the three so-called *Gingles* preconditions, followed by a totality of the circumstances analysis. *See, e.g., Allen v. Milligan*, 599 U.S. 1, 18 (2023). The three preconditions, which must be satisfied for a claim to proceed, are as follows: "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district;" (2) "Second, the minority group must be able to show that it is politically cohesive;" (3) "Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 50-51. Once these preconditions are established, the plaintiff "must also show, under the 'totality of circumstances,' that the political process is not 'equally open' to minority voters." *Milligan*, 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at 45-46). The factors relevant to the totality of the circumstances test were laid out in a Senate report that accompanied the amended text of Section 2 in 1982. *See generally* S. Rep. No. 97-417 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177.

The first *Gingles* precondition requires a plaintiff to prove the existence of what has been called a "benchmark undiluted voting practice." *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 28 (2025), *aff'd*, No. 84, 2025 WL 3235042 (N.Y. Nov. 20, 2025) (citations and internal quotation marks omitted). Specifically, a plaintiff must show that an additional, reasonably configured district can be drawn in which the identified racial minority "'has the potential to elect a representative of its own choice.'" *Milligan*, 599 U.S. at 18 (quoting *Growe v. Emison*, 507 U.S.

25, 40 (1993)). The implication of this demonstration (when combined with the other *Gingles* preconditions and the totality of the circumstances analysis) is that the electoral system at issue is offering *less opportunity* to voters of the specified racial minority to elect their candidates of choice than they would have under the benchmark policy.

Federal courts have developed a taxonomy of the types of districts that can (and cannot) be used to meet the first *Gingles* precondition's benchmark requirement. We sketch the history of this development in the next section, but to state at the outset, as of the filing of this brief, Supreme Court precedent is clear: a plaintiff must show that the specified racial minority can constitute more than fifty percent of the voting age population of an additional, reasonably configured, single-member district. *Milligan*, 599 U.S. at 20. These districts are called "majority-minority" districts. *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009). The term majority-minority is used in contrast to a district where "a racial minority could elect its candidate of choice [only] with support from crossover majority voters." *Id.* at 6. Since *Bartlett* in 2009, the Court has accepted the "lingo of voting law" such that the term "'crossover' district" means a district "in which members of the majority help a 'large enough' minority to elect its candidate of choice." *Cooper v. Harris*, 581 U.S. 285, 303 (2017) (quoting *Bartlett*, 556 U.S. at 13). And because the Court in *Bartlett* closed the door to plaintiffs offering crossover districts as proof of compliance with the first *Gingles* precondition, the federal courts have not expounded since then on what a "large enough" minority community is for purposes of a crossover district.

Amici next review the case law on how to think about and define districts with sizeable, albeit less than majority, shares of minority voters. We hope to assist the Court in developing a workable definition of a crossover district for racial vote dilution claims under the New York Constitution.

B. For Two Decades, Federal Courts Inconsistently Used the Terms "Crossover District," "Coalition District," and "Influence District."

The Court in *Gingles* introduced the term "crossover" to describe white voters who vote with minority voters to support their preferred candidates—while most white voters vote as a bloc that "normally . . . defeat[s] the combined strength of minority support plus white 'crossover' votes." *Gingles*, 478 U.S. at 56. This statement remains a helpful guide to what courts today consider to be "crossover districts." Between 1986 and 2009, however, federal (and state) courts meandered between the terms "crossover," "coalitional," and "influence" as they sought to understand which kinds of potential districts could give rise to claims under Section 2.

The California Supreme Court considered this issue in 1992, in the context of reviewing congressional and state legislative plans drawn by three special masters following a legislative impasse. That court "recognized the propriety of forming minority influence districts to maximize the voting potential of geographically compact minority groups of appreciable size . . . even though the individual minority groups . . . were of insufficient size to constitute a majority in their voting districts." *Wilson v. Eu*, 823 P.2d 545, 550 (Cal. 1992) (citations omitted). The U.S. Supreme Court proceeded similarly in 1993, describing as "influence districts" those where "[B]lack voters would not constitute a majority but in which they could, with the help of a predictable number of cross-over votes from white voters, elect their candidates of choice." *Voinovich v. Quilter*, 507 U.S. 146, 150 (1993). A year later, in 1994, the Court referred to a "so-called influence district" as one where "members of a minority group are a minority of the voters, but a potentially influential one." *Johnson v. De Grandy*, 512 U.S. 997, 1009 (1994). The Court added that it would "assume without deciding that even if Hispanics are not an absolute majority of the relevant population in the additional districts, the first *Gingles* condition has been satisfied." *Id.*

Soon after, in 1997, the U.S. District Court for Massachusetts used the term "influence district" in a new way. The court characterized such a district as one where "no viable candidate can ignore minority interests, because of the minority's strong influence at the ballot box." *Vecinos de Barrio Uno v. City of Holyoke*, 960 F. Supp. 515, 523 (D. Mass. 1997). The court noted that the district in question was 28% Hispanic (by voting age population), but that the Hispanic-preferred candidate got "just under 50%" of the total vote. *Id.* at 527. This conception of an influence district began to distinguish it from a crossover district (rather than to conflate them as courts had done to this point). The idea started to emerge that, while minority voters in a crossover district *can* elect their candidates of choice (with the help of some white voters), minority voters in an influence district must settle for mere influence (not control) over who is elected.

The lingering confusion over the terminology for districts with minority shares below fifty percent reached its apex in the Supreme Court's opinions in *Georgia v. Ashcroft*, 539 U.S. 461 (2003). While *Georgia* dealt with claims under Section 5, not Section 2, of the federal VRA, the Justices were analyzing minority voting power at the district level and questioning which metrics to use to determine whether minority voting power increased, decreased, or stayed the same. Their comments thus naturally helped shape the developing jurisprudence under Section 2 of the VRA. At various times, Justice O'Connor, writing for the Court in *Georgia*, referred to districts where a racial minority had some power but did not make up a majority as "influence districts." Early in the opinion, she suggested that "so-called 'influence' districts [are] where [B]lack voters would be able to exert a significant—if not decisive—force in the election process." *Id.* at 470. Justice O'Connor later defined "influence districts" as those "where minority voters may not be able to elect a candidate of choice but can play a substantial, if not

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decisive, role in the electoral process." *Id.* at 482. In these statements, she seemed to say that an influence district is something *less than* a district where minority voters have an opportunity to elect candidates of their choice.

However, in other parts of the opinion, Justice O'Connor referenced studies that "have suggested that the most effective way to maximize minority voting strength may be to create influence or coalitional districts." *Id.*[1] This implies that an influence district is one where a racial minority has the opportunity to elect candidates of choice. Similarly, Justice O'Connor discussed how "[t]he 34 districts in the proposed plan with a [B]lack voting age population of above 20% consist almost entirely of districts that have an overall percentage of Democratic votes of above 50%." *Id.* at 489. The inference is that an influence district entails minority voters being able to elect their candidates of choice (most likely, Democrats). But a moment later, Justice O'Connor stated that, even though one of the thirty-four districts she identified would not elect a Democrat, the Black voters in that district still "will constitute an effective voting bloc, even if they cannot always elect the candidate of their choice." *Id.* Here, Justice O'Connor thus seemed to return to defining influence districts as *less than* districts where minority voters can usually elect their candidates of choice. In his dissent, Justice Souter lambasted the majority for its flip-flopping use of the term "influence," and argued that "'influence' must mean an opportunity to exercise power effectively." *Id.* at 494 (Souter J, dissenting). But even Justice Souter changed his mind in the next case to come to the Court.

In that case, *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006), Justice Kennedy endorsed one of *Georgia*'s notions of an influence district: namely, "'where minority voters may not be able to elect a candidate of choice but can play a substantial,

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[1] Justice O'Connor's use of the term "coalitional" as a synonym for "influence" here is at odds with the settled federal definition of a "coalition district" today. *See infra* Section I.D.

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if not decisive, role in the electoral process.'" *Id.* at 446 (quoting *Georgia*, 539 U.S. at 482).

Helpfully, Justice Kennedy contrasted this concept of an "influence district" with what we now

call a "crossover district," which he explained is a district where minority voters "constitute 'a

sufficiently large minority to elect their candidate of choice with the assistance of cross-over

votes.'" *Id.* at 443 (quoting *Voinovich*, 507 U.S. at 158). And so appears the clear distinction by

federal courts between "crossover districts" where minority voters have an opportunity to elect

their preferred candidates and "influence districts," which are a different species altogether.

In *LULAC*, Chief Justice Roberts further used the term "minority opportunity districts" to

describe districts where there is a "sufficiently large minority population to elect candidates of its

choice." *Id.* at 496 (Roberts, C.J., concurring in part and dissenting in part). This term serves as

an umbrella for majority-minority and crossover districts—but it excludes influence districts, in

which minority voters are unable to elect their top-choice candidates. In his opinion, lastly,

Justice Souter offered a useful framework for determining if there are sufficient crossover votes

to ensure that voters from the relevant racial minority have an opportunity to elect their preferred

candidates. A district should qualify as a crossover district, according to Justice Souter, if

"minority voters in a reconstituted or putative district constitute a majority of those voting in the

primary of the dominant party, that is, the party tending to win in the general election." *Id.* at

485-86 (Souter, J., concurring in part and dissenting in part).

C. In 2009, the Supreme Court Finally Made a Bright-Line Distinction Between "Majority-Minority Districts" and "Crossover Districts."

Finally, in *Bartlett*, the Supreme Court clarified that there are two types of "minority

opportunity" districts: "majority-minority districts" on the one hand, and "crossover districts" on

the other. The Court thus reaffirmed the terminology that Chief Justice Roberts had used in

LULAC, noting that, "[i]n majority-minority districts, a minority group composes a numerical,

working majority of the voting-age population." *Bartlett*, 556 U.S. at 13. The Court added that "[a]t the other end of the spectrum are influence districts, in which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected." *Id.* And the Court offered a similar definition of crossover districts to that suggested by Justice Souter in *LULAC*: "Like an influence district, a crossover district is one in which minority voters make up less than a majority of the voting-age population. But in a crossover district, the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." *Id.*

Since *Bartlett* barred crossover claims under Section 2, the term "crossover district" has been referenced only briefly by the Supreme Court. The Court has continued to adhere, though, to *Bartlett*'s clear definition of a crossover district as one where minority voters make up less than a majority but nonetheless have the opportunity to elect their candidates of choice. For example, in a dissent, Justice Scalia distinguished between briefing that identified "a potential crossover district" and his view that there was insufficient evidence with respect to "majority-minority districts." *Ala. Leg. Black Caucus v. Ala.*, 575 U.S. 254, 290-291 (2015) (Scalia, J., dissenting); *see also Harris*, 581 U.S. at 303 (describing the term crossover district as part of "the lingo of voting law.")

In contrast to the (now) relatively stable definition of a crossover district, the term "influence district" has not been given any further texture by the federal courts since *Bartlett*. The only hint of judicial elaboration on what an influence, as opposed to a crossover, district might be came from the California Supreme Court—but in an opinion *declining* to decide what constitutes an influence district. According to that court, "a protected class's ability to influence

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the outcome of an election could include, for example, 'forming a coalition with another group to elect a candidate acceptable to each' or 'blocking an unacceptable candidate.'" *Pico Neighborhood Ass'n. v. City of Santa Monica*, 534 P.3d 54, 71 (Cal. 2023). But the court made clear that this was only speculation. "We need not decide the scope of the CVRA's ability-to-influence prong in this case, however." *Id.* Beyond *Pico*, plaintiffs in a New York Voting Rights Act (NYVRA) case made allegations about minority influence. But the consent order entered in that case did not mention influence claims or influence districts. *See* Consent Judgment and Decree, *Coads v. Nassau County Legislature* (N.Y. Sup. Ct., Nassau Cnty., No. 611872/2023), NYSCEF Doc. No. 370 (Jan. 23, 2025).

D. "Coalition Districts" Are Defined as Districts in Which Two or More Protected Classes Are Jointly Able to Elect Mutually Preferred Candidates.

The definition of the last remaining category of districts, "coalition districts," is relatively uncontroversial under federal law. A coalition district is one where two or more minority racial or ethnic groups, together, have an opportunity to elect mutually preferred candidates. In the past, this term was often conflated by federal courts with "crossover districts," which feature a minority group achieving electoral success only with support from majority-group voters who "cross over" to support the same candidates. Justice Kennedy effectively clarified this distinction in *Bartlett*:

> "[A] crossover district is one in which minority voters make up less than a majority of the voting-age population. But in a crossover district, the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate. . . . This Court has referred sometimes to crossover districts as 'coalitional' districts, in recognition of the necessary coalition between minority and crossover majority voters. *See Georgia v. Ashcroft*, 539 U.S. 461, 483 (2003) . . . But that term risks confusion with coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition's choice. *See, e.g., Nixon v. Kent County*, 76 F.3d 1381, 1393 (C.A.6 1996) (en banc)."

Bartlett, 556 U.S. at 13.

While federal appellate courts are split as to whether Section 2 authorizes coalition claims, they agree on what a coalition claim is—two or more racial or ethnic minority groups uniting to obtain a minority opportunity district in which the coalition can elect candidates of that coalition's choice—without any crossover support from majority voters. *See Petteway v. Galveston Cnty.*, 111 F.4th 596, 601-03 (5th Cir. 2024) (concluding that coalition claims, which allow minority groups to "aggregate their populations," are unavailable under Section 2); *Clerveaux v. East Ramapo Centr. Sch. Dist.*, 984 F.3d 213, 332–233 (2d Cir. 2021) (holding that the second and third *Gingles* preconditions were met where "[B]lack and Latino residents were politically cohesive and . . . white residents voted as a bloc."); *Nixon v. Kent Cnty.*, 76 F.3d 1381, 1389-92 (6th Cir. 1996) (ruling that Congress did not intend to cover minority coalition claims when it enacted the VRA because coalitions are not homogenous); *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524, 527 (11th Cir. 1990) (analyzing whether Black and Hispanic populations formed a political coalition). These courts' specific discussions of coalition districts reveal a federal consensus as to what these districts are (though not whether coalition claims are available under Section 2).

Additionally, the definitions of coalition and crossover districts can be combined to yield "coalition crossover districts." These are districts in which voters from two or more racial or ethnic groups join with some number of voters from the majority racial or ethnic group in the jurisdiction (who cross over to vote with the coalition voters) to elect candidates of the coalition's choice. Coalition crossover districts can be contrasted with "coalition majority-minority districts," in which voters from two or more racial or ethnic groups constitute an outright majority of the population.

II. Petitioners' Claim, Properly Understood Using "Voting Rights Lingo," Is a Claim for a "Coalition Crossover District."

Turning from the taxonomy of different districts to Petitioners' claim in this case, their filings are ambiguous with respect to their exact grievance. *See generally* Petition, NYSCEF Doc. 1; Memorandum of Law in Support of Petition (hereafter "Petitioners' Br."), NYSCEF Doc. 63. In Amici's view, Petitioners' materials are best understood as stating a claim for a "coalition crossover district." Amici recommend that the Court adopt this terminology and recognize Petitioners' claim as such. Of course, New York courts may treat coalition crossover claims differently from federal law. To avoid linguistic and conceptual confusion, though, the Court should use the vocabulary of federal law even if the Court diverges substantively from it.

Petitioners begin their petition by suggesting that the terms "crossover district" and "influence district" are interchangeable. Petition ¶ 8, NYSCEF Doc. 1. Later, Petitioners assert that the NYVRA requires plaintiffs to show that a protected class has a "lack of electoral influence." *Id.* ¶ 46 ("A plaintiff need only show that the current district map is responsible for the protected class's lack of electoral *influence* based on the existence of racially polarized voting or the totality of the circumstances.") Yet, in the very same paragraph, Petitioners offer a citation to a case—*Clarke*— about a vote dilution claim seeking electoral *opportunity* for the identified protected classes under the NYVRA. Petitioners cite a portion of *Clarke* that explains that the NYVRA allows for remedies where "minorities [can] elect their candidates of choice" (despite being less than a majority in a single-member district). *Id.* (quoting *Clarke*, 237 A.D.3d at 38, and N.Y. Elec. Law § 17-206(c)). This passage in *Clarke* assesses whether a protected class (or classes) have electoral *opportunity*, not whether they merely have electoral *influence* short of opportunity. Petitioners then seemingly confirm that their claim is one for a crossover district in paragraph 47 of the Petition, where they abandon any mention of influence districts and state that

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"the voters of New York . . . made the choice to go beyond the scope of the federal Voting Rights Act and protect coalition and crossover districts." *Id.* ¶ 47.

That Petitioners are best understood as pursuing a coalition crossover (not an influence) district is further shown by their brief in support of their petition. NYSCEF Doc. 63. Throughout the brief, Petitioners refer to the ability of minority voters "to elect candidates of their choice and influence elections" as a unitary concept, rather than two separate types of power. *Id.* at 8, 10, 15, 19, 21, 26. In each case, Petitioners use the term "influence" in conjunction with the ability or opportunity to elect candidates of choice. Petitioners give no other dimension to the term "influence." They do not write of "gratuitous cracking of a large, compact, politically cohesive" minority community, as did the plaintiffs in a recent NYVRA case. *See* Complaint, ¶ 46, *New York Communities for Change v. County of Nassau*, No. 602316/2024 (Sup. Ct., Nassau Cnty, Feb. 7, 2024). Nor do they mention "blocking an unacceptable candidate," as the California Supreme Court alluded in its opinion in *Pico*, 534 P.3d at 71.

Accordingly, while Petitioners sometimes use ambiguous language in their filings, the thrust of their complaint is clearly that a new minority opportunity district (specifically, a coalition crossover district) should be drawn. Amici urge the Court to construe Petitioners' claim this way—and thus not as a claim for an influence district.

III.   **The Court Should Assess Petitioners' Claim for a Coalition Crossover District Using the Standard Developed in Federal Law and Academic Literature.**

Unsurprisingly given the Supreme Court's rejection of crossover claims under Section 2 in *Bartlett*, a majority of the Court has never endorsed a standard for these suits. However, as explained earlier, Justice Souter did propose a definition for crossover districts in *LULAC*, and Justice Kennedy relied on this definition in *Bartlett* (even while precluding relief on this basis). Since *Bartlett*, scholars including one of us have also used essentially this definition to identify

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crossover districts. Amici therefore recommend that the Court follow these doctrinal and academic leads in evaluating Petitioners' claim for a coalition crossover district.

In *LULAC*, to reiterate, Justice Souter argued that a crossover district exists where "minority voters . . . constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election." 548 U.S. at 485-86 (Souter, J., concurring in part and dissenting in part). Justice Souter thereby recognized that minority voters must effectively control a crossover district and that the primary election is often the key to wielding (and ascertaining) control. In *Bartlett*, Justice Kennedy cited this passage from Justice Souter's opinion in *LULAC* and confirmed that "some have suggested using minority voters' strength within a particular party as the proper yardstick." 556 U.S. at 22. Consideration of both the primary and general elections is also implied by Justice Kennedy's understanding of a crossover district as one where the minority population "is large enough" (despite not comprising a majority) "to elect the candidate of its choice." *Id.* at 13. A minority population is sufficiently large when it can both nominate its preferred candidate in the primary and see this candidate take office after the general election.

In the academy, scholars, including one of us, have repeatedly assessed whether districts qualify as crossover districts using very similar approaches. In one article, Jowei Chen and amicus Nicholas Stephanopoulos relied on the following working definition of a minority opportunity district: "one where (1) the minority-preferred candidate wins the general election, and (2) minority voters who support the minority-preferred candidate outnumber white voters backing that candidate, provided that (3) minority voters of different racial groups are aggregated only if each group favors the same candidate." Jowei Chen & Nicholas O. Stephanopoulos, *The Race-Blind Future of Voting Rights*, 130 Yale L.J. 862, 899 (2021). Any minority opportunity

district must satisfy the first element. The second element is the one that ensures that minority voters in a crossover district effectively control the district—because their votes outnumber white voters' votes for the minority-preferred candidate. *See also, e.g.*, Nicholas O. Stephanopoulos, Eric McGhee & Christopher Warshaw, *Non-Retrogression Without Law*, 2023 U. Chi. Legal. F. 267, 269 (using the same definition).
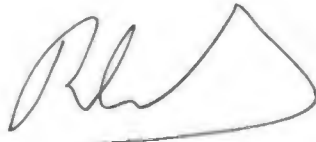
Because these studies sought to make comparisons across states and lacked data from primary elections, they had to approximate control of the primary by asking if more minority voters than white voters backed the minority-preferred candidate in the general election. Studies of a single state, however, do not face this limitation and do explicitly analyze both primary and general elections. For example, a team of prominent scholars defined a successful outcome for the voters of a minority group in Texas as "one in which the minority-preferred candidate in the primary prevailed in both" that election and the general election. Amariah Becker, Moon Duchin, Dara Gold & Sam Hirsch, *Computational Redistricting and the Voting Rights Act*, 20 Election L.J. 407, 420 (2021). By "*link*[ing] the primary . . . to the general election," the authors addressed their "main concern here," which was "whether minority-preferred candidates are ultimately elected to office." *Id.* at 416.

As this case involves a single state (indeed, a single congressional district within that state), the Court should expect to see data from both primary and general elections. Again, a proposed district should count as a crossover district if minority voters (including from two or more racial or ethnic groups) are able to nominate candidates of their choice in the primary election and if these candidates are ultimately victorious in the general election. If this were a case under the NYVRA (which it is not), a showing that a crossover district could be drawn is insufficient to create liability on its own. This showing indicates only that a reasonable

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alternative practice would improve minority voters' representation. The existence of racially polarized voting must also be proven, and it must further be demonstrated that minority voters are currently underrepresented. *See* Plaintiffs-Respondents' Br. at 18-22, *Clarke v. Newburgh*, ___ N.Y.3d ___, 2025 WL 3235042 (Nov. 20, 2025) (No. 84). Amici take no position on whether these additional elements have been (or need to be) established here.

CONCLUSION

Amici support the development of racial vote dilution claims under the New York Constitution but advise the Court to be as clear as possible about the terminology it uses to describe these claims. It took decades to develop a widely accepted taxonomy for these claims, and the confusion that formerly reigned should not be reintroduced. Here, amici read Petitioners' filings as requesting what has been dubbed a "coalition crossover" district according to federal, and some state, jurisprudence. The casual use of the term "influence district" in Petitioners' papers risks muddying the issue before the Court and should not be treated as a claim for the creation of such a district. Under the relatively well-established standard for crossover claims, a key question is whether a district can be drawn in which minority voters, despite not comprising a majority, can control both the primary and general elections. Amici take no stance on the merits of this question, or any other, in the case.

By: _____

Ruth M. Greenwood
Nicholas O. Stephanopoulos
Election Law Clinic at Harvard Law School
6 Everett Street, Suite 4105
Cambridge, MA 02138
Telephone: 617-998-1010

Attorneys for Amici

Dated: Cambridge, Massachusetts
       January 21, 2026

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Memorandum uses Times New Roman 12-point typeface and contains 5,247 words, excluding parts of the document exempted by Rule 202.8-b. As permitted, the undersigned has relied on the word count feature of this word processing program.

Dated: Cambridge, Massachusetts
      January 21, 2026

By: _____

Ruth M. Greenwood

EXHIBIT O

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Michael Williams; José Ramírez-Garofalo; Aixa Torres;
and Melissa Carty,

<div style="text-align:center">Petitioners,</div>

<div style="text-align:center">-against-</div>

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,

<div style="text-align:center">Respondents,</div>

<div style="text-align:center">-and-</div>

Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon
B. Reeves, Angela Sisto, and Faith Togba,

<div style="text-align:center">Intervenors-Respondents.</div>

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Index No. 164002/2025

Hon. Jeffrey H. Pearlman

Motion Seq.006

<div style="text-align:center">

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
INTERVENOR-RESPONDENTS' MOTION TO DISMISS**

(Counsel for Intervenor-Respondents listed on the following page)

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TROUTMAN PEPPER LOCKE LLP

Bennet J. Moskowitz, Reg. No.4693842
875 Third Avenue
New York, New York 10022
(212) 704-6000
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No.4642609
111 S. Wacker Dr., Suite 4100
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

*Counsel for Intervenor-Respondents
Congresswoman Nicole Malliotakis and
Individual Voters Edward L. Lai, Joel
Medina, Solomon B. Reeves, Angela Sisto,
and Faith Togba*

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PRELIMINARY STATEMENT

As Intervenor-Respondents explained in the motion-to-dismiss portion of their Memorandum Of Law In Support Of The Motion To Dismiss And In Opposition To Petitioners' Motion For Judgment, this Court should dismiss Petitioners' claim for multiple independent reasons, including that Article III, Section 4 does not incorporate Petitioners' theory under the later-enacted New York Voting Rights Act ("NYVRA") and that the only remedy that Petitioners seek—changing the 11th Congressional District to alter the race-based election outcomes within that district—would violate the U.S. Constitution's Equal Protection Clause. Then, in the portion of their Memorandum Of Law addressing the Petition on the merits, Intervenor-Respondents argued that Petitioners' lawsuit failed under the NYVRA's standards, while making extensive arguments as to the relevant meaning of those standards and submitting multiple expert reports as to those standards. Under this Court's scheduling order, NYSCEF Doc. No.56, Intervenor-Respondents confine this Reply Memorandum to supporting their arguments for dismissal.

Now that Petitioners, the Governor,[1] and certain *amici* have weighed in, the proper disposition of this case is clear. It is beyond any serious dispute that Petitioners' *only* merits theory, that Article III, Section 4 of the New York Constitution time traveled to include the subsequently adopted standards from the NYVRA, is egregiously wrong. Even the Governor—who, remarkably, refuses to defend the very redistricting statute that she signed into law less than 22 months ago[2]—cannot bring herself to defend Petitioners' Article-III-Section-4-equals-NYVRA

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[1] Intervenor-Respondents refer to Respondents Kathy Hochul, Andrea Stewart-Cousins, Carl E. Heastie, and Letitia James—who submitted a joint letter in response to the Petition, NYSCEF. Doc. No.95 ("Gov.Ltr.")—collectively as "the Governor."

[2] The Governor makes the risible suggestion that her unwillingness to defend the map that she signed into law stems from the fact she "did not have the evidence now submitted by Petitioners." Gov.Ltr.2–3 n.1. Nothing that Petitioners submitted would be surprising to a politician knowledgeable in New York's political geography and recent election results. The Governor is, instead, clearly torn between the utterly meritless nature of Petitioners' lawsuit and

theory, and two different sets of *amici* float different approaches. Petitioners, for their part, only meekly defend the only theory in their Petition, while telling this Court to come up with its own approach if it so desires. That request would violate the Due Process Clause and basic principles of fairness. Intervenor-Respondents submitted merits briefing and expert analysis on the only theory that Petitioners put forward: that Article III, Section 4 incorporates the NYVRA's standards. To now pull a bait-and-switch—after submission of briefing and expert reports—and force the parties to litigate this case under one of the theories that *amici* have articulated or on some theory that this Court belatedly invents, at Petitioners' urging, is a nonstarter. Any alternative theories under Article III, Section 4 have not even been vetted in adversarial briefing in this case, let alone had expert reports submitted in this Court tailored to their particularities. Petitioners chose to frame their belated lawsuit in the manner that they did, and if this Court rejects that framing— which even the Governor admits is wrong—that must be the end of this case.

All that said, if this Court does somehow conclude that the Petition survives the fatal defect described immediately above, it should still dismiss the Petition on any of the other three grounds that Intervenor-Respondents have developed, including that Petitioners' only requested remedy is an unconstitutional racial gerrymander. Petitioners' sole requested remedy requires the redrawing of the 11th Congressional District with the express goal of giving Black and Latino voters the benefit of an increased electoral "influence," but there is no narrowly tailored, compelling justification for engaging in that race-based redistricting that would satisfy the applicable strict scrutiny review. While Petitioners argue that strict scrutiny does not apply because their proposed map does not rely on an express racial target and otherwise complies with traditional redistricting principles, this is clearly contrary to binding U.S. Supreme Court precedent. Specifically, under

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her political promise to explore "every option to redraw [New York's] congressional lines as soon as possible." NYSCEF Doc. No.92 at 3–4 (citation omitted).

the U.S. Supreme Court's case law, strict scrutiny applies whenever race is the sole—and, therefore, necessarily the "predominant"—factor that "motivat[ed] the [mapdrawer's] decision," *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (citation omitted); *see also Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 402–03 (2022) (per curiam), and "could not be compromised," *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017) (citations omitted). That holds even if the race-based map at issue "respects traditional [redistricting] principles." *Bethune-Hill*, 580 U.S. at 189.

This Court should dismiss the Petition.

ARGUMENT

I. **The New York Constitution Does Not Incorporate The NYVRA's Standards, Which Is Reason Enough To Dismiss The Petition**

    A. **As Even The Governor Concedes, Article III, Section 4 Does Not Incorporate The NYVRA's Standards**

1. As Intervenor-Respondents explained, this Court should dismiss the Petition because Article III, Section 4 does not incorporate the NYVRA's standards requiring a mapmaker to draw so-called "influence" districts if certain statutory criteria are met. NYSCEF. Doc. No.115 ("Int'r.Resp't.Br.") at 9–13. Article III, Section 4 was modeled after, and uses the same language as, Section 2 of the federal VRA, Int'r.Resp't.Br.9–13, which the U.S. Supreme Court held does not require influence districts, *League of United Latin Am. Citizens v. Perry* ("*LULAC*"), 548 U.S. 399, 446 (2006) (plurality opinion). Well-settled principles of construction under New York law thus compel the Court to adopt the U.S. Supreme Court's interpretation of the language used in Article III, Section 4. Int'r.Resp't.Br.9–13; *see also In re Colo. Indep. Cong. Redistricting Comm'n*, 497 P.3d 493 (Colo. 2021) (interpreting a Colorado constitutional amendment consistent with the VRA because the General Assembly failed to define separately words used in the VRA). Petitioners' only contrary argument as articulated in their Petition and supporting papers—that

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Article III, Section 4 adopted in 2014 somehow incorporates the influence-district mandate of the NYVRA, a statute adopted eight years later—is egregiously, indefensibly wrong. Int'r.Rep't.Br.15–20. Unlike the NYVRA, Article III, Section 4 says nothing about a minority group's "ability to 'influence outcomes,'" and instead, like Section 2 of the federal VRA, ensures only an "opportunity to participate." Int'r.Resp't.Br.17 (citation omitted). To accept Petitioners' position, this Court would have to retroactively amend constitutional language adopted in 2014 to govern congressional districts to add statutory language enacted eight years later dealing with different jurisdictions—something it cannot do. Int'r.Resp't.Br.16.

2. All of the submissions that the Court has received since Intervenor-Respondents filed their Motion to Dismiss confirm that the sole theory alleged in the Petition—that Article III, Section 4's anti-vote-dilution mandate adopted in 2014 somehow incorporates the influence-district mandate of the NYVRA adopted in 2022—is a nonstarter. The Governor who signed the NYVRA and openly voiced her desire to redraw the 2024 Congressional Map refuses to endorse Petitioners' theory, explaining that "the NYVRA is wholly inapplicable to apportionment challenges brought against Congressional or Legislative Districts" as it is "clearly limited to political subdivisions." Gov.Ltr.2. And two different sets of *amici* have advanced new approaches. *See infra* Part I.B. In response, Petitioners contend that this Court is free to adopt any standard, while half-heartedly defending their own standard as the best one. But these eleventh-hour theories and Petitioners' failure to defend meaningfully their theory that the NYVRA's standards are somehow incorporated into Article III, Section 4 tells the Court all it needs to know and independently warrants dismissal, regardless of what other standard Article III, Section 4 can be held to incorporate in a later case, where those arguments are properly pleaded and developed.

Most obviously, and fatal to this lawsuit, Petitioners cannot explain how Article III, Section 4's 2014 language could possibly incorporate the NYVRA's standards adopted by the Legislature eight years later. When the Legislature adopted the NYVRA in 2022, the Legislature sought to guarantee citizens in local elections grouped together by race the "opportunity" to "elect candidates of their choice" *and* the ability to "*influence the outcome of elections.*" N.Y. Elec. Law § 17-206 (emphasis added). Article III, Section 4 does not use "influence" and guarantees *only* an equal "opportunity" "to participate in the political process" and "elect representatives of their choice" in congressional and state legislative elections. N.Y. Const. art. III, § 4. Under bedrock canons of construction, this Court cannot "add[ ] words" to a provision—especially not to a constitutional provision—"that are not there." *Am. Transit Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004). Nor can the Court render the NYVRA's use of "influence" superfluous by interpreting Article III, Section 4's use of "opportunity" to guarantee voters' right to influence elections. *Columbia Mem'l Hosp. v. Hinds*, 38 N.Y.3d 253, 271 (2022). Petitioners have no response to this dispositive, threshold interpretive problem. *See generally* NYSCEF Doc. No.154 ("Pet.Opp.").

To the extent that Petitioners try to respond to this devastating point, their argument is hard to even understand. Their position appears to be that "the NY VRA acts as a 'legislative interpretation' of the Constitution itself," and for this reason, Article III, Section 4 should be interpreted to incorporate the NYVRA's influence-district mandate. That is circular and wrong. Although a statute adopted in tandem with a constitutional amendment on the same subject may inform the Constitution's meaning because when the People voted for the amendment they can be expected to have had the statute in mind as informing how the amendment would operate, *see Harkenrider v. Hochul*, 38 N.Y.3d 494, 510–11 (2022), that is not even arguably the temporal sequence here. The People voted for Article III, Section 4 in 2014; the Legislature enacted the

NYVRA in 2022. Other than perhaps Marty McFly, no person who voted for Article III, Section 4 in 2014 could possibly have had the NYVRA's 2022 standards in mind. ***And that does not even account for the point that Article III, Section 4 uses materially different language than the NYVRA with respect to influence districts—a point that Petitioners never even attempt to address because they have no response***. Again, Article III, Section 4 uses only "opportunity" without any reference to an ability to "influence" elections. N.Y. Const. art. III, § 4. The NYVRA, in stark contrast, specifically uses the word "influence." N.Y. Elec. Law § 17-206. Petitioners provide no support for the contention that a materially different statute enacted eight years later can inform the interpretation of a constitutional provision.

Petitioners' repeated invocation of the NYVRA's statement of purpose, Pet.Opp.6–7, does not move the needle, as Intervenor-Respondents previously explained, Int'r.Resp't.Br.18. Again, the NYVRA's text—enacted eight years later—cannot constitutionally amend Article III, Section 4, regardless of what the NYVRA's statement of purpose says. Petitioners fail to provide any support for the contention that the policy of a later enacted statute can inform the Court's interpretation of a constitutional provision adopted eight years earlier, even after Intervenor-Respondents called them out for that failure, Int'r.Resp't.Br.18. In any event, that the Legislature enacted the NYVRA in "'recognition [of] . . . the constitutional guarantee[ ] . . . against the denial or abridgment of voting rights' of racial minority groups," Pet.Opp.7 (alteration in original and citation omitted), says nothing about whether Article III, Section 4 mandates minority influence districts. As Intervenor-Respondents pointed out, Int'r.Resp't.Br.18, interpreting Article III, Section 4 to be consistent with Section 2, upholds the guarantee "against the denial or abridgment of voting rights," N.Y. Elec. Law § 17-200, because it ensures the rights of minority groups to "participate in the political process" and "elect representatives of their choice," N.Y. Const. art.

III, § 4. Nothing in the NYVRA's statement of purpose, which makes no mention of influence, suggests otherwise.

Petitioners' citation of the *in pari materia* canon also does not support them. Pet.Opp.7–8. Intervenor-Respondents offer an interpretation of Article III, Section 4 that treats New York's voting laws cohesively. Under Intervenor-Respondents' reading, Article III, Section 4's language imposes certain standards on congressional and state legislative districts, mirroring the standards of Section 2. The NYVRA then takes it a step further for New York's political subdivision districts, utilizing distinct "influence" language to mandate the imposition of influence districts, in addition to constitutional requirements. There is no conflict.

Petitioners also are unsuccessful in attempting to refute Intervenor-Respondents' argument that Article III, Section 4 incorporates the standards of Section 2 of the VRA. To be clear, this Court need not resolve the question of what standard governs Article III, Section 4 claims as a general matter because, as explained, Petitioners rest their entire case on their utterly meritless Article-III-Section-4-equals-NYVRA theory. *See supra* pp.1–2. It is sufficient for this Court to hold that Petitioners' outlandish theory is wrong to dismiss this case. That said, Intervenor-Respondents' argument that Article III, Section 4 incorporates the standard from Section 2 of the VRA is mandatory under bedrock principles of New York constitutional interpretation. Both provisions guarantee racial and language minority groups the "opportunity" "to elect representatives of their choice," N.Y. Const. art. III, § 4(c)(1); 52 U.S.C. § 10301, which is the same language that the U.S. Supreme Court interpreted as not requiring the creation of influence districts, *LULAC*, 548 U.S. at 445–46 (plurality op.). That the Legislature utilized that identical, material language after the U.S. Supreme Court decided *LULAC* demonstrates the Legislature's

intention for these two provisions to be coterminous. *See Zakrewska v. New Sch.*, 14 N.Y.3d 469, 479 (2010). Petitioners' various arguments to the contrary are all wrong.

Although Petitioners strain to identify minor, irrelevant "textual differences" between Article III, Section 4 and VRA Section 2, Pet.Opp.5–6, Petitioners fail to confront the clear, pertinent textual parallels between Article III, Section 4 and Section 2 that Intervenor-Respondents drew in their Motion to Dismiss, Int'r.Resp't.Br.13–14. And the "textual differences" that Petitioners identify—in reality, a single difference—do not help Petitioners. Petitioners invoke Article III, Section 4's use of the word "groups" (in the plural) as opposed to "class" (in the singular) to support their argument. Pet.Opp.5–6. Thus, Petitioners note, Article III, Section 4 prohibits the dilution of "racial or minority language *groups*[']" ability to "elect representatives of *their* choice," N.Y. Const. art. III, § 4 (emphases added), while Section 2 prohibits the dilution of "members of a *class* of citizens[']" votes such that "*its* members have less opportunity than other[s]" "to elect representatives of *their* choice," 52 U.S.C. § 10301(b) (emphases added). This difference does not support Petitioners' contention that the New York Constitution, unlike Section 2, mandates the creation of influence districts. Like Section 2, *Article III, Section 4 makes no mention of the creation of "influence districts,"* and its use of the word "groups" as opposed to "class" does not somehow insert an influence-district mandate into this state-constitutional provision.

The Sixth Circuit's decision in *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (en banc)—which Petitioners rely upon here, Pet.Opp.6—suggests that the textual difference between Article III, Section 4 and Section 2 is relevant only to the viability of *coalition* district claims, not the *influence* district claims at issue here. In *Nixon*, the plaintiffs brought a minority coalition claim under Section 2, contending that a particular district diluted African American and

Hispanics' collective right to vote. *Nixon*, 76 F.3d at 1383. The Sixth Circuit concluded that Plaintiffs could not succeed because Section 2 does allow for "coalition suits." *Id.* at 1386. The Sixth Circuit reasoned that Section 2 protects "members of *a class*," and "[i]f Congress had intended to sanction coalition suits, the statute would read 'participation by members of *the classes* of citizens.'" *Id.* Thus, *Nixon* considered only a completely distinct claim, saying nothing about influence claims—the sole claim alleged by Petitioners. And, if anything, *Nixon* supports Intervenor-Respondents' argument here: Had the New York Legislature intended to mandate influence districts, Article III, Section 4 would say so. *Id.*

Petitioners then argue that this Court should not interpret Article III, Section 4 in line with the VRA, despite materially indistinguishable language, because that would introduce "redundancy and the will of New York voters in voting for them would be read out of the State Constitution." Pet.Opp.6–7 (citing Gov.Ltr.3). As a threshold matter, interpreting Article III, Section 4 to mirror Section 2's lack of an influence district mandate does not make this constitutional provision "redudan[t]" or a "legal nullity." *Contra* Gov.Ltr.4. That is because the 2014 Amendments textually differ from the VRA in numerous *other* ways. The 2014 Amendments, for example, prohibit partisan gerrymandering, *see Harkenrider*, 38 N.Y.3d at 518, while the VRA does not, *see Hunt v. Cromartie*, 526 U.S. 541, 551 (1999). Further, the 2014 Amendments establish additional redistricting principles beyond those of the VRA, such as maintaining "cores of existing districts" and "pre-existing political subdivisions," N.Y. Const. art. III, § 4, again demonstrating that the New York Legislature knew how to distinguish the 2014 Amendments from the VRA when it intended to. That it chose not to differentiate Article III, Section 4's language from Section 2 of the VRA therefore does not make it redundant but rather indicates that the People intended for these particular provisions to be coterminous. *Supra* pp.3–

8. In any event, States—including New York—*very commonly* adopt (or interpret) constitutional provisions that are coextensive with federal law. *See Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 404 (1979). For example, the Court of Appeals has interpreted New York's equal protection guarantees, search and seizure provision, and due process protections to be coextensive with the U.S. Constitution's Equal Protection Clause, Fourth Amendment, and Due Process Clause, respectively. *See Congregation Rabbinical Coll. Cf Tartkov, Inc. v. Vill. cf Pomona*, 945 F.3d 83, 110 n.211 (2d. Cir. 2019) (New York and federal "equal protection guarantees" "are coextensive"); *People v. P.J. Video, Inc.*, 68 N.Y.2d 296, 304 (1988) (provision against "unlawful searches and seizures contained in NY Constitution . . . conforms with that found in the 4th Amendment"); *Cent. Sav. Bank in N.Y. v. City cf N.Y.*, 280 N.Y. 9, 10 (1939) (per curiam).

B. Petitioners' And The Governor's Suggestion That This Court Can Adjudicate This Case Under Some Other Theory Would Violate The Due Process Clause And Basic Principles Of Fairness

Recognizing that Petitioners' sole request to read the NYVRA's standards into Article III, Section 4 is a nonstarter, the Governor and *amici* have attempted to reframe this case for Petitioners. The Governor asserts that the Court can simply wing it and adopt whatever standard it sees fit outside of the NYVRA. Gov.Ltr.2–3. Petitioners seem to follow the Governor's lead, asserting that this Court ultimately "must decide in the first instance what standard governs [their] vote dilution claim," Pet.Opp.4 (emphasis omitted), while claiming only that their own NYVRA-based standard is the "better framework," Pet.Opp.5. Two sets of *amici* each propose their own standards, including one drawn from certain law review articles written by some of the *amici*, and then urge this Court to apply those approaches, even though no party has briefed the constitutionality of those standards or submitted expert evidence tailored to those standards. NYSCEF. Doc. No.139 ("NYCLU.Am.Br.") at 11; NYSCEF. Doc.No.135 at 19–20

("Prof.Am.Br."). This is all egregiously inappropriate and, if adopted by this Court, would violate the Due Process Clause and basic principles of fairness to litigants.

1. The Due Process Clause of the Fourteenth Amendment "centrally concerns the fundamental fairness of governmental activity," *N.C. Dep't of Revenue v. Kimberly Rice Kaestner 1992 Fam. Tr.*, 588 U.S. 262, 268 (2019); *see also People v. Collier*, 223 A.D.3d 539, 542 (1st Dep't 2024), *leave to appeal denied*, 42 N.Y.3d 962 (2024), and "imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair," *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 33 (1981). "[A]t a minimum," those standards require "notice and opportunity for hearing appropriate to the nature of the case," *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *see also People ex rel. Abrams v. Apple Health & Sports Clubs, Ltd., Inc.*, 80 N.Y.2d 803, 806 (1992), that is "reasonably calculated, under all the circumstances, to . . . afford [participating parties] an opportunity to present their objections," *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010); *see Am. Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932) (due process requires "an opportunity to present every available defense"); *Apple Health & Sports Clubs*, 80 N.Y.2d at 806 (due process requires "opportunity to be heard at a meaningful time in a meaningful manner") (citations omitted). A court deprives a party "of the right of fair warning," *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964), when it "reconfigure[s]" the applicable "scheme, unfairly, in *midcourse* [ ] to 'bait and switch'" the responding party, *Reich v. Collins*, 513 U.S. 106, 111 (1994).

2. Here, if this Court now follows the suggestion of Petitioners, the Governor, and/or the *amici* and belatedly adjudicates this case under a standard different from the one that the Petition articulated, that would unconstitutionally "'bait and switch'" Intervenor-Respondents "unfairly, *in midcourse*," *Reich*, 513 U.S. at 111, depriving them of the "right of fair warning," *Bouie*, 378 U.S.

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at 352, transgressing basic principles of fairness. The Petition's sole theory was that this Court should "apply the same standards set forth under the NY VRA to adjudicate Petitioners'"" Section III, Article 4 claim, NYSCEF Doc. No.1 ("Pet.") ¶ 50, and determine whether, under that NYVRA standard, "[a] minority influence district is both possible and required" in the 11th Congressional District, Pet. ¶¶ 97–102.   In light of that framing, Intervenor-Respondents developed expert evidence refuting Petitioners' claim under the standards set forth in the NYVRA and submitted extensive merits briefing under that theory, relying upon those experts. *See* Int'r.Resp't.Br.20–31; NYSCEF Doc. No.112 ("Trende.Rebut,"); NYSCEF Doc. No.160 ("Voss.Rebut."); NYSCEF Doc. No.114 ("Borelli.Rebut."). Having baited Intervenor-Respondents into submitting detailed arguments and expert reports on the only theory that Petitioners put forth—that the NYVRA's standards apply under their Article III, Section 4 claim—Petitioners, the Governor, State Respondents, and various *amici* now suggest that this Court adopt some other standard.

But adopting their belated suggestion now would be fundamentally unfair, in violation of the Due Process Clause. *N.C. Dep't of Revenue*, 588 U.S. at 268. In response to the Petition's sole theory, Intervenor-Respondents developed a robust merits defense focused on the NYVRA's standards. *See generally* Int'r.Resp't.Br. Because no court has interpreted many of the NYVRA's standards, Intervenor-Respondents spent considerable time explaining how this Court should interpret those standards. Int'r.Resp't.Br.20–31. Intervenor-Respondents also obtained experts to opine on how to analyze Petitioners' claim under the NYVRA's statutory standards. *See* Trende.Rebut.5–16; Voss.Rebut.1–6; Borelli.Rebut.6–62. Intervenor-Respondents then dedicated a significant portion of the limited words they were given in their brief to explain why they should prevail under the NYVRA's standards, Int'r.Resp't.Br.20–31, mirroring Petitioners' Memorandum of Law in Support of Petition, NYSCEF Doc. No.63 at 19–30.   Intervenor-

Respondents have now spent additional time and resources preparing for trial under the reasonable assumption that the sole theory in the Petition would govern the proceedings. To change the applicable standard now and decide this case under an approach that Petitioners did not allege—whether put forward by *amici* or adopted by this Court upon Petitioners' and the Governor's belated invitation—would deny Intervenor-Respondents the "minimum," guarantees of due process, *Mullane*, 339 U.S. at 313, by failing to provide them a meaningful "opportunity to present their objections," *United Student Aid Funds*, 559 U.S. at 272.

The timing of this case makes this suggestion even more egregious. Petitioners had 20 months to frame this action after Governor Hochul signed the 2024 Congressional Map and before they filed their Petition. That they did not utilize that unreasonably lengthy amount of time to develop alternative theories is not something that *amici* or the Court can change at this belated stage in the proceedings. Having thrown all of their eggs into the NYVRA basket—ensuring their adversaries submitted evidence and arguments under that approach—Petitioners must live with their framing. It is far too late now, with Intervenor-Respondents' final brief due today and a trial immediately after the holidays, for this Court to decide this case under any other standard. *See United Student Aid Funds*, 559 U.S. at 272; *Am. Surety Co.*, 287 U.S. at 168.

Under these circumstances, due process requires that the Court consider only the standard advanced by Petitioners at the outset of this litigation and that Intervenor-Respondents had an opportunity to respond to—that the NYVRA governs claims brought under Section III, Article 4. Because that theory is an obvious nonstarter, the only permissible disposition now is dismissal.

II. Adopting Petitioners' Outlandish Theory Of Article III, Section 4 Would Violate The Elections Clause

A. Should the Court adopt Petitioners' atextual rewrite of the New York Constitution, that would "transgress the ordinary bounds of judicial review" and "arrogate to [this Court] the power

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vested in state legislatures" to "prescribe[ ]" the "[m]anner" of holding congressional elections in violation of the U.S. Elections Clause. Int'r.Resp't.Br.38–41 (citing *Moore v. Harper*, 600 U.S. 1, 34 (2023); U.S. Const. art. I, § 4). The U.S. Supreme Court has warned state courts not to disrespect "the constitutionally prescribed role of state *legislatures*" in congressional cases, Int'r.Resp't.Br.41 (citing *Bush v. Gore*, 531 U.S. 98, 115 (2000)), by utilizing strained interpretations of state law to wield unauthorized authority over the congressional-redistricting process, Int'r.Resp't.Br.42–43 (citing *Moore*, 600 U.S. at 34–37). To judicially amend Article III, Section 4 to include the NYVRA's standards, in order to strike down and require the redrawing of a legislatively adopted congressional map, would be just the kind of "impermissibl[e] distort[ion]" of state law that would "unconstitutionally intrude upon the role specifically reserved to state legislatures" by the U.S. Constitution. Int'r.Resp't.Br.41–42 (citing *Moore*, 600 U.S. at 37; *id* at 38 & n .1 (Kavanaugh, J. concurring)). That is even more true given that this Court would be the first to read language identical to Section 2, in any State's constitution or laws, as secretly including an influence-district mandate. Int'r.Resp't.Br.39.

B. Petitioners assert that "determin[ing] an appropriate standard under which to evaluate a vote dilution claim under the New York Constitution . . . is consistent with a core and longstanding function of this Court." Pet.Opp.32. That misses the point. While the Court may determine the appropriate standard to apply to a claim brought under the New York Constitution, it cannot adopt an interpretation in carrying out that function with regard to congressional districts that departs so drastically from prior doctrine on how to interpret the New York Constitution as to "transgress the ordinary bounds of judicial review." *Moore*, 600 U.S. at 36. Under New York law, longstanding rules of construction prevent the Court from adopting Petitioners' sole theory as it would require the Court to retroactively amend Article III, Section 4's text to adopt standards from the NYVRA

that were enacted eight years after Article III, Section 4, *Am. Transit Ins. Co*, 3 N.Y.3d at 76; and it would erroneously render the NYVRA's express reference to "influence" superfluous, *Columbia Mem'l Hosp.*, 38 N.Y.3d at 271; *supra* pp.3–8. In all, because Article III, Section 4 makes no mention of influence districts and, to the contrary, mirrors the language of Section 2—which indisputably does not require influence districts, *supra* Part I.A—accepting Petitioners' theory would "impermissibly distort" state law "in a federal election case," *Moore*, 600 U.S. at 38 & n.1 (Kavanaugh, J., concurring). And doing so in order to strike down a legislatively drawn congressional map is a textbook violation of the Elections Clause. *See id*. at 36 (majority op.).

That Petitioners believe that the NYVRA provides a "workable standard" for influence claims, Pet.Opp.32, is legally irrelevant. The problem here is not that the NYVRA's standard is difficult to apply—although, as Intervenor-Respondents explained, the NYVRA contains multiple important wrinkles that this Court would need to adjudicate to decide Petitioners' claim, Int'r.Resp't.Br.20–31—the problem is that the NYVRA cannot permissibly be read as applying to a constitutional provision adopted eight years before its enactment. This Court does not have "free rein," *Moore*, 600 U.S. at 34, to depart from New York's long-standing principles of constitutional interpretation to accomplish Petitioners' desired policy ends, workable or not. If Petitioners would like the congressional map to accomplish the policy ends that Petitioners praise, the Elections Clause requires them to bring their request to the Legislature, not for the courts to depart from established notions of New York constitutional interpretation to mandate the alteration of a legislatively adopted map. *Id*. at 36.

III. Petitioners' Requested Remedy Is A Racial Gerrymander That Violates The Equal Protection Clause

A. As Intervenor-Respondents explained, this Court ordering the redrawing of the 11th Congressional District with the express goal of increasing the electoral success of citizens lumped

together by race would violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Int'r.Resp't.Br.32–39. Under binding U.S. Supreme Court precedent, Petitioners' requested remedy triggers strict-scrutiny review because it requires the redrawing of the 11th Congressional District's lines explicitly based on race. Int'r.Resp't.Br.32–33 (citing, for example, *Cooper*, 581 U.S. at 291, 299–301; *Wis. Legislature*, 595 U.S. at 402–03; and *Bethune-Hill*, 580 U.S. at 192–93). Thus, the "predominant"—and, indeed, sole—rationale for the new district lines that Petitioners ask this Court to mandate would be race-based, clearly triggering strict-scrutiny review. Int'r.Resp't.Br.32–33. That conclusion would obtain even if the new lines of the 11th Congressional District that either the Court or the Legislature adopts to comply with this race-based redistricting mandate happens to comply with traditional redistricting principles, Int'r.Resp't.Br.33, although, as Intervenor-Respondents have explained, Petitioners' proposed lines do not adhere to such principles, Int'r.Resp't.Br.34.

Petitioners' requested race-based redrawing of the 11th Congressional District cannot possibly satisfy the applicable strict-scrutiny review because it neither furthers a compelling state interest nor is narrowly tailored to any such interest. Int'r.Resp't.Br.35–39. Beginning with the compelling-state-interest prong, redrawing the 11th Congressional District to increase the electoral "influence" of Black and Latino voters would not further any compelling state interest that New York has in "remediating specific, identified instances of past discrimination that violated the Constitution or a statute." Int'r.Resp't.Br.35–37 (citing *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.* ("*SFFA*"), 600 U.S. 181, 207 (2023)). Moving to the narrow-tailoring prong, Petitioners cannot show that their proposed redrawing of the 11th Congressional District would be "*necessary*" to achieving any compelling state interest. Int'r.Resp't.Br.37–39 (citing *SFFA*, 600 U.S. at 206–07 (emphasis added)). Petitioners have made

no effort to tie Article III, Section 4's alleged mandate to redraw the 11th Congressional District into any showing either that New York has engaged in specific racially discriminatory conduct in the past, or that there are ongoing consequences of such specific discrimination either generally or with respect to the 11th Congressional District, in particular. Int'r.Resp't.Br.38. Instead, Petitioners claim only that redrawing the 11th Congressional District is required because the preferred candidates of Black and Latinos are usually defeated and there is "racially polarized" voting under the NYVRA's totality-of-the-circumstances standard—neither of which is discrimination. Int'r.Resp't.Br.37–38. And Petitioners have not explained why race-neutral alternatives, such as those listed in the NYVRA itself, are inadequate to increase the electoral "influence" of Black and Latinos, meaning that their race-based redrawing of the 11th Congressional District is not "necessary" for this reason as well. Int'r.Resp't.Br.38–39.

B. Petitioners' various arguments that their proposed redrawing of the 11th Congressional District into an "influence" district for Black and Latino Voters somehow complies with the Equal Protection Clause all fail.

Strict scrutiny applies. Petitioners admit that, under binding U.S. Supreme Court precedent, a redistricting map triggers strict scrutiny where it is drawn with race as the predominant rationale. Pet.Opp.22–23. Despite that concession, Petitioners attempt to muddy the predominant-rationale test with misplaced quotations of *Bush v. Vera*, 517 U.S. 952 (1996), Pet.Opp.22–23—which Petitioners fail to cite as a plurality opinion, *see* Pet.Opp.18, 22–23, 30—and of *Bethune-Hill v. Virginia State Board of Elections*, 580 U.S. 178 (2017), Pet.Opp.22–23. The U.S. Supreme Court's decisions in *Wisconsin Legislature* and *Cooper* show the correct articulation of the predominant-rationale test; put Petitioners' misplaced quotations from *Vera* and *Bethune-Hill* in

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proper context; and powerfully show that redrawing the 11th Congressional District for race-based reasons does trigger strict-scrutiny review under this test.

In *Wisconsin Legislature*, the U.S. Supreme Court concluded that a judicially adopted remedial redistricting map for Wisconsin's legislative districts triggered (and, ultimately, failed) strict-scrutiny review, after applying the predominant-rationale test. 595 U.S. at 401–04. There, the Wisconsin Supreme Court had adopted the remedial map at issue, upon the proposal of the Wisconsin Governor. *Id.* at 399–400. That map had "intentional[ly] add[ed]" a "seventh majority-black district," *id.* at 402, which was "one more" than the State's prior map, *id.* at 400. Applying the predominant-rationale test, *id.* at 401, the U.S. Supreme Court held that the "intentional addition of a seventh majority-black district" in the remedial map—standing alone—meant that the "strict-scrutiny test must [ ] be satisfied" for the map to comply with the Equal Protection Clause, *id.* at 402–03. That is, "drawing the seventh majority-black district" into the map, *id.* at 403, without any further showing constituted "race-based redistricting," *id.* at 402, as that decision alone established that "race [was] the predominant factor motivating the placement of voters in or out of [that] particular district," *id.* at 401. Accordingly, in deciding that strict scrutiny applied, the U.S. Supreme Court saw no need to discuss, for example, whether the remedial map at issue also failed to satisfy the traditional districting principles, *see generally id.* at 401–04, notwithstanding arguments from the Wisconsin Governor that the map did comply with those principles, *see* Resp. To Appl. From Resp't Governor Tony Evers at 19, *Wis. Legislature*, No.21A471 (U.S. Mar. 11, 2022) (asserting that Petitioners did not "identify any specific respect in which its map conflicts with or subordinates traditional redistricting criteria").[3]

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[3] Available at https://www.supremecourt.gov/DocketPDF/21/21A471/218427/20220311165107226 _21A471%20Wisconsin%20-%20SCOTUS%20Opp%20Final.pdf (last visited December 23, 2025).

Cooper is in accord. There, like *Wisconsin Legislature,* the U.S. Supreme Court held that two districts within a state legislative map drawn by the North Carolina General Assembly triggered (and, again, failed) strict scrutiny, based upon the predominant-rationale test. *Cooper,* 581 U.S. at 291, 295–96. The Court explained that under the predominant-rationale test, a party may "make the required showing" that "race was the predominant factor motivating the [mapdrawer's] decision to place a significant number of voters within or without a particular district" through three different evidentiary pathways: "[1] direct evidence of legislative intent, [2] circumstantial evidence of a district's shape and demographics, or [3] a mix of both." *Id.* at 291 (citations omitted). A party's "task, in other words, is simply to persuade the trial court—without any special evidentiary prerequisite—that race (not [some other factor]) was the predominant consideration in deciding to place a significant number of voters within or without a particular district." *Id.* at 318; *accord Bethune-Hill*, 580 U.S. at 189 ("the criterion that . . . could not be compromised" (citations omitted)). *Cooper* then held that, under this test, one of the districts at issue triggered strict scrutiny based upon the first pathway ("direct evidence of the [mapdrawer's] intent") because the North Carolina General Assembly "purposefully established a racial target" with the district: the goal of ensuring that Black voters "ma[d]e up no less than a majority of the voting-age population" in that district. 581 U.S. at 299–301. Again, as with *Wisconsin Legislature*, that decision alone triggered strict-scrutiny review as to that district, with no need for the Court to discuss the State's argument that this district nevertheless complied with traditional districting principles. *Compare id.*, *with* Br. For Appellants at 45, *Cooper v. Harris*, No.15-1262, 2016 WL 4771954 (U.S. Sept. 12, 2016) (asserting that "a plaintiff must prove—and a court must find—that the challenged district lines are inconsistent with traditional districting principles").

The U.S. Supreme Court's *Wisconsin Legislature* and *Cooper* decisions provide essential framing for the misplaced quotations of the *Vera* plurality and *Bethune-Hill* in Petitioners' brief. Pet.Opp.22–23. In their brief, Petitioners cite the *Vera* plurality's statement that the decision "to create a majority-minority district" in the map there was "merely one of several essential ingredients" to the plurality's conclusion that strict scrutiny applied under the predominant-rationale test. *Vera*, 517 U.S. at 962 (lead plurality of O'Connor, J.); Pet.Opp.22–23. Petitioners then cite *Bethune-Hill*, arguing that it holds that the predominant-rationale test requires a "'holistic analysis'" and the consideration of multiple "factor[s]." Pet.Opp.23 (citing *Bethune-Hill*, 580 U.S. at 192). Finally, based on these two citations, Petitioners claim that their own map-drawing "goal of giving Black and Latino voters the benefit of increased electoral 'influence' than under the prior map" cannot by itself trigger strict scrutiny, under the predominant-rationale test. Pet.Opp.22 (citing Int'r.Resp't.Br.33). *Wisconsin Legislature* and *Cooper* definitively refute that argument, as they both concluded that the maps at issue trigged strict scrutiny under the predominant-rationale test solely because the mapdrawers had express race-based purposes when drawing the maps. *See supra* pp.18–19. That is because, as *Cooper* explains, a mapdrawer's expressed race-based goal is itself "direct evidence of [ ] intent," which alone suffices under the predominant-rationale test. 581 U.S. at 291. Petitioners' quotations from the *Vera* plurality and *Bethune-Hill* do not conflict with *Wisconsin Legislature* and *Cooper* in this respect. Rather, both quotations refer to the *additional* pathways of establishing a mapdrawer's predominant racial motive expressly recognized in *Cooper*—demonstrating such intent through "circumstantial evidence" or a mix of "direct" and "circumstantial evidence." *See id.* That kind of reliance does require consideration of "several essential ingredients," *Vera*, 517 U.S. at 962, and a "holistic analysis," *Bethune-Hill*, 580 U.S. at 192.

Here, just like the maps in *Wisconsin Legislature* and *Cooper*, Petitioners' proposed map triggers strict scrutiny because race is the *sole*—and, therefore, necessarily the predominant—rationale for its redrawing of the 11th Congressional District. Again, Petitioners' requested remedy here requires either this Court or the Legislature to move voters in or out of the 11th Congressional District until there are enough Black and Latino voters within the newly drawn district to give those voters sufficient electoral "influence." *Supra* pp.15–17. Such intentional and purposeful drawing of a district to give more electoral benefit to voters lumped together by race is alone "race-based redistricting" that triggers strict-scrutiny review under the predominant-rationale test, with no further inquiry. *Wis. Legislature*, 595 U.S. at 401–02. In other words, either this Court or the Legislature redrawing the 11th Congressional District with the sole, express purpose of increasing the electoral "influence" of Black and Latino voters is "direct evidence of [the] intent" that "race was the predominant factor" in redistricting, meaning that strict scrutiny applies. *Cooper*, 581 U.S. at 291. No further evidentiary showing of race-based intent is necessary under the predominant-rationale test to invoke strict scrutiny. *Id.* at 291, 319.

Petitioners' related argument that their proposed map still avoids strict-scrutiny review because it "respects the other redistricting criteria" fails for the same reasons. Again, *Wisconsin Legislature* and *Cooper* both hold that when a mapdrawer's *explicit* intent in drawing a map is based on race, race is *necessarily* the predominant rationale, without any need to consider whether the map at issue fails to adhere to traditional redistricting criteria. *Supra* pp.18–19. *Bethune-Hill* makes this same point in express and unambiguous terms: "showing a deviation from, or conflict with, traditional redistricting principles is *not* a necessary prerequisite to establishing racial predominance," so as to trigger strict scrutiny. 580 U.S. at 191 (emphasis added). That is because "[r]ace may predominate even when a reapportionment plan respects traditional principles . . . if

race was the criterion that, in the [mapdrawer's] view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made." *Id.* at 189 (citations omitted; brackets in original).

Nevertheless, Petitioners are wrong that the redrawn 11th Congressional District that they have proposed complies with traditional redistricting principles—although, again, that is not legally relevant to whether strict scrutiny applies. As Intervenor-Respondents' experts showed, Petitioners' proposed redraw of the 11th Congressional District disregards communities of interest in multiple ways, Int'r.Resp't.Br.34 (citing Borelli.Rebut.15–18), and disregards compactness, given its combination of the physically separated Manhattan and Staten Island boroughs, Int'r.Resp't.Br.34 (citing Borelli.Rebut.17–19). Petitioners' response that their proposed map does not disregard communities of interest because "the Staten Island ferry caries *tens of thousands* of people between boroughs every single day" is perplexing, to say the least, and does not support their argument. Pet.Opp.23–24. That people choose to travel between the boroughs every day, as opposed to moving to Staten Island, supports Intervenor-Respondents' contention that it makes "little practical sense" to combine Staten Island's diverse, suburban population with lower Manhattan's largely White, city dwellers. Int'r.Resp'ts.Br.34. If lower-Manhattanites believed that their lifestyle matched those of Staten Islanders, they would not undertake a daily commute, and vice versa. Pivoting, Petitioners then contend that "Article III, § 4 does not require new congressional districts to *create* communities of interest," so, "the absence of a community of interest does not mean a map should *fail*." Pet.Opp.24. But it is Petitioners who contend that Article III, Section 4 requires mapdrawers to link communities of interest in Staten Island and lower Manhattan. Pet. ¶ 12. That the two boroughs have little in common is surely relevant to that contention. Borelli.Rebut.15–19.

Petitioners next attempt to avoid the application of strict scrutiny here by claiming that their request to redraw the 11th Congressional District to give Black and Latino voters more "influence" does not "rely on 'the use of an express racial target.'" Pet.Opp.23 (citing *Bethune-Hill*, 580 U.S. at 192). But Petitioners' requested relief requires a mapdrawer (either this Court or the Legislature) to move voters in and out of the 11th Congressional District until Petitioners' express goal of giving Black and Latino voters within the district enough electoral "influence" is met. *See* Pet.28; Int'r.Resp't.Br.33–34. The choice to use a qualitative racial target still makes race the explicit—and, indeed, sole—"rationale" for the "design" of the redrawn 11th Congressional District that Petitioners have proposed, which necessarily means that race is the "predominant" factor here, *Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 401–04, for all the reasons already discussed above, *supra* pp.15–22. Strict scrutiny therefore applies.

Petitioners then appear to argue, briefly, that the U.S. Supreme Court's decision in *Bartlett v. Strickland*, 556 U.S. 1 (2009), means that strict scrutiny should not apply to their requested redrawing of the 11th Congressional District. Pet.Opp.23. In *Bartlett*, the U.S. Supreme Court stated (in a controlling plurality by Justice Kennedy) that, although Section 2 of the VRA does not mandate the creation of "cross-over districts," such districts may "diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal." *Bartlett*, 556 U.S. at 23 (plurality op.). Therefore, the Court continued, "States that wish to draw crossover districts are free to do so where no other prohibition exists." *Id.* These statements in *Bartlett* do not help Petitioners, however, because they do not water down the controlling racial-predominance inquiry applicable here. "[T]here is a difference between being aware of racial considerations and being motivated by them." *Allen v. Milligan*, 599 U.S. 1, 30 (2023) (citation omitted). "The former is permissible; the latter is usually not," given that it

triggers exacting, strict-scrutiny review. *Id.* Under *Bartlett*, a State may draw cross-over districts due to the State's "aware[ness] of racial considerations" or "racial demographics," *id.*, but a State cannot draw such districts where "the overriding reason for choosing [them]" is "race for its own sake," *id.* at 31. Here, as explained above, Petitioners' overriding reason for redrawing the 11th Congressional District to increase the "influence" of Black and Latino voters is race for its own sake. *Supra* pp.15–22. *Bartlett* does not insulate such obviously race-based redistricting decisions from strict-scrutiny review.

Petitioners cannot carry their heavy burden of satisfying strict scrutiny. Petitioners then turn to arguing that, if strict scrutiny did apply to their requested redrawing of the 11th Congressional District, they would satisfy this exacting standard. Pet.Opp.24–25. Yet, although it is Petitioners' burden to satisfy strict scrutiny, *see Wis. Legislature*, 595 U.S. at 402–03, they spend only a single paragraph attempting to show why redrawing the 11th Congressional District for racial reasons furthers a compelling government interest in a narrowly tailored way, *see* Pet.Opp.24–25. Petitioners' abbreviated arguments on this score fail.

Beginning with the compelling-state-interest prong, Petitioners' *sole* argument is that redrawing the 11th Congressional District furthers a compelling interest in complying with the *state* constitutional provision at issue here: Article III, Section 4. Pet.Opp.24–25. The U.S. Supreme Court has never recognized compliance with *state* law to be a compelling state interest for purposes of the Fourteenth Amendment's strict-scrutiny test. *See Cooper*, 581 U.S. at 292; *SFFA*, 600 U.S. at 207–08. That is for good reason: the Fourteenth Amendment is a prohibition on *the States*, such that States are not "free to decide" when race-based "remedies are appropriate." *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 490 (1989) (plurality op). So, while Congress may have the power to use race-based laws that "redress societal discrimination," the States

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manifestly lack such authority under the Fourteenth Amendment. *SFFA*, 600 U.S. at 228. States cannot in any way undertake the "odious" task of "pick[ing] winners and losers based on the color of [their citizens'] skin." *Id.* at 208. More broadly, the U.S. Supreme Court has expressed deep skepticism, to put it mildly, of recognizing new compelling state interests in this context, as it is only the "rare" and "extraordinary case" where a State's race-based action serves a *compelling* interest. *Id.* While Petitioners cite *Bartlett* again, Pet.Opp.24, it is of no help to them here either, as *Bartlett* merely recognized that a State may "appropriate[ly]" create a cross-over district "where no other prohibition exists," 556 U.S. at 24 (plurality op.). A State pursuing an "appropriate" state policy is a far cry from a *compelling* state interest.

Petitioners' citation of *Clarke v. Town of Newburgh*, 237 A.D.3d 14 (2d Dep't 2025), *aff'd,* No.84, 2025 WL 3235042 (N.Y. Nov. 20, 2025), is deeply confused. Pet.Opp.24–25. *Clarke* merely held that the NYVRA need not mirror the so-called *Gingles* standards of Section 2 of the federal VRA in order "to survive a facial challenge to [the NYVRA's] constitutionality under the Equal Protection Clause." 237 A.3d at 37. The question here, however, is whether Petitioners' expressly race-based redrawing of the 11th Congressional District furthers a compelling state interest. *Clarke* does not address that question at all. *See generally id.*

Petitioners' narrow-tailoring argument—which comprises a single sentence, Pet.Opp.25— fares no better. Even if this Court were to determine that "the current boundaries of CD-11 result in unlawful vote dilution of Black and Latino voters" under Article III, Section 4 of the New York Constitution and that remedying that state-constitutional violation were a compelling state-interest under the Fourteenth Amendment's Equal Protection Clause, Pet.Opp.25, that would not "necessarily demonstrate" that *a race-based remedy* for that violation is narrowly tailored for purposes of the strict-scrutiny analysis, *contra* Pet.Opp.25. Petitioners bear the burden of showing

that a *race-based remedy*, as opposed to a race-neutral remedy, is *"necessary."* *SFFA*, 600 U.S. at 206–07 (citations omitted; emphasis added). Yet, Petitioners do not even attempt to explain why a race-neutral remedy would fail to increase sufficiently the electoral "influence" of Black and Latino voters, *see generally* Pet.Opp.25—including some remedies listed in the NYVRA itself, *see* Int'r.Resp't.Br.38–39.

NYVRA more generally. Petitioners conclude the equal-protection portion of their Opposition with an extended argument that the NYVRA itself does not facially violate the Equal Protection Clause, *see* Int'r.Resp't.Br.25–31, but that is beside the point. Intervenor-Respondents have not argued here that the NYVRA's vote-dilution provisions are facially unconstitutional under the Equal Protection Clause. That is, Intervenor-Respondents do not claim in this case that every application of the NYVRA's vote-dilution provisions violates the Constitution, *see generally* Int'r.Resp't.Br.32–39, which was one of the issues before the New York Court of Appeals in *Clarke*, a case the Court resolved on municipal-capacity grounds not at issue here, 2025 WL 3235042. Therefore, to rule in Intervenor-Respondents' favor and dismiss the Petition, the Court need *not* engage at all with Petitioners' arguments that: the NYVRA does not facially classify based on race, so as to trigger facial strict-scrutiny review, Pet.Opp.26–29; the NYVRA's remedies do not facially "rely on impermissible racial classifications," Pet.Opp.29–30; or, even if strict scrutiny did facially apply to the NYVRA, the NYVRA would satisfy that review as a facial matter, Pet.Opp.30–31. Rather, Intervenor-Respondents' argument is that the drawing of an "influence" district after a petitioner happens to satisfy the minimal showings set out in the NYVRA—namely, (1) that the preferred candidates of a group of voters lumped together by race "usually [be] defeated," and (2) that there is either (a) "racially polarized" voting in the district or (b) an impairment of that group of voters' ability to influence an election under the NYVRA's all-things-

considered, totality-of-the-circumstances inquiry—both triggers and fails strict-scrutiny review, as Intervenor-Respondents explained. Int'r.Resp't.Br.37–38.

Here, this Court need not go even that far into an equal-protection analysis of the NYVRA and its influence-district mandate to dispose of this case. With respect to ruling for Intervenor-Respondents on their equal-protection argument, it is sufficient for the Court to conclude that the race-based redrawing *of the 11th Congressional District in particular* into an "influence" district, per the NYVRA's influence-district mandate, fails strict scrutiny. Int'r.Resp't.Br.37–38. And that is the correct conclusion here, as Intervenor-Respondents explained. Int'r.Resp't.Br.37–38. Again, Petitioners cannot show how redrawing the 11th Congressional District into an "influence" district according to the NYVRA's standards furthers any compelling state interest, nor could they show that such a race-based redrawing of the 11th Congressional District is necessary to the pursuit of any such interest. Int'r.Resp't.Br.37–38.

That said, two of Petitioners' claims in this portion of their brief do merit a brief response, in light of Intervenor-Respondents' equal-protection arguments. First, Petitioners claim that the NYVRA would not facially trigger strict-scrutiny review because it is "race neutral," in that it "'allow[s] members of all racial groups, including white voters, to bring vote dilution claims.'" Pet.Opp.27 (citing *Clarke*, 237 A.D.3d at 33 (brackets in original)). While that assertion is wrong as a matter of U.S. Supreme Court precedent, *see, e.g.*, *Johnson v. California*, 543 U.S. 499, 502 (2005); *Powers v. Ohio*, 499 U.S. 400, 410 (1991), it suffices to note that Petitioners do *not* claim in this case that their proposed map escapes strict-scrutiny review on these NYVRA-is-facially-race-neutral grounds, *see generally* Pet.Opp.22–24. That is for good reason, as even Petitioners' own cited authority recognized that, if a court in an NYVRA vote-dilution case were to order as a remedy redistricting "in which race is a factor in establishing district boundaries," that particular

remedy may trigger strict-scrutiny review. *Clarke*, 237 A.D.3d at 37 (citation omitted). Second, Petitioners claim that "the [U.S. Supreme] Court has not subjected the Federal VRA to strict scrutiny" and that the so-called *Gingles* factors of Section 2 of the VRA, which factors the NYVRA systematically disregards, are not needed to make a vote-dilution provision like Section 2 narrowly tailored for strict-scrutiny review. Pet.Opp.31. These arguments too are clearly wrong, as the logic of the U.S. Supreme Court's longstanding assumption that a State's compliance with Section 2 is a compelling interest means that the U.S. Supreme Court would subject Section 2 itself to strict scrutiny. *See Abbott v. Perez*, 585 U.S. 579, 587 (2018); *Bartlett*, 556 U.S. at 21 (plurality op.); *infra* pp.28–29 (discussing how *Louisiana v. Callais*, 606 U.S. ___, 2025 WL 1773632 (June 27, 2025) (reargued Oct. 15, 2025), may cut back on this longstanding assumption). Further, the Court has also made clear that any weakening of Section 2's *Gingles* factors would raise "serious constitutional concerns under the Equal Protection Clause," meaning that those factors are essential to Section 2's narrow tailoring. *Bartlett*, 556 U.S. at 21 (plurality op.).

Finally, Intervenor-Respondents respectfully submit that, as this Court considers the parties' equal-protection arguments, it should bear in mind that in *Louisiana v. Callais* the U.S. Supreme Court appears poised to cut back, at least to some extent, on its longstanding assumption that a State's compliance with Section 2 of the VRA is a compelling state interest for purposes of the strict-scrutiny analysis. Int'r.Resp't.Br.35 n.8, 37. If the U.S. Supreme Court were to reject that longstanding assumption in *Louisiana*, that would alone defeat the only asserted compelling interest—compliance with the NYVRA's standards, as read into Article III, Section 4—that Petitioners have put forward here. *See* Pet.Opp.24–25. While Intervenor-Respondents raised the *Louisiana* case in their Memorandum, Int'r.Resp't.Br.35 n.8, 37, Petitioners wholly ignored it—including by failing to explain how their strict-scrutiny arguments could possibly prevail here if

Louisiana does cut back on the Court's longstanding assumption that compliance with Section 2 is a compelling state interest.

IV.   Laches Bars The Petition As Well

A. Laches independently bars this action because Petitioners inexplicably waited until October 2025 to bring a challenge that would have been ripe as soon as the Governor signed the map into law in 2024, and which contains boundaries that have been largely consistent since 1980. Int'r.Resp't.Br.43–44. This "entirely avoidable delay," which will require the drawing of a new map before the impending 2026 primaries, "prejudice[s] [ ] voters[,] candidates," and the Legislature, warranting dismissal. Int'r.Resp't.Br. 43–44 (citing *League of Women Voters of N.Y. State v. N.Y. State Bd. of Elections*, 206 A.D.3d 1227, 1230 (3d Dep't 2022)).

B. Petitioners do not seriously contend that they acted promptly, simply claiming that it was not unreasonable to wait eighteen months after the 2024 Congressional Map's enactment to sue. Pet.Opp.33. But they fail to explain how their claim was not ripe in 2014, when the 2014 Amendments' enactment (under their theory) required a minority influence district to prevent vote-dilution in a nearly identical 11th Congressional District. Pet. ¶¶ 96–102. They assert that "voting has become increasingly racially polarized," Pet.Opp.34, but their own experts claim a "consistent pattern of racially polarized voting" going back to 2017, NYSCEF Doc. No.60 ("Palmer Rep.") ¶ 19.[4] At the absolute minimum, Petitioners could have brought their claim immediately after the adoption of the 2024 Congressional Map on February 28, 2024. Such a delay, particularly in the election context, is unreasonable—as New York courts have repeatedly recognized. *See MacDonald v. Cnty. of Monroe*, 79 Misc.3d 550, 565–67 (Monroe Cnty. Sup. Ct. 2023)

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[4] For this reason, *Garza v. County of Los Angeles*, 918 F.2d 768 (9th Cir. 1990), where petitioners alleged that their injury became "progressively worse over time," *id.* at 772, does not help Petitioners here who have not alleged that any vote-dilution injury has increased year over year.

(dismissing petition filed two months after enactment); *Nichols v. Hochul*, 76 Misc.3d 379, 384–85 (N.Y. Cnty. Sup. Ct. 2022) (dismissing petition filed three and a half months after adopting map); *Amedure v. State*, 210 A.D.3d 1134, 1137–39 (3d Dep't 2022) (dismissing petition filed nine months after adoption of election process). Petitioners nonetheless point to a spattering of federal cases to support their position. Pet.Opp.34–35. But federal partisan gerrymandering cases offer little help, as shown by *League of Women Voters of Michigan v. Benson*, 373 F. Supp. 3d 867, 908–10 (E.D. Mich. 2019), which was vacated because federal courts lack jurisdiction to hear partisan gerrymandering claims, *Chatfield v. League of Women Voters of Mich.*, 589 U.S. 1031 (2019). And the sole New York case cited simply holds that "laches is not applicable to commercial cases." *Ambrogio & Caterina Giannone Fam. Ltd. P'ship v. 7th Heaven USA Inc.*, 954 N.Y.S.2d 757 (Nassau Cnty. Dist. Ct. 2012) (table decision). None show that this Court encourages Petitioners' dilatory tactics.

Petitioners also claim that laches should fail because there is no prejudice, Pet.Opp.33, but that is wrong. Petitioners' inexcusable and entirely avoidable delay causes "significant and immeasurable prejudice to voters[,] candidates," and the Legislature. *League of Women Voters of N.Y. State*, 206 A.D.3d at 1230. Any remedial map must be passed by the Legislature long before the June 23, 2026 primary. By failing to bring suit timely, Petitioners have both artificially compressed judicial review and created an "impossible burden[ ]" for the Legislature, requiring it to expedite the map drawing process prior to the primary. *Id.* This timeline—which, again, only exists because of Petitioners' unexplained and avoidable delay—is simply "not feasible." *MacDonald*, 79 Misc.3d at 555. Further, Petitioners' delay also prejudices Intervenor-Respondents, who have invested significant time and resources campaigning in the 11th

Congressional District based upon the understanding that the 2024 Congressional Map would govern until the next Census in 2030—not just one election cycle.

The Court should not countenance Petitioners' unreasonable delay and should dismiss this Petition on laches grounds. But, at the absolute minimum, this Court should hold Petitioners to the sole theory that they developed during their lengthy delay and raised in their belated Petition: Article III, Section 4 incorporates the standards in the NYVRA. Since, as even the Governor admits, this theory is a constitutional nonstarter, that must be the end of this case in any event.

CONCLUSION

This Court should dismiss the Petition.

Dated: New York, New York
December 23, 2025

TROUTMAN PEPPER LOCKE LLP

By: _____
Bennet J. Moskowitz, Reg. No.4693842
875 Third Avenue
New York, New York 10022
(212) 704-6000
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No.4642609
111 S. Wacker Dr., Suite 4100
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

<u>CERTIFICATION</u>

I hereby certify that the foregoing reply memorandum of law complies with the word count limitations set forth in 22 NYCRR § 202.8-b(a). According to the word-processing system used to prepare this memorandum of law, it contains 9,624 words, excluding parts of the document exempted by Rule 202.8-b(b).

I certify pursuant to Rule 18 of the Part 44 Rules that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within this submission.

Dated: New York, New York
       December 23, 2025

TROUTMAN PEPPER LOCKE LLP

By: _____
Bennet J. Moskowitz, Reg. No.4693842
875 Third Avenue
New York, New York 10022
(212) 704-6000
bennet.moskowitz@troutman.com

EXHIBIT **P**

In The Matter Of:

MICHAEL WILLIAMS et al. v.
BOARD OF ELECTIONS OF THE STATE OF NEW YORK

Dr. Thomas Sugrue & Dr. Maxwell Palmer
January 5, 2026

Cheryl-Lee Lorient

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1 SUPREME COURT OF THE STATE OF NEW YORK
   COUNTY OF NEW YORK - CIVIL TERM - PART 44
2 --X
   Michael Williams, Jose Ramirez-Garofalo, Aixa Torres,
3 and Melissa Carty,
4   Petitioners,
5   -against-
                             Index No.:
6   164002/2025
7 Board of Elections of the State of New York, Kristen Zebrowski
   Stavisky, in Her Official Capacity As Co-executive Director of
8 The Board of Elections of the State of New York; Raymond J.
   Riley Iii, in His Official Capacity As Co-executive Director of
9 The Board of Elections of the State of New York; Peter S.
   Kosinski, in His Capacity As Co-chair and Commissioner of the
10 Board of Elections of the State of New York; Henry T. Berger,
   In His Offical Capacity As Co-chair and Commissioner of the
11 Board of Elections of the State of New York; Anthony J. Casale,
   in His Official Capacity As Commissioner of the Board of
12 Elections of the State of New York; Essma Bagnuola, in Her
   Official Capacity As Commissioner of the Board of Elections of
13 the State of New York; Katy Hochul, in Her Official Capacity As
   Governor of New York; Andrea Stewart-cousins, in Her Official
14 Capacity As Senate Majority Leader and President Pro Tempore of
   the New York State Senate; Carl E. Heastie, in His Official
15 Capacity As Speaker of New York State Assembly; and Letitia
   James, in Her Official Capacity As Attorney General of New York
16
                             Respondents,
17   -and-
18
   Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon B.
19 Reeves, Angela Sisto, and Faith Togba,
20   Intervenors-Respondents.
   --X
21   60 Centre Street,
                New York, New York
22   January 5, 2026
23
   B E F O R E :
24
        HONORABLE JEFFREY PEARLMAN,
25   Supreme Court Justice

Page 2

1 A P P E A R A N C E S :
2
   ELIAS LAW GROUP LLP
3 250 Massachusetts Avenue, Suite 400
   Washington, D.C. 20001
4 Attorneys for the Petitioners
   BY: ARIA C. BRANCH, ESQ.
5 BY: CHRISTOPHER DODGE, ESQ.
   BY: LUCAS LALLINGER, ESQ.
6 BY: NICOLE WITTSTEIN, ESQ.
7
   EMERY CELLI BRINCKERHOFF
8 ABADY WARD & MAAZEL, LLP
   Attorneys for the Petitioners
9 One Rockefeller Plaza, 8th Floor
   New York, New York 10020
10 BY: ANDREW G. CELLI, JR., ESQ.
   BY: EMILY WANGER, ESQ.
11
12 Cullen and Dykman LLP
   Attorneys for the Respondents
13 80 State Street, Suite 900
   Albany, New York 12207
14 BY: NICHOLAS J. FASO, ESQ.
   BY: CHRISTOPHER E. BUCKEY, ESQ.
15
16
   Troutman Pepper Locke
17 875 Third Avenue
   Attorneys for the Intervenors Respondents
18 New York, NY 10022
   BY: BENNET MOSKOWITZ, ESQ.
19 BY: MISHA TSEYTLIN, ESQ.
   BY: ROBERT PEALER, ESQ.
20 BY: MOLLY DIRAGO, ESQ.
   BY: ANDREW BRAUNSTEIN, ESQ. BY: LAUREN MILLER, ESQ.
21
22   CLAUDINE Y. DAVIDSON
                CHERYL LEE LORIENT
23   MONICA HAHN
                SENIOR COURT REPORTERS
24
25

Page 3

1   MR. TSEYTLIN: This is the matter of Williams
2 versus the Board of Elections of the State of New York, et
3 al., Index No. 164002/2025.
4   May I have appearance of counsel, please,
5 starting with the Petitioner.
6   MS. BRANCH: Good morning, Your Honor. My name
7 is Aria Branch on behalf of the Petitioners. And I have
8 here with me today my colleagues Christopher Dodge,
9 Nicole Wittstein, Lucas Lallinger, and our local counsel,
10 Andrew Celli and Emily Wanger.
11   MR. FASO: Good morning, Your Honor.
12   Nicholas Faso, Cullen & Dykman for Respondents,
13 Kosinski, Casale and Riley. And I'm here with my partner
14 Christopher Buckey.
15   THE COURT: Good morning.
16   MR. MOSKOWITZ: Good morning, Your Honor.
17   Bennet Moskowitz, Troutman Pepper Locke for the
18 Intervenor Respondents. Here with me at the counsels'
19 table is Misha Tseytlin, Robert Pealer, who is on the
20 other side of me. To my right is our hot-seat
21 technician -- and would Your Honor like me now to
22 introduce my other colleagues who may be going on record
23 at some time during these proceedings?
24   THE COURT: Please.
25   MR. MOSKOWITZ: Molly DiRago, whose pro hoc

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1 admission you just entered, is standing right behind me
2 here. And Andrew Braunstein is over on that first bench
3 on the side. You may -- you will hear from him during
4 these proceedings. And Lauren Miller is standing right
5 next to him, and you will probably hear from her during
6 these proceedings as well.
7   THE COURT: Okay. Good morning. All right.
8 Well, please -- more?
9   MR. FARBER: Good morning, Your Honor.
10   Seth Farber, from the Office of New York State
11 Attorney General for Respondents Hochul, Stewart-Cousins,
12 Heastie and James. Thank you.
13   THE COURT: Good morning.
14   Anybody else?
15   Come on up.
16   MR. GROSSMAN: Good morning, Your Honor.
17   Perry Grossman from the New York Civil Liberties
18 Union for the proposed amici, New York Civil Liberties
19 Union, NAACP Legal Defense and Education Fund,
20 Asian-American Legal Defense and Education Fund, Latino
21 Justice PRLDEF and the Center for Law and Social Justice.
22   (Court reporter seeks clarification.)
23   THE COURT: Welcome.
24   Others, at this time?
25   Not at this time. Please be seated then.

1　　　　Get started?

2　　　　MS. BRANCH: Good morning again, Your Honor, and

3　may it please Court. My name is Aria Branch, and I appear

4　today on behalf of the Williams Petitioners.

5　　　　The evidence in this case will show that Black

6　and Hispanic voters on the North Shore of Staten Island,

7　from Port Richmond to West Brighton and from Stapleton to

8　Saint George, have routinely, repeatedly and

9　systematically been excluded from the democratic process

10　because their votes are being diluted. Black and Hispanic

11　voting strength in the Congressional District 11 has been

12　rendered meaningless by design.

13　　　　Even as the Black and Hispanic percentage of the

14　population on Staten Island increases, Black and Hispanic

15　voting strength is being diluted because -- and the

16　evidence will show this -- voting on Staten Island is

17　racially polarized. Coalitions between Black and Hispanic

18　voters and White voters do not exist, and the views and

19　interests of Black and Hispanic voters do not impact the

20　positions of representatives elected by what is now a slim

21　White majority.

22　　　　The current contours of the 11th Congressional

23　District diminish Black and Hispanic voters' ability to

24　engage in the political process as true civic

25　participants. They are excluded from the promise of our

1　democracy rather than included. The evidence in this case

2　will prove three things about Staten Island and the 11th

3　Congressional District.

4　　　　First, the evidence will show, as the figure on

5　the screen displays, District 11, like much of America,

6　has become increasingly diverse over the last several

7　decades, with a shrinking White population and a growing

8　Black an Hispanic one. From 1980 to 2020, the combined

9　Black and Hispanic population on Staten Island grew by

10　nearly 50 percent, meaning that now Black and Hispanic

11　people comprise nearly 30 percent of Staten Island's

12　population.

13　　　　During the same period, Staten Island's White

14　population dropped from 85 percent to 56 percent. But the

15　current configuration of the 11th Congressional District

16　does not account for these population changes. It,

17　instead, ensures that the growing population of Black and

18　Hispanic voters will not translate to increase political

19　influence at the federal level.

20　　　　Second, the evidence will show that social

21　science and voting data, together with many historical

22　facts, demonstrate that Black and Hispanic voters on

23　Staten Island experience significant disadvantages in many

24　areas, including education, homeownership rates and

25　employment rates. And Black and Hispanic Staten Islanders

1　have historically been unable to influence electoral

2　outcomes, much less elect their candidates of choice.

3　　　　The evidence will also show that there is

4　significant racially polarized voting in Congressional

5　District 11. Black and Hispanic voters do not support the

6　same candidates as White voters, and their preferred

7　candidates are usually defeated.

8　　　　Third, the evidence will show that this problem

9　is not unsolvable. It is possible to draw a fair map that

10　creates a competitive Congressional District 11, one that

11　can either elect a Republican or a Democrat and one where

12　cross-racial coalitions are possible and available, unlike

13　in today's congressional district.

14　　　　(Court reporter seeks clarification.)

15　　　　MS. BRANCH: Petitioners will offer the evidence

16　that I have just described through three expert witnesses,

17　each of whom is highly qualified in his field. First, we

18　will present evidence of a long history of racial

19　discrimination against Blacks and Hispanics on

20　Staten Island that persist to the present day.

21　　　　The evidence will show that Staten Island is

22　highly segregated, with nearly all of the Island's Black

23　and Hispanics residents confined to neighborhoods in the

24　North Shore. In nearly every aspect of life, Black and

25　Hispanic Staten Islanders face steep disadvantages as

1　compared to Whites.

2　　　　As a group, they own fewer homes. They face

3　higher unemployment rates and have lower levels of

4　academic achievement. They have also faced significantly

5　higher rates of violent crime than their White neighbors.

6　　　　These disparities impact Black and Hispanic

7　voters' ability to effectively participate in the

8　political process, and they contribute to lower voter

9　turnout rates among those populations.

10　　　　Dr. Thomas Sugrue, S-U-G-R-U-E, an expert in

11　American History and social science from NYU, will provide

12　more information on these disparities, which are often

13　referred to as "the totality of the circumstances factors"

14　in voting rights litigation parlance.

15　　　　(Court reporter seeks clarification.)

16　　　　MS. BRANCH: We will also present evidence of

17　racially polarized voting in Congressional District 11.

18　Dr. Maxwell Palmer of Boston University will testify that

19　Black and Hispanic voters vote cohesively, and they

20　consistently support different candidates than White

21　voters. Because of this intensely racially polarized

22　voting, Black and Hispanic voters are unable to elect

23　their preferred candidates.

24　　　　The Black and Hispanic-preferred candidate won

25　only 5 of the 20 elections from 2017 to 2024 that

1   Dr. Palmer examined. He will testify that the current
2   incumbent representative is decidedly not the preferred
3   candidate for Black and Hispanic voters in her district.
4   Finally, Petitioners will also present an
5   illustrative map from Mr. Bill Cooper, who is a
6   well-respected and longtime demographer, showing that it
7   is entirely possible to remedy the racial vote dilution in
8   Congressional District 11.
9   (Court reporter seeks clarification.)
10   MS. BRANCH: Mr. Cooper will explain how
11   Petitioners' illustrative district joins Staten Island
12   with Lower Manhattan, instead of southwestern Brooklyn.
13   And he will testify that the illustrative map complies
14   with traditional redistricting criteria recognized under
15   New York Law, such as compactness and contiguity.
16   Dr. Palmer also examined Mr. Cooper's
17   illustrative map. And the evidence will show that the
18   illustrative map significantly reduces racially polarized
19   voting in CD-11, allowing the significant population of
20   Black and Hispanic voters to form an electoral coalition
21   with White crossover voters and that it complies with
22   traditional redistricting criteria.
23   This district would be highly competitive for
24   Black and Hispanic voters with their candidate of choice
25   winning most, but not all, elections.

1   There is nothing novel or unprecedented about
2   Mr. Cooper's illustrative map, which shows just many --
3   one of many ways to draw a district that remedies
4   Petitioners' injury.
5   This basic configuration has both historical and
6   contemporary precedent. Staten Island and Manhattan were
7   joined together in a congressional district for the first
8   half of the 20th century, as well as throughout the 1970s,
9   as shown on the display. The current State Assembly map
10   follows a similar template. Assembly Strict 61 presently
11   joins Staten Island's North Shore with Lower Manhattan.
12   Finally, the evidence will also show that the
13   illustrative district is competitive, and it creates what
14   Respondents themselves agree is a toss-up district, rather
15   than one that clearly favors one party over another. The
16   evidence will also show that the illustrative district
17   unites Chinese-American communities of interest in
18   Bensonhurst, Bath Beach, Sunset Park, all in one
19   congressional district.
20   Now you've heard the facts, and I want to talk
21   briefly about how the law instructs you to organize and
22   evaluate those facts.
23   In 2014, New Yorkers voted to amend the State
24   Constitution, and the amendments expressly prohibit racial
25   vote dilution in redistricting. The relevant amendment

1   provides, in part, that, quote:
2   "Districts shall be drawn so that, based on the
3   totality of the circumstances, racial or minority language
4   groups do not have less opportunity to participate in the
5   political process than other members of the electorate and
6   to elect their candidates of choice -- or their
7   representatives of choice." Excuse me.
8   That is Article 3, Section 4 of the State
9   Constitution.
10   Petitioners are the first to bring a racial vote
11   dilution claim under this provision. Accordingly, the
12   specific substantive legal standard that should be applied
13   is a matter of first impression for this Court to decide.
14   At the statewide level, New York has long
15   counted itself among the nation's leaders in protecting
16   the right to vote. And to that end, the language and
17   context of the constitutional provision support the
18   conclusion that it sweeps broadly; and, in particular, it
19   sweeps more broadly than federal law.
20   Unlike federal law, the New York Constitution
21   offers relief to petitioners who can show minority vote
22   dilution that can be remedied with a new district that
23   creates opportunity for minority voters without a
24   majority-minority population.
25   New York Courts themselves have suggested that

1   Article 3 is more protective of minority vote -- voting
2   rights than federal law because it protects crossover
3   districts. In the Harkenrider case, the lower court found
4   that Article 3's, quote, "prohibition against
5   discriminating against minority voting groups at the least
6   encapsulated the requirements of the Federal Voting Rights
7   Act; and according to many experts, expanded their
8   protection."
9   (Court reporter seeks clarification.)
10   MS. BRANCH: And since the 2014 redistricting
11   amendments, map drawers have assumed that the New York
12   Constitution protects districts in which the minority
13   population does not constitute a majority, just as the
14   New York Voting Rights Act does, even if federal law does
15   not.
16   For example, the Special Master in the
17   Harkenrider litigation drew a coalition district to,
18   quote, "follow the injunction of the State Constitution to
19   not draw districts that would result in the denial or
20   abridgment of racial or language minority voting rights."
21   Federal law sets a floor for the minimum
22   protections states must afford minority voters. But the
23   Supreme Court has expressly recognized that states may go
24   further, and it has discussed the benefits of doing so.
25   In Bartlett v. Strickland, for example, the

1   Supreme Court said that, quote: "States that wish to draw
2   crossover districts are free to do so where no other
3   prohibition exists." And as the Supreme Court explained
4   in Bartlett, crossover districts in particular, or
5   districts where racial minorities rely on White crossover
6   voters to have an opportunity to influence elections and
7   elect their candidate of choice, quote, "diminish the
8   significance and influence of race by encouraging minority
9   and majority voters to work together toward a common
10   goal."
11   Put another way, such districts help ensure that
12   Black and Hispanic voters are not denied the opportunity
13   to pull, haul and trade to find common political ground
14   with White voters.
15   That is the beauty of the minority voting
16   protections set forth in the State Constitution: They
17   seize on the Supreme Court's recognition that states can
18   go further in protecting minority voting rights.
19   They allow for the formation of crossover
20   districts and coalition districts, where different racial
21   groups can form collisions and influence elections.
22   They account for addressing unique and evolving
23   forms of racial vote dilution that would go unremedied
24   under federal law.
25   And the John R. Louis New York Voting Rights

1   Act, in particular, provides specific standards for courts
2   to use to, first, recognize unlawful racial vote dilution
3   and then remedy it.
4   This case is about a fundamental promise of our
5   democracy: That all voters -- no matter their race or
6   ethnicity -- should have a fair and equal opportunity to
7   participate in the political process and elect
8   representatives of their choice. That is the promise that
9   New Yorkers voted for when they amended the State
10   Constitution in 2014.
11   At the conclusion of this hearing, Petitioners
12   will ask this Court to fulfill that promise. We will ask
13   the Court to invalidate Congressional District 11 and
14   order the legislature to immediately remedy the
15   constitutional violation, according to Article 3,
16   Section 5, which says that the legislature should be given
17   a, quote, "full and reasonable opportunity to redraw an
18   unconstitutional map." Thank you.
19   THE COURT: Thank you.
20   Counsel.
21   MR. TSEYTLIN: Thank you, Your Honor.
22   Misha Tseytlin, for Intervener Respondents.
23   For decades, the legislature and courts have
24   drawn CD-11 to include Staten Island and portions of
25   Brooklyn. Most recently, the Steuben County Supreme

1   Court, which my friend just referenced, with the help of a
2   Special Master, drew the CD-11 in with that configuration.
3   The legislature two years later, after another court
4   decision, adopted a modified congressional map, but left
5   CD-11 alone. The elective representatives from CD-11 is
6   the daughter of a Cuban refugee and a Greek immigrant,
7   Representative Malliotakis, my client.
8   M-A-L-L-I-O-T-A-K-I-S.
9   Before her, it was represented by a Democrat who
10   won in -- in 2018.
11   After all this, Petitioners have brought this
12   lawsuit to, on its face, racially Gerrymander to put
13   Representative Malliotakis out of her district, on the
14   novel theory the standards of the New York Voting Rights
15   Act, adopted by the legislature in 2022 time-traveled back
16   to -- into the 2014 anti-Gerrymandering amendments that
17   the people adopted.
18   (Court reporter seeks clarification.)
19   MR. TSEYTLIN: Let me take an extreme view of
20   these -- of the NYVRA standards, which would render those
21   standards, as I will explain, absurd and impossible to
22   comply with throughout New York State.
23   They argue that the standards require that
24   Congressional District 11 must allow Black and Latino,
25   voters lumped together by race, who makeup only 30 percent

1   of the district, to elect the maj- -- the candidate of
2   their choice in more than half the elections, which means
3   that, since there is racially polarized voting in CD 11,
4   that voters lumped together by different races, such as
5   White voters, would elect their candidate of choice in
6   less than half the elections, which would mean that those
7   voters would then have a viable NYVRA-based claim against
8   the same district under their own theory.
9   (Court reporter seeks clarification.)
10   MR. TSEYTLIN: Now, this lawsuit should be
11   rejected for many reasons, and I'll talk about a couple
12   here. Some of them are purely legal, and some will be
13   evidence based.
14   First, as we explain in our briefing, there is
15   just absolutely nothing in the 2014 amendments that adopts
16   the standards of the NYVRA. The relevant language in the
17   2014 amendments mirrors the -- the federal VRA, Section 2,
18   which the US Supreme Court has said does not permit the
19   intentional finding of violation for failure to create and
20   influence districts in the LULAC case, that was a Supreme
21   Court case, L-U-L-A-C.
22   (Court reporter seeks clarification.)
23   MR. TSEYTLIN: There is no linguistic difference
24   between Section 2 of the VRA and the New York
25   Constitutional Anti-Gerrymandering amendments enacted in

1   2014 that would allow the gutting of Sections 2's core
2   requirement that there has to be a majority-minority
3   district that can be drawn with a reasonable
4   configuration.
5   And certainly, nothing in the Constitution's
6   language that allows this time-travel theory that is the
7   core of Petitioner's entire case, that the NYVRA standards
8   for 2022 should be incorporated back into the 2014
9   amendments.
10   In fact, comparing the NYVRA's language and the
11   New York Constitution's language suggests very strongly
12   the opposite inference. Both the NYVRA and the New York
13   Constitution guarantee racial groups the opportunity to
14   elect the candidates -- opportunity -- a fair opportunity
15   to elect their candidates.
16   Then NYVRA also, in addition, requires --
17   provides the protection for racial groups to influence
18   elections. That language is missing from the New York
19   Constitution. And the only fair inference is that
20   additional protection is in the NYVRA for localities, but
21   it is not in the New York Constitution for congressional
22   and state assembly and state senate maps.
23   Now, I think Petitioners, having framed this
24   case around that, kind of recognize that doesn't really
25   work. I mean, even the governor, who can't bring herself

1   to defend the very law that she signed two years ago, says
2   in her letter submission that that theory doesn't work,
3   that the NYVRA standards are not in the New York
4   Constitution, that they apply only to localities.
5   So these Petitioners, in some of their amici
6   and --
7   (Court reporter seeks clarification.)
8   MR. TSEYTLIN: I did not realize there would be
9   so much spelling on my feet here.
10   And -- and maybe -- maybe, the governor
11   suggests, that the Court can come up with some other
12   standard.
13   Very respectfully, we submitted multiple expert
14   reports on the NYVRA standards that they put in their
15   petition. We submitted detailed briefing about how this
16   Court, in a matter of first impression, should interpret
17   that language. To now adjudicate this case on some other
18   standard -- on which we haven't submitted expert reports,
19   on which we haven't adjudicated -- would be a fundamental
20   violation of due process and would render this proceeding
21   unconstitutional.
22   THE COURT: What standard should the Court
23   apply?
24   MR. FASO: The Court should take one of two
25   paths. One, if the Court agrees with us, that the NYVRA

1   standards are not in the New York Constitution, the only
2   legal -- legally permissible disposition is to dismiss
3   this petition or deny the petition.
4   If the Court disagrees with us and thinks the
5   NYVRA standards are in the New York Constitution, then the
6   Court should apply the NYVRA standards. And I will -- so
7   those are the two paths.
8   Obviously, we think it should be dismissed.
9   Nothing in the Constitution includes the NYVRA standards,
10   and the governor agrees with us. If the Court
11   disagrees -- if the Court takes a different approach, then
12   the Court will be in the position of being the first Court
13   in the state to articulate what the NYVRA means.
14   THE COURT: The Constitution, in Article 3
15   Section 4(1), talks about the opportunity to participate
16   in the political process. What's the difference there as
17   opposed to the New York Voting Rights Act language --
18   MR. TSEYTLIN: Right.
19   THE COURT: -- where it says that the Court
20   should apply the opportunity to participate?
21   MR. FASO: So the "opportunity to participate"
22   language, that is borrowed -- taken directly from
23   Section 2 of the -- of the Federal Voting Rights Act.
24   THE COURT: Right.
25   MR. TSEYTLIN: Which is the canonical voting

1   rights statute in this nation.
2   (Court reporter seeks clarification.)
3   MR. TSEYTLIN: The US Supreme Court has
4   interpreted that as to require that there has to be a
5   reasonably configured district that can be created, that
6   has a majority of either a single race, as some courts
7   have held, or multiple -- single-minority race or, as
8   other courts have held, a combination of multiple races
9   makes up 50 percent or more in a reasonably configured
10   district. That is what the US Supreme Court has held.
11   What the NYVRA does is it uses that language,
12   Section 2, in the New York Constitution. And it adds
13   additional language that says that there should also be
14   the opportunity to influence elections, the very thing the
15   US Supreme Court has held is not in the language that
16   Your Honor quoted.
17   And what we respectfully submit is -- you know,
18   look, the New York legislature in 2022 said, "We want this
19   influence standard for localities -- for counties, towns."
20   You know, I'm defending a couple -- I've defended, and I'm
21   defending, a couple lawsuits on behalf of towns and
22   counties when, you know, the NYVRA has been invoked.
23   (Court reporter seeks clarification.)
24   MR. TSEYTLIN: Here, the NYVRA was not adopted
25   to cover congressional districts. That is governed only

1   by the constitution provision that my friend projected on
2   the screen, and that one does not have the influence
3   language.
4   However, if Your Honor does choose to go in the
5   direction that my friends have urged in the petition to
6   adopt the NYVRA for congressional districts, which
7   legislature didn't do, then this Court is going to be in
8   the position to be the first one to opine what it -- about
9   what the language means.
10   And the way the NYVRA functions is as a
11   threshold requirement, and then two paths after the
12   threshold requirement. And threshold requirement is key,
13   which is that the -- the racial group at issue, the one
14   bringing the lawsuit, their candidates of choice have to
15   be usually defeated. And that involves two questions that
16   have been unanswered because there have been no cases yet.
17   One is: How high is the threshold for
18   "usually"? Is it 50 percent, as I think my friends are
19   suggesting? Or is it, as The Oxford Dictionary definition
20   that we quote said, has to be "ordinarily, as a rule."
21   Second, do you do the analysis by looking just
22   at the congressional district or the -- or the county
23   legislative district or the ward, dealing with counties --
24   when you're dealing with counties or towns? Or do you
25   look at the whole jurisdiction or a region?

1   And we respectfully submit that their thesis
2   that you look at the particular district, and that you
3   essentially do 50 percent or more, would render the NYVRA
4   absurd and impossible to comply with. And any
5   jurisdiction, and any district that had the very common
6   condition of racially polarized voting, the US Supreme
7   Court in Footnote 5 of Cooper says, that racially
8   polarized voting is a common condition, nothing
9   consciously suspect about it.
10   And even though an expert, Dr. Palmer says, and
11   I quote, "race and party are fundamentally linked in
12   American politics." So racially polarized voting is
13   common. So if one were to adopt their theory that you
14   focus on an individual district, and you say, you know,
15   "usually defeated" is 50 percent or more, then any -- any
16   district that have racially polarized voting -- almost any
17   district would be illegal.
18   (Court reporter seeks clarification.)
19   MR. TSEYTLIN: For one race or another, either
20   for -- like in this case, you know, the current district,
21   their own expert says that African-American and Latino
22   candidates of choice have won 4 out of 20 -- 5 out of 20
23   of the elections that he looked at.
24   If you reconfigure the district the way that
25   Dr. Cooper, another expert that they put forward, says,

1   then Dr. Palmer says that that district is won by the
2   candidate of choice of Latino and African-American
3   candidates 18 out of 20 times. So if -- if the Latino and
4   African-American candidate of choice is usually defeated
5   under the current district, then surely the
6   White-preferred candidate of choice is usually defeated
7   under their remedial district, which would make it illegal
8   for the same reason, just for another race.
9   Because as the Appellate Division held in the --
10   the Clark case that I argued and lost, on this --
11   including on this argument, the -- the NYVRA protects
12   White voters just like it protects voters of any other
13   race.
14   And since any -- unless you have a 50/50
15   district exactly, and you're going to have -- and you have
16   racially polarized voting, one of the racial groups'
17   preferred candidates is going to be losing. That's basic
18   math. So that can't be the test.
19   And we respectfully submit that the only way the
20   test works is if you do the analysis on a regional or a --
21   or a jurisdiction-wide basis and that you have a -- a more
22   stringent understanding of what "usually defeated" means.
23   THE COURT: I'm sorry -- a --
24   MR. TSEYTLIN: Of what "usually defeated" means.
25   Because "usually defeated" is the necessary threshold, and

1   if you apply the understanding --
2   (Court reporter seeks clarification.)
3   MR. TSEYTLIN: And if you apply that
4   understanding -- sorry, Your Honor.
5   THE COURT: Keep going.
6   MR. TSEYTLIN: If you apply the understanding to
7   the facts of this case, as the experts for their side and
8   our side are going to submit, the case is an easy one. It
9   is undisputed between the experts that the -- that the
10   African-American and Latino candidate of choice is not
11   usually defeated in New York across the -- the
12   congressional districts, according to the -- the numbers
13   that you'll see from Dr. Trendy, the 20 -- or 19 of the --
14   of the congressional districts of the 26 congressional
15   districts are expected to be won by the African-American
16   or Latino candidate of choice.
17   (Court reporter seeks clarification.)
18   MR. TSEYTLIN: If you look at just region-wide
19   in New York City, CD-11 is the only district where
20   African-American and Latino candidates of choice are
21   winning every election. And if you look at just CD-11,
22   their own expert says that a fourth of the time, the
23   African-American and Latino candidate of choice wins. And
24   he only -- he got that -- he -- and maybe he'll explain
25   why, he excluded the 2018 congressional race, where the

1   Latino and African-American candidate choice won in CD 11.
2   If you look at those numbers, Latino voters and
3   Black voters make up about 30 percent of CD-11, and
4   they're winning around 30 percent of the -- their
5   candidate of choice are winning around 30 percent the
6   elections.
7   So unless you have this absurd theory of: You
8   focus on only in the individual strict, and it has to be
9   50 percent that's usually defeated, under the evidence
10   presented by both sides' experts, their claim fails, under
11   the usually-defeated threshold.
12   And if their claim fails under the
13   usually-defeated threshold, Your Honor doesn't need to get
14   into this frankly messy and difficult question of how you
15   apply the 11 nonexclusive, all-things-considered factors
16   under the NYVRA that Dr. Sugrue is going to testify to
17   this morning and that our expert Mr. Borelli will testify
18   to in a couple of days.
19   Because if we are correct that the
20   African-American, Latino candidate of choice is not
21   usually defeated under the proper analysis, then you don't
22   get to that other inquiry. But if Your Honor does get
23   into that other inquiry, I think you will see that
24   Dr. Sugrue does not make out the case under those factors.
25   He essentially -- for a lot of his analysis, he

1   essentially ignores Latinos in -- in the NYVRA factors
2   that he analyzes, even though there are twice as many of
3   them as African-Americans in -- in Staten Island.
4   And then there -- the stuff -- the things that
5   he does look at are things like literacy tests that
6   New York State enacted decades ago that were long
7   adopted -- long abolished. You know, and other old
8   incidents. He glosses over the substantial progress that
9   Mr. Borelli will testify to in -- with African-American,
10   Latinos' progress and improvement in education, economic
11   attainment and voting in Staten Island.
12   (Court reporter seeks clarification.)
13   MR. TSEYTLIN: And also their success in --
14   electoral success. Not the least of which is Congressman
15   Malliotakis, who Petitioners are trying to racially
16   Gerrymander out of her -- out of this district, being a
17   Latino representative of this district.
18   THE COURT: But you're not claiming to be the
19   minority -- representing the minorities, though.
20   MR. TSEYTLIN: But that -- no, she represents
21   all of the people of CD-11, Your Honor.
22   (Continued on the next page.)
23
24
25

1   MR. TSEYTLIN: But I will say one of the
2   factors, one of the things to consider under the all
3   things considered inquiry, is the success of candidates,
4   of raises as well, not just, you know, who
5   demographically various candidates are supporting. Of
6   course, it cannot be said that New York -- policy only
7   minority candidates worth electing are those supported,
8   are those supported by democrats.
9   Finally, your Honor, um, it is important to
10   note that the remedy they seek here is very clearly
11   unconstitutional under the U.S. Supreme Court's equal
12   protection juris prudence. In fact, I further submit
13   that anything like that remedy, came out of this court,
14   U.S. Supreme Court would very likely submit a reverse as
15   it did in the Wisconsin legislator case a couple of
16   years ago.
17   The test under the U.S. constitution equal
18   protection clause, articulated by the U.S. Supreme Court
19   is straight forward.
20   One, is strict scrutiny applied.
21   Two, is it satisfied.
22   Strict scrutiny applies under the Wisconsin
23   legislator case if there is an intentional racial draw.
24   If race is the factor that can't be -- this wolf comes
25   as a wolf, your Honor.

1   Their entire basis for asking for either
2   legislative or judicial redraw here is race.
3   Under Wisconsin legislation in Cooper, that
4   very clearly triggers strict scrutiny. I don't think
5   there is a plausible argument to the contrary.
6   So they would have the burden to show that this
7   racial redraw of a district that is 30 percent African
8   American Latino, and electing the African American
9   Latino choice around 30 percent of the time, is nearly
10   tailored to satisfy a compelling argument. There is no
11   compelling argument of interest in changing the district
12   on racial basis, and even if there were, they haven't
13   come close, they haven't even tried to show that this is
14   narrowly tailored. Narrow tailoring is the highest
15   legal standard that we have outside of the criminal
16   context in this nation. They spent, I could tell one
17   sentence of their brief on it, that itself is
18   exceptionally a default on that necessary legal
19   requirement.
20   And in terms of my prediction of what would
21   happen if the racial gerrymander came out of this
22   proceeding, U.S. Supreme Court is not uninterested in
23   this area of law. It currently has before it order to
24   reargument in a case that may even hold that the --
25   Section 2 which carefully crafted three preconditions,

1   and two steps has serious -- problems.
2   A court that is willing to consider that
3   approach would surely have no trouble dispatching a
4   district that is intentionally drawn for racial reasons
5   with not even a serious effort to show strict scrutiny
6   has been satisfied.
7   Thank you, your Honor.
8   THE COURT: Thank you.
9   MR. FASO: Good morning, your Honor. Nicholas
10   Faso on behalf of respondent Kosinski, Casale and Riley.
11   At the outset, it is telling who is not
12   defending this lawsuit. The Governor, the Legislator,
13   democratic commissioners and board of elections, they
14   have not taken position on the merits of this case.
15   They are not defending the very lines that they enacted.
16   Their position underscores what this lawsuit is
17   really about. Partisan gambit to reconfigure the only
18   republican held district in New York City. It is not a
19   bona fide voting rights case.
20   The evidence will show this case is about
21   partisanship, not protecting minority voters.
22   Before we get to the evidence, this case should
23   be dismissed on a threshold legal ground my friend just
24   articulated.
25   The New York Voting Rights Act does not apply

1   to congressional redistricting, which is governed
2   exclusively by the New York State Constitution.
3   Petitioner has asked this court to properly
4   engraft that later enacted statute into the
5   constitution. But even if the legislature had intended
6   the New York Voting Right Act to apply, it would have
7   said so. Even the governor, legislative leaders, while
8   not defending the law, but agreed the New York Voting
9   Rights Act cannot apply, in this case.
10   Separation of powers forbids judiciary from
11   rewriting the constitution by applying the statutory
12   standard that the political branch chose not to.
13   Now, petitioners concede that their case fails
14   unless the New York Voting Right Act applies. Meaning,
15   they ask this court to do what the states political
16   actors have declined to do. This court should reject
17   that invitation.
18   Even putting aside this fatal flaw,
19   petitioners illustrious plan reveals partisan intent.
20   Under their own configuration, combined Black and Latino
21   citizen voting age share barely moves, while the White
22   share rises. That is not a vote dilution remedy. But
23   is a blatantly partisan reconfiguration to shift CD-11
24   political balances.
25   At best, Mr. Cooper --

1   THE COURT: Doesn't that happen all the time in
2   reconfiguring, scales tip to help a political balance;
3   isn't that part of what the legislature does?
4   MR. FASO: It is part of the people of the
5   State of New York rejected in the 2014 constitutional
6   amendment, explicitly prohibit political partisan
7   gerrymandering. The policy of this state to avoid that
8   consequence, sure. Political actors on both sides of
9   the aisles pursuing it. It is the role of the courts
10   to ensure that that does not happen.
11   At best, Mr. Cooper's illustrious plan was
12   nakedly partisan redraw of CD-11. At worse, there is a
13   wish list for the national democratic party that
14   violates multiple principles of redistricting.
15   First, the plan partisan gerrymandering
16   masquerading as it a racial remedy. It achieved its
17   claim performance gains not by adding Black or Latino
18   voters, but by swapping in more liberal white voters
19   from other boroughs.
20   Under petitioners own configuration, the
21   combined Black and Latino voting age share barely moves.
22   It is simply rearranging White partisans to shift the
23   district's political balance.
24   Second, the plan harms Asian voters. The
25   largest minority group in the area. To achieve this

1   partisan goal, the plans moves Asian voters at far
2   higher rates than any other group. It splits cohesive
3   communities like Chinatown and reduces their voting
4   strength in CD-11.
5   Degrading one minority groups voting share to
6   manufacture political outcome is not a lawful remedy.
7   Third, petitioner's goal is geographically
8   impossible. The population geography of Staten Island
9   and the surrounding boroughs makes it infeasible to draw
10   compact, lawful district that meaningfully increases
11   Black and Latino voting shares without harming Asian
12   representation or sacrificing compactness. This
13   practical impossibility confirms the plan's true aim is
14   partisan advantage.
15   Finally, adopting petitioner's theories is a
16   dangerous precedent providing -- partisan relitigation
17   of every competitive district in the state. The
18   inability to elect in any close district is enough to
19   trigger a redraw without some clear limiting principle,
20   courts will be drawn into an endless cycle of political
21   redistricting and -- that Article 3 permits. Our
22   experts will confirm this.
23   Political sciences John Alfred's analysis shows
24   the plans gains come from swapping democrat-leaning
25   White voters, not from empowering minority voters.

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1   Demographer Thomas Bryan, B R Y A N, finds the plan less
2   compact, it splits communities interests, like Chinatown
3   and disproportionately harms Asian voters.
4   Ultimately, this case should be dismissed as a
5   matter of law, because the New York VRA does not comply
6   the governing standard for congressional redistricting
7   and petitioners cases admittedly not viable without it.
8   Alternatively, if the court reaches the merits,
9   the evidence will show the petitioners plan as a
10   partisan gerrymander that harms Asian voters, fails to
11   empower Black and Latino voters.
12   For these reasons, we respectfully ask the
13   court to dismiss the petition, enter judgment in favor
14   of the respondents.
15   Thank you, your Honor.
16   THE COURT: Thank you.
17   MR. FARBER: Good morning, your Honor.
18   THE COURT: Good morning.
19   MR. FARBER: Seth Farber, for Governor Hochul,
20   Senate Majority Leader Steward-Cousins, Speaker Heastie,
21   and Attorney General James.
22   Your Honor, the estate respondents rely on the
23   letter we submitted on December 8, 2025. NYSCEF
24   Document 95. Thank you.
25   THE COURT: Thank you.

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1   Response?
2   MS. BRANCH: Yes. Just a few clarifying
3   points, your Honor.
4   All parties I think agree that this case
5   presents an issue of first impression because the
6   constitutional ban on vote dilution has not yet been
7   interpreted by courts. It is fairly new. Just added to
8   the constitution in 2014 and there has not been
9   litigation under that provision.
10   My friends on the other side believe that the
11   constitutional provision is just a repeat of Section 2
12   of the Voting Writes Act and plaintiffs are petitioners
13   that bring a constitutional vote dilution claim must
14   prove that they can constitute a majority in a new
15   district.
16   By contrast, we believe that the language and
17   the context of the constitutional provision indicates
18   that it is broader than the protections provided by
19   federal law. And that is the dispute here.
20   In particular, we believe that the
21   constitutional language, and allows plaintiffs to show
22   that a new district can be drawn, which a single race is
23   not required to form a majority of voters in the
24   district. Instead, coalitions, multi-racial coalitions,
25   in this case, Black and Hispanic voters and White

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1   crossover voters can also be remedies for racial voters.
2   THE COURT: So can we breakdown the
3   Subdivision C of the New York State Constitution where
4   when we are talking about drawing district lines here,
5   Paragraph 1 talks about race, language, minority voting
6   rights, et cetera.
7   Paragraph 2 then gets to containing equal
8   number of inhabitants for each district. There is an
9   allowance for deviation.
10   Paragraph 3, it talks about continuity of the
11   district.
12   So based on the order, should I consider race
13   to be the primary objective and everything else falls
14   underneath that?
15   MS. BRANCH: The doctrine and the case law
16   under the equal protection clause is clear that courts
17   can remedy racial vote dilution, but they have to do so
18   in ways that comply with traditional redistricting
19   criteria. That would include some of the other criteria
20   that are set forth in that state constitutional
21   provision, including compactness and continuity. In
22   other words, race cannot predominate. That is the legal
23   test. And here that is why we will have expert
24   testimony from Mr. Bill Cooper that will show that, yes,
25   the district is drawn to remedy racial vote dilution in

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1   Congressional District 11, but it also complies with the
2   traditional redistricting principles set forth in the --
3   constitution, it is compact considering the geography of
4   New York City, and Staten Island in particular which is
5   not, does not have enough population to constitute a
6   congressional district on its own. It either has to
7   take population from the two most natural geographies,
8   Brooklyn or Lower Manhattan, and will talk about the
9   ways in which the district has been configured as a
10   Staten Island, Lower Manhattan district in the past.
11   And so race cannot predominate, but it can be
12   considered in remedy racial vote dilution so long as the
13   additional criteria comply here.
14   I would like to draw your Honor's attention to
15   the language of Article 3, Section 4 of the state
16   constitution which specifically talks about districts
17   being drawn based on the totality of the circumstances
18   so that race or -- racial or minority language groups do
19   not have less opportunities to participate. And we
20   would submit that that plurally-range group is very
21   significant here with respect to whether or not the
22   state constitutional language extends beyond the
23   protections of federal law. We reference in our
24   briefing the Nixon v. Kent County case where the Sixth
25   Circuit underscored the text of Section 2 doesn't permit

1   lawsuit seeking coalition or crossover districts because
2   if Congress had intended to sanction such suits, then
3   federal law would refer to quote, "classes" plural
4   "of citizens protected."
5   Here, the language, that language that was
6   illustrative in the context of the Sixth Circuit case is
7   similar to the language in the state constitutional
8   provision in that it doesn't refer to a single class of
9   citizens, but rather refers to racial and minority
10   language groups, and we submit that that language is
11   important in interpreting the constitutional provision
12   to extend beyond the protections of federal law.
13   We have urged the court to look to the legal
14   framework set forth in the New York Voting Rights Act.
15   We don't argue that the state constitution incorporates
16   those standards or that those standards are somehow
17   engrafted onto the state constitutional language. We
18   simply argue that the New York Voting Rights Act as
19   opposed to federal law provides a helpful standard for
20   the court to consider applying to our constitutional
21   claim. Because it too, and the respondents and
22   intervenors agree with this, it too is broader than the
23   protections set forth under federal law.
24   The standards provided for in New York Voting
25   Rights Act are helpful. They provide a workable

1   definition of what constitutes racially polarized
2   voting. Dr. Palmer, our expert, will testify that
3   under that standard race -- there is significant
4   racially polarized voting in Congressional District 11.
5   The New York Voting Rights Act also provides a
6   non-exhaustive list of the totality of the circumstance
7   factors for courts to consider. Dr. Sugrue will testify
8   to those factors. I think it is important to note that
9   those factors are very similar to what is referred to as
10   the senate factors under Section 2.
11   So the idea that this is so novel and unheard
12   of, that we would look to standards for racial curing,
13   for identifying and remedying racial vote dilution that
14   exists in state law, I think is just, is over, is
15   over-placed.
16   Unless your Honor has further questions, I
17   think we can call our first witness.
18   THE COURT: That is fine. Bring up the
19   witness.
20   (A brief pause.)
21   THE COURT: Let's take a five minute break.
22   Off the record.
23   (Whereupon, a discussion was held off the
24   record.)
25   THE COURT: When you are ready, call the first

1   witness.
2   MR. LALLINGER: Good morning. Lucas Lallinger
3   on behalf of the petitioners.
4   Petitioners call Dr. Thomas Sugrue.
5   THE COURT OFFICER: Please remain standing.
6   Do you swear or affirm to tell the truth and
7   nothing but the truth?
8   THE WITNESS: Yes, I do.
9   D R. T H O M A S S U G R U E,
10   called by the Petitioner, after being duly sworn, testified
11   as follows:
12   THE COURT OFFICER: Have a seat.
13   State your name for the record and your
14   address.
15   THE WITNESS: My name is Thomas J. Sugrue,
16   S U G R U E. My address is 28 West Houston Street,
17   New York 10012.
18   THE COURT: Good morning.
19   THE WITNESS: Good morning, your Honor.
20   MR. LALLINGER: Your Honor, may I approach
21   the witness to hand him a binder with his expert
22   reports?
23   THE COURT: Hand it to the court officer.
24   THE WITNESS: Thank you.
25   (Handed to the witness.)

1   DIRECT EXAMINATION
2   BY MR. LALLINGER:
3   Q. Good morning, Dr. Sugrue?
4   A. Good morning.
5   Q. You've been retained as an expert by petitioners in
6   this case; is that right?
7   A. Yes, I have.
8   Q. I will begin by asking you some questions about
9   your background and expertise.
10   What is your current profession?
11   A. My current profession is silver professor of social
12   and cultural analysis and history at New York University.
13   Q. And can you please summarize your educational
14   background?
15   A. Yes. I received my bachelor's in history from
16   Columbia University in 1984. I then received a bachelor's
17   and masters degree in history from Cambridge University in
18   England in 1986 for the BA and 1990 for the MA. I attended
19   graduate school in history at Harvard University, where I
20   received a masters in 1987 and received my Ph.D in history
21   in 1992.
22   Q. How long have you been a history professor?
23   A. I began teaching in 1991 before I finished my Ph.D.
24   at the University of Pennsylvania. So that would add up to
25   be about 35 years.

1 Q. And do you hold any other titles at NYU currently?
2 A. Yes, I do. I am the founding director of the NYU
3 program in urban studies. In addition, I am the director of
4 NYU City's collaborator and I am affiliate member in the
5 Wagner School of Public Service and in the Department of
6 Sociology in NYU.
7 Q. What are your principal areas of expertise?
8 A. Principal areas of expertise are 20th Century and
9 21st Century U.S. history and social science. My
10 scholarship focuses on race and equality in the United
11 States. It focuses on cities and urban history. It focuses
12 on civil rights and focuses on politics. Written about
13 other subjects, but those are the primary areas of my
14 scholarship.
15 Q. Have you published any books on these subjects?
16 A. I'm sorry?
17 Q. Have you published any books on these subjects?
18 A. Yes, I have. I published many books. Single
19 author of three books, co-author of a fourth and editor of
20 six other books.
21 Q. And any peer reviewed articles on these subjects?
22 A. Yes. I have published about 33 peer-reviewed
23 articles, scholarly books and journals.
24 Q. Have you served as an expert witness before in
25 voting or civil rights cases?

1 A. Yes, I have.
2 Q. How many cases?
3 A. Um, eight cases all together.
4 Q. Have any of those cases required you to examine the
5 totality of the circumstances, factors, either under the New
6 York Voting Rights Act or Section 2 of the Federal Voting
7 Rights Act?
8 A. Yes. Four of the cases that I served in required
9 totality of circumstances analysis.
10 Q. And has the court ever found you not qualified when
11 offered as an expert?
12 A. No.
13 Q. Have courts previously credited and relied on your
14 expert analysis?
15 A. Yes, they have. My opinions, expert opinions were
16 cited in the voting writes case, U.S. v. City of Euclid.
17 That was 2007. And also in U.S. v. City of East Point which
18 was 2019.
19   MR. LALLINGER: Your Honor, at this time,
20 petitioner's tender Dr. Sugrue as an expert in the
21 fields of American History and Social Science focusing
22 on Urban History and Civil Rights, pursuant to Civil
23 Practice Law Rules 3101.
24   THE COURT: Any objections?
25   MR. MOSKOWITZ: Your Honor, just -- I think it

1 is -- Ben Moskowitz, Troutman Pepper Law. I think
2 Respondents have an explanation here, we negotiated a
3 stipulation with them that would result in having to not
4 having to go through this typical showing to tender
5 witnesses. So, maybe I missed it if it was filed,
6 perhaps it is with the court's consideration.
7   THE COURT: I saw it this morning. So if
8 everyone is okay with moving forward without laying the
9 foundation for making witnesses, I'm fine with foregoing
10 the background. I've read all the records in this
11 matter, so.
12   MS. BRANCH: Fine.
13   THE COURT: Thank you.
14   Let's continue.
15   MR. MOSKOWITZ: Thank you.
16   THE COURT: You may proceed. Thank you,
17 Counselor.
18 Q. Dr. Sugrue, did you prepare two expert reports for
19 this case?
20 A. Yes, I did.
21 Q. Did those include your opening expert reports
22 submitted on November 17th and rebuttal report on
23 December 18th?
24 A. That's correct.
25 Q. Are those Tabs 1 and 3 in the binder that is in

1 front of you?
2 A. Yes. Tab 1 is my expert report submitted in
3 November and Tab 3 is a rebuttal report I submitted in
4 December.
5   MR. LALLINGER: The parties have stipulated
6 that each of the expert reports filed by the parties in
7 support of their briefs shall be admitted into the, into
8 evidence as Exhibits F, provided the expert testifies at
9 this hearing.
10   So at this time, Petitioner's move to admit
11 Petitioner's Exhibit 1, November 17, 2025 report of
12 Dr. Thomas Sugrue and Petitioner's Exhibit 2, December
13 18th rebuttal report of Dr. Thomas Sugrue into evidence?
14   THE COURT: Documents numbers?
15   MR. LALLINGER: Sorry.
16   THE COURT: Virtual evidence? They are in the
17 virtual evidence courtroom?
18   MR. LALLINGER: They are.
19   THE COURT: Just tell me what documents they
20 are?
21   MR. LALLINGER: They are P001 and P002.
22   THE COURT: Okay. Both of them are for
23 identification purposes.
24   Let's continue.
25   (So identified.)

1   Q.   Dr. Sugrue, what were you asked to analyze, in this
2   case?
3   A.   I was asked to analyze the history of
4   discrimination, segregation, and racial disparities
5   affecting Blacks and Latinos in Staten Island. And in
6   addition, I was asked to consider ongoing segregation,
7   discrimination and disparities affecting Blacks and Latinos
8   in Staten Island, specifically with reference to the
9   totality of the circumstances enumerated in the New York
10   State Constitution and elaborated upon in the New York
11   Voting Rights Act of 2022, or the John Lewis Act of 2022.
12   Q.   And Dr. Sugrue, can you turn to Tab 4 of the binder
13   in front of you?
14   A.   Yes, I'm there.
15   Q.   And do you recognize this document?
16   A.   Yes, I do.
17   Q.   And what is it?
18   A.   This is a copy of the John Lewis Voting Rights Act,
19   New York Voting Rights Act of 2022.
20   Q.   Can you now turn to Page 4 of Tab 4?
21   MS. DIRAGO: Molly Dirago, for the
22   intervention respondents.
23   Do you plan to give us copies of these
24   documents? I have his reports. That is fine. If you
25   are going to be discussing the statute, I would like to

1   have it in front of me.
2   MR. LALLINGER: Yes, I have a copy.
3   (Handed to counsel.)
4   MS. DIRAGO: Thank you.
5   Q.   Dr. Sugrue, where it is marked three, does this
6   page show the totality of the circumstances factors under
7   the New York Voting Rights Act?
8   A.   Yes, it does. Page 4, Paragraph 3.
9   Q.   And did you focus on any particular totality of the
10   circumstances factors in your analysis?
11   A.   Yes, I did. My report touches on many of the
12   factors listed here, but focuses primarily on Factor A,
13   which is discrimination on Staten Island.
14   Factor B, the extent to which member, Blacks
15   and Latinos in Staten Island were elected to office.
16   Factor C, the use of voting qualifications,
17   prerequisite voting, et cetera, on Staten Island.
18   Factor G, which is the extent to which Blacks
19   and Latinos are disadvantaged in various areas on Staten
20   Island, including education and employment, criminal justice
21   and housing.
22   Factor H, the extent to which members of the
23   protected class -- Staten Island are affected, are
24   disadvantaged in other areas, ability to participate in the
25   political process.

1   Factor I, Factor J, significant lack of
2   responsive elected official in Staten Island.
3   Q.   What areas were you focusing on when analyzed the
4   areas?
5   A.   My report focuses primarily on Richmond County, New
6   York or the borough of Staten Island.
7   Q.   We can take this down now.
8   Now, Dr. Sugrue, does Page 4, Paragraph 8 of PX1,
9   your opening report, summarize the primary conclusions that
10   is you reached?
11   A.   Page 4, Paragraph?
12   Q.   Eight of your opening report?
13   A.   Yes, it does, yes.
14   Q.   What did you concluded?
15   A.   In my report I provided evidence that Staten Island
16   has a long history of racial segregation, discrimination,
17   and disparities affecting Blacks and Latinos on the island.
18   I looked at the connection between past history of
19   discrimination and segregation disparities to ongoing
20   disparities, particularly concerning housing and education
21   and status and policing, and with an eye toward the
22   scholarship that shows that all of these have a negative
23   impact on the ability of Blacks and Latinos to participate
24   fully in the political process. I discussed the
25   longstanding nature of race on Staten Island up to the

1   present day focusing both on public policies and private
2   actions by real estate brokers, landlords and building
3   managers and ordinary citizens in Staten Island that
4   contributed to the history of segregation. I also focused
5   on, provided evidence for segregation of Blacks and Latinos
6   on Staten Island. And I explored and discussed at some
7   length discrimination and acts of harassment, hate crimes or
8   violence that targeted Blacks and Latinos in Staten Island.
9   And I discuss in some detail various measures of
10   socioeconomic, educational and housing disparities on Staten
11   Island concerning Blacks and Latinos and affecting their
12   right or ability to participate fully in political process.
13   I can go on, but I think that gives a, what are the major
14   themes I explore in my report.
15   (Transcript continues on the next page.)
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1   Q   And what methodology did you use to come to your
2 conclusions?
3   A   I used methodologies that I've been using in my
4 scholarship since the very beginning of my career, which is a
5 combination of historical and social scientific analysis,
6 relying on various sources, including newspapers and other
7 publications, government records, empirical data, including
8 data from the U.S. Census.
9   In addition, I draw from scholarly books and
10 articles. I draw from City -- New York City records. I look
11 at court cases and -- and filings.
12   I may be missing a few but that, I think, captures
13 the scope of the types of sources that I use in this report and
14 that I've used in many of my -- my -- my books and articles
15 over the last 35 years.
16   Q   And did you review the expert reports of any other
17 expert in this case?
18   A   Yes. I -- I closely read and -- and responded to the
19 reports submitted by Mr. Joseph Borelli in this case. And I
20 briefly looked through some of the other expert reports that
21 your clients commissioned for this -- for this case.
22   Q   Dr. Sugrue, do you examine the demographic changes on
23 Staten Island at page 7, paragraphs 12 to 13 of your opening
24 report?
25   A   Yes, I do.

1   Q   And can you briefly describe what the demographics of
2 Staten Island were in 1980?
3   A   Yes. Staten Island in 1980 was overwhelmingly White.
4 It was more than 85 percent White, according to the decennial
5 census of that year. It was 7 percent Black and 5.4 percent
6 Latino and 1.9 percent Asian in 1980.
7   Q   Dr. Sugrue, can you please turn to tab 5 of the
8 binder in front of you?
9   A   Yes.
10   Q   Which has been marked as P013 for identification.
11 And take a look at the first few pages of those -- of that
12 document.
13   A   Yes.
14   Q   Do you recognize this document?
15   A   I do. I have a -- a beaten-up copy of this on -- on
16 the shelf in my office at NYU, along with some other states.
17   This is from the 1980 Census of Population prepared
18 by the U.S. Census Bureau for the State of New York, back in
19 the days when these things were published in paper form.
20   Q   And does it contain --
21   MS. DIRAGO: I'm sorry to interrupt. Can I just
22   get a copy of the exhibit?
23   (Court reporter seeks clarification.)
24   COURT OFFICER: Molly DiRago.
25   Can I get a copy of the exhibits that you're --

1   that you're going to be showing him and discussing?
2   MR. LALLINGER: We didn't -- we didn't discuss
3   how the parties would exchange exhibits, but we've filed
4   all of these exhibits that are marked on the virtual
5   courtroom. So our understanding is that you can get them
6   on the virtual courtroom.
7   MS. DIRAGO: Oh, yeah, I guess we didn't discuss
8   printing them out.
9   THE COURT: Just go off the record for a second.
10   (Off the record.)
11   THE COURT: Let's go back on the record.
12   All right, counsel. Whenever you're ready, you
13   may proceed.
14 BY MR. LALLINGER:
15   Q   Dr. Sugrue, does what's marked as P013 contain
16 demographic information for Staten Island in 1980?
17   A   Yes, it does. It's actually presented here as
18 county-level data for Richmond County, which is the same thing
19 as Staten Island. In fact, over the course of my testimony,
20 I'll use "Richmond County" and "Staten Island" synonymously.
21   Q   Thank you.
22   And did you rely on this document to report the 1980
23 demographic information for Staten Island in your report?
24   A   Yes, I did.
25   Q   And do historians and social scientists regularly

1 rely on this information to report demographic statistics?
2   (Court reporter seeks clarification.)
3   A   Yes. I've been using U.S. Census data since I worked
4 on my dissertation a long time ago.
5   MR. LALLINGER: Petitioners move to admit P013
6   into evidence.
7   MS. DIRAGO: I don't have an objection. Thank
8   you.
9   THE COURT: Plaintiffs' Exhibit 013 is admitted.
10   (Document is received and marked Petitioners'
11   Exhibit No. P013 in evidence by the Court as of this
12   date.)
13   MR. LALLINGER: Thank you.
14 BY MR. LALLINGER:
15   Q   Dr. Sugrue, can you briefly describe the demographic
16 change on Staten Island since 1980?
17   A   Yes, I can. Staten Island has grown increasingly
18 diverse since the 1980 census data that you just asked me
19 about. Today, Staten Island is only 56.6 percent White
20 compared to more than 85 percent in 1980.
21   Today, the Latino population or Hispanic population
22 of Staten Island is 19.5 percent compared to only 5.4 percent
23 in 1980. And Staten Island is today 9 percent Black. It was
24 7 percent Black in 1980.
25   Q   And Dr. Segrue, can you please turn to tab 6 of the

1   binder in front of you, which has been marked as P008 for
2   identification?
3   A   Yes.
4   Q   And take a look at the first few pages.
5   A   Yes.
6   Q   Do you recognize this document?
7   A   I do. This is a printout of data that I used
8   digitally from the American Community Survey, which is a
9   product of the U.S. Census Bureau. This is the five-year
10   American Community Survey from 2019 to 2023, the most recent
11   comprehensive census data available that I used throughout my
12   report.
13   Q   And does it contain demographic information for
14   Staten Island in 2023 that you relied on for your report?
15   A   Yes, it does.
16   MR. LALLINGER: Petitioners move to admit P008
17   into evidence.
18   MS. DIRAGO: No objection.
19   THE COURT: Petitioners' Exhibit No. 8 is
20   admitted.
21   (Document is received and marked Petitioners'
22   Exhibit No. 8 in evidence by the Court as of this date.)
23   MR. LALLINGER:
24   Q   Dr. Sugrue, let's begin with the history of
25   discrimination on Staten Island. Did you make any overall

1   conclusions regarding the history of discrimination?
2   A   Yes, I did.
3   Q   And what did you conclude?
4   A   I found that there is a long history of racial
5   segregation on Staten Island that dates back close to
6   100 years, and that those patterns of racial segregation
7   continue to shape and influence the experience of Blacks and
8   Latinos on the island today.
9   Q   Let's bring up figure 2 on page 11 of PX1, your
10   opening report.
11   (Exhibit displayed in open court at this time.)
12   A   Yes.
13   BY MR. LALLINGER
14   Q   Dr. Sugrue, can you explain what this figure shows?
15   A   Yes. Figure 2 shows the distribution of the Black
16   population on Staten Island between 1990 and 2019, 2023. I use
17   the decennial census data for 1990, 2000 and 2010; and I used
18   five-year American Community Survey of the U.S. Census Bureau
19   for 2023 -- from 2019 to 2023.
20   Q   And what does it show about the concentration of
21   Black Staten Islanders?
22   A   These maps which I prepared show that between 1990
23   and the most recent data that the Black population on Staten
24   Island has been disproportionately concentrated in the
25   North Shore of the island -- the area that is above where the

1   black curved line is shown on the maps here.
2   Q   And what is that black curved line on the map?
3   A   That line is the Staten Island Expressway.
4   Q   And is that a significant feature of Staten Island?
5   A   It is. It's the main way to get across Staten Island
6   from points east to New Jersey and beyond. And it's also a
7   place that has symbolic significance on Staten Island.
8   Q   In what way?
9   A   Beginning in the 1980s, many Staten Islanders began
10   to describe the Staten Island Expressway as the "Mason-Dixon
11   Line," that is referring to differences between north and
12   south, but in this case, referring to the fact that most
13   non-White Staten Island residents were living north of the
14   Mason-Dixon Line, that is north of the Staten Island
15   Expressway; and the areas to the south of the Staten Island
16   Expressway were overwhelmingly White.
17   That's a pattern that we can see in all four of these
18   maps. The Black population in all of these census data years
19   is overwhelmingly concentrated north of the Staten Island
20   Expressway.
21   Q   And let's bring up figure 3 on page 12 of PX1.
22   What does this figure show?
23   A   Yes. So figure 3 is an analogous map to figure 2,
24   drawing from the same data, from the 1990, 2000 and 2010
25   decennial U.S. Census, and also drawing from the most recent

1   data from 2019 to 2023, from the American Community Survey.
2   And this -- these are maps that I drew that show the
3   distribution of the Latino population on Staten Island over
4   that period.
5   Q   And where is the Latino population on Staten Island
6   concentrated?
7   A   The Latino population on Staten Island is also
8   concentrated in the North Shore of the island or north of the
9   Staten Island Expressway. You can see even with a relatively
10   small population in 1990 that the darker colored areas are
11   mostly north of the expressway. And you can see the population
12   as it expands in 2010 and 2023.
13   I should point out, as a bit of local information,
14   that you'll notice on the 2010 and 2023 maps -- the bottom two
15   maps, that there's a large orange area, which might suggest
16   a -- a significant movement of Latinos to the southern part of
17   the Staten Island.
18   But I should note this area has a very small
19   population. It's the area around the -- the Fresh Kills or
20   recently -- or soon to be -- or recently decommissioned --
21   decommissioned in 2001, Fresh Kills dump, so it doesn't have a
22   very big population.
23   And likewise, if you take a look at the 2023 map,
24   you'll see an area of kind of moderate-colored orange, just to
25   the south of the Staten Island Expressway on the left-hand side

1   of the map. This is an area called Travis and Chelsea, which
2   is a largely industrial area. There are a lot of warehouses
3   there, and it's a -- it's a neighborhood with pretty mediocre
4   housing stock by and large.
5   And if you look over to the far right, you'll see a
6   very dark area. This is an area that is almost all parkland
7   and fields. It has a population of 59 Latinos. And so, again,
8   these -- these colors on -- on the map represent the percentage
9   of Blacks and the percentage of Latinos in the population --
10   this map, the percentage of Latinos.
11   Q   Did you also provide statistical measures of
12   residential segregation on Staten Island in your report?
13   A   Yes, I did.
14   Q   And what statistical measure did you use?
15   A   I used the index of dissimilarity, which is the most
16   commonly used measure of residential segregation by race or
17   ethnicity.
18   Q   Can you briefly explain what the index of
19   dissimilarity is?
20   A   Yes. The index of dissimilarity, speaking broadly,
21   measures the distribution -- or evenness of the distribution of
22   two compared populations across the geographic unit of
23   analysis. So in this case, the index of dissimilarity measures
24   the evenness of the distribution of the White population and
25   the Black population or the White population and the Latino

1   population.
2   The index of dissimilarity goes from zero to 100.
3   Zero means that a geographic unit is entirely integrated, that
4   the populations are distributed totally randomly; that there
5   are no concentrations of one or another group. One hundred
6   means total apartheid -- that is, the complete segregation of
7   the population, and the index is measured on that -- on that
8   span between zero and one hundred.
9   Q   And are there commonly understood ranges within that
10   span from zero to one hundred?
11   A   Yes. I -- I cite the U.S. Department of Housing and
12   Urban Development's measure, which is one that many scholars
13   use as well, which finds that areas that are 40 or below on the
14   index are considered to be -- or considered to have low rates
15   of segregation.
16   From 40 to 55 indicates moderate segregation; and
17   from 55 to 100 indicates a high degree of segregation.
18   Q   And did you calculate the dissimilarity index value
19   for Blacks on Staten Island today?
20   A   Yes, I did.
21   Q   And what was that value?
22   A   The value of -- sorry. The index of dissimilarity
23   for Blacks and Whites in Staten Island using the most recent
24   ACS data are -- is 75, meaning that it's a highly segregated
25   community.

1   Q   And did you calculate the value for Latinos on Staten
2   Island today as well?
3   A   Yes, I did. And I found that there was an index of
4   dissimilarity of 42 between Blacks and Latinos in the present,
5   which signifies a moderate degree of segregation.
6   Q   Turning to paragraph 32 of your opening report, do
7   you offer any opinion on what led to the residential
8   segregation that exists on Staten Island today?
9   A   Yes, I did.
10   Q   And what is it?
11   A   So I focus on a number of factors that have shaped
12   past and ongoing segregation on Staten Island. One is historic
13   and ongoing discrimination and stigmatization of non-White
14   groups, Blacks and Latinos in this case.
15   Second are federal housing policies that created and
16   maintained segregation both in the private sector and in the
17   public sector, that is in -- in government subsidized private
18   real estate developments as well as public housing.
19   I also look at the history of ongoing discrimination
20   on Staten Island by real estate brokers, landlords and mortgage
21   lenders among others; and I also discuss the role that, on
22   occasion, ordinary citizens on Staten Island, White citizens
23   played, in maintaining the barriers of segregation on the
24   island.
25   Q   You discuss a practice called, "redlining."

1   Can you explain what redlining is?
2   A   Yes. Redlining is a term used by scholars and
3   policymakers to describe the demarcation of certain sections of
4   cities or metropolitan areas by a value of -- of properties,
5   the quality of properties, and -- and other characteristics.
6   Maps that were produced first by the Homeowner's Loan
7   Corporation in Staten Island in 1940 demarcated the island into
8   four different zones: The highest ranked being green and blue,
9   the lowest ranked being yellow and red. The term, "redlining,"
10   comes from this -- this demarcation of ostensibly risky or
11   hazardous neighborhoods using the color red on maps.
12   Q   And was there -- were there any particular factors
13   that made a neighborhood be demarcated as red on the maps?
14   A   Yes. When appraisers -- federal appraisers drew
15   these maps, they looked at the location, the housing stock, et
16   cetera. But an overriding factor in the drawing of these maps
17   was the presence of racial or ethnic groups that were
18   considered to be dangerous or undesirable or hazardous to the
19   value of properties in -- in those communities.
20   Every neighborhood that had a red ranking -- I'm
21   sorry. I should say, every neighborhood with even a small
22   Black population was ranked the lowest or demarcated red on
23   these maps. And even neighbors that had the prospect at some
24   point in the near or medium term future that were perceived as
25   likely to attract non-White residents was also ranked low on

1 these appraisal maps.

2   Q Can we bring up figure 5 on page 19 of your opening

3 report.

4   A Yes.

5   Q Dr. Sugrue, did you identify particular neighborhoods

6 on Staten Island that were redlined?

7   A Yes. I should say this is a reproduction of the

8 Federal Home Loan Board map for Richmond County, also called

9 The Home Security Map. And the appraisers offered detailed

10 descriptions of -- called "area descriptions" of each

11 community, marked here in different colors, that they use as a

12 basis for assigning evaluations to neighborhoods.

13   And the neighborhoods with significant Black

14 populations that were marked red included Sandy Ground, which

15 is in the southwestern part of the Staten Island, which was

16 Staten Island's longest established Black community dating to

17 the 1820s.

18   It also included nearby neighborhoods, Charleston and

19 Rossville, which had, as the HOLC reported, a growing

20 infiltration of -- of Black residents. And the low rankings

21 also included neighborhoods on the North Shore that were --

22 that had established Black populations or were perceived at

23 risk of -- of gaining Black population.

24   Q Now, did you identify any connection between these

25 official policies of redlining and poor outcomes for those

1 living in formally redlined neighborhoods today?

2   A Yes. There's a wide body of scholarship by

3 historians, sociologists, public health experts and other

4 social scientists, demonstrating that areas that are redlined

5 are more likely today to have various negative socioeconomic

6 indicators, problematic environmental outcomes and problematic

7 health outcomes.

8   Q Now in your report at pages 25 through 29, you also

9 discuss past and ongoing discriminatory practices by real

10 estate brokers and landlords. What practices did you identify

11 in your report?

12   A I identify a number of practices by real estate

13 brokers, including discrimination against Black and Latino

14 homebuyers or renters. I discuss the process of blockbusting,

15 which affected neighborhoods that were beginning to attract or

16 suspected to be beginning to attract minorities, and I discuss

17 racial steering.

18   In addition, I discuss real estate brokers'

19 opposition to -- on Staten Island, opposition to New York's

20 Civil Rights laws that protected the rights of minorities to

21 buy housing freely or rent housing freely on the market.

22   Q And can you explain what "racial steering" is?

23   A Yes.

24   Racial steering is one of the most common and ongoing

25 discriminatory practices concerning the sale or rental of

1 houses to -- differentially to Whites and Blacks and Latinos.

2 The process of steering is directing potential White buyers to

3 predominantly or entirely White areas and directing Black or

4 Latino potential homebuyers or renters to racially mixed or

5 predominantly Black or Latino neighborhoods.

6   It's a very common practice because it can be done

7 surreptitiously. It's very hard to document.

8   Q And did you identify any evidence of this practice

9 still happening today on Staten Island?

10   A Yes. I identified evidence of the practice of

11 steering beginning in the 1960s and continuing up to the very

12 recent past, I mean as in, within the last couple of years.

13   And steering is evidenced by the use of paired

14 testers or Blacks and Whites or Whites and Latinos with

15 comparable incomes, comparable credit records, comparable

16 desires for the type of housing they want, and then one finds

17 evidence of disparate treatment, that is Whites being steered

18 to prominently White areas and Blacks and Latinos being steered

19 to predominantly Black areas, regardless of their common

20 socioeconomic status or common interests.

21   Q And you also mentioned White hostility and racial

22 harassment as contributing to residential segregation.

23   A Yes.

24   Q Can you summarize what you describe in that section

25 of your report?

1   A Yes. I discuss incidents where White residents of

2 Staten Island expressed hostility to non-Whites who were

3 attempting to move or who moved into their neighborhoods over a

4 significant period of time in the 20th Century.

5   Q Now, did you also look at socioeconomic disparities

6 between Black and Latino Staten Islanders as compared to White

7 Staten Islanders?

8   A Yes, I did.

9   Q And what particular socioeconomic factors did you

10 focus on?

11   A I looked at major indicators of socioeconomic

12 disparity. That includes educational attainment. It includes

13 income. It includes rates of unemployment. It includes

14 poverty rates. It includes rates of homeownership or

15 rentership.

16   Q And why did you focus on these particular factors?

17   A These pretty much run the gamut of measuring

18 socioeconomic commonalities or differences between groups.

19   Q Let's bring up figure 7 on page 39 of your opening

20 report.

21   Dr. Sugrue, what does this figure show?

22   A This figure shows -- again, using the ACS five-year

23 data for 2019 to 2023, it shows the highest educational

24 attainment rates of Blacks, Latinos and Whites on Staten

25 Island. And I should say the universe covered by this is

1   everybody over the age of 25 who is White, Black or Latino.
2   Q   And what are the key data from this figure?
3   A   So the key data here are the first line, which is
4   "less than high school diploma"; and the last line, which shows
5   "Bachelor's degree or higher." In other words, who or what
6   percentage of each of these groups did not graduate from high
7   school on Staten Island, and what percentage of these groups
8   graduated from college on Staten Island.
9   Q   And do these show disparities between Black and
10   Latino as compared to White?
11   A   Yes. If you look at the top line, you'll see that
12   only 7.2 percent of Whites on Staten Island didn't have a high
13   school diploma, versus 11 percent of Blacks and 20.5, almost
14   21 percent of Latinos.
15   Q   And did Mr. Borelli in his report offer anything that
16   calls your conclusions about stark disparities between Black
17   and Latino as compared to White Staten Islanders in into
18   question?
19   A   No. Mr. Borelli's report offered evidence that
20   confirms my discussion of disparities in educational
21   attainment, showing gaps of those who have graduated from high
22   school as well as showing significant gaps between White,
23   Blacks and Latinos in terms of the attainment of a college
24   degree.
25   Q   And did you investigate whether there is a connection

1   between educational attainment and political participation?
2   A   Yes, I did.
3   Q   And what did you find?
4   A   A there is a wide body of scholarship going back
5   decades now by social scientists who show a strong relationship
6   between educational attainment and political participation,
7   precisely because educational attainment provides voters --
8   those who want to participate in the political process with
9   access to information and knowledge about political issues,
10   social capital that gives some advantages in the voting
11   process, and that's been found steadily over now decades of
12   scholarly research.
13   Q   And did Mr. Borelli offer any counter to the evidence
14   you presented of this connection between educational attainment
15   and political participation?
16   A   No. Mr. Borelli didn't comment on that in his
17   report.
18   Q   Now, did you also examine socioeconomic disparities
19   between the groups?
20   A   Yes, I did.
21   Q   Let's bring up figure 8 on page 39 of your opening
22   report.
23   A   Okay.
24   Q   Dr. Sugrue, what does this chart show?
25   A   So this chart uses different measures of

1   socioeconomic status to document disparities. The first line
2   looks at per-capita income on Staten Island. Again, I'm
3   drawing from the same recent census data. And it shows that
4   Whites on Staten Island make more than $53,000 a year per
5   capita, whereas Latinos and Blacks make in the very low 30s,
6    $31,647 for Latinos and $30,784 for Blacks.
7   Or to put it differently, Blacks and Latinos on
8   Staten Island, per capita, have incomes of $20,000 lower than
9   the per-capita income of Whites on Staten Island.
10   Q   And did you find the same -- similar disparities
11   exist between Blacks, Latinos and Whites in the unemployment
12   rate and those who live below the poverty line?
13   A   Yes, I did. The census data show that 5 percent of
14   Whites experience unemployment on Staten Island, whereas 6.7
15   and 6.8 percent of Blacks and Latinos, respectively.
16   Q   And did you investigate whether there's a connection
17   between these socioeconomic factors and political
18   participation?
19   A   Yes.
20   Q   And what does the data show?
21   A   There is, again, an extensive body of scholarship by
22   social scientists showing the relationship between
23   socioeconomic status and political participation on many
24   dimensions, including the ability to make financial
25   contributions to candidates or to organizations that are

1   funding political campaigns. And also, higher socioeconomic
2   status gives one access to other dimensions of political
3   process as well.
4   Q   And did Mr. Borelli offer any evidence or conclusions
5   that would call this scholarship on the relationship between
6   income and these socioeconomic factors into question?
7   A   No. His report is silent on the matter.
8   Q   Now, did you also look at homeownership rates on
9   Staten Island?
10   A   Yes, I did.
11   Q   Let's pull up figure 9 on page 40 of your opening
12   report.
13   What does this figure show?
14   A   This figure shows really substantial disparities in
15   homeownership rates on Staten Island. More than three quarters
16   of Whites -- 76.8 percent of Whites on Staten Island own their
17   own homes, whereas just a little more than 4 in 10 -- just a
18   little more than 4 out of 10.
19   (Court reporter seeks clarification.)
20   A   So 43.7 percent of Latinos own their own homes in
21   Staten Island, and only 35.8 percent of Blacks on Staten Island
22   own their own homes. It's a very marked difference in the
23   experience of Blacks and Latinos and Whites on Staten Island.
24   And that's reflected in the second line, which conversely shows
25   that a majority of both Blacks and Latinos in Staten Island are

1 renters, and a minority, under 1 in 4 Whites on Staten Island
2 are renters.
3 BY MR. LALLINGER
4   Q   And did you find -- did you investigate whether
5 there's a connection between homeownership and political
6 participation?
7   A   Yes. There's a wide body of scholarship by social
8 scientists showing that homeownership has a significant impact
9 on degrees of political participation, in part because
10 homeowners have a pretty significant financial stake in
11 political decisions that may affect the values of their
12 property and often have very strong stakes in the communities
13 where they live.
14   Q   And did you come to any overall --
15   THE COURT: Did you consider the difference in
16   New York City, where the tax base is based on income
17   rather than on property?
18   THE WITNESS: I -- I didn't consider the
19   relationship of taxes and property on Staten Island versus
20   other parts of New York City, no.
21   THE COURT: I'm asking in the context of
22   homeownership too, just for clarification.
23   THE WITNESS: No. I didn't explore that
24   question in my report.
25   THE COURT: Thank you.

1 BY MR. LALLINGER
2   Q   Did you come to an overall conclusion with regard to
3 the effect of these socioeconomic factors and political
4 participation for Blacks and Latinos on Staten Island?
5   A   Yes. Each of these socioeconomic factors that I
6 discussed -- educational attainment, income, poverty and
7 unemployment and homeownership and rentership -- are related,
8 strongly related to one's ability to participate fully in the
9 political process.
10   And on every one of these dimensions, there are
11 significant disparities between Blacks, Latinos and Whites on
12 Staten Island.
13   Q   Now, did you also look at Black and Latino electoral
14 success on Staten Island?
15   A   Yes, at this did.
16   Q   And what did you find?
17   A   Staten Island has had a Black population for about
18 200 years, and Staten Islanders did not elect the first Black
19 to public office until 2009. That was Councilwoman
20 Debbie Rose, who took office in 2010.
21   Since then, Staten Island voters have elected two
22 other Black elected officials, Councilwoman Rose's successor,
23 that's Councilwoman Kamillah Hanks, and Assembly Member
24 Charles Fall. I should say Kamillah Hanks was elected in 2022,
25 Charles Fall elected to the Assembly in 2018.

1   It's noteworthy that those three elected officials --
2 Kamillah Hanks, Debbie Rose and Charles Fall -- all represent
3 the center of the Latino and Black population on Staten Island,
4 the North Shore. Assembly Fall also -- his district includes
5 the North Shore, but also part of Lower Manhattan.
6   There is a fourth Black elected official on Staten
7 Island, and that is Judge Anne Thompson. She was elected in
8 2022, to the 13th Judicial District bench on in Staten Island.
9 It's noteworthy that Judge Thompson was elected in an
10 uncontested race, there were three candidates for three seats.
11 She had run the previous year in 2021 for an open seat on the
12 judicial bench in Staten Island and lost handily.
13   Q   Has any Latina person ever served on the Staten
14 Island city counsel?
15   A   No.
16   Q   And has any Latina person ever represented Staten
17 Island in the state legislature?
18   A   Yes. That was then Assemblywoman Nicole Malliotakis.
19   Q   And is she the only one?
20   A   She is the only person of Latino heritage who has
21 been elected to office on Staten Island, despite the fact that
22 Latinos constitute about 20 percent of Staten Island's
23 population today.
24   Q   And other than who you've identified now, did
25 Mr. Borelli identify any additional Black or Latino success on

1 Staten Island?
2   A   Mr. Borelli did not identify any additional Black or
3 Latino electoral success on Staten Island.
4   Q   And can you turn to pages 19 and 20 on tab 3, so this
5 is your rebuttal report?
6   A   Yes.
7   Q   And what do you discuss?
8   A   Oh, I'm sorry. I have to take -- take a minute to
9 find my way there. I'm sorry.
10   Q   No problem.
11   A   Page number? I'm sorry.
12   Q   Nineteen, beginning on page 19.
13   A   Yes, I'm there.
14   Q   What do you discuss at paragraphs 50 to 51?
15   A   I discuss a faulty assertion in Mr. Borelli's report
16 concerning the election of Blacks and Latinos to office in
17 Staten Island.
18   Q   And what was the faulty assertion?
19   A   Mr. Borelli provided a list of Black and Latino
20 and -- and, as an aside, Asian judges from Staten Island, or
21 sitting on bench in Staten Island. All of the judges that he
22 lists, that I'll mention now, were not elected to the bench by
23 Staten Island voters.
24   He asserts, for example, that the Honorable
25 Tashanna Golden and the Honorable Raymond Rodriguez were

1   elected by Staten Island voters.
2   Judge -- Judge Golden is a native of Staten Island,
3   but she serves on the Housing Court of the Civil Court of the
4   City of New York in Kings County, Brooklyn.
5   The Honorable Raymond Rodriguez has never held
6   elected office either, and he was not elected to any judicial
7   positions on Staten Island. He was appointed to the New York
8   City Criminal Court by the mayor; and at that point, it was
9   Mayor Bill de Blasio.
10   And Judge Rodriguez did run for the bench just
11   six weeks ago -- or two months ago, in November. He ran for an
12   open seat on the 13th Judicial District on Staten Island, and
13   he lost overwhelmingly with only 37.1 percent the vote.
14   So Staten Island has not elected any Black or Latinos
15   to the bench, except for Judge Anne Thompson in the uncontested
16   2022 race.
17   Q   Did you also examine whether there were disparities
18   with regard to criminal justice and policing on Staten Island?
19   A   Yes. I discuss a long history of disparities
20   concerning the treatment of Blacks and Latinos on Staten
21   Island, going back to the middle of the 20th century.
22   Q   Without going through all of your examples, are there
23   noteworthy examples of this history of discriminatory
24   treatment?
25   A   Yes. I think perhaps the most significant are racial

1   disparities in stop-and-frisk practices by the New York City
2   Police Department on Staten Island.
3   (Court reporter seeks clarification.)
4   A   The U.S. Commission on Civil Rights investigated
5   racial disparities in stop-and-frisk on Staten Island in the
6   late 1990s. And the New York City Police Department
7   commissioned the Rand Corporation, R-A-N-D, Rand Corporation, a
8   research center, to examine disparities in stop-and-frisk
9   across New York City. And they found that Staten Island stood
10   out for its disparate use of stop-and-frisk targeting Blacks
11   and Latinos on the island.
12   BY MR. LALLINGER
13   Q   And did you offer any examples of the discriminatory
14   use of force by Staten Island police?
15   A   Yes. I -- I offered evidence at various points about
16   discrimination, harassment and sometime deaths at the hand of
17   the police on Staten Island concerning Blacks.
18   Q   Now, did you also examine racial appeals in political
19   campaigns in Staten Island in your report?
20   A   Yes, I did.
21   Q   Can you begin by defining what a "racial appeal" is?
22   A   A racial appeal is the use of racial symbolism,
23   images, representations, language often associated with
24   undesirable characteristics that are part of the racialization
25   of segments of the population. For example, associating Blacks

1   or Latinos with welfare receipt, or criminality, or drug use.
2   And these racial appeals are used to activate the
3   racial animus or prejudices of voters in service of winning
4   their votes and influencing the political process.
5   Racial appeals have a particularly poisonous effect
6   on political discourse because they legitimate long-held
7   prejudices, stereotypes -- and not only legitimate but
8   reinforce those prejudices and stereotypes. And they -- they
9   give what you might call a permission structure to those who
10   see the racial appeals to offer their own -- or act on their
11   own impulses of prejudice.
12   Q   Let's bring up figure 11 on page 50 of your opening
13   report.
14   A   Yes.
15   Q   Can you describe for us what's going on in this
16   figure?
17   A   Yes. This was a fake Facebook page that was
18   attributed to then Councilwoman Rose. Again, she was the first
19   Black elected official on Staten Island, serving on New York
20   City Council.
21   This page offers a good example of a racial appeal by
22   associating a Black councilwoman with attributes that are
23   frequently racialized in American political discourse.
24   (Court reporter seeks clarification.)
25   A   And have been over time in Staten Island, as I

1   document in my report.
2   BY MR. LALLINGER
3   Q   And what's happening in this fake Facebook post?
4   A   So this post, attempting to discredit Councilwoman
5   Rose, refers to her alleged support for a welfare hotel full of
6   criminals and drug addicts.
7   I'm reading here from the -- from the text of this --
8   this page, second and third lines.
9   THE COURT: Why don't you just describe it,
10   rather than read it?
11   THE WITNESS: Yeah.
12   THE COURT: It's not in evidence yet.
13   THE WITNESS: Okay.
14   So this appeal associated Councilwoman Rose with
15   negative attributes frequently associated with -- with
16   non-Whites on Staten Island that I find evidence for,
17   going back to the 1970s -- 1960s, actually -- associating
18   race and such attributes as welfare receipt and drug
19   abuse, used to taint Candidate Rose's -- or Councilwoman
20   Rose's candidacy.
21   THE COURT: Thank you.
22   BY MR. LALLINGER
23   Q   Did you also review Mr. Borelli's discussion about
24   racial appeals?
25   A   Yes, I did.

1   Q   Turning to tab 3 of your rebuttal report.
2   A   Yes.
3   Q   At page 14, do you describe your understanding of
4   Mr. Borelli's methodology for identifying racial appeals?
5   A   Yes, I -- I do.
6   Q   And what is it?
7   A   Mr. Borelli did a two-keyword search from the
8   newspapers.com database, spanning 2000 to 2024.
9   (Court reporter seeks clarification.)
10   A   His keyword search terms were "racism" and "issues."
11   It's problematic -- indeed, I think, fatal to an effective
12   database research to use just two search terms, one of which is
13   judgmental and laden, "racism"; the other of which is really
14   vague, "issues."
15   When historians conduct newspaper research, they
16   regularly use multiple search terms, synonyms, related words
17   and concepts, specific terms that pertain to the issue that
18   they are attempting to find evidence on. "Racism" and "issues"
19   doesn't capture very much, or it captures, maybe with the term
20   "issues," a lot. But nothing specific necessarily to racial
21   appeals because they show up in -- in many ways in the
22   historical record.
23   BY MR. LALLINGER
24   Q   And in your opinion, what is the likely effect of
25   using the methodology that Mr. Borelli used to try and identify

1   racial appeals in Staten Island?
2   A   Well, Mr. Borelli used these two search terms to make
3   an argument that there were few, if any, racial appeals on
4   Staten Island between 2000 and 2024.
5   (Court reporter seeks clarification.)
6   A   And, again, using just those two keyword search terms
7   would not capture any number of -- of possible examples.
8   BY MR. LALLINGER
9   Q   Shifting gears slightly, who are the Young Leaders of
10   Staten Island?
11   A   The Young Leaders was a black-led organization,
12   founded to promote political participation and to demand
13   greater responsiveness on the part of the elected officials on
14   Staten Island to the needs of the Black community. And it's an
15   organization that also reached out and formed a coalition with
16   Latinos on Staten Island, making similar demands of -- of New
17   York City elected official and hoping to mobilize Black and
18   Latino voters in 2000. It was an organization committed to
19   peaceful protest as well.
20   Q   And did Mr. Borelli cite to an article in his report
21   that identified racial appeals concerning the Young Leaders?
22   A   Yes, he did.
23   Q   And did you review that article in writing your
24   rebuttal report?
25   A   Yes. I did review the ads that appear in the article

1   that Mr. Borelli cited.
2   Q   And do you discuss that at page 16, paragraph 41 of
3   your rebuttal report?
4   A   Yes, I do.
5   Q   And can you read the first two sentences of that
6   paragraph?
7   A   I can. So this refers to the use of the Young
8   Leaders as part of two ads that were racial appeals in the
9   2020, 11th Congressional District race between then
10   Assemblywoman Nicole Malliotakis and then incumbent Congressman
11   Max Rose, just to contextualize this quote.
12   Mr. Borelli refers to "The City," which is a New York
13   publication that he -- he draws from to discuss the nonviolent
14   protests led by the Young Leaders in 2020.
15   The article reports footage of one peaceful march
16   interspersed with doctored images of police cars ablaze, became
17   the centerpiece of an attack ad, touting Assembly Member
18   Nicole Malliotakis and trashing Representative Max Rose.
19   Q   And can you explain why that is a racial appeal?
20   A   Yes. This is a textbook racial appeal. It's a --
21   it's -- in some ways, this is what I could use in a class to
22   illustrate racial appeals to my students.
23   In this case, we have a group that's nonviolent, the
24   Young Leaders, marching on Staten Island. They did three
25   marches that summer. And their peaceful march is interspersed

1   with -- with inflammatory images of Black riotousness and --
2   and criminality of police cars being lit on fire.
3   The Young Leaders didn't light any police cars on
4   fire, and they didn't condone lighting police cars on fire,
5   or -- and there was nothing riotous, criminal, or threatening
6   about the marches that they led.
7   So, we see an ad, in other words, attempting to
8   promote the candidacy of one elected official against another
9   by associating, in this case, Representative Max Rose with
10   Black criminality, a classic use of a racial appeal.
11   Q   And did the article identify another racial appeal?
12   A   Yes, it did. The article also identified a
13   4 million-dollar ad campaign that was led by a Republican
14   political action committee, the Congressional Leadership Fund.
15   (Court reporter seeks clarification.)
16   A   This was also an ad that featured the nonviolent
17   marches of the Young Leaders. It showed a Young Leaders' March
18   through New Dorp, D-O-R-P -- it's a predominantly White section
19   of the central part of Staten Island.
20   (Court reporter seeks clarification.)
21   A   It showed images of the -- of the Young Leaders
22   marching through New Dorp, along with spliced-in violent
23   scenes, again not at all associated with the Young Leaders,
24   with the ad offering a voiceover, talking about criminals
25   hailed as freedom fighters.

1   BY MR. LALLINGER
2   Q   And can you explain why that's a racial appeal?
3   A   Yes. Once again, we see the Young Leaders, a
4   nonviolent organization that Mr. Borelli discusses very
5   favorably in his report, committed to Black and Latino
6   political engagement and working to influence the local
7   politicians to be more responsive to the needs of Blacks and
8   Latinos on Staten Island, and doing it nonviolently, yet being
9   associated with criminality and violent acts; again, very much
10   the racialized imagery and language that is an example of a
11   textbook racial appeal.
12   Q   And can you summarize your conclusions with regard to
13   the presence of racial appeals in campaigns in Staten Island?
14   A   Yes. Over time, we've seen racial appeals in Staten
15   Island that have had a negative impact on the political process
16   that contribute to racial polarization and de-legitimate -- or
17   sorry -- legitimate, not de-legitimate, my apologies -- that
18   legitimate racial prejudices and racial -- racially
19   discriminatory sentiments that have a long history on Staten
20   Island.
21   Q   Let's turn back to your evaluation of Mr. Borelli's
22   report.
23   What was your overall conclusion as to the
24   conclusions Mr. Borelli reached in his report?
25   A   Mr. Borelli's report confirms, when he uses

1   U.S. Census data, many of the points that I make in my report,
2   including confirming the evidence that I offer about
3   socioeconomic disparities and disparities in educational
4   attainment on Staten Island. His interpretation of those data
5   are problematic.
6   In addition, much of Mr. Borelli's methodology,
7   especially his use of search methods for racial appeals, are
8   problematic; but he does not offer a comprehensive history or a
9   history of the totality of the ways in which discrimination,
10   segregation, and racial disparities have affected Blacks and
11   Latinos on Staten Island over a very long period of time -- and
12   to consider the relationship, especially of -- of those various
13   forms of discrimination, segregation, and disparity, both past
14   and present and the connections between the two.
15   Q   And then, finally, can you briefly summarize your
16   conclusion with regard to the totality of the circumstances on
17   Staten Island?
18   A   Yes.
19   My research touches on a number of the totality of
20   factors, some -- some of which I enumerated at the beginning of
21   my testimony this morning, and shows that in sum, the
22   interconnections between a history of segregation in housing,
23   discriminatory practices ensconced in public policy, and also
24   reinforced by private actors on Staten Island -- real estate
25   brokers and citizens, created a pattern of segregation that

1   persists up to the present day and is evidenced in the index of
2   dissimilarity.
3   In addition, I show that other forms of
4   discrimination and racial marginalization and racial appeals
5   have played out in the life of Staten Island's Black and Latino
6   populations for decades, also impairing their right to fully
7   participate in the -- or their ability to fully participate in
8   the political process.
9   MR. LALLINGER: Thank you, Dr. Sugrue.
10   Petitioners pass the witness.
11   MS. DIRAGO: Your Honor, can I have a
12   five-minute break?
13   THE COURT: Absolutely. Why don't we let the
14   witness step down, take a break, and then we'll recommence
15   for a little while.
16   (Brief recess.)
17   MS. DIRAGO: My name is Molly DiRago. Good
18   morning, Your Honor.
19   BY MS. DIRAGO:
20   Q   Good morning, Dr. Sugrue. We met remotely. I don't
21   know if you remember, but a couple of years ago I deposed you
22   remotely. So good to see you again.
23   A   Yes, likewise.
24   Q   Yeah.
25   So you're not an expert on Staten Island, right?

1   A   I am an urban historian and an expert on New York
2   City, which includes Staten Island.
3   Q   Okay.
4   You would agree that the majority of cases that you
5   testified in, though, do not relate to the history of Staten
6   Island specifically, right?
7   A   I have testified in cases concerning Nassau Counties,
8   Islip and Suffolk County; Euclid, Ohio; East Point, Michigan;
9   and -- those are the voting rights cases.
10   Q   Okay.
11   A   Whether Nassau and Suffolk County are related to
12   Staten Island or not, they're all part the New York
13   metropolitan area.
14   Q   Okay.
15   Well, I mean, Islip and Nassau are not even part of
16   the New York City, right?
17   A   That's correct.
18   Q   You never taught any cases about Staten Island,
19   right?
20   A   I never --
21   Q   You haven't taught any classes about Staten Island?
22   A   I'm going include Staten Island in my spring semester
23   History of New York undergraduate seminar, and we're going to
24   do site visits, including to the North Shore of Staten Island.
25   (Court reporter seeks clarification.)

1   BY MS. DIRAGO
2   Q   Is that due to this case and the research you've done
3   here?
4   A   Could you speak a little closer to microphone? My
5   hearing's not very good. I'm very sorry.
6   Q   Sure. I'll move on.
7   Let me see. You've never you authorized any
8   publication specifically focused on Staten Island, right?
9   A   Correct.
10   Q   So this is the first time doing research focusing on
11 Staten Island -- for this case?
12   A   No. I've researched about the Staten Island before.
13   Q   Focusing on Staten Island?
14   A   Focusing in part on Staten Island, yes.
15   Q   Because it was New York City?
16   A   No. Because I was invited to Arch Bishop Farrell
17 High School to do a workshop for archdiocesan teachers on
18 Staten Island and -- about a decade ago. And I began doing
19 some reading in Staten Island history so I could talk
20 knowledgeably about the island's relationship to the theme of
21 the presentation.
22   Q   Okay.
23   Let's talk about your opinions on segregation. And
24 I'm just going to clarify a few things.
25   You discussed Staten Island's Latino population in

1   your report, correct?
2   A   Yes, I do.
3   Q   And you use the term "Latino" pretty broadly, don't
4   you?
5   A   I use the term "Latino," which others already in this
6   case, and myself, too, use the term "Hispanic."
7   (Court reporter seeks clarification.)
8   A   Others speaking today have used "Hispanic." I used
9   both terms synonymously, and I use a definition that's widely
10 accepted by scholars and used by the U.S. Bureau of the Census
11 as well.
12   (Court reporter seeks clarification.)
13 BY MS. DIRAGO
14   Q   Okay.
15   And it describes people with ancestries from Mexico,
16 Latin America and the Caribbean, correct?
17   A   Yes.
18   Q   And that's regardless of national origin?
19   A   The term encompasses people from Central America,
20 Mexico, the Caribbean and South America.
21   Q   And are you aware from the research in this case that
22 Staten Island's Latino community is comprised of populations
23 from Puerto Rico, the Dominican Republic, the Caribbean and
24 Central and South America?
25   A   Yes. That's true of the Hispanic or Latino

1   population in all of metropolitan New York.
2   Q   And your report doesn't distinguish between these
3   subgroups, right?
4   A   I do not distinguish between the subgroups in my
5   report because the subgroup identities aren't relevant to the
6   larger issues that I discussed in my report.
7   Q   So you didn't look into whether those subgroups --
8   whether it's relevant to the issues in your report, right?
9   A   I did when I looked at various organizations that
10 advocate for Latinos and immigrants on Staten Island, like
11 La Colmena that themselves, serve Latinos regardless of their
12 place of origin, whether it be from Puerto Rico or the
13 Caribbean, elsewhere, or Mexico, or Guatemala or various
14 countries in South America.
15   Q   Okay.
16   But that doesn't have to do with the disparities that
17 you talked about in your report. Like, for example, education,
18 did you look at whether someone who was born in this country or
19 have ancestors who were born here have different levels of
20 educational attainment than, say, someone who came to this
21 country as an immigrant?
22   A   I looked at the census data. And the census uses the
23 term "Latino" to refer to the subset of the population, and
24 derived my findings from my analysis of census data.
25   Q   Okay.

1   So you did not parse it by subgroup.
2   A   When discussing education and --
3   Q   Sure.
4   Education and housing --
5   A   -- socioeconomic attainment I didn't parse it.
6   (Court reporter seeks clarification.)
7   A   When discussing educational attainment and
8   socioeconomic status, I did not parse national origin. I
9   focused on the census category, Latino or Hispanic.
10 BY MS. DIRAGO
11   Q   So in paragraph 22 of your report, and earlier, you
12 testified about the informal racial barrier that is the Staten
13 Island Expressway, correct?
14   A   Yes.
15   Q   You didn't discuss any segregation of Asians in your
16 report, did you?
17   A   I focused on Blacks and Latinos in my report because
18 they are the parties to this case.
19   Q   So was someone -- did someone tell you not to look at
20 the Asian communities in Staten Island in this case?
21   A   I -- I was hired to focus on disparities concerning
22 Whites, Blacks, and Latinos on Staten Island. So I focused on
23 disparities, discrimination and segregation concerning Whites,
24 Blacks and Latinos on Staten Island.
25   Q   And is that because the Petitioners' illustrative map

1 excises large portions of the Asian community from CD-11?
2   A   I did not look at the instructive -- I'm sorry. What
3 was the term that you used?
4   Q   "Illustrative map."
5   A   The illustrative map.
6   I have not looked at the illustrative map, and I have
7 not formed any opinions on it. I didn't use it when I was
8 writing my report.
9   Q   And just so I'm clear, were you instructed not to
10 look at the Asian-American population in Staten Island?
11   A   I was instructed to focus on Blacks, Latinos and
12 Whites on Staten Island because Blacks and Latinos are the
13 parties in this case.
14   Q   So you would agree that Asian-Americans can be found
15 on either side of the expressway, correct?
16   A   I did not do research on the residential
17 concentration or discrimination or disparities or segregation
18 concerning Asian-Americans on Staten Island.
19   Q   Did you note that Mr. Borelli did in his report?
20   A   I -- I saw that Mr. Borelli discusses Asians in his
21 report.
22   Q   Okay. Do you have any reason to disagree with the
23 data that he provides in his report for Asians?
24   A   I did not analyze the data that he used for Asians
25 since Asians are not part of what I was asked to do in

1 preparation of my reports.
2   Q   Okay.
3   You claim that -- in your report on paragraph 6, if
4 you want to look at it -- that you have conducted research on
5 historical and current patterns of racial discrimination,
6 racial segregation, and racial disparities and socioeconomic
7 status in New York City, with a focus on Richmond County.
8   But I guess you should have included a caveat that it
9 does not include Asians in Staten Island?
10   A   Again, in my report, I focused on the parties in the
11 case. I was asked to. I was not asked to provide data on
12 Asians. They were not parties to the case.
13   Q   Okay. So that would be a caveat that you would have
14 to add now to be accurate.
15   A   No. I don't see any caveat. This is what I was
16 hired to do, to focus on the matters of the totality of
17 circumstances that negatively impact the ability of the parties
18 to this case, Blacks and Latinos, to fully participate in the
19 political process on Staten Island.
20   Q   You do know that Asian-Americans make up 12 percent
21 of Staten Island, correct?
22   A   Yes. I report that data early in my report.
23   Q   And that's the third largest ethnic group on Staten
24 Island behind Whites and then Latinos, correct?
25   A   Yes.

1   Q   So even more than Blacks on Staten Island.
2   A   That's correct.
3   Q   I'm going to move on to something slightly different.
4   You cite an article by Seth Barron called, "New
5 York's Red Borough." That is in footnote 20 of your report.
6   A   I'm looking to see. I believe, yes, I did cite that
7 article. But I'll find it to verify. Yes, it's footnote 20 at
8 the bottom of page 13.
9   Q   Okay.
10   Is this the article that you cited there?
11   A   I'm sorry. I can't see it from here. It's just a
12 bunch of really small print.
13   Q   Okay.
14   You know what, then, I don't think we'll need it.
15 Let me know if -- if you end up wanting to looking at it. I'll
16 just ask you some questions.
17   THE COURT: You can probably enlarge it.
18 BY MS. DIRAGO
19   Q   And the first question was just sort of -- yeah, to
20 figure out if this was --
21   A   I -- it's still pretty hard for me to read. If I
22 could come down to the floor, I could look at it. Or if you
23 could give me a copy, it would be, I think, a lot easier for me
24 to look at it, and answer --
25   Q   Sure.

1   A   -- your questions accurately.
2   (Document handed to the witness at this time.)
3   A   Thank you very much.
4   COURT OFFICER: You're welcome.
5   THE COURT: We'll take a recess at about five to
6 1:00 for lunch, so -- just to give you some understanding
7 of where to stop.
8   MS. DIRAGO: I appreciate that. Okay.
9   THE COURT: Off the record.
10   (Off the record.)
11   THE COURT: Back on the record.
12 BY MS. DIRAGO:
13   Q   Okay.
14   Sorry, Dr. Sugrue. So you said that is the article
15 that you were quoting from in footnote 20 of your report?
16   A   Yes, it is.
17   Q   So you consider this -- you consider this article to
18 be reliable and credible.
19   A   I'm sorry. I considered it --
20   Q   -- the article to be a reliable and credible source?
21   A   It's a source that I use to document the
22 understanding of Staten Island's salient racial divide that is
23 the Staten Island Expressway, and to provide an example of the
24 use of the term "Mason-Dixon Line" on Staten Island.
25   Q   So for those purposes, it must have been reliable to

1   you, right?
2   A   Yes.
3   Q   It refers to Staten Island as the "forgotten
4   borough." In your research, did you come across what that
5   means, that term?
6   A   "Forgotten borough" is a concept that some residents
7   of Staten Island use to discuss the island's relationship with
8   other parts of New York City.
9   Q   And what is that relationship that it's referring to?
10   A   I can't speak to those who actually use or coined the
11   phrase. It refers to Staten Island's sense that it is somehow
12   not a part of New York or is -- has a complicated relationship
13   with New York City.
14   Q   Okay.
15   And that's all you found in your research about what
16   that term means?
17   A   I found examples of various grievances that residents
18   of Staten Island expressed towards other parts of New York
19   City. And the idea that somehow people in other parts of
20   New York City have forgotten or not paid attention to Staten
21   Island. A common complaint in American politics is that --
22   the -- the -- "I've been forgotten," and that's a -- a -- the
23   kind of rhetoric that doesn't surprise me.
24   Q   Okay.
25   So this article that you cited describes Staten

1   Island as "much less thickly settled than the rest of Gotham,
2   offering middle class families a chance to buy homes with lawns
3   and driveways."
4   Do you remember that description?
5   A   Yes.
6   Q   Do you agree with that description?
7   A   That description holds primarily for Whites because
8   of the low rates of homeownership for Blacks and Latinos on
9   Staten Island.
10   Q   Does lower Manhattan have a lot of homes with lawns
11   and driveways?
12   A   I'm sorry?
13   Q   Does lower Manhattan have a lot of homes with lawns
14   and driveways?
15   A   No.
16   Q   What about Bay Bridge, Bensonhurst or Bath Beach in
17   Brooklyn?
18   A   I haven't done research on Bay Ridge, Bath Beach or
19   other parts of -- of Brooklyn. There's a wide variety of
20   housing in Brooklyn based on my naked-eye observations, but not
21   any scholarly research, so I won't make any -- any claims based
22   on my scholarly expertise without the data.
23   (Court reporter seeks clarification.)
24   BY MS. DIRAGO
25   Q   Okay.

1   So you didn't look at the cultural differences or
2   similarities between Bay Ridge, Bensonhurst or Bath Beach,
3   Brooklyn and Staten Island?
4   A   I did not. I focused in my report on Staten Island.
5   Q   Okay.
6   And you didn't do any research on the similarities or
7   dissimilarities culturally between Lower Manhattan and Staten
8   Island, correct?
9   A   I did not look at culture, which is a pretty broad
10   and -- and murky category -- cultural differences or
11   similarities between Lower Manhattan and Staten Island, no.
12   Q   Okay.
13   So you don't have an expert opinion about whether
14   Staten Island is more similar culturally to Lower Manhattan
15   versus the western side of Brooklyn.
16   A   The term "culture" is really vague and undefined. I
17   wouldn't use it as a historian or social scientist to describe
18   the relationship between two different parts of a city.
19   (Court reporter seeks clarification.)
20   BY MS. DIRAGO:
21   Q   Okay.
22   A   It's really unspecified. How could I find data that
23   would -- that would document this -- this vague concept of
24   "culture"?
25   Q   So that's an easy "no" for you then.

1   A   That's correct.
2   Q   Okay.
3   The article further states that Staten Island has
4   "served as a political and cultural counterweight to the
5   far-left excesses of New York's other boroughs, especially
6   Manhattan and the Bronx."
7   Do you remember reading that?
8   A   Yes.
9   Q   And so this doesn't mention anything about being a
10   counterweight to Brooklyn there, does it?
11   A   There are a lot far-left people in Brooklyn, I think
12   it's safe so say. There's an area called the "Commie Belt"
13   that refers to a section of -- of southern and eastern Brooklyn
14   that offered overwhelming support for the candidacy of our --
15   our new mayor.
16   So the term "far-left excess" seems to me rather
17   hyperbolic. I wouldn't associate far-left excesses with
18   a great variety of political positions held by people in
19   different parts of metropolitan New York City.
20   Q   Okay.
21   It's your source. I'm just quoting it.
22   A   Yes.
23   Q   It also says:
24   "Statistically, Staten Island is an anomaly in New
25   York City. More than half of the adult population is married,

1 compared with less than 40 percent throughout the city as a
2 whole. Fewer than 15 percent of Staten Island households are,
3 quote, 'nonfamily,' whereas upward of 40 percent of households
4 citywide are so characterized. The citywide rate of unmarried
5 births is almost double the rate on Staten Island."
6   Did you remember reading that paragraph in your
7 research?
8   A   Yes.
9   Q   But you didn't report on that paragraph, did you?
10   A   I did not look at marriage, marriage patterns, family
11 structure, et cetera, on Staten Island or other parts of the
12 New York. It wasn't relevant to my analysis of discrimination,
13 segregation and racial disparities on Staten Island.
14   Q   All right.
15   Let's move to your opinions on segregation. And you
16 discussed earlier this index of dissimilarity, correct?
17   THE COURT: Do you want to start here at 2:00.
18   MS. DIRAGO: Oh, yes.
19   THE COURT: Sorry to interrupt.
20   MS. DIRAGO: No. This is a good time to stop.
21   THE COURT: Let's stop for lunch now. We'll go
22   off the record.
23   Let me remind the witness that while you're
24   testifying, please don't have any conversations with your
25   attorneys about your testimony.

1   Anything else?
2   MS. DIRAGO: When should we come back?
3   THE COURT: Come back at 2:00, and we'll get
4   started again at 2:15. We'll get everybody assembled, and
5   we'll go.
6   THE WITNESS: May I leave my materials here?
7   THE COURT: You may. All right. We'll recess
8   until 2:00.
9   MS. DIRAGO: Thank you, Your Honor.
10   (LUNCHEON RECESS HELD AT THIS TIME.)
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1   THE COURT: Let's go back on the record.
2 CROSS EXAMINATION
3 MS. DIRAGO:
4   Q   Hello, again. I just started before the break
5 discussing or bringing up the topic of the dissimilarity
6 index that you discussed in your report and you testified to
7 earlier, right?
8   A. Yes.
9   Q. So the index of dissimilarity is a tool to measure
10 the distribution of racial populations across a certain
11 geographic area; is that right?
12   A. Yes.
13   Q. This index does nothing to answer the question of
14 why there is racial dissimilarity, correct?
15   A. Yes, I explained as part of my report.
16   Q. And you would agree that a dissimilarity value of
17 40 or below represents a low level of segregation, correct?
18   A. That's correct.
19   Q. And the maximum value on the dissimilarity index
20 is 100, right?
21   A. Correct.
22   Q. And you calculated the white and Latino
23 dissimilarity index or value in Staten Island.
24   It is 42; is that right?
25   A. Yes, that's correct.

1   Q. So that's a moderate dissimilarity between
2 Hispanic and whites in Staten Island, right?
3   A. Yes, that's what I reported.
4   Q. And actually it's at the low end of what's
5 considered moderate?
6   A. It's in the moderate range. We could talk about
7 that. There's not a consensus among scholars about whether
8 something is low, medium or high within a range.
9   Q. Okay.
10   You didn't include the value for the
11 dissimilation, a number between Asians and whites, right?
12   A. I did not.
13   Q. And is that because you looked at it and it was
14 low, so you didn't include it in your report?
15   A. No. I could -- I wrote my report considering
16 discrimination, segregation and disparities concerning
17 blacks and Latinos who were parties in this case.
18   Q. So you don't provide any statistics on Asians,
19 beyond just a mere percentage of how many live in Staten
20 Island, in your report?
21   A. I do not provide any other statistics concerning
22 Asians in my report.
23   Q. Did you review Mr. Riley's report -- forgive me.
24 I may have asked you this. But he mentioned or he reported
25 that the dissimilarity value was 32 for Asians in Staten

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1   Island.
2   Did you read that?
3   A. I'd have to look at his report to review it and
4   give you the most accurate answer. But, I do recall it was
5   in the 30 range.
6   Q. And 32 indicates a low level of segregation,
7   right?
8   A. That's correct.
9   Q. And did you also see that that number has steadily
10   declined from a value of 36 in 2010?
11   A. As I said, I did not focus on Asians in Staten
12   Island. So, I didn't pay close heed to the statistics in
13   this report and the trajectory of that index.
14   Q. Okay.
15   But you would agree that there's not a high degree
16   of segregation in Staten Island for either Latinos or
17   Asians?
18   A. Again, I did not research the question of Asians.
19   And there's a moderate degree of segregation in Staten
20   Island for Latinos -- the group that I did study at length.
21   Q. Okay.
22   So, you would agree that it's not in the high
23   range?
24   A. As I reported, the degree of segregation for
25   Latinos in Staten Island has been, since 2000, in the

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1   moderate range.
2   Q. You did report the black and white segregation
3   number and that's high in Staten Island, correct?
4   A. Yes, I reported that black and white segregation,
5   beginning in 1990 and continuing to 2019 to 2023 ACS.
6   Q. Do you agree that racial segregation, especially
7   of Blacks and Whites is a common pattern in urban America?
8   A. There's a wide range of indices of dissimilarity
9   in urban America. United States has, at least, several
10   hundred urban areas. And I would say, it's hard to make a
11   generalization across the board.
12   I do know that seven five, which includes Staten
13   Island, ranks Staten Island in the higher end of -- again,
14   that's not an official designation, but certainly ranks
15   along with some racially segregated metropolitan areas and
16   cities throughout the United States.
17   Q. So you agree that it's a common pattern across
18   America?
19   A. You are asking me to make a generalization on
20   hundreds of data points that I did not do in my research for
21   this. So I can't give you an accurate answer without seeing
22   the data.
23   Q. So as a historian -- or for this report, it was
24   not relevant to know how Staten Island stacks up against the
25   rest of the country?

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1   A. My report is about Staten Island and about
2   disparities, segregation and discrimination concerning
3   Blacks and Latinos on Staten Island, not those issues in
4   Detroit or Chicago and San Francisco.
5   Q. So, if it is a common pattern across America, it's
6   not relevant to your report?
7   A. I don't understand the question you are asking me
8   here.
9   Q. Would it be relevant to your report or your expert
10   opinion here if the common pattern that you see in Staten
11   Island is common across the rest of the country?
12   A. It would be irrelevant to understand what's
13   happening on Staten Island rather than the disparities
14   between the groups that are a party to this case on Staten
15   Island.
16   Q. I'm surprised to hear that.
17   So, you quote Mr. Lawrence Bobo in article --
18   actually, you quote -- you reference a study that he did.
19   Do you remember that name "Lawrence Bobo"?
20   A. Yes, I do. He's a very distinguished scholar at
21   Harvard University. I know his work. I probably wrote on
22   everything he's written. I know his work well.
23   Q. Okay.
24   I was quoting from his study where he says racial
25   segregation, especially of Blacks from Whites, is a common

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1   pattern in urban America.
2   Do you take more heed in that statement?
3   A. Again, it depends on what you mean in "common."
4   We are parsing a word that's really broad in its
5   characterization. I have no reason to disagree with
6   Professor Bobo. But again, some metropolitan areas have
7   range of segregation in the 70s and some have range of
8   segregation in the 30s or 20s.
9   Again, if you show me a table of the top 50 or top
10   100 or top 500 Metropolitan areas in terms of segregation, I
11   can give you an informed answer. But I know, from my
12   scholarship, this is an enormous range across metropolitan
13   areas of the United States.
14   Q. Okay.
15   So do you know the dissimilarity index for
16   New York City as a whole?
17   A. I looked at Staten Island and I calculated the
18   dissimilarity index for Staten Island in this report. I did
19   not calculate the index of dissimilarity for New York City
20   in this report.
21   Q. Did you know then or you probably do not know then
22   that it's 84, so much higher than it is on Staten Island?
23   A. Again, I would have to look at the data to be able
24   to verify it to see who calculated it, how it was
25   calculated. But, the metropolitan New York is a segregated

1   metropolitan area by Black and White and by Black and
2   Latino.
3   Q.   And so, if that too is irrelevant, how Staten
4   Island lists compared to the rest of New York City was not
5   relevant to your report?
6   A.   Again, I was looking as -- I was charged to do my
7   report at Staten Island. Blacks and Latino and Whites on
8   Staten Island, not Blacks and Latino and Whites in other
9   parts of the New York metropolitan area or other states in
10   the United States very much.
11   Q.   Okay.
12   So you didn't know that Queens, Bronx and
13   Manhattan have higher dissimilarity index scores for Blacks
14   and Whites than Staten Island?
15   A.   I have not examined those data to be able to
16   answer your question accurately.
17   Q.   Okay.
18   For the cause of segregation, you discussed that
19   in paragraph 31 of your report, you claim that there's
20   abundant counterevidence to the opinion that racial or
21   ethnic groups tend to self-segregate. Do you remember
22   writing that?
23   A.   Yes. Yes, I do.
24   Q.   And that's from your source -- I believe it's
25   Lawrence Bobo -- correct?

1   A.   Yes. But I'm also drawing from my general
2   knowledge of the history of patterns of residents in the
3   United States. I'm drawing from scholarship that goes all
4   the way back to my dissertation.
5   Q.   I'm sorry.
6   I think I was just asking about your general
7   knowledge about patterns of residents across the United
8   States and you said you hadn't looked into that and you
9   can't give me an expert answer.
10   A.   No, you asked me whether I knew about
11   dissimilarity in the greater metropolitan area across the
12   United States. And I said no, I haven't looked at this data
13   recently. I cannot answer your question accurately unless
14   you show me those data.
15   Q.   And what is the difference then between
16   segregation and -- I thought you were talking about
17   segregation.
18   A.   No, segregation is a process that leads to the
19   segregation of groups by race and ethnicity. There's a lot
20   of history on the processes by which groups are segregated
21   in the United States. It is a topic I have been working on
22   for my career, my entire career.
23   Q.   Okay. I understand now.
24   So we are just talking about -- I was just talking
25   about the index values. But, okay. I understand now.

1   A.   But the index values don't answer the question
2   about what you -- they are not relevant to the question of
3   whether birds of a feather flock together, which is what you
4   were asking, or whether groups choose to segregate.
5   Q.   I understand. It's still relevant. But it does
6   not answer that question. You agree with that, right?
7   A.   I'm sorry. Can you rephrase that question?
8   Q.   I think you just said the index value wasn't
9   relevant.
10   A.   The index -- as I said, I didn't examine the
11   indices of dissimilarity outside of Staten Island, because
12   Staten Island was the subject of my report. I was not asked
13   to write a report involving groups other than the ones party
14   to this case. And I was not asked to examine data for other
15   places other than Staten Island. And that's where I focused
16   on in my report.
17   Q.   Okay.
18   And so, you quote Mr. or Dr. Bobo who says, "Only
19   a trivial percentage of Blacks, Hispanics and Asians express
20   objection to living in a largely White neighborhood."
21   Do you see that in your report? Do you
22   remember --
23   A.   I remember that. That's an accurate statement
24   that reflects Professor Bobo's research as well as other
25   scholars in the field.

1   Q.   So I assume you read that, Mr. Bobo's article,
2   that that came from, correct?
3   A.   Yes.
4   Q.   Okay.
5   A.   As I said, I read, I think, probably almost
6   everything that Professor Bobo has written over the course
7   of his long, very distinguished career.
8   Q.   Okay.
9   You didn't cite to it, though. You cited instead
10   to minutes from a New York City Council meeting.
11   Is that because they maybe referenced his report
12   in that meeting?
13   A.   I have to take a look at the footnote. Which one
14   are you referring to?
15   Q.   Twenty-nine.
16   A.   Twenty-nine?
17   Q.   In your original report.
18   A.   Yes. I am looking at 29. In Footnote 29, I'm
19   referring to the Brown case, which was the case of the Klu
20   Klux Klan attack on a Black family who moved into the
21   section of the North Shore in Staten Island in the 1920s.
22   In that paragraph and to that citation, I note
23   that the annual NAACP chapter on Staten Island -- which has
24   fought against racial segregation and disparity on Staten
25   Island for 100 years. We just passed it's centennial

1   anniversary -- was founded in Staten Island in response to
2   the Brown case in 1925.
3   Q.   Are you looking at 29 of your original report?
4   A.   Yes, I am. Footnote 29 refers to New York City
5   Council minutes of the proceedings for the second meeting
6   October 3, 2017.
7   That is a discussion of the city council providing
8   historic designation or noting historical significance of a
9   terroristic incident that lasted for more than a year
10   regarding the Brown family in Staten Island which lead to
11   the formation of NAACP chapter. That had nothing to do with
12   Professor Bobo.
13   Q.   Okay.
14   So you don't actually cite his article. I just
15   wasn't -- I didn't understand why --
16   A.   I'm not sure how you -- you said I said Professor
17   Bobo. I didn't look for the citation. But, I did not cite
18   Professor Bobo vis-a-vis the Brown case or the NAACP because
19   Mr. Bobo is not the historian who wrote about the Brown case
20   and the NAACP in Staten Island or the long history of the
21   NAACP fighting against segregation and against disparities
22   from the Brown case all the way up to today.
23   Q.   Well, this is the sentence you say: "While there
24   is some evidence that members of extended families are
25   immigrants from the same town or village of origin sometimes

1   move to neighboring homes, there's abundant counterevidence.
2   Political scientist warns Bobo found that only a trivial
3   percentage of Blacks, Hispanics and Asians express objection
4   to living in a largely White neighborhood, a finding echoed
5   by other demographers and sociologists."
6   A.   I agree with that statement. I studied it. But
7   it's not here at Footnote 29. I'm not sure where you're
8   finding it.
9   Q.   Well, I had to research it. That's my point, is
10   that it wasn't in there. Okay.
11   So, someone objecting to living in a largely White
12   neighborhood does not say anything about the choices they
13   make or whether they prefer to live near other Blacks,
14   Hispanics or Asian people, correct?
15   A.   There are three parts to that question. Can you
16   break it down into different parts so I can answer it
17   accurately?
18   Q.   Yeah.
19   Someone not objecting to living in a largely White
20   neighborhood does not say anything about the choices they
21   make about where they prefer to live.
22   Do you agree with that?
23   A.   There is a -- I'm not quite understanding your
24   question. But there's a large body of scholarship on the
25   relationship between preferences and residents. There's a

1   large body of literature that I draw from extensively and
2   have for most of my work that shows that for most of the
3   20th century and into the 21st, Black and Latinos have faced
4   really significant obstacles to achieving their stated
5   preferences for where to live. And that include Staten
6   Island beginning with the process of racial harassment and
7   redlining.
8   There's not a free market for housing for Blacks
9   and Latinos in part, because of the long history of
10   segregation and discriminatory practices in the document
11   here.
12   THE COURT: All right. One at a time.
13   MS. DIRAGON: I'd like to move as
14   nonresponsive.
15   THE COURT: You want to read the response
16   back, please.
17   (The testimony as requested was read by the
18   reporter.)
19   MR. LALLINGER: Your Honor, the witness
20   responded to what he understood the question to be
21   about which was the preferences of Black and Latinos
22   from where to live and he spoke about his research on
23   exactly that question.
24   THE COURT: While I understand the
25   objection, it's overruled. It is.

1   Let's continue.
2   Q.   Okay.
3   Dr. Sugrue, I'm asking you about -- and, if you
4   want to look at paragraph 31 in your original report, I'm
5   just asking you about that sentence, your last sentence in
6   that paragraph which says, "Political scientist, warns Bobo,
7   found that only a trivial percent of Blacks, Hispanics,
8   Asians, express objection to living in a largely White
9   neighbor a finding echoed by other demographers and
10   sociologists."
11   Do you see that?
12   A.   Yes, I do.
13   Q.   And you talk about a large body of scholarship,
14   but all you quoted or all you cited was the New York Council
15   minutes of proceedings for this stated meeting on October
16   31, 2017, correct?
17   A.   Oh, there seems to be a missing footnote here.
18   There are -- the quote from Larry Bobo -- professor Lawrence
19   Bobo that you cite, says Footnote 29. But then, the
20   following page continues to sequence of footnotes 26, 27, 28
21   and 29 again.
22   So, it looks like somewhere on the process, in the
23   process of editing, the citation was, erroneously, left out.
24   I don't understand. It is really strange to have two
25   Footnote 29s, one between Footnote 25 and footnote 26.

1   Q. I guess we don't need -- I don't have two, 29
2   footnotes at all. So this is why depositions are good.
3   A. Yes. I will -- I will point it out on this
4   version. There's a Footnote 29 after "sociologist," the
5   sentence with the Larry Bobo quote. And there's a Footnote
6   29 after my discussion of the Brown case, which is at the
7   very end of paragraph 33. It says, in the Footnote 29 --
8   Q. Okay. I'll just move on.
9   A. It goes down to that "New York City Council
10 minutes" that you suggested.
11   Q. That clears up a lot. Okay.
12   So we don't -- I have two footnotes in the body,
13 two footnotes "29" in the body, but not two footnotes in the
14 footnote area for "29."
15   A. That's correct. I have two footnotes "29"
16 superscripts in the text and one Footnote 29 referring to
17 the Brown case at the end of page 17.
18   Q. Thank you for clearing that up.
19   Regardless, say a Asian person who professes not
20 to object to living in a largely White neighborhood does not
21 say anything about the choices that person would make about
22 where they are living or where they prefer to live. Do you
23 agree with that?
24   A. You asked me that question before. And I'll offer
25 maybe a slightly shorter answer, which is that the process

1   of segregation grows out of public policies and private
2   actions that limit the ability of potential homebuyers or
3   renters to achieve the preferences that they have expressed.
4   Q. But, Dr. Sugrue, I'm talking about this one study
5   that you quoted and you felt it was important enough to
6   quote this conclusion by Mr. -- Dr. Bobo. So, that's what
7   I'm talking about.
8   A. Yes, I understand. And I stand behind what
9   Dr. Bobo wrote. The article that, unfortunately we don't
10 have a footnote for, discusses the relationship between
11 preferences and residential patterns and segregation
12 concerning different non-white groups including Blacks and
13 Latinos. I refer to it in this context.
14   Q. Okay.
15   We'll get into this more. But, I'm focused on
16 this one sentence. And I guess I will ask you again.
17   I mean, if you poll everyone at a restaurant and
18 you say, "Are you -- do you object to eating soup for
19 lunch," and 5 percent said yes, you would not then assume
20 that 95 percent of those people ordered soup for lunch,
21 right?
22   A. May I answer your question not using the
23 hypothetical that you presented? I'd rather, as a
24 historian, not range into hypotheticals and actually offer
25 specific evidence that answers your question.

1   Q. Okay.
2   A. So, there is abundant evidence by scholars of race
3   and urbanization and civil rights, including myself in two
4   of my books, that probe segregated housing policies enacted
5   by the national government or enacted by a private sector --
6   actors like real estate broker and managers -- have long
7   prevented non-white potential homebuyers or renters to
8   express their preferences. This is the core of efforts to
9   deal with the ongoing problems of fair housing.
10   Q. So, it sounds like you've agreed with me that that
11 sentence and that conclusion by Dr. Bobo is probably not
12 relevant to what you cite it for, because you keep backing
13 away from it.
14   A. I'm not backing away from it. I said earlier, I
15 agree with Professor Bobo. I draw from his work. I know
16 him and have been in conferences with him, shared work with
17 him. I know what position he takes and when it's consistent
18 with mine as is a wide body of scholarship including some of
19 my own published work.
20   Q. The conclusion that you cite, however, is not
21 relevant to your conclusion? You cite it as evidence for
22 your conclusion. And that is the part that I'm taking issue
23 with.
24   MR. LALLINGER: Objection, your Honor. I
25 think this question has been asked and answered three

1   or four times.
2   THE COURT: Let's continue.
3   MS. DIRAGON: Okay.
4   THE COURT: I have heard enough.
5   Q. So the study that Dr. -- I assume he's a doctor,
6   correct?
7   A. He is.
8   Q. Okay.
9   I assume the study that Dr. Bobo performed he did
10 not actually ask participants about their preferences in
11 where to live, did he?
12   A. I don't have Professor Bobo's article in front of
13 me right now. I can't remember every detail in the article.
14   Q. Okay.
15   Would it surprise you if I told you that he did
16 not ask them about their preferences on where to live?
17   A. Again, I'd have to see the text to be able to give
18 you a definitive answer.
19   Q. Okay.
20   MS. DIRAGON: Why don't we pull that up.
21   Q. While he's doing that, do you remember that the
22 study was conducted from 1996?
23   A. Yes.
24   Q. Do you remember that the study used data from
25 people in Los Angeles, correct?

1   A.   That's correct.
2   Q.   Not Staten Island?
3   A.   Yes.
4   Q.   And not New York?
5   A.   He does not talk about Staten Island in this.
6   Q.   Okay.
7   Let's -- first, if you could go to page 1.
8   A.   Yes.
9   Q.   That was fine. That's fine.
10   A.   Please make it big. I definitely can't read that.
11   Yes. Thank you.
12   Q.   Okay.
13   So, that's -- that first sentence is what I was
14   quoting to you earlier about the common pattern --
15   A.   Yes.
16   Q.   -- in urban America.
17   A.   Yes.
18   MS. DIRAGON: And then, if you could then go
19   to page 891.
20   (Handing.)
21   A.   Thank you very much.
22   MR. LALLINGER: Do you have a copy of that
23   for us as well?
24   MS. DIRAGON: Yes.
25   MR. LALLINGER: Thank you.

1   He concludes that his findings point to ongoing
2   and persistent segregation and differences between White
3   attitudes about integration and non-white attitudes about
4   integration.
5   In other words, non-Whites he argues -- in the
6   quote that he used here to summarize part of his argument --
7   are more likely to not object to living in integrated
8   neighborhoods than Whites. This is part of the -- you might
9   say, the social structure that perpetuates residential
10   segregation by race.
11   If we look at page 904 of Professor Bobo's essay,
12   in the paragraph that's near the bottom, he talks about how
13   White's stereotypes and racial prejudices -- he talks about
14   White attitudes and stereotypes and racial prejudice, as a
15   center group position, translates into attitudes on
16   residential segregation.
17   Q.   So is that a big no? I am asking you a very
18   simple --
19   A.   I'm trying to be as accurate and thorough as
20   possible to give you the answers reflecting my scholarly
21   attention to the context and the detail.
22   And the answer is, I stand behind both my quote
23   here from Professor Bobo and Bobo's interpretation about the
24   relationship of minority preferences for integration and the
25   persistence of segregation by race which is the central

1   Q.   If it helps you, on page 889 is, I think, a quote
2   or at least the data you were quoting. It's like sort of
3   midway through the page.
4   A.   889.
5   Q.   Yes. The second paragraph.
6   A.   Yes, that is the quote that I pulled from
7   Professor Bobo's report.
8   (Pause in proceedings.)
9   THE COURT: Are you ready?
10   MS. DIRAGON: I'm sorry. I am ready.
11   THE WITNESS: Yes.
12   Q.   Did you determine your answer?
13   A.   I'm sorry. I thought I answered the last question
14   you asked. I was just looking at the report. I thought you
15   were reviewing your notes.
16   Q.   Oh.
17   A.   My apologies.
18   Q.   I was waiting for the answer.
19   So the question that was asked was not about the
20   preferences of people and where they prefer to live, but it
21   was whether they objected to living near or with groups
22   of -- he calls it out-groups, correct?
23   A.   Professor Bobo is looking at residential
24   preferences by Blacks, Whites and Latinos for integration as
25   a way of discussing larger patterns of segregation.

1   argument I'm making in this entire section of my report.
2   Q.   Dr. Sugrue, I will move on. But, respectfully, I
3   didn't ask you about that. I asked you, specifically, what
4   the question was.
5   There was a study that was done and you had a lot
6   of time to look at it. And I asked you if they -- what
7   Mr. Bobo did in the study and what he asked the
8   participants, which is very important when you're analyzing
9   a scientific or social scientific study. And you still
10   haven't answered.
11   A.   Mr. Bobo looks at Black, White, Asian and Latino
12   attitudes and preferences about racial integration and about
13   out-groups and in-groups.
14   And he uses those to draw conclusions that
15   contribute to a very large body of scholarship on
16   residential segregation, concluding that there are
17   restraints on opportunities because of White's attitudes
18   towards integration that he documents here in this essay.
19   Q.   So when you're looking at a study, for example, do
20   you look to see the participant's size, the sample size,
21   where the data was from, how old it was, where the
22   participants lived? Do you look at stuff like that when you
23   are analyzing it as a historian?
24   A.   Yes.
25   Q.   Did you look, in this case, at the actual

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1   questions that were asked of the participants in the study?
2   A. I did not have access to the research instrument
3   or the survey instrument that Professor Bobo used to conduct
4   his research for the article.
5   Q. Okay.
6   Did you know that Mr. -- Dr. Bobo, actually, found
7   that Blacks had the highest margin of any group preference?
8   A. Yes. But, any group preference, as he shows in
9   this article, is not necessarily related to preference about
10   where to live. He documents, in fact, that Blacks and
11   Latinos express an interest in living near Whites, because
12   they believe the White neighborhoods have better amenities,
13   are better off, et cetera. So again, you're asking me to
14   disaggregate two different sets of Professor Bobo's
15   argument. And he talks about both.
16   (Continued on the following page.)
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1   BY MS. DIRAGO
2   Q   My questions are just as simple as I ask them. I'm
3   not asking anything more than words that I say to you.
4   But thank you for at least agreeing with that.
5   A   You're welcome.
6   Q   So you cite a lot of academics in your report,
7   actually, don't you?
8   A   Yes, I do.
9   Q   And do you vet those people for bias?
10   A   I'm sorry? I missed the last bit.
11   Q   Do you vet those people who you cite for any kind of
12   bias?
13   A   I read a wide range of a scholarship from people of
14   different vantage points. I look for -- I look first to the
15   footnotes, to the apparatus. As a scholar, you seem to get a
16   sense of the quality of the research that they've done. And I
17   look at articles and books in relationship to other literature
18   in the field.
19   This is what all of us do. This is how we do peer
20   review, for example.
21   Q   Okay.
22   Your report discusses redlining, right?
23   A   Yes, it does.
24   Q   And you testified about that earlier, correct?
25   A   Yes, I did.

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1   Q   And that was the practice of marking areas or
2   neighborhoods where minorities lived as having a credit risk,
3   correct?
4   A   Among other things, yes.
5   Q   And redlining existed around the country in the 1930s
6   and 40s?
7   A   Yes, it did.
8   Q   You also talk about some federal housing programs in
9   the 1930s and early 1940s, Federal Home Loan Bank Board, The
10   Home Owners Loan Corporation, the Federal Housing
11   Administration and the Veterans Administration, correct?
12   A   Yes, I do.
13   Q   And then none of those are unique to Staten Island
14   either, right?
15   A   No. These are public policies that influenced and
16   affected Staten Island and shaped the racial geography of
17   Staten Island, but the programs that you mentioned were
18   programs overseen by the federal government.
19   Q   Right.
20   And I asked if they were unique to Staten Island.
21   A   No.
22   Q   You state that:
23   "These federal housing agencies prevented most Blacks
24   and Latinos from obtaining federally backed home loans and
25   mortgages for more than a third of a century between 1932 and

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1   1968."
2   That's paragraph 34, if you wanted to check in that.
3   A   Yes. I agree with that. I don't need to consult the
4   text in this case.
5   Q   Your report does not contend that the Home Owners
6   Loan Corporation rated predominantly Latino neighborhoods in
7   Staten Island as "declining or hazardous," does it?
8   A   The Home Owners Loan Corporation area descriptions
9   for Staten Island didn't mention Latinos because in 1940, there
10   were few, if any, Latinos on Staten Island. The number was
11   only 3 percent or so in 1980.
12   Q   And it doesn't mention any Asian -- it doesn't
13   mention redlining for any Asian presence in the neighborhood,
14   correct?
15   A   The Asian population in Staten Island was miniscule
16   until the 21st Century.
17   Q   The -- if I call it the "HOLC," you'll understand
18   Home Owners Loan Corporation?
19   (Court reporter seeks clarification.)
20   BY MS. DIRAGO
21   Q   The Home Owners Loan Corporation published its map
22   for Richmond County in 1940, correct?
23   A   Yes, it did.
24   Q   And you cite, "Mapping Inequality: Redlining and New
25   Deal America."

1   (Court reporter seeks clarification.)
2   A   Yes, I do.
3   BY MS. DIRAGO
4   Q   And there is a website associated with that, correct?
5   A   Yes, there is.
6   Q   And you note in your report that areas with large
7   number of Italians were ranked negatively, correct?
8   A   Yes. I noted that.
9   Q   In fact, the website that you cited as a source
10 states that for Staten Island, anti-immigrant -- I'm sorry.
11   "Anti-Italian sentiments saturates The Home Owners
12 Loan Corporation report as many D-ratings are attributed
13 primarily to the presence of Italians."
14   A   That's correct.
15   Q   So you would agree with that statement.
16   A   Yes, I do.
17   Q   And it referred to, for example, Rosebank as having
18 been, quote, "entirely taken over by Italians and transformed
19 into a typical slum."
20   Did you read that?
21   A   I did.
22   Q   And what percentage did you say Hispanics were in
23 Staten Island in 1940?
24   A   I don't have the census data for the number of
25 Hispanics in 1940. The U.S. Census wasn't collecting data on

1   Latinos or Hispanics until the -- really beginning, tentatively
2   in the 1960s, and reaching its more or less current form in
3   1980.
4   Q   So in 1940, Blacks only constituted about 2 percent
5   of Staten Island; is that correct?
6   A   Yes. That's correct.
7   Q   Yet 75 percent of the map was ranked "definitely
8   declining or hazardous." Did you remember that?
9   A   I saw that in the redlining report, and it's
10 well-documented that the appraisers considered immigration
11 status and ethnicity, along with race, in their evaluations of
12 neighborhoods, including in the 1940 Staten Island map.
13   Q   And the website that you have as a source states that
14 with the opening of the Verrazzano Bridge, the ramps were
15 constructed over several majority Italian neighborhoods rated C
16 or D by the HOLC, H-O-L-C.
17   A   I'm sorry. I don't remember offering that quote in
18 my report.
19   Q   That's on the website. Do you disagree with that
20 statement?
21   A   I don't disagree with that statement. I haven't
22 examined the Italian composition of the area underneath the
23 Verrazzano Bridge to verify it, but I have no reason to doubt
24 the statement.
25   (Court reporter seeks clarification.)

1   BY MS. DIRAGO
2   Q   Okay.
3   Did you know that the island today holds the highest
4   concentration of Italian-Americans in the United States?
5   A   I have not seen that exact figure, but I know that
6   Staten Island has a significant population of Italian heritage.
7   Q   Do you know the percentage of people living on Lower
8   Manhattan today who are Italian-American?
9   A   I do not. I haven't examined the census data to be
10 able to answer that question.
11   Q   What about Bensonhurst, Bay Bridge or Bath Beach in
12 Brooklyn?
13   THE COURT: Bay Ridge.
14   MS. DIRAGO: Did I say "Bay Bridge"? Sorry.
15   Bay Ridge.
16   A   I didn't look at the census data for Bensonhurst,
17 Bay Ridge and Bath Beach in Staten Island in preparation -- I'm
18 sorry -- in Brooklyn in preparation for this report. I focused
19 on Staten Island.
20 BY MS. DIRAGO
21   Q   You had discussed opposition of public housing on
22 Staten Island in your report, correct?
23   A   Yes.
24   Q   And you believe that all opposition to public housing
25 is racist, correct?

1   A   I did not say that at any point in my report. I
2   wouldn't make such a blanket statement.
3   Q   So you agree there are legitimate policy reasons to
4   oppose public housing?
5   A   There are many reasons that people might oppose
6   public housing, but we know from the history of public housing
7   in New York, and elsewhere, that racial considerations were
8   quite significant in opposition to the construction of public
9   housing. It's well-documented in the scholarly literature,
10 including work -- my own work.
11   THE COURT: More than socioeconomic, race was
12   considered more?
13   THE WITNESS: Well, public housing -- the
14   socioeconomic status of public housing was -- has changed
15   over time. Early public housing was largely working class
16   and lower middle class.
17   The increasing number of poor people living in
18   public housing occurred over time. It wasn't initially
19   part of public housing. Because there was a massive
20   shortage of housing in the 1930s and 1940s when the United
21   States launched its public housing programs for the first
22   time.
23   THE COURT: Okay. Thank you.
24 BY MS. DIRAGO
25   Q   So you cite a lot of sources discussing opposition to

1   public housing that don't mention race, and you don't provide
2   an analysis of why those sources are race-based. Do you agree
3   with that?
4   A   Again, you would have to point me to specific sources
5   or statements that I made, but it's --
6   Q   I can do that.
7   A   -- it's well-established that there were racial
8   reasons for opposing the construction of public or affordable
9   housing in New York and on Staten Island.
10   Q   Well, I'm going by the sources in your report.
11 That's what we have here today.
12   So if you go to, for example, paragraph 44, you cite
13 Kramer and Flanagan, "Staten Island: Conservative Bastion in a
14 Liberal City."
15   This is in your discussion of the construction of
16 public housing in Annadale-Huguenot.
17   A   Yes.
18   Q   Okay. So you agree that this is a reliable source?
19   A   Yes. I draw from Flanagan and Kramer's book on
20 Staten Island at various points in my report.
21   Q   Okay.
22   What you failed to mention, however, about the
23 Annadale-Huguenot urban renewal efforts is that Kramer and
24 Flanagan state that the program was "odd because it conceived
25 of the program to tear down the slums and replace them with

1   decent buildings, shops, restaurants and recreational cultural
2   centers. But Annadale-Huguenot was at that time, and it is
3   now, a middle-class community with a low crime rate and many
4   pleasant homes."
5   Do you remember reading that in the Kramer and
6   Flanagan book?
7   A   I read that in the Flanagan book. Annadale-Huguenot
8   was -- had those characteristics because it was an all-White
9   part of Staten Island when the proposed Annadale-Huguenot
10 project was built and opposed.
11   Q   So do you think it is racist to object to tearing
12 down a middle-class community with nice homes and a low crime
13 rate?
14   A   I can't answer that question without context. The
15 context is: At a moment when Whites on Staten Island and
16 New York were fiercely opposing the construction of public
17 housing that was going to be open on a nondiscriminatory basis
18 that would change the composition of White neighborhoods, they
19 opposed it. And that's the a case in Annadale-Huguenot.
20   (Court reporter seeks clarification.)
21 BY MS. DIRAGO
22   Q   It sounds like that's all you needed for analysis
23 that that was race-based.
24   A   I'm not sure that's all I needed. As with this case,
25 as with many of the cases, I'm a historian.

1   I think contextually, Annadale-Huguenot can't just be
2   understood as a one-off deal. It's -- it occurred in the
3   context of really fierce contestation against the construction
4   of public housing that would be opened on an integrated basis
5   in predominantly White sections of New York and Staten Island.
6   (Court reporter seeks clarification.)
7   BY MS. DIRAGO
8   Q   You also quote from a 1968 newspaper article in the
9   "Staten Island Advance." This is paragraph 44 of your report
10 and you state:
11   "Similar fears rose in the Fox Hills area of Clifton,
12 where the construction of new high-rise apartments and a new
13 primary school sparked White residents' concerns that the city
14 will subsidize housing to bring in minority groups from ghetto
15 areas in the city."
16   Did I read that correctly?
17   A   That's correct.
18   Q   Did you read the next sentence after that in the
19 newspaper article that you quote?
20   A   Can you point me to the sentence? I'm looking at my
21 report.
22   "'Staten Island Advance' published a cartoon entitled
23 'Unwelcome" --
24   (Reporter admonition.)
25   A   Are you talking about the sentence that says, "The

1   'Staten Island Advance' published a cartoon" --
2   BY MS. DIRAGO
3   Q   I mean in the newspaper article.
4   A   -- "entitled 'Unwelcome Import'"?
5   Q   Sorry.
6   In the newspaper article that you quote from.
7   A   I'd have to go back and look at the newspaper article
8   to -- I --
9   Q   You don't remember either way.
10   A   I don't recall.
11   Q   So the very next sentence: "The author concedes that
12 'while no one admits it openly, those fears are quite
13 prevalent.'"
14   My question to you is: Would you consider that an
15 unreliable source of a reporter admitting that no one has
16 admitted openly the fears that she's reported people having?
17   A   The quote again, can you read that back to me, "No
18 one expresses it openly"?
19   Q   "While no one admits it openly, the fears are quite
20 prevalent."
21   A   That seems to me a very common sentiment for people
22 who are unwilling to express racial concerns openly. You
23 express them privately, quietly. That's very common. That's
24 indeed one the reasons racial appeals matter so much because it
25 gives public prominence to sentiments that are often discussed

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1   privately.
2   Q   Okay.
3   So no second thought about a reporter stating that
4   people feel some way, but they didn't express it openly, that
5   you just accept that.
6   MR. LALLINGER: Your Honor, asked and answered.
7   THE COURT: I'll allow you to answer that.
8   Let's continue.
9   A   I don't have any objections to that statement.
10 BY MS. DIRAGO
11   Q   Okay.
12   We'll go on to real estate practices now.
13   Within your discussion of discriminatory real estate
14 practices in your report, you don't mention a single instance
15 of discrimination against Latinos, do you?
16   A   I would have to look at my report to answer that
17 question accurately, but I do know that in recent years -- yes,
18 in fact, I can think of one right now, which is the incident --
19   Q   I want to stick to your report if you don't mind.
20   A   No, I'm sticking to my report. I discussed an attack
21 on a family that moved into New Dorp in 1972. New Dorp,
22 D-O-R-P.
23   (Court reporter seeks clarification.)
24   A   They were Black and Venezuelan. Venezuelans are --
25 are Latinos. And that was a case in which four neighbors, some

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1   law enforcement official and a real estate broker, vandalized
2   the property and eventually torched it in 1972 to prevent the
3   Black-Venezuelan family from moving in.
4   BY MS. DIRAGO
5   Q   And you don't mention a single instance of
6   discrimination against Asians, do you?
7   A   I will repeat again what I said earlier which is: I
8   did not focus on discrimination and acts of harassment that
9   targeted Asians in Staten Island.
10   Q   And the paired testing of the realtors that you
11 testified to earlier did not test whether real estate agents
12 steered Latino residents to certain neighborhoods, correct?
13   A   I don't specifically state whether -- who the paired
14 testers were. My sources didn't always give me evidence as to
15 who went out with whom in the paired testing process.
16   (Court reporter seeks clarification.)
17 BY MS. DIRAGO
18   Q   And you don't provide any examples of blockbusting
19 involving Latino residents, correct?
20   A   I did not have any evidence of blockbusting
21 concerning Latino residents. It focused on Black residents in
22 the period I wrote in -- about blockbusting, which was the
23 1960s, when the Latino population of Staten Island was still
24 quite small.
25   Q   Okay.

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1   We'll move on to hate crimes. You state that Black
2   and Latino residents of Staten Island have been the targets of
3   hate crimes, correct?
4   A   Yes.
5   Q   But you don't dispute Mr. Borelli's contention that
6   Staten Island has consistently had one the lowest incident
7   rates of hate crimes in New York's precincts for the past
8   several decades, correct?
9   A   Mr. Borelli only provides data from 2018, 2019 to
10 substantiate that point in his report. And he offers evidence
11 of two hate crimes that occurred this past year. So I don't
12 have any other evidence upon which to offer an assessment of
13 the trajectory of hate crimes on Staten Island.
14   Q   Okay.
15   So you can't dispute it then.
16   A   As I said, I found evidence of hate crimes in Staten
17 Island spanning a multi-decade period all the way up until
18 2025. Hate crimes are part of the totality of circumstances
19 that affected non-Whites on Staten Island.
20   Q   Did you know there were only two hate crimes against
21 Black individuals on Staten Island in 2025?
22   A   There were two hate crimes against Blacks on Staten
23 Island in 2025. One hate crime -- as the head of the anti-hate
24 crime organization in Staten Island, one hate crime is one too
25 many.

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1   Q   I don't disagree with you. But we're not here
2   talking about an ideal world. We're talking about Staten
3   Island.
4   Do you know the difference --
5   A   We're talking about a place that -- that has a long
6   history of hate crimes, including some that led to grievous
7   injury, targeting non-Whites.
8   Q   Did you compare the statistics of hate crimes from
9   Staten Island to Manhattan?
10   A   I did not. I focused on Staten Island in my report.
11   Q   Did you know that over the last five years, there was
12 only one hate crime against a Hispanic individual on Staten
13 Island?
14   A   I did not see data on the specifics of targets of
15 hate crimes on Staten Island.
16   Q   Do you know there were no hate crimes against
17 Latinos, according to the New York Police Department, in 2025
18 on Staten Island?
19   A   I didn't see data about hate crimes targeting Latinos
20 on Staten Island in 2025.
21   Q   There were only two hate crimes in the last
22 five years against Asians on Staten Island. Did you know that?
23   A   I didn't focus on Asians in Staten Island, but two
24 hate crimes directed against a fairly small community is not
25 inconsequential.

1   Q   Are you referring to Asians as a fairly small
2   community?
3   A   Well, 12 percent of the population on Staten Island,
4   that's slightly more than one in ten.
5   (Court reporter seeks clarification.)
6   BY MS. DIRAGO
7   Q   You also refer to the Proud Boys as a very -- very
8   active Staten Island chapter.
9   (Court reporter seeks clarification.)
10 BY MS. DIRAGO
11   Q   That's paragraph 71 in your report.
12   A   Yes.
13   Q   And you cite the Southern Poverty Law Center list of
14 hate groups from 2024, correct?
15   A   That's correct.
16   Q   The source did not discuss whether the chapter was
17 quote, "very active," did it?
18   A   I'd have to look back at the report to give you an
19 accurate answer, but it reported that the Proud Boys are an
20 active extremist organization on Staten Island.
21   Q   Well, it actually just had a list of organizations.
22 Do you -- did you look into what the Southern Poverty Law
23 Center did to determine what groups go on that list?
24   A   I have used the Southern Poverty Law Center's data on
25 hate groups and extremist groups in my work. I have not,

1   however, looked at the survey instrument or the data-gathering
2   methods that the Southern Poverty Law Center uses.
3   Q   We've talked a little about New Dorp School. You
4   reference a brutal attack in October 1980 at the high school.
5   (Court reporter seeks clarification.)
6   BY MS. DIRAGO
7   Q   That's paragraph 63.
8   A   Yes, I did.
9   Q   And you cite the "New York Amsterdam News"; is that
10 correct?
11   A   That's correct.
12   Q   You don't cite any other sources for that event, do
13 you?
14   A   I don't believe I did. I may have cited, although I
15 didn't, to the Flanagan and Kramer book, which also discusses
16 that incident at New Dorp High School.
17   Q   Did you know that "The New York Times" ran an article
18 at the same time about the incident, and stated that the school
19 authorities attributed the difficulties to what they said was
20 "a handful of troublemakers of both races and a series of
21 isolated incidents that were magnified by rumors and eventually
22 involved the entire school"?
23   A   I did not look at "The New York Times" article, but
24 that strikes me as descriptive of the kinds of hate incidents
25 that often occur in such racially charged environments as

1   New Dorp High School.
2   Q   And did you read that the school was overcrowded
3   because they were squeezing 3,000 people into a structure built
4   for 2,200?
5   A   I didn't look at the overcrowding of the school. It
6   was 5 percent Black at the time. But it was overwhelmingly
7   White. But I did not look at the population of the school in
8   1980.
9   Q   In your research, did you see that "The Times" ran a
10 story eight years later that talked about the efforts the
11 school had made, which were successful?
12   A   The efforts to --
13   Q   I'm sorry, the efforts to eradicate racism?
14   A   I don't know if I read a specific article from
15 "The Times" about that effort to eradicate racism in New Dorp
16 High School.
17   Q   So it stated:
18   "The high school's efforts have not gone
19 unrecognized. In 1986, New Dorp's human relations program was
20 cited by the New York Commission of Education as the most
21 outstanding in the state. Last year, Mayor Koch selected it as
22 the most positive effort of its kind in the borough, prompting
23 other organizations to initiate similar programs."
24   Is that news to you?
25   A   I didn't see the article that you're referring to, so

1   I can't answer any more than that.
2   Q   Okay.
3   So when you were doing your analysis of
4   discrimination in Staten Island and you came across that
5   incident, you didn't look for more articles about it?
6   A   I focused on that incident because, again, I'm
7   writing about New Dorp in the larger context of various acts of
8   discrimination, harassment, hate crimes, and ultimately, the
9   patterns of segregation and disparities that continue to affect
10 Latinos and Blacks on Staten Island.
11   So New Dorp has to be understood in that larger
12 context. And I did not look at a "New York Times" article that
13 you cited.
14   Q   But the larger context is important, correct?
15   A   My entire report is about the context, looking at the
16 relationship of various incidents to larger patterns of
17 discrimination and segregation on Staten Island.
18   Q   So you say that "anti-Latino sentiment intensified in
19 Staten Island, especially from 2022 to 2024, as the number of
20 asylum seekers in the city rose," correct?
21   A   Yes, I did.
22   Q   Do you perceive all objections or protests to
23 immigration as anti-Latino?
24   A   No. There are legitimate reasons for having
25 differences of immigration policy. But the protests that

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1   occurred on Staten Island in the fall of 2024 -- I'm sorry --
2   fall of 2023 and continuing into 2024 also exhibited various
3   substantial and sometimes violent xenophobia.
4   (Court reporter seeks clarification.)
5   BY MS. DIRAGO
6   Q   But you cited a lot of protests and objections to
7   immigration that did not have anything violent about them. Is
8   it your contention that they all had racist undertones?
9   A   I cited a number of incidents, and I focused on those
10   that are of the family of hate crimes -- that is, physical
11   attacks, acts of aggressive harassment that are that targeted
12   migrants on Staten Island, very serious ones.
13   Q   So even if there's no violence.
14   A   I answered your question by saying: I focused mostly
15   on those that were violent and that expressed xenophobic
16   sentiment, that harassed Latinos and other migrants to Staten
17   Island in the long period from the late summer of 2023 to the
18   spring of 2024.
19   Q   Well, for example, you cite an article at
20   footnote 102 on page 35, entitled, "Staten Island Pols Express
21   Outrage Over Migrants Being Housed in a Staten Island Hotel."
22   Do you remember citing this article or reading this
23   article?
24   A   Yes, I do.
25   Q   Do you remember that it quoted Congresswoman

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1   Malliotakis, M-A-L-L-I-O-T-A-K-I-S, as saying: "The thousands
2   of asylum seekers coming to Staten Island will burden the backs
3   of people who are already struggling"?
4   (Court reporter seeks clarification.)
5   BY MS. DIRAGO
6   Q   Did you read that?
7   A   I did not quote Congresswoman Malliotakis here. But
8   I have no reason to doubt that she said that in her discussion
9   of the policy.
10   Q   Do you agree with that statement?
11   A   I would have to note a larger context of the entire
12   statement to -- it's not -- there's not a "yes" or "no" answer
13   to that.
14   Q   Do you agree that the influx of over 100,000 migrants
15   to New York would burden those with less means and wealth than
16   those with more means and wealth?
17   A   I did not see evidence of any disproportionate burden
18   on people with less wealth and more wealth. Some of their
19   opposition to immigration happened in wealthy neighborhoods,
20   but it didn't happen violently.
21   Q   It did not happen violently, or it did?
22   A   I did not see violent incidents in the articles that
23   Mr. Borelli cited, and I know about the anti-immigration
24   sentiment near a hotel in the Upper Westside, where people went
25   to meetings and expressed their opinions vocally, as citizens

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1   do.
2   (Court reporter seeks clarification.)
3   A   But I did not find evidence that there were violent
4   attacks on migrants who were moving into the Upper Westside or
5   to Clinton Hill, which Mr. Borelli cites in his report.
6   BY MS. DIRAGO
7   Q   Do you remember your article that you cited entitled,
8   "Borough President Calls for Migrants to be Housed in
9   Washington D.C. Instead of Fort Wadsworth"?
10   A   I don't recall that article.
11   Q   You cited it at footnote 104, if you want to take a
12   look.
13   A   My memory is not perfect at age 63, but I do see the
14   citation here at footnote 104.
15   Q   Okay. Do you remember what the article is about?
16   A   Yes. I remember the article was about the conversion
17   of part of the Fort Wadsworth Plant for providing temporary
18   housing for displaced refugees.
19   Q   Okay.
20   And you know that Fort Wadsworth is a historical site
21   in Staten Island?
22   A   Yes. I've seen it from my crossings of Staten Island
23   over the years.
24   Q   Okay.
25   And so you know it's in the Gateway National

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1   Recreation Area?
2   A   Yes.
3   Q   And it's maintained by the National Park Service?
4   A   Yes.
5   Q   So is it your opinion that objections to the housing
6   of homeless people in a cultural and historical landmark is
7   inherently racist?
8   A   No.
9   Q   Okay.
10   So why did you include that example, then, in your
11   report?
12   A   I was situating the debate about refugees in its
13   wider context on Staten Island in the summer of 2023 -- the
14   fall of 2023 and beyond.
15   Q   Okay.
16   And in your next paragraph, you discuss a protest on
17   October 12, 2023, in the Arrochar neighborhood. It's
18   A-R-R-O-C-H-A-R.
19   A   What paragraph are we looking at?
20   Q   That would be -- I think 71.
21   A   I found it at paragraph 71.
22   Q   You originally stated that that protest had members
23   of the Proud Boys present, correct?
24   A   I did. And I corrected that in my rebuttal report.
25   The Proud Boys were evoked by a prominent speaker; but to the

1   best of my knowledge, they were not present. So that was an
2   error in my report.
3   Q   Okay.
4   So you just misread the article?
5   A   I'm sorry.
6   Q   You had just misread the article.
7   A   Correct.
8   Q   That one was not violent either, was it?
9   A   Not to the best of my knowledge.
10   Q   And this type of protest were not unique to Staten
11   Island in 2023 and 2024, correct?
12   A   What was distinct about the protests on Staten Island
13   in '23, '24 is that many of them were very violent and
14   disruptive, including stoning immigrants, surrounding a bus for
15   almost seven hours, not allowing immigrants off. Flashing
16   lights and blasting loud music in the nighttime into shelters,
17   shouting through megaphones and blasting music at night at
18   shelter housing refugees.
19   (Court reporter seeks clarification.)
20   BY MS. DIRAGO
21   Q   You said many of the protests were? I only read one
22   in your report.
23   A   I'm sorry?
24   Q   I only read one protest -- the protest that you're
25   describing, I only read one of those in your report, but you

1   said "many."
2   A   One of the articles I cite discusses how ongoing
3   protests at night, including the blasting of music, the use of
4   blow horns, the flashing of lights into windows occurred on
5   Staten Island.
6   Q   Port Richmond is on the North Shore of Staten Island,
7   correct?
8   A   Yes.
9   Q   When you wrote your original report, were you aware
10   that Council Member Kamillah Hanks -- first name spelled
11   K-A-M-I-L-L-A-H -- is a Black woman who represents the
12   North Shore of Staten Island in the city council?
13   A   Yes.
14   Q   You never discussed her in your original report, did
15   you?
16   A   I discussed her in my second report.
17   Q   Is that because that is a fact that is positive for
18   the Black community on Staten Island, why you didn't discuss it
19   in your original report?
20   A   In a district that serves most of the Blacks and
21   Latinos in Staten Island, the election of a Black elected
22   official could be seen as a -- as the ability for Blacks and
23   Latinos in that council district to elect a candidate of their
24   choice.
25   Q   And so that's why you didn't want to put it in your

1   original report?
2   A   No.
3   MR. LALLINGER: Objection. Your Honor,
4   mischaracterizes the testimony.
5   THE COURT: Sustained.
6   BY MS. DIRAGO
7   Q   You discuss in your original report -- you have a
8   paragraph about people of color serving in elected positions
9   from Staten Island. And in that paragraph, you don't discuss
10   Council Member Kamillah Hanks; is that correct?
11   MR. LALLINGER: Objection. Your Honor, asked
12   and answered. We want to be mindful of the fact that we
13   have other witnesses to put on today.
14   MS. DIRAGO: Okay. I will hurry up.
15   THE COURT: Thank you.
16   (Continued on the next page.)

1   Q.   Your original report also mentions Nicole
2   Malliotakis, but cited her as being elected to the State
3   Assembly in 2010 and not in the U.S. House of
4   Representatives; is that correct?
5   A.   I don't recall. But, I certainly knew that
6   Congress Woman Malliotakis had been elected to the U.S.
7   Senate. I'm sorry -- the U.S. House of Representatives.
8   Q.   You would agree that there is a tendency among
9   people to omit or ignore the experiences and achievements of
10   Hispanics?
11   A.   I can't say, yes or no. It's not a subject I've
12   researched extensively or at all.
13   Q.   Okay.
14   What about the same phenomenon occurring with
15   women in history?
16   A.   There's certainly evidence that contributions of
17   women historically have been downplayed.
18   My wife is now a historian and she is part
19   teaching of classes introducing the importance of
20   Renaissance artists, who are women artists, who are not
21   represented in chronicle of art history. And there are
22   many, many examples of that over time.
23   Q.   You minimized her Latino heritage in your report,
24   didn't you?
25   A.   I stated her heritage very clearly. I said she

1   has a father who is Greek and a mother who is Cuban.
2   Q.   You said she has some Latino heritage instead of
3   calling her Latina or Hispanic, correct?
4   A.   That's correct. She has some Greek heritage and
5   some Latino heritage. That's not diminishing Congress Woman
6   Malliotakis. It is reflecting how she identifies herself.
7   Q.   You mention her religion as Greek orthodox. I
8   didn't see you mention the religion of anyone else, any
9   other elected official in your report.
10   A.   I don't remember mentioning her being Greek
11   orthodox religion. But, that's an affiliation that she has
12   mentioned in public in reports that I read about her
13   candidacy and her works as a congress person.
14   Q.   And do you know that if the petitioners'
15   illustrative map is enacted, she is likely to be swiftly
16   voted out. So that would actually reduce the number of
17   Latino representatives in elected office on Staten Island?
18   A.   I'm a historian. A historian writes about
19   contemporary reality. I don't make predictions about the
20   future. I would lose my credibility as a historian if I
21   looked into what would inevitably be a very cloudy and
22   cracked crystal ball. I'm not to make predictions about
23   what might happen even tomorrow not to mention more or less
24   years from now.
25   Q.   Okay. Almost done. You didn't do any research

1   into the migratory patterns of Brooklynites to Staten Island
2   after the Verrazano Bridge was completed, correct?
3   A.   I did not look at census data or other data that
4   examined migratory patterns in metropolitan New York.
5   Q.   Did you do any research into the influx of Asian
6   Americans from Brooklyn to Staten Island?
7   A.   I did not focus on Asian Americans in my report.
8   I focused on the parties to the case who are Black and
9   Latino.
10   Q.   So if the Court finds that the Asian community is
11   relevant here, you have nothing to say on the matter?
12   A.   I didn't conduct research on this matter. So I
13   can't offer an opinion, one way or another, without
14   examining the data.
15   Q.   Okay. That's all I have.
16   THE COURT: Okay. Redirect?
17   MR. LALLINGER: We have nothing further.
18   Thank you very much, Dr. Sugrue.
19   THE WITNESS: Thank you.
20   THE COURT: I thank the witness for your
21   testimony. You may step down.
22   (Witness excused.)
23   THE WITNESS: Thank you very much, your
24   Honor.
25   THE COURT: We have another 30 minutes. Do

1   you have another witness?
2   MS. BRANCH: Yes. I have Dr. Maxwell
3   Palmer.
4   THE COURT: Come on up.
5   Let's have the witness be sworn in.
6   COURT OFFICER: Raise your right hand,
7   please.
8   Do you swear or affirm to tell the truth the
9   whole truth nothing but the truth?
10   THE WITNESS: I do.
11   M A X W E L L   P A L M E R, called as a witness for the
12   by the Plaintiff, having been first duly sworn, testified
13   as follows:
14   COURT CLERK: Please, have a seat.
15   Please state your name and address -- your
16   full name address for the record.
17   THE WITNESS: Maxwell Palmer, One Roanoae
18   Road, R-O-A-N-O-A-E, Arlington, Massachusetts.
19   MS. BRANCH: May I hand you a binder of
20   Dr. Palmer's expert reports in this case?
21   (Handing.)
22   THE WITNESS: Thank you.
23   COURT OFFICER: You're welcome.
24   THE COURT: Good afternoon.
25   THE WITNESS: Good afternoon.

1   DIRECT EXAMINATION
2   MS. BRANCH:
3   Q.   Good afternoon, Dr. Palmer.
4   A.   Good afternoon.
5   Q.   I know that the parties have stipulated to your
6   expertise and to your expertise as to the matters in your
7   report. I do want to briefly introduce you to the court,
8   but I will not belabor your background.
9   Can you please just first summarize your
10   educational background.
11   A.   I received my undergraduate degree in mathematics
12   and government and legal studies from Bowdoin College in
13   Maine. And my PhD in political science from Harvard
14   University in 2014.
15   Q.   Where are you, currently, employed?
16   A.   I am, currently, an associate professor of
17   political science at Boston University.
18   Q.   Are you tenured?
19   A.   I am.
20   Q.   What classes do you teach or have you taught at
21   Boston University.
22   A.   I teach courses on American politics, voting
23   rights and political methodology including data science and
24   research and design.
25   Q.   Have you ever been accepted as an expert witness

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1   in cases involving redistricting before?
2   A.   Yes.
3   Q.   You also served as a consultant to the nonpartisan
4   Virginia redistricting commission in 2021?
5   A.   Yes. I was hired by the Virginia commission as
6   their independent racially polarizer and voting consultant.
7   Q.   And is racially polarizing an area of your
8   expertise.
9   A.   Yes. I have prepared many reports and testified
10   many times about it.
11   MS. BRANCH: At this time, your Honor,
12   petitioners tender Dr. Palmer as an expert in
13   redistricting, political science and data analysis.
14   The parties have stipulated to his qualifications.
15   MR. BUCKLEY: No objection.
16   THE COURT: Okay.
17   Continue.
18   Q.   Dr. Palmer, did you prepare two expert reports for
19   this case?
20   A.   I did.
21   Q.   Does that include your opening report, which was
22   submitted on November 19th and your rebuttal report which
23   was submitted on December 18th?
24   A.   Yes.
25   Q.   Are those reports in the binder in front of you?

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1   A.   Yes.
2   Q.   Did you include your findings and opinions and
3   your reasons for them in your report?
4   A.   I did. I'm not sure I have my second report here.
5   Q.   Let's fix that.
6   THE COURT: You can hand it to the court
7   officer.
8   A.   I'm sorry. It is just on the other tab here.
9   Thank you.
10   Q.   Okay. Are you prepared to discuss your findings
11   and opinions today?
12   A.   I am.
13   MS. BRANCH: At this time, petitioners move
14   to admit Petitioners' Exhibit 3, which is the November
15   19th report of Dr. Maxwell Palmer and Petitioners'
16   Exhibit 4, the December 18th rebuttal report of doctor
17   Palmer, into Evidence. And the parties have stipulated
18   to that. So I will move on.
19   THE COURT: Okay.
20   Q.   Let's now discuss the analysis you did for this
21   case. What were you asked to do Dr. Palmer?
22   A.   I was asked to offer an expert opinion on the
23   extent to which voting is racially polarized in the
24   11th Congressional District as well as to evaluate the
25   ability of Black and Hispanic preferred candidates to win

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1   elections in that district. Then, I was also asked to do
2   the same analysis for the proposed illustrative districts.
3   Q.   Did you also look at voter turnout on Staten
4   Island?
5   A.   I did.
6   Q.   And did you also respond to some of the opposing
7   experts in this case?
8   A.   Yes.
9   Q.   At a high level, did you reach a conclusion with
10   regard to whether there's racially polarized voting in
11   Congressional District 11?
12   A.   Yes, I found strong evidence in racially polarized
13   voting in the 11th Congressional District. I looked at 20
14   different elections from 2017 to 2024 and found a consistent
15   pattern where Black and Hispanic voters share the same
16   candidate of choice and white voters cohesively oppose those
17   candidates.
18   Q.   Did you reach an opinion about whether Black and
19   Hispanic voters' proffered candidate is able to win
20   elections in Congressional District 11?
21   A.   I find that Black and Hispanic preferred
22   candidates are generally not able to win elections in
23   District 11. Across the 20 elections I looked at, they lost
24   75 percent of the time.
25   Q.   Do you have an opinion regarding whether there is

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1   racially polarized voting in the illustrative district?
2   A.   In the illustrative district, I find that there is
3   a significantly lower or a lesser degree of racially
4   polarized voting, that, White voters support Black and
5   Hispanic candidates at a higher level.
6   Q.   Did you reach an opinion regarding whether Black
7   and Hispanic voters preferred candidates are able to win
8   elections in the illustrative district?
9   A.   Yes. I find that overall Black and Hispanic
10   candidates are generally able to win elections in the
11   illustrative districts wining 16 of the 18 elections
12   examined.
13   Q.   Let's discuss your racially polarized voting
14   analysis in a bit more depth.
15   First, can you please explain to the court what
16   racially polarized voting is?
17   A.   Racially polarized voting -- sometimes abbreviated
18   to RPV -- is when the majority of voters of different racial
19   or ethnic groups, support additional different candidates.
20   I think it is easiest to explain it just as a
21   hypothetical. Imagine an election where 80 percent of Black
22   voters support candidate A. We would say that Black voters
23   are a cohesive group. They are generally supporting the
24   same candidate by a large majority. And suppose that
25   75 percent of White voters support candidate B, the

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1   opponent. The White voters would also be cohesive
2   supporting a different candidate; being the case of racial
3   polarize voting, because the two groups support two
4   different candidates.
5   Q.   Does racially polarizing votes analysis tell us
6   why voters vote for a certain candidate?
7   A.   No racially polarized voting seeks to understand
8   how voters vote -- or, that is, how different groups of
9   voters vote, who they prefer. It doesn't tell us anything
10   about the reason behind their decisions.
11   Q.   How would you go about examining whether there is
12   racially polarized voting in a given jurisdiction?
13   A.   There is several different techniques to do this,
14   but the one I use and the most commonly used one is called
15   ecological inference or EI.
16   What it seeks to do is to estimate the levels of
17   support of different groups of voters for different
18   candidates using the data that we have available to us.
19   Q.   Can you explain the ecological inference
20   methodology?
21   A.   The problem we have is that because of secret
22   ballots, we can't see how individual voters vote. We can't
23   see the choices made by individuals. The only information
24   we have available to us is aggregate data. That is at the
25   precinct level. We can see how many votes were casted for

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1   each candidate in each election. And we can also use census
2   data or other data sources to determine how many people or
3   potential voters there were by race and ethnicity in each
4   precinct.
5   And so what ecological inference does is it takes
6   those two different sources of information precinct level
7   votes and precinct level population data to estimate the
8   rate at which voters, of each group, are supporting each
9   candidate.
10   Q.   You use a particular computer program to run this
11   analysis?
12   A.   Yes. Ecological inference is typically run
13   through a statistical software called R -- it's just the
14   letter "R" -- which is a free open source software commonly
15   used in the social sciences, in the natural sciences across
16   many industries as well.
17   And there's a variety of different tools within
18   that or software that other scholars developed and published
19   that we could use to run the ecological inference model.
20   Just to clarify, when I talk about the ecological
21   inference analysis or model, it is something that we are --
22   it's a statistical procedure that's run separately for every
23   election.
24   So when I'm looking at 20 different elections, I
25   am producing 20 different sets of ecological inferences and

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1   then looking at or analyzing results altogether.
2   Q.   Is ecological inference the same methodology you
3   have used in other redistribution cases to analyze racially
4   polarized voting.
5   A.   Yes. I've used this same methodology in every
6   case in which I've testified. And my understanding is it's
7   the most commonly used one by experts in redistricting
8   cases.
9   Q.   And is it your understanding that Court's
10   regularly rely on ecological inference analyses to determine
11   whether there is racially polarized voting in a certain
12   area?
13   A.   Yes. It's routinely used and relied upon by
14   courts. And my understanding is it's the prefer the
15   methodology of at least Federal Courts.
16   Q.   Let's dig in a little bit more into how you used
17   ecological inference in this case.
18   Which racial groups did you examine for your
19   analysis.
20   A.   I looked at five different races or ethnic groups;
21   first Hispanic people of all races. And the census
22   categorizes both race and ethnicity. So using ethnicity to
23   determine Hispanic people of all races. And then,
24   non-Hispanic Whites, non-Hispanic Blacks, non-Hispanic
25   Asians and then "other" which is everybody else including

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1   multiracial people.
2   Q.   What kind of results did your ecological inference
3   analysis produce?
4   A.   So, for each of the elections, the ecological
5   inference analysis will produce an estimate of what
6   percentage of each group is supporting each candidate as
7   well as a measure of uncertainty, a confidential interval or
8   credibility interval that is a measure of uncertainty about
9   that estimate.
10   Q.   Which geographic area did you examine for your
11   racially polarized analysis in this case?
12   A.   I conducted two separate analyses; first using the
13   boundaries of the 11 Congressional District and then second
14   using the boundaries of the illustrious district.
15   Q.   What data did you use for your analysis?
16   A.   I combined two different data sets; one is
17   precinct level election results. And that comes from the
18   New York City elections website where they provide all the
19   election results at the precinct level as well as geographic
20   data about where those precincts are located.
21   And then I combined that with data from the U.S.
22   Census Bureau the American Community Survey which produces
23   estimates at the block group level of the number of citizens
24   and voting age people by race and ethnicity.
25   Q.   How many precincts did you analyze?

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1   A.   The number of precincts will vary from year to
2   year, because the City will create new precincts or
3   consolidate precincts or redraw them in various ways. But I
4   think there's about three to four hundred precincts each
5   year. It is going to vary a little bit.
6   Q.   Is that a sufficient number of precincts to
7   analyze in your experience?
8   A.   Yes. Sometimes there's not enough data to run an
9   ecological inference model with many different racial or
10   ethnic groups, say, at the State house level. Some
11   districts might not have enough precincts, but several
12   hundred is more than enough.
13   Q.   Which particular election is did you examine?
14   A.   I looked at every election from 2017 to 2024 that
15   covered the entire 11th District as is currently drawn. So,
16   that includes federal elections for president and senate,
17   state elections for statewide offices, citywide offices as
18   well as for 2022 and 2024 the U.S. house election.
19   Q.   How did you select these elections?
20   A.   These are all of the elections in recent years
21   where the election was held either at the boundaries of the
22   current district or at a greater level such that all of the
23   potential voters in that district could have participated in
24   that election.
25   Q.   Why did you choose to look at so many elections?

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1   A.   I generally think it's useful to look at many
2   elections; the picking and choosing single contact. We
3   could have variation arising year to year as the political
4   climate changes. And within the year, we could see
5   variations from office to office based on candidates and
6   campaigns and issues that might arise. So I think getting
7   the big picture of a general pattern is more useful than say
8   picking one election or one from each year or something like
9   that.
10   Q.   Let's now take a look at your opening report,
11   which is petitioners' Exhibit 3. And let's turn to figure
12   one on page four, which is entitled racially polarized
13   voting estimates for U.S. House races CD 11.
14   Dr. Palmer what does anything one show.
15   A.   Figure one shows the results or two of the
16   ecological inference models for the 2022 and 2024 house
17   races. So each panel on the figure is from a separate
18   analysis, a separate election.
19   And on the horizontal access, on the bottom, we
20   see the names of the two candidates running in 2022 and then
21   2024.
22   And then, the Y, the vertical axis, is the
23   percentage of each group voting for each candidate. And
24   above each candidate are three dots; one, for Black voters,
25   one for Hispanic voters and one for White voters showing the

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1   estimated level of support for that candidate.
2   So if we look at the top left corner of the 2022
3   figure, we see that the blue dot and the green dot shows a
4   very high level of support from both Black and Hispanic
5   voters in favor of Rose.
6   And then, on the bottom right, we see very low
7   levels of support from Black and Hispanic for Congress Woman
8   Malliotakis.
9   In contrast, the red dot is around the 25 percent
10   line, for Rose. And the 75 percent line for Malliotakis
11   shows that White voters strongly support Malliotakis over
12   Rose.
13   And so, we can get a couple of key pieces of
14   information from each election from this figure. First that
15   Black voters are cohesive. A large majority of Black voters
16   are supporting the same candidate.
17   Second, that Hispanic voters are cohesive; a large
18   majority of Hispanic voters support the same candidate.
19   Across the group Blacks and Hispanics supporting
20   the same candidate and finally White voters are cohesively
21   opposed to that candidate.
22   So that would be an example of racially polarized
23   voting where White voters are polarized against preferred
24   and candidate of the Black and Hispanic voters.
25   Q.   You talked about the 2022 U.S. House race. Is

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1   your observation as to whether there were racially polarized
2   voting with respect to the 2024-U.S. House race the same?
3   A.   Yes. the pattern is generally the same.
4   Q.   What do the lines on the charts represent?
5   A.   The lines behind the dots are the confidence
6   intervals behind the -- for the estimate. That is a measure
7   of uncertainty produced by the model about where the true
8   estimate might lie.
9   Q.   Is it correct, when you're looking at the chart
10   that the further apart the dots are the more polarization
11   there is?
12   A.   Yes, I think we can measure polarization as a
13   spectrum. It's not a binary "yes or no." When we see a
14   large separation between White voters and the Black and
15   Hispanic voters, that indicates a high degree of
16   polarization.
17   I also say that when the points are closer to the
18   50 percent line, it indicates that a group isn't that
19   cohesive, which is less polarization. But, also that group
20   doesn't have a single clear candidate choice.
21   Q.   Is Representative Malliotakis the preferred
22   Black -- the preferred candidate for Black and Hispanic
23   voters in either the 2022 or 2024 U.S. House election?
24   A.   No.
25   Q.   Let's turn to another figure in your report on

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1   page five, figure two. This figure is entitled "Racially
2   polarizing voting Estimates CD 11." What does figure two
3   show, Dr. Palmer?
4   A.   Figure two shows the results of this analysis for
5   all 20 elections. And the main difference is that I'm
6   condensing figure one down. I'm only showing the results
7   for the Black and Hispanic preferred candidate, because we
8   can clearly identify that candidate in each election.
9   And I'm sort of rotating the whole figure
10   90-degrees so we can fit it all on a page.
11   And what we see, just looking across all 20 of
12   these candidates, is a very clear pattern. On the
13   right-hand side of the figure, we see blue points for Black
14   voters and green points for Hispanic voters. Consistently
15   above 75 percent usually significantly higher.
16   Then on the left-hand side of the figure, below
17   50 percent, we see those red points for white voter. That
18   shows the general pattern of cohesions among Black and
19   Hispanic voters -- and between Black and Hispanic voters and
20   the polarization of those voters.
21   Q.   Can we pull up, at table one of your report, which
22   is on page ten.
23   Dr. Palmer, does your report contain the precise
24   numbers for the elections that were just depicted in figure
25   two?

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1   A.   Yes. This table contains all the numbers that you
     use to make that figure. And so, each row is one of the 20
     elections that I look at. And there's five columns of
     numbers for Black, White, Hispanic, Asian and other.
             And within each column of numbers are actually
     three numbers. First, there's the estimate that's sort of
     the best estimate produced by the model. Those are the
     points in the figure. And then, in parenthesis are the
     bounds of the confidence interval. And that's where the
     bottom and top of those lines or arrow bars would be on the
     figure. So, we could use this to look at any particular
2   result or any group and see the results.
3   Q.   And so table one shows your results for Black,
4   White, Hispanic, Asian and also other voters or voters in
5   the "other" category; is that right?
6   A.   Yes.
7   Q.   And which voters are in the other category?
8   A.   Other includes people who selected multiple races
9   on the census, Native Americans and any other racial group.
         Q.   Does your report make any conclusions with respect
     to Asian voters or voters in the other category?
         A.   My report is primarily focused on Black, Hispanic
     and white voters. But, this table let us draw conclusions
     by Asian voters; for example, if we look down this column of
     numbers, we see that often the Hispanic estimate is around
                          Cheryl-Lee Lorient

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1   these candidates in District 11. That is, once we've
2   identified Black and Hispanic preferred candidates, did they
3   win elections in this district or not.
4   Q.   How did you conduct this part of your analysis?
5   A.   This analysis is really simple compared to the EI
6   analysis. I already know which precincts fall under the
7   boundaries of the 11th district. It is just a matter of
8   adding up the votes across all the precincts and determining
9   which candidate one and which candidate lost.
         Q.   Let's turn to figure three of your report on page
     six. Figure three is entitled "Performance of Black and
     Hispanic Preferred Candidates CD 11."
             What does figure three show?
         A.   Figure three shows the results of this analysis.
     But I think that's the old version of my report before we
                          Cheryl-Lee Lorient

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1   corrected it. The report I have in front of me has one
2   small difference which is that the public advocate election
3   is colored differently.
4   Q.   Okay.
5   A.   The orange points correspond to cases where the
6   Black and Hispanic preferred candidate lost. And green
7   points to cases where the Black and Hispanic candidate won.
8   So we see, first, a general pattern that the Black
9   and Hispanic candidate are losing most of these elections.
10   They lose 15 of the 20 and lost every election since 2019.
11   There is a couple exceptions to that. In 2018,
12   Black and Hispanic candidate did better and very narrowly
13   won four contests in the district.
14   In 2017, that public advocate election, should be
15   colored in green there as well. That was an unusual
16   multi-candidate case where the Black and Hispanic preferred
17   candidate won despite not getting the majority of the vote.
18   Q.   What conclusions did you draw from this analysis?
19   A.   Generally, Black and Hispanic preferred candidates
20   are not able to win elections in this district and they
21   average 41 percent of the vote. So they're not coming that
22   close most of the time. When they are able to win, it is
23   extremely narrow. But generally they are not able to do.
24   So --
25   Q.   Can you take that figure down.

1   Let's turn now to the illustrative map. How did
2   you conduct your racially polarize voting analysis with
3   respect to the illustrative district?
4   A.   This analysis was conducted, identically, to the
5   other IE analysis. The only difference is that these are
6   precincts that fall within the current 11th District. I am
7   using all precincts that fall under the boundaries of the
8   illustrative district.
9   Q.   Did you make any conclusions as to whether there's
10   racially polarized voting in the illustrative district?
11   A.   I did. I still find that Black voters and
12   Hispanic voters are very cohesive in this district. The
13   main difference I find is that White voters are less
14   cohesive.
15   There is still some polarization in some
16   elections, but, generally, white voters are more supportive
17   of Black and Hispanic candidates. We call this cross over
18   voting such as the estimates are significantly higher. I
19   would estimate that whites, about 42 percent of voting
20   areas, support white and Hispanic preferred candidates on
21   average.
22   Q.   Which elections did you analyze?
23   A.   I went to the exact same set of elections except
24   for the two elections for U.S. House which I can't include
25   here, because the boundaries are different. And there's

1   voters in the illustrative that wouldn't have been able to
2   vote in those two U.S. house races.
3   Q.   So you looked at 18 elections in the 11th
4   District, is that correct?
5   A.   Yes, that's correct.
6   Q.   Let's turn now to your analysis of the performance
7   of Black and Hispanic preferred candidates in the
8   illustrative district. What did you analyze in that part of
9   your report?
10   A.   I did the same performance analysis as before,
11   just changing the boundary from the district of the
12   precincts that are included.
13   Q.   Does this analysis depend on any type of
14   estimation or models?
15   A.   No. Just as before I am just determining which
16   precincts fall within the illustrative district and adding
17   up all the votes cast in each election.
18   Q.   Let's turn to figure five of your report, which is
19   on page 78 entitled performance of Black and Hispanic
20   preferred candidates in the illustrative districts. What
21   does figure 5 show?
22   A.   Figure 5 shows the performance of Black and
23   Hispanic preferred candidates in this district. And this is
24   also the out-of-date version of this figure.
25   Across the 18 elections, the Black and Hispanic

1   candidate won 16 times. There's two cases, in 2021, where
2   they won without getting majority of the vote. That should
3   be colored green here. They lost both elections for mayor
4   in 2017 and 2021. But otherwise they won. In a relatively
5   competitive district, I find that a Black and Hispanic
6   preferred candidate averaged 54 percent of the vote.
7   Q.   Are there specific results of your analysis in
8   your report?
9   A.   Yes. Table three of my report has the exact
10   numbers I used to make these figures.
11   Q.   And we can pull that table up. I believe it's on
12   page 11.
13   Do Black and Hispanic voters' candidates win every
14   election in the illustrative districts?
15   A.   No, they lose two contests for mayor in 2017 and
16   2021.
17   Q.   Would you classify the illustrative districts as
18   competitive?
19   A.   Generally, yes. Hispanics and Black preferred
20   candidates are wining for average 54 percent of the votes
21   here. So, not a safe seat but, it is a seat where their
22   preferred candidates are able to win.
23   Q.   Let's turn next to your analysis of voter turn
24   out.
25   What did you analyze regarding voter turn out on

1   Staten Island?
2   A.   I was asked to examine differences in voter
3   turnout by race, just in Staten Island, not in the full 11th
4   District. And, to do so, I used a data source called L2,
5   which is a data vender for voter information. And that
6   estimates the race of every voter on the voter file.
7   And it does so, because New York -- unlike some
8   states like, say, North Carolina -- doesn't record the race
9   of voters on the voter registration file. So L2 estimates
10   it's using geography names and other variables. And it's
11   been validated and used in academic work and in other court
12   cases as well. And they made their estimates for 2020, 2022
13   and 2024 publically available.
14   Q.   Let's turn to figure 6 which is on page 9 of your
15   report. It's titled "Estimated Voter Turnout by Race" --
16   and I think that's supposed to be -- "Ethnicity Groups on
17   Staten Island." What does figure 6 show, Dr. Palmer?
18   A.   Figure 6 shows estimated voter turnout among
19   registered voters by race on Staten Island. And what we can
20   see is that the yellowish bar that's second is for White
21   voters in each panel. It's the highest. White voter
22   turnout the highest rates. And Hispanic and Black voters
23   turnout at lower rate.
24   So, for example, in 2024, 71 percent of white
25   voters turnout at the vote, while 50 percent of Hispanic and

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1   54 percent of Black voters did so.
2   And we see especially large differences in the
3   2022 mid term election. And we always see lower turnout in
4   midterm elections. But here we see a 54 percent of White
5   voters turnout compared to 35 percent of Black voters.
6   (Continued on the following page.)
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1   BY MS. BRANCH
2   Q   Shifting gears now, Dr. Palmer, in your rebuttal
3   report, which is Petitioner's Exhibit 4, you responded to some
4   of the analyses Respondents' and Interveners' expert witnesses
5   conducted. And I'd like to talk with you briefly about some of
6   those analyses and the conclusions they made.
7   Let's start with Interveners' expert Dr. Voss. Did
8   you review Dr. Voss' expert report submitted in this case?
9   A   I did.
10   Q   Did you also review his corrected report?
11   A   I did.
12   (Court reporter seeks clarification.)
13   MS. BRANCH: V-O-S-S.
14   BY MS. BRANCH
15   Q   To start, was Dr. Voss able to easily replicate your
16   ecological inference analysis?
17   A   Yes. I provided all of my code and data with my
18   report, which allowed Dr. Voss to reproduce my analyses.
19   Q   Were his results substantively identical to yours?
20   A   Yes.
21   Q   What criticisms does Dr. Voss make of your analysis?
22   A   My understanding is that Dr. Voss raises three
23   criticisms with my report. First, he claims that I did not
24   follow scientific best practices because I didn't adjust my
25   models with covariates.

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1   Second, he claims to find turnout patterns in my
2   results that don't make sense.
3   And third, he questions the scope of my analysis,
4   focusing on the 11th Congressional District.
5   Q   Let's take the last of those first.
6   Can you further explain what you understand to be
7   Dr. Voss' critique of the geographic scope of your report?
8   A   In my report, I conducted ecological inference for
9   the 11th District. And Dr. Voss' critique, as I understand it,
10   is that he argues that I should have looked at a larger
11   geography, at a broader geography, in that analysis. And he
12   instead conducts his analysis using all of the congressional
13   districts that fall mostly within New York City.
14   Q   What happened when Dr. Voss examined racially
15   polarized voting in all of New York City?
16   A   Dr. Voss estimated racially polarized voting analysis
17   for, I believe, just one election that he reports, the 2022
18   election for governor. He runs the model using data from the
19   entire city, instead of the 11th District alone. But then he
20   calculates estimates for each individual congressional
21   district.
22   And when you look at the 11th District from Dr. Voss'
23   model, while he gets different numbers than I do, he also finds
24   racially polarized voting in the 11th District. He estimates
25   that 95 percent of Black voters and 75 percent of Hispanic

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1   voters voted for the same candidate, while only 20 percent of
2   White voters did so.
3   So regardless of the scope, we still see strong
4   evidence of racially polarized voting in this district.
5   Q   Turning to the second critique, what does Dr. Voss
6   have to say about your turnout results?
7   THE COURT: When you finish with Dr. Voss' line
8   of questioning, we'll wrap up for the day.
9   MS. BRANCH: Thank you, Your Honor. I just have
10   maybe three or four more questions.
11   A   When you run ecological inference using census data,
12   one thing you also estimate along the way to getting support
13   for different candidates is the percentage of people of each
14   group who turned out to vote.
15   And Dr. Voss looked at the turnout numbers that are
16   produced by my report and says that there's odd patterns in
17   them, where turnout seems to increase as you go from the more
18   important offices to the less important offices within a
19   certain year, for example, from governor to state comptroller,
20   for example.
21   Q   And what is your analysis of that critique?
22   A   I find nothing to support that critique. Dr. Voss
23   presents a table of just the estimates from my model, showing
24   that sometimes there's a two or three-percentage point
25   difference in turnout for a group.

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1   (Court reporter seeks clarification.)
2   A   But that's well-within the bounds of the confidence
3   intervals.
4   (Court reporter seeks clarification.)
5   A   That is, when we account for a statistical
6   uncertainty, there's no differences at all. There's nothing to
7   make of this pattern that he finds by ignoring the uncertainty
8   in the estimates.
9   BY MS. BRANCH
10   Q   Finally, what critique does Dr. Voss make of your
11 ecological inference methodology?
12   A   Dr. Voss argues that I'm not following what he terms
13 "scientific best practices" in running EI, because I'm not
14 including covariates in my models, which are additional
15 precinct-level variables that can be included in these models.
16   Q   In your experience, is it standard practice to use
17 Dr. Voss' approach of including covariates in the analysis?
18   A   No. I haven't come across anyone else raising this
19 claim or doing this in their ecological inference analyses.
20 It's not something I've done in any of my expert reports or
21 that I've seen done by other experts, including those
22 responding to my own reports.
23   Q   Have you had the opportunity to review and analyze
24 the results of Dr. Voss' ecological inference analysis which
25 includes covariates?

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1   A   I did.
2   Q   And do you have an opinion of the results?
3   A   I ran Dr. Voss' models, his covariate-adjusted model
4   myself, and looked at the results. And they produce results
5   that don't make a lot of sense to me.
6   For example, the turnout numbers that his adjusted
7   models produce don't make a lot of sense. In one case, it
8   estimated that Hispanic turnout was around 75 percent, which
9   was much higher than White or Black turnout in that same
10 election and that the other groups' turnout was around
11 95 percent. So to me, this covariate is producing nonsensical
12 results that I don't find reliable.
13   MS. BRANCH: I think that'll end the questioning
14   for today, Your Honor. And just with respect to
15   Dr. Palmer's corrected report, we will make sure that the
16   correct version of the report is included in the exhibit
17   list. And it has been served on opposing counsel. I
18   think there was just a mixup with respect to the
19   technologies.
20   THE COURT: So let's have the witness stand
21   down.
22   Let me remind what while you're on the stand,
23   you shouldn't discuss your testimony with counsel.
24   And we'll see you tomorrow.
25   THE WITNESS: Thank you.

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1   THE COURT: Watch your step going down.
2   (The witness exits the stand at this time.)
3   THE COURT: Anything to discuss before we
4   adjourn for the day?
5   MR. BUCKEY: Christopher Buckey with Cullen
6   Dykman, I'm here for Respondents. I just want to be
7   clear, after Dr. Palmer's direct is done tomorrow, both
8   the Interveners and the Respondents intend to
9   cross-examine him.
10   THE COURT: Absolutely.
11   MR. BUCKEY: Okay. Thank you.
12   THE COURT: Absolutely.
13   Okay. All right. So we're adjourned for the
14 day. Everybody have a good afternoon.
15   (Whereupon, the case is adjourned to
16 January 6, 2025.)
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Board of Elections of the State of New York, et al.

Dr. Maxwell Palmer & William Cooper
January 6, 2026

Monica Hahn

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1   SUPREME COURT OF THE STATE OF NEW YORK
    COUNTY OF NEW YORK : CIVIL TERM :   PT. 44
2   --x
    MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO,
3   AIXA TORRES and MELISSA CARTY,

4   Index: 164002/2025

5   Petitioners,
              -against-
6
    BOARD OF ELECTIONS OF THE STATE OF NEW YORK, KRISTEN
7   ZEBROWSKI STAVISKY, IN HER OFFICIAL CAPACITY AS
    CO-EXECUTIVE DIRECTOR OF THE BOARD OF ELECTIONS OF THE
8   STATE OF NEW YORK; RAYMOND J. RILEY, III, IN HIS OFFICIAL
    CAPACITY AS CO-EXECUTIVE DIRECTOR OF THE BOARD OF ELECTIONS
9   OF THE STATE OF NEW YORK; PETER S. KOSINSKI, IN HIS
    OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF THE BOARD
10 OF ELECTIONS OF THE STATE OF NEW YORK; HENRY T. BERGER, IN
    HIS OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF THE
11 BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ANTHONY J.
    CASALE, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE
12 BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ESSMA
    BAGNUOLA, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE
13 BOARD OF ELECTIONS OF THE STATE OF NEW YORK; KATHY HOCHUL,
    IN HER OFFICIAL CAPACITY AS GOVERNOR OF NEW YORK; ANDREA
14 STEWART-COUSINS, IN HER OFFICIAL CAPACITY AS SENATE
    MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE NEW YORK
15 STATE SENATE; CARL E. HEASTIE, IN HIS OFFICIAL CAPACITY AS
    SPEAKER OF THE NEW YORK STATE ASSEMBLY; AND LETITIA JAMES,
16 IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF NEW YORK,

17   Respondents.

18   -and-

19 NICOLE MALLIOTAKIS; EDWARD L. LAI, JOEL MEDIAN, SOLOMON B.
    REEVES, ANGELA SISTO AND FAITH TOGBA,
20
                    Intervenors-Respondents.
21 --x

22   January 6, 2026
                     60 Centre Street
23   New York, New York 10007

24 B E F O R E :

25   HONORABLE JEFFREY PEARLMAN

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1
    A P P E A R A N C E S :
2
              ELIAS LAW GROUP, LLP.
3   Attorneys for the Petitioners
              250 Massachusetts Avenue, Suite 400
4   Washington, D.C. 20001
              BY: ARIA C. BRANCH, ESQ.
5   CHRISTOPHER DODGE, ESQ.
                  LUCAS LALLINGER, ESQ.
6   NICOLE WITTSTEIN, ESQ.

7   EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP.
              Attorneys for the Petitioners
8   One Rockefeller Plaza, 8th Floor
              New York, NY 10020
9   BY: ANDREW G. CELLI, JR., ESQ.
                  EMILY WANGER, ESQ.
10
              CULLEN AND DYKMAN, LLP.
11   Attorneys for the Respondents
              80 State Street, Suite 900
12   Albany, NY 12207
              BY: NICHOLAS J. FASO, ESQ.
13   CHRISTOPHER E. BUCKEY, ESQ.

14   TROUTMAN PEPPER LOCKE
              Attorneys for the Intervenor Respondents
15   875 Third Avenue
              New York, NY 10022
16   BY: BENNET MOSKOWITZ, ESQ.
                  MISHA TSEYTLIN, ESQ.
17   ROBERT PEALER, ESQ.
                  MOLLY DIRAGO, ESQ.
18   ANDREW BRAUNSTEIN, ESQ.
                  LAUREN MILLER, ESQ.
19
              OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
20   Attorneys for Respondents
              28 Liberty Street
21   New York, NY 10005
              BY: SETH FARBER, ESQ.
22

23   Monica Hahn
                     Karen Perlman
24   Senior Court Reporters

25

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1   THE COURT OFFICER: All rise. Part 44 is now
2   in session.
3   THE COURT: Everybody be seated. Thank you so
4   much.
5   Let's get appearances. This is the matter of
6   Michael Williams, et al. V. Board of Elections, State of
7   New York, et al. Index 164002/2025.
8   May I have the appearance of counsel, please,
9   starting with the petitioner.
10   MS. BRANCH: Aria Branch for the petitioners.
11   With me is Nicole Wittstein, Christopher Dodge, Lucas
12   Lallinger and local counsel Andrew Celli.
13   MR. BUCKEY: Christopher Buckey here on behalf
14   of the respondents, Kosinski Casale & Riley and I have
15   with me my colleague Nicholas Faso.
16   THE COURT: Good morning.
17   MR. BUCKEY: Good morning.
18   MR. BRAUNSTEIN: Good morning, your Honor.
19   Andrew Braunstein, Troutman Pepper Locke, LLP, along
20   with colleague Misha Tseytlin, Bennet Moskowitz, Molly
21   Dirago and Lauren Miller on behalf of the Intervenor
22   respondents.
23   THE COURT: Good morning. Anybody?
24   MR. FARBER: And good morning, your Honor.
25   Seth Faber, with the Office of the Attorney General,

Dr. Palmer - Direct/Branch   Page 183

1   for Respondents Hochul, Stewart-Cousins, Heastie and
2   James.
3   THE COURT: Thank you. Good morning.
4   Any amici in the back want to state their
5   appearance. All right.
6   So let's bring the witness back up.
7   MS. BRANCH: Yes. Petitioner calls Dr. Maxwell
8   Palmer back to the stand, please.
9   THE COURT: Dr. Palmer. Reminding you that
10   you remain under oath, and we are continuing with your
11   direct testimony.
12   Whenever counsel is ready, we can get started.
13   MS. BRANCH: Yes. If I may approach the
14   witness?
15   THE COURT: Let's have the court officer hand
16   up to the witness.
17   THE WITNESS: Thank you.
18   THE COURT OFFICER: Yep.
19   (Handed to the witness.)
20   CONT'G DIRECT EXAMINATION
21   BY MS. BRANCH:
22   Q. Good morning, Dr. Palmer?
23   A. Good morning.
24   Q. We left off yesterday with you responding to a few
25   questions regarding Dr. Voss's critiques of your report.

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1   I would like to turn now to respondents expert
2   Dr. Alford.
3   Did you review Dr. Alford's report, in this case?
4   A.   I did.
5   Q.   And was Dr. Alford able to easily replicate your
6   racially polarized voting analysis?
7   A.   Yes, he was.
8   Q.   Does Dr. Alford identify any issues with your
9   methodology?
10 A.   No, he doesn't identify any issues and uses the
11 same methodology as I do.
12 Q.   Did Dr. Alford critique you for not uses covariants
13 in your ecological-inference analysis?
14 A.   No, he doesn't raise this issue at all.
15 Q.   And does Dr. Alford dispute your conclusions that
16 Black and Hispanic voters in the 11th Congressional District
17 vote cohesively?
18 A.   No.
19 Q.   Does he dispute your conclusion that White
20 preferred candidates usually defeat the Black and Hispanic
21 preferred candidates in most elections?
22 A.   No.
23 Q.   Where do you understand Dr. Alford to disagree with
24 you?
25 A.   I think the difference is in interpretation of the

1   results that Dr. Alford looks at the party affiliations of
2   the candidates of the Black and Hispanic candidates of
3   choice and the White candidates of choice, and says that the
4   results are a pattern of partisan polarization rather than
5   racially polarized voting.
6   Q.   What analysis does he conduct to reach that
7   conclusion?
8   A.   Probably he looks at the party's labels for each
9   candidate and reports that because the Black and Hispanic
10 preferred candidates are democrats and the White prefer
11 candidates are republicans that this is a partisan pattern
12 rather than racially-polarized voting.
13 Q.   Do you find his approach flawed in any way?
14 A.   I think Dr. Alford is trying to do something
15 different which is trying to make an argument about why
16 voters made the choices that they made, but
17 racially-polarized voting isn't about the reasons behind the
18 choices of voters, but what their choices are. And so
19 regardless of if voters of different groups prefer
20 candidates of different parties or not, that is still
21 evidence that they are preferring different candidates and
22 that would still be evidence of racially-polarized voting
23 regardless of the partisan affiliation of the candidate.
24 Q.   Does Dr. Alford ask the right question to examine
25 racially-polarized voting in your opinion?

1   A.   No. I think, as I said the question should be how
2   are voters voting. That is, what are their preferences, not
3   where do the preferences come from.
4   MS. BRANCH: Thank you. I pass the witness.
5   THE COURT: Cross.
6   CROSS-EXAMINATION
7   BY MR. BRAUNSTEIN:
8   Q.   Good morning, Dr. Palmer. Good morning, your
9   Honor. My name is Andrew Braunstein. I am counsel for the
10 Intervenor Respondents in this action.
11   Dr. Palmer, in coming to the conclusions in your
12 report, you did not use any polling data, did you?
13 A.   No, I did not.
14 Q.   You did not use any direct voter analysis, did you?
15 A.   Can you define what that means?
16 Q.   Any analysis of -- did you use any survey data in
17 your analysis?
18 A.   No.
19 Q.   So the only method you used in your analysis was
20 ecological inferences; isn't that right?
21 A.   For the racially-polarized voting analysis, yes.
22 Q.   And you used standard ecological inference that did
23 not adjust for aggregation bias, correct?
24 A.   I used what I term the standard model, but
25 ecological inference is a model designed to deal with

1   aggregation bias as constituted. The difference I think
2   that you are pointing to I didn't include additional
3   covariant in my model.
4   Q.   To be clear, you did not use covariants, correct?
5   A.   I did not use covariants. I would not say the
6   model doesn't account for aggregation bias.
7   Q.   The software you used to perform your analysis, I
8   believe you testified is called R yesterday, the letter R.
9   That allows for the use of covariants to try to correct for
10 aggregation bias, doesn't it?
11 A.   It allows for the use of covariants. That doesn't
12 mean that including covariants with will correct for
13 aggregation bias or that it is necessary to do so.
14 Q.   Right. Using covariants could correct for
15 aggregation bias?
16 A.   Um, it is possible that some covariants potentially
17 could. It is not clear to me it is necessary here. And the
18 models I reviewed from Dr. Voss certainly didn't produce
19 better results. They produced results that didn't make very
20 much sense. Um, the fact that you can do something in a
21 model is not evidence that you should do something in a
22 model.
23 Q.   Understood. Even though the software allowed for
24 those corrections you, did not employ any of those, correct?
25 A.   That is correct. There are many different options

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1   the software allows from. In my judgment I used the correct
2   set of options.
3   Q.   The software also allows you to perform a
4   diagnostic on whether aggregation bias might exist, isn't
5   that correct?
6   A.   There is some tools in the software for models that
7   can be used to perform different diagnostics. It is a
8   little bit harder in the models that have multiple groups
9   and multiple candidates like we are using here to use some
10   of those diagnostics, but there is different ways you can
11   look and assess the fit of the models.
12   Q.   But you could have used those diagnostic tools
13   here, isn't that correct?
14   A.   Um, yes. There are checks I do on the models as
15   I'm setting up the data, as I'm working with it before I
16   produce my final results to make sure the models are
17   operating within the way they are suppose to work.
18   Q.   Those checks you did, that did not include any
19   diagnostic or whether there may be aggregation bias, did it?
20   A.   Um, I don't think that is right. I'm looking at
21   the model result. I see they converge appropriately. So I
22   think I'm appropriately evaluating the model performance.
23   Q.   That sounds like you just did that without using
24   the diagnostic tools in the software; is that right?
25   MS. BRANCH: Objection. Asked and answered.

1   THE COURT: I will allow him to answer the
2   question.
3   A.   There is many ways to look at the results, assess
4   performance, whether you use the built-in functions, whether
5   I write my own code to look at things to do so. So I don't
6   believe I used some of the built-in functions, but I look at
7   the results and assess the performance of the models.
8   Q.   Okay. Thank you.
9   You are familiar with VoteHub, correct?
10   A.   I was not familiar with it until I read Dr. Voss's
11   report.
12   Q.   But you are familiar with it now?
13   A.   In a very limited sense in how Dr. Voss discusses
14   it and from a very brief perusal of the website, I wouldn't
15   say I have any in-depth familiarity with it.
16   Q.   You did not compare the results you obtained to any
17   data or results that or analysis that would be on VoteHub,
18   did you?
19   A.   No, I did not. It was not a resource that I have
20   used in the past or I assessed as reliability or accuracy.
21   Q.   In your reply report you cite to a recently
22   published peer-review article in the American Political
23   Science Review, do you recall that?
24   A.   I do.
25   Q.   Did you assist the authors of that article in

1   authoring that article?
2   A.   No, I did not.
3   Q.   Did you review the article for the purpose of
4   writing your reply report?
5   A.   I did.
6   Q.   Did you review the article to see if it might have
7   any impact on the way you did your analysis here?
8   A.   No. I was just trying to assess the degree to
9   which a recent peer-reviewed work in the field was using or
10   not using covariants as Dr. Voss claims is necessary, and so
11   what I did here was when you publish an article in a top
12   journal in political science, the American Political Science
13   Review is considered the top or flagship journal in the
14   field, you have to produce your code and your data for
15   public review. And so I downloaded the publically available
16   replication materials for this article, looked at the code
17   where they ran ecological inference, and verified that they
18   did not include covariants here as I would have expected, as
19   I believe the standard practice in the field.
20   Q.   Did you work on that article in any capacity?
21   A.   I didn't work on it. I didn't author it. I may
22   have gave them brief comments on a draft. I probably saw it
23   before publication, but I didn't write it or author it or
24   write any of the code for it.
25   Q.   In the abstract, I believe the author thanked

1   several individuals, including Maxwell Palmer. Would you
2   believe that to be yourself?
3   A.   I'm not surprised by that. I'm sure I gave them
4   brief comments on a draft early on. I wasn't one of the
5   peer reviewers, for example, who reviewed it for publication
6   in the journal.
7   Q.   Okay. Understood.
8   Dr. Palmer, turning to the scope of the data that
9   you looked at for your analysis, for your analysis you
10   performed ecological inference solely using data from the
11   11th Congressional District and illustrative district; is
12   that correct?
13   A.   That's correct.
14   Q.   In other words, you consider data only from
15   precincts in a single existing congressional district and a
16   single illustrative district, correct?
17   A.   Yes.
18   Q.   You did not perform any ecological inference
19   analysis using data from across all of New York City
20   congressional districts and then look at Congressional
21   District 11 within that broader context?
22   A.   I did not do that in my original report. For the,
23   my reply report I did replicate Dr. Voss's analysis. So I
24   ran the code he provided to do that for New York City as a
25   whole in his report.

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1   Q. So you only ran Dr. Voss's code, you didn't perform
2   your own separate analysis?
3   A. I didn't perform my own analysis, but the code that
4   Dr. Voss used for his city-wide analysis is substantially
5   similar to my own. That is producing results in a similar
6   format, structure. It is run using the same ecological
7   inference algorithm. And I would note in his New York
8   analysis he is also not including covariant. So it is very
9   similar to how I would have done so if I had run, written my
10   own code to do so.
11   Q. I'm not asking about covariants. Asking about data
12   broader than the two districts that you talk about in your
13   report, you did not look at independently New York City data
14   for your analysis, right?
15   A. I did not.
16   Q. And you didn't look at any New York State data for
17   your analysis, did you, other than outside of the two
18   districts?
19   A. No, I did not.
20   Q. Okay. In your report you stated that you testified
21   as an expert in Chestnut v. Merrill in the Northern District
22   of Alabama; is that correct?
23   A. Yes.
24   Q. And you testified at trial, in that case?
25   A. Yes.

1   Q. Your testimony was about ecological inference
2   analysis you performed as an expert in that case, correct?
3   A. Yes.
4   Q. Do you recall your testimony in that case?
5   A. Um, I haven't reviewed that report in many years.
6   I think that was 2019, roughly.
7   Q. Do you recall testifying we want as much data as we
8   can and that you couldn't do ecological inference on the
9   counties in one congressional district alone because there
10   isn't enough information to look at those and infer with any
11   confidence what the pattern is?
12   A. Um, that sounds plausible. I don't recall the
13   exact testimony in that case.
14   Q. Okay. But it is possible that you testified that
15   way in that case?
16   A. Yes. I think the amount of data you need is going
17   to vary considerably from place to place. So a rural
18   county, for example, with a small number of precincts and a
19   large population, densely populated county with many
20   precincts are not apples to apples comparison.
21   Q. Dr. Palmer, you reviewed the report of Dr. Voss,
22   correct?
23   A. I did.
24   Q. And you're aware Dr. Voss submitted a corrected
25   report, so if I refer to his report, referring to the

1   corrected report?
2   A. Yes.
3   Q. Did you also review the report of Dr. Sean Trende?
4   A. Very minimally.
5   Q. Did you review the report of John Alford?
6   A. Yes.
7   Q. Dr. Palmer, you concluded in your report that Black
8   and Hispanic voters are generally unable to elect their
9   preferred candidates in the 11th Congressional District; is
10   that correct?
11   A. Yes.
12   Q. In other words, your conclusion is that the Black
13   and Hispanic preferred candidate is usually defeated, right?
14   A. Yes.
15   Q. You say in your report that the Black and Hispanic
16   candidate won five out of the 20 elections you evaluated in
17   Congressional District 11, correct?
18   A. Yes.
19   Q. And that amounts to 25 percent?
20   A. Yes.
21   Q. Thank you. I trusted your math would be better
22   than mine.
23   So it is your opinion that in a district where the
24   Black or Hispanic preferred candidate wins 25 percent of the
25   time that the Black and Hispanic preferred candidate is

1   usually defeated; is that right?
2   A. Um, yes, that is my opinion. I think, you know,
3   losing three quarters of the time seems to be, you know, not
4   having a very high success rate.
5   Q. And that would be not high success rate to be
6   usually defeated?
7   A. As a legal standard, I don't know. I'm not a
8   lawyer, but in my opinion as a social scientist, yes.
9   Q. Okay. Dr. Palmer, do you recall Figure 3 from your
10   report, I believe we discussed it yesterday?
11   A. Yes.
12   Q. Bear with me one moment. It will be on the screen
13   there.
14   That is Figure 3 from your report?
15   A. Yes.
16   Q. And this figure shows the performance of the Black
17   and Hispanic preferred candidate in the 20 elections you
18   analyzed; isn't that right?
19   A. Yes.
20   Q. And the green dots in the figure indicate where the
21   Black and Hispanic preferred candidate received more votes
22   in the 11th District than the White preferred candidate,
23   correct?
24   A. Yes.
25   Q. And the red dots indicate where the opposite is

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1   true, where the Black and Hispanic preferred candidate
2   received fewer votes that the White preferred candidate?
3   A. Yes.
4   Q. I believe you also testified about Table 3 from
5   your report which we will pull up in a minute here.
6   A. Yes.
7   Q. And this is Table 3 that appears on the screen?
8   A. Yes, it is.
9   Q. And just to be clear, that Figure 3 in this Table
10   3, those are the versions from your corrected reports,
11   correct?
12   A. Yes.
13   Q. Okay. And Table 3 shows the performance of the
14   Black and Hispanic preferred candidate in the 20 elections
15   you analyze both in terms of votes in the current
16   District 11, as well as, the illustrative district, correct?
17   A. Yes.
18   Q. And the first column on Table 3 reflects the same
19   data as in Figure 3, just percentage rather than plotted on
20   a graft; is that right?
21   A. Yes, that is right.
22   Q. And again, just to make sure we are on the same
23   page, these numbers are not estimates that you reached,
24   correct, these are the votes that were actually earned by
25   the Black and Hispanic preferred candidates?

1   A. Yes for, there is probably a very small amount of
2   variation because there is some precincts that may for the
3   earlier elections in particular where the lines didn't
4   exactly lineup with the current balance of the 11th
5   District, but are very, very close with, you know, very
6   small numbers of differences possibly.
7   Q. You included the 2022 and 2024 congressional
8   elections in Congressional District 11 in your analysis of
9   these 20 election, correct?
10   A. Yes.
11   Q. You did not include the 2018 congressional election
12   in District 11 even though it falls within the time period
13   that you analyzed, correct?
14   A. I didn't include the 2018 or the 2020 congressional
15   election because that was under different boundaries. That
16   was a different Different 11 then the District 11 we are
17   talking about here which was adopted in the more recent map.
18   Q. You didn't perform any analysis in your reports as
19   to the similarities or differences between the district in
20   those two boundaries in those different time periods, did
21   you?
22   A. No.
23   Q. So you don't know if those districts are
24   substantially similar or if there were any differences that
25   would have justified not including the 2018 election?

1   A. I know there is some small differences, enough I
2   feel like it is appropriate to use the bounds of the current
3   district and only look at elections held under those
4   boundaries for the congressional elections.
5   Q. Again, you did not actually analyze what those
6   differences were, correct?
7   A. Um, not extensively, no. I'm sure I looked at it
8   early on at some stage, not in my report.
9   Q. Okay. In the 2018 congressional election in
10   District 11, do you know which candidate won that election?
11   A. I believe the democratic candidate.
12   Q. And the democratic candidate would have been the
13   Black and Hispanic preferred candidate in that election,
14   correct?
15   A. I didn't do that analysis, but likely, yes. I
16   believe he was, ran multiple times. I believe that
17   candidate in 2018 ran again later and was the Black/Hispanic
18   preferred candidate.
19   Q. So it is safe to assume and you can assume that he
20   was also the Black and Hispanic preferred candidate in 2018
21   when he won, correct?
22   A. Yes.
23   Q. In that 2018 election, that Black and Hispanic
24   preferred candidate actually beat a White preferred
25   incumbent; isn't that correct?

1   A. I don't recall, but if that is what you are telling
2   me then, yes.
3   Q. Okay. If you were to count the 2018 congressional
4   election, the black and Hispanic preferred candidate would
5   have won the six out of 21 elections in the time period you
6   analyzed; is that correct?
7   A. Um, yes. I think we should also include the 2020
8   elections for Congress as well if we are going to include
9   additional congressional elections but, yes, you would add
10   one more if you were only to include 2018.
11   Q. And six out of 21, that is more than 25 percent,
12   correct?
13   A. Yes.
14   Q. So it is your opinion that in a district where the
15   Black or Hispanic preferred candidate wins six out of 21
16   elections that Black and Hispanics, the Black and Hispanic
17   preferred candidate is usually defeated?
18   A. I'm not sure what we, how we want to define the
19   term usually defeated. It is not a social science term that
20   I would use regularly in my work. I think it is, you know,
21   there is some legal standard here. I think obviously we can
22   figure out a rate at which any, you know, which preferred
23   candidates are defeated. Where we draw bright line from
24   usually defeated to not usually defeated, I don't know, but
25   I would think still six of 21 is in a large majority of

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1   cases the Black and Hispanic preferred candidate is
2   defeated.
3   Q. Dr. Palmer, how often would the Black and Hispanic
4   preferred candidate have to win in order for, in order for
5   it to be your opinion that that candidate is not usually
6   defeated?
7   A. Um, I'm not sure. As I said, I don't think so
8   there is a right line to divide it. It is a spectrum. If
9   there were many more cases where the black and Hispanic
10   candidate were more successful, at some point it would
11   become equal chances, for example, if you had ten more
12   elections with Black and Hispanic preferred candidate was
13   successful. I don't have some bright line where I can say
14   this one election switches it from usually defeated to not
15   usually defeated. It is a spectrum.
16   Q. You did concluded in your report that five out of
17   20 is usually defeated, didn't you?
18   A. I did.
19   Q. So you know that that is usually defeated, but you
20   don't know what makes it not usually defeated or what other
21   potential percentages are still usually defeated, correct?
22   A. Yes. I would say that, I would say that it is very
23   clear to me that 75 percent is, you're losing three times
24   more often than your winning is usually defeated. I didn't
25   have to draw a line here because it was very clearcut.

1   Q. I suppose if you are saying you don't know how to
2   define usually defeated, how could it have been clearcut to
3   you?
4   A. As I said, I think when you are losing a three to
5   one ratio where you are losing three times more often than
6   you're winning, I think it is a clear pattern of being
7   defeated. I think if the results had been say 55 percent or
8   something like that, I wouldn't have drawn that conclusion,
9   but I didn't need to make that, do that, make that
10   evaluation here. That wasn't the case.
11   Q. You are not aware of any definition of usually
12   defeated in any academic work or scientific literature that
13   you have reviewed, are you?
14   A. Um, I don't believe so.
15   Q. So you just decided that 75 percent of the time is
16   usually defeated without any support or any reference to any
17   source that you are aware of?
18   A. Yes. In my expert opinion, if you are losing three
19   times more than you are winning, I think that is a regular
20   pattern of being defeated. I also see, you know, in this
21   figure that, you know, as a clear pattern, all the recent
22   elections of the Black/Hispanic preferred candidate being
23   defeated and so I drew that conclusion based on, you know,
24   this and then the average being relatively low that they
25   are, that the Black/Hispanic preferred candidate is

1   generally not receiving a high vote share.
2   Q. 2017 and 2018 were considered favorable election
3   cycles for the Black and Hispanic preferred candidates,
4   isn't that fair to say?
5   A. I believe it is true for 2018. I don't have enough
6   information for the 2017 cycle in New York City to say
7   anything about the elections in that year.
8   (Transcript continues on the next page.)

1   CROSS-EXAMINATION
2   BY MR. BRAUNSTEIN:
3   Q. Well, between 2017 and 2018, the Black and Hispanic
4   preferred candidate won five out of the eight elections you
5   analyzed for that time period, correct?
6   A. That's true.
7   Q. And if we counted the 2018 congressional 11 or
8   Congressional District 11 election, it would be six out of
9   eight; is that correct?
10   A. Yes, if we added that election, that's true.
11   Q. So you'd agree with me, then, that in Congressional
12   District 11, in more favorable election cycles the Black and
13   Hispanic preferred candidate can win more than 60 percent of the
14   time in a two-year period?
15   A. I would say that was true for this particular election
16   cycle. I think 2020, for example, was also a favorable election
17   cycle, where the Black and Hispanic preferred candidate did not
18   win.
19   Q. If we count the 2018 Congressional District 11
20   election, the Black and Hispanic preferred candidate could even
21   win 75 percent of the elections in that two-year period,
22   correct, if we're counting six out of eight?
23   A. For that limited time period alone, that would be
24   correct.
25   Q. So in another favorable election cycle, the Black and

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1   Hispanic preferred candidate could win in Congressional District
2   11; would you agree with that?
3   A. I'm not saying the Black and Hispanic candidate can't
4   win. I'm saying that across the election I looked at, they
5   usually did not. If you were to add hypothetical election
6   cycles with certain levels of shifts in the vote, then, yes,
7   Black and Hispanic candidates can win.
8   Q. Do you know whether 2026 is expected to be a favorable
9   election cycle for Black and Hispanic preferred candidates?
10   A. I'm not going to make predictions about the election in
11   general. I think generally speaking, the midterm elections tend
12   to favor the party that's out of power. But the degree to which
13   there will be any swing in any one direction, I'm not going to
14   make a prediction about.
15   Q. And the power that is out of power currently is the
16   Democratic party you're referring to, correct?
17   A. Yes.
18   Q. Again, Dr. Palmer, when you say the Black and Hispanic
19   preferred candidate is usually defeated in Congressional
20   District 11, what you're really saying is that the Black and
21   Hispanic preferred candidate received fewer votes from voters in
22   that district than the White preferred candidate, correct?
23   A. Yes.
24   Q. But that doesn't necessarily mean that the Black and
25   Hispanic preferred candidate actually lost the election, does

1   at the 2017 and look at the mayor dot that stands out a
2   little bit. Why?
3   THE WITNESS: I haven't analyzed that one election
4   in particular. But voters in this district clearly
5   preferred -- I believe that was Malliotakis who might have
6   run in the 2017 mayoral election, but I'd have to
7   double-check that.
8   BY MR. BRAUNSTEIN:
9   Q. Dr. Palmer, did you review Figure 1 in Dr. Trende's
10   report?
11   A. No.
12   Q. Do you have a copy of Dr. Trende's report with you?
13   A. No.
14   Q. I believe I have one.
15   MR. BRAUNSTEIN: Your Honor, may I provide
16   Dr. Palmer a copy of the report?
17   THE COURT: Hand it to the court officer.
18   (Handing.)
19   MR. BRAUNSTEIN: Thank you.
20   THE COURT: Thank you so much.
21   BY MR. BRAUNSTEIN:
22   Q. I believe it's Tab 5, Dr. Palmer.
23   A. What page?
24   Q. Apologies. It is on page 6.
25   Is this Figure 1 that's on the screen, does that appear

1   it?
2   A. Well, lost the election at which -- the level at which
3   the election was conducted?
4   Q. Correct.
5   A. No, certainly not. You can -- statewide election, I'm
6   only looking at if -- the vote within the boundaries of the
7   district.
8   Q. Isn't it the case that Black and Hispanic preferred
9   candidates routinely win elections on that level in New York
10   City and New York State?
11   A. Yes. I'm not saying anything about the performance of
12   Black and Hispanic preferred candidates at the city or state
13   level. I'm looking at the district that we're discussing here.
14   Q. In the 20 elections you analyzed -- and we can put
15   Figure 3 back up if that would be helpful.
16   In these 20 elections that you analyzed, other than the
17   presidential and congressional elections, was the Black and
18   Hispanic preferred candidate ultimately elected?
19   A. At the state, city, or federal level, yes. But that's
20   an entirely different analysis than what I'm speaking to here.
21   Q. Okay. Dr. Palmer, you said you reviewed Dr. Trende's
22   report briefly; is that correct?
23   A. Very briefly, yes.
24   Q. Okay. I'd like to put up Figure 1 from Dr. Trende --
25   THE COURT: Before you jump from that figure, look

1   to be the Figure 1 in Dr. Trende's report that you have in front
2   of you?
3   A. Yes.
4   Q. Do you understand this figure to show the vote share
5   for the Black and Hispanic preferred candidate in various
6   elections broken down by congressional districts in New York
7   State?
8   A. That's not clear from just looking at the figure. But
9   if you represent that, then that could be the case. I haven't
10   read the report.
11   Q. Right above the table, if you want to look there, I
12   believe Dr. Trende explains that that is what this figure is.
13   A. Thank you.
14   Q. So that is your understanding of this figure now?
15   A. Yes.
16   Q. And there are 11 elections listed at the top of each
17   column in the first row. Are these all elections that you also
18   analyzed?
19   A. Yes.
20   Q. The -- and then in each column, it's -- it's the share
21   of the vote received by the Black and Hispanic preferred
22   candidate; is that correct?
23   A. Yes.
24   Q. And on the column all the way on the right, it says "D
25   wins" and "percentage D wins." Do you understand that to mean

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1 how many of these 11 elections were won by the Black and
2 Hispanic preferred candidate in each district?
3   MS. BRANCH: Objection. The -- the report that's
4   being referred to, as I understand it, it says here that the
5   following table summarizes the Democratic vote share in
6   various races in congressional districts across the state,
7   and you're being asked questions about the Black and
8   Hispanic preferred candidate which is not the same analysis
9   as I understand in Figure 1.
10   THE COURT: Okay. So I'll sustain the objection
11   and ask counsel to rephrase.
12 BY MR. BRAUNSTEIN:
13   Q. Dr. Palmer, in Congressional District 11, you
14 determined that the Black and Hispanic preferred candidate in
15 these elections was the Democrat, correct?
16   A. The Black and Hispanic preferred candidate in
17 District 11. I didn't identify Black and Hispanic preferred
18 candidates anywhere else except in the illustrative district.
19   Q. Do you have any reason to believe that in New York
20 State, the Black and Hispanic preferred candidate would not be a
21 Democrat?
22   A. I haven't done that analysis.
23   Q. Does that sound logical to you, based on what you know
24 about New York State and the analysis you did perform?
25   A. That sounds plausible for Black preferred candidates.

1 I haven't assessed Hispanic preferred candidates in any other
2 district.
3   Q. Fair enough.
4   Then I'll rephrase.
5   So Dr. Trende's figure here does show the number of
6 Democrat wins in each district, and then the percentage of those
7 wins as in the total of the 11 elections here; is that correct?
8   A. Yes.
9   Q. Dr. Palmer, Districts 5 through 15 in New York are
10 wholly within New York City. Is that your understanding?
11   A. If that's what you're representing to me, I think
12 that's right. I don't recall the exact numbers.
13   Q. I believe Dr. Trende says that in his report on page 7,
14 if you would like to look there briefly.
15   A. Thank you. I see that now.
16   Q. You have no reason to disagree with that?
17   A. No, I do not.
18   Q. Other than in District 11, has the Democratic candidate
19 lost any of these 11 elections in Districts 5 through 15?
20   A. According to this table, no.
21   Q. So the Democratic candidate won 100 percent of 10 of
22 these -- 10 New York City-based congressional districts'
23 elections other than District 11?
24   A. That's what this table shows.
25   Q. Districts 6 and 13 are partially within the bounds of

1   New York City, are you aware of that?
2   A. Dr. Trende's report says Districts 3 and 16, is that
3 what you're referring to?
4   Q. Yes. Correct.
5   In those two districts, did the Democrat win the
6 majority of these 11 elections?
7   A. Yes. In District 3, the Democrat won seven of the
8 elections. And then in District 16, according to this table,
9 they won all of the elections.
10   Q. Expanding outside of New York City, I count 20 out of
11 26 districts in New York State where the Democratic candidate
12 won a majority of these elections. Is that your read as well?
13   A. Yes.
14   Q. So in New York State as a whole, the Democratic
15 preferred candidate won a majority of these 11 elections in 20
16 out of 26 districts?
17   A. According to this table, yes.
18   Q. And, again, you have no reason to doubt the results of
19 this table, correct?
20   A. I don't. I just did not do this analysis myself.
21   Q. Do you know how many of New York's 26 congressional
22 districts are currently represented by Democrats?
23   A. No.
24   Q. So you performed an analysis of which candidates
25 usually win in one of New York's congressional districts, but

1 you don't know what other districts are represented by Democrats
2   or Republicans?
3   A. I know some of them. But my focus in this matter was
4 on the 11th District and on the illustrative district, so I
5 didn't examine the entire state.
6   Q. Dr. Trende's report says that 19 out of 26 districts
7 are represented by Democrats in New York. And I believe that's
8 on page 8. Do you have any reason to doubt that?
9   A. No.
10   Q. So in New York State, as a whole, the Democratic
11 candidate represents 19 out of 26 congressional districts?
12   A. Yes.
13   Q. You didn't perform any analysis for your reports about
14 whether Black and Hispanic preferred candidates are usually
15 defeated outside of Congressional District 11 and the
16 illustrative district, did you?
17   A. No, I did not. My focus was on the 11th District.
18   Q. And you didn't perform any analysis for your reports
19 about whether any areas broader than Congressional District 11
20 and the illustrative district exhibit racially polarized voting
21 patterns?
22   A. I did not. I'm sorry. I should amend that. I did not
23 with the exception of reviewing Dr. Voss's New York citywide
24 analysis and -- I'll repeat that.
25   Dr. Voss's citywide analysis and assessing racial

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1   polarized voting based on his estimates in other districts.
2   Q. But to be clear, you did not perform your own analysis,
3   correct?
4   A. I did not. But I did run and evaluate Dr. Voss's
5   analysis.
6   Q. Okay. Dr. Palmer, switching gears slightly. Am I safe
7   to assume that because you determined that the Black and
8   Hispanic candidate was usually defeated when they lost
9   25 percent of the elections in Congressional District 11, then
10   they would also be usually defeated if they lost an even greater
11   percentage?
12   A. Yes.
13   Q. For example, if the Black and Hispanic preferred
14   candidate won only 10 or 15 percent of the elections, you would
15   say they're usually defeated, correct?
16   A. Yes.
17   Q. Dr. Palmer, you also examined whether the Black and
18   Hispanic preferred candidate would be usually defeated in the
19   illustrative district, didn't you?
20   A. I did.
21   Q. You did? Sorry. I didn't hear.
22   A. Yes, I did.
23   Q. Thank you.
24   And in the illustrative district, the Black and
25   Hispanic preferred candidate was still generally different than

1   the White preferred candidate is different than the Black and
2   Hispanic preferred candidate?
3   A. I think that's a fuzzy gray area. There's some experts
4   who use 50-50 as an exact cutoff for polarized and not
5   polarized.
6   I think that we have to think about polarization as a
7   spectrum. And when you see a case where, say, four in six White
8   voters are supporting the minority preferred candidate, that's a
9   fairly high level of crossover voting.
10   I didn't make a determination for each individual
11   election here about if there was a clear White preferred
12   candidate. I'm just reporting the average across all of them.
13   But at the individual election level, we have some cases here
14   where there is fairly high crossover voting.
15   Q. But the Black and Hispanic preferred candidate is only
16   the White -- is only also the White preferred candidate
17   41.8 percent of the time on average in the illustrative
18   district; isn't that right?
19   A. On average, White voters are supporting the Black and
20   Hispanic preferred candidate 41 percent -- 41 percent of White
21   voters are supporting the Black and Hispanic preferred candidate
22   on average. But there are elections where the Black and
23   Hispanic preferred candidate might be the White preferred
24   candidate or where White voters don't actually have a clear
25   preferred candidate.

1   the White preferred candidate, correct?
2   A. For the most part, yes. But I found significantly less
3   cohesion among White voters. In some cases it's not clear that
4   White voters had a clear preferred candidate.
5   Q. But as a whole, you would agree that the Black and
6   Hispanic preferred candidate was different than the White
7   preferred candidate; is that fair to say?
8   A. In most of the elections, yes. But not always. And
9   then there is some elections -- like in 2022 and 2024 -- where
10   White voters are fairly divided. And so I didn't sort of reach
11   a conclusion about if there was a clear White preferred
12   candidate in those elections.
13   Q. Well, you say in your report that White voters in the
14   illustrative district only support the Black and Hispanic
15   preferred candidates with 41.8 percent of the vote; is that
16   correct?
17   A. That's the average across all of these elections. It
18   doesn't mean that I'm identifying a White preferred candidate.
19   I'm reporting the average support for the Black and Hispanic
20   preferred candidate.
21   So, for example, if White voters were split 50-50 then
22   there would not be a White preferred candidate. But I would
23   still report that the support for the Black and Hispanic
24   preferred candidate was 50 percent.
25   Q. So you wouldn't say that a 58-42 split indicates that

1   Q. So then approximately 58 percent of the time, White
2   voters are supporting the White preferred candidate?
3   A. I think we're differing on what you mean "of the time."
4   On average, 58 percent of White voters are not voting for the
5   Black and Hispanic preferred candidate. I think when you say
6   "of the time" to me, that means across elections, what percent
7   of elections is this happening, and I'm talking about the
8   percentages of voters.
9   Q. Understood.
10   So you determined that 58 percent, approximately, of
11   White voters prefer the White preferred candidate?
12   A. Are not voting for the Black and Hispanic preferred
13   candidate. So I think we're just differing here whether there
14   is or is not a White preferred candidate in every election. The
15   fact that there is a Black and Hispanic preferred candidate does
16   not mean that there has to exist a White preferred candidate.
17   That's assuming polarization where it may or may not exist. You
18   have to first find that there is -- that White voters are
19   cohesive behind a single candidate in order to say that there is
20   a White preferred candidate.
21   Q. Understood.
22   So approximately 58 percent of the time -- let me
23   rephrase that.
24   Only 41.8 percent of the time, White voters are
25   supporting the Black and Hispanic preferred candidate?

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1   A.   Again, I think the "of the time" is a confusing way to
2 phrase it.
3   On average, 41.8 percent of White voters are voting for
4 the Black and Hispanic preferred candidate across a set of
5 elections.
6   Q.   Okay. I'll move on.
7   You understand that the New York Voting Rights Act
8 protects -- protects voters of all races, don't you?
9   A.   That's my understanding. But I'm not a lawyer or an
10 expert on this act.
11   Q.   So if that's your understanding, then the New York
12 Voting Rights Act would protect White voters, wouldn't it?
13   A.   I believe so.
14   Q.   Your analysis determined that the White preferred
15 candidate would only win 2 out of 18 elections in the
16 illustrative district; isn't that right?
17   A.   No. Again, I'm not identifying a White preferred
18 candidate in all 18 elections. And I'm saying that the Black
19 and Hispanic preferred candidate would win 18 of the 20. It
20 does not mean there is a White preferred candidate in all 18 of
21 these elections. Or that they would lose.
22   For example, in 2022, where White voters are voting in
23 the high 40 percent range for Black and Hispanic preferred
24 candidates, I don't say that there is a White preferred
25 candidate here. I don't think White voters are cohesive enough

1 to identify a White preferred candidate, so you can't say the
2 White preferred candidate lost.
3   Q.   But, again, as a whole, your analysis showed in the
4 illustrative districts that the White preferred candidate is
5 different than the Black and Hispanic preferred candidate,
6 correct?
7   A.   No. I'm not identifying a set of White preferred
8 candidates here. I'm identifying a set of Black and Hispanic
9 preferred candidates.
10   If you look at my Figure 4 of my report, which is on
11 page 7, what we see is a pattern where White voters are, you
12 know, in that sort of 40 to 60 percent range most of the time,
13 with a couple of exceptions. And, for instance, in 2018, a
14 majority of White voters appeared to be voting for the Black and
15 Hispanic preferred candidate, so that would be four cases where
16 first I'm not finding a White preferred candidate, but if you
17 were going to use that strict 50-50 cutoff, that would be four
18 cases right there where the White preferred candidate would win.
19 So I don't think we can talk about in the illustrative map a set
20 of White preferred candidates the way we can in the
21 11th District because the degree of racially polarized voting is
22 very, very different.
23   It's not the case that we have White preferred
24 candidates in all of the elections here or that they're going to
25 be different from Black and Hispanic preferred candidates

1 necessarily.
2   Q.   In the illustrative district, the Republican candidate
3 only won 2 out of 18 elections; is that correct?
4   A.   Yes.
5   Q.   So if we were to assume that the White preferred
6 candidate was the Republican, that would mean that their
7 candidate of choice was defeated 16 out of 18 times; isn't that
8 right?
9   A.   I don't think that is a good assumption to make in the
10 illustrative district. I don't think we have the evidence to
11 make that assumption.
12   We actually have evidence to say that we shouldn't make
13 that assumption because White voters are not a cohesive block in
14 most of these elections. If we need to have racial block
15 voting, you need cohesion among White voters to say there is a
16 White preferred candidate, and then to say -- to identify that
17 candidate is or is not a Republican.
18   There is a difference, I think, between a small
19 majority of White voters or even a majority of White voters who
20 are voting for Republicans and there is a White preferred
21 candidate of White voters in this district.
22   Q.   But if we were to determine that in the illustrative
23 district, the White preferred candidate was the Republican, then
24 you would agree that the White preferred candidate is being
25 defeated 16 out of 18 times, correct?

1   MS. BRANCH: Objection. He's already answered that
2 question.
3   THE COURT: Sustained.
4   MR. BRAUNSTEIN: I'm sorry. I didn't hear the
5 objection.
6   MS. BRANCH: It's asked and answered. You just
7 asked that question.
8 BY MR. BRAUNSTEIN:
9   Q.   Setting aside any questions of cohesion, would you
10 agree that winning only 2 out of 18 elections means the
11 candidate was usually defeated?
12   A.   I'm -- I'm not following how that is different here. I
13 think that if you're talking about party performance, if you
14 were to just say how often are Republican candidates defeated,
15 that is an entirely different question than how often are White
16 preferred candidates defeated in this district.
17   Q.   I'm only asking you about the usually defeated piece.
18   So in a district where one group's preferred candidate
19 is defeated 16 out of 18 times, wouldn't you agree that that
20 candidate is usually defeated by the standards that you
21 articulated for usually defeated here today?
22   A.   In a hypothetical district, where there are
23 perfect -- where there is identifiable -- a set of identifiable
24 candidates who are defeated 16 of the 18 times, I would say yes,
25 they're usually defeated, but that's not the case in the

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1   illustrative district.
2   Q. Would the voters whose preferred candidate lost 16 out
3   of 18 times, in that hypothetical you just discussed, have a
4   claim under the New York Voting Rights Act that their candidate
5   is being usually defeated?
6   MS. BRANCH: Objection. I think that calls for a
7   legal conclusion and Dr. Palmer, obviously, isn't a lawyer.
8   THE COURT: Sustained. Rephrase.
9   BY MR. BRAUNSTEIN:
10   Q. You would agree that if the petitioners here have a
11   claim that losing 15 out of 20 elections means their candidate
12   is usually defeated, would another group, whose candidate lost
13   16 out of 18 elections, also have a claim that their candidate
14   is usually defeated?
15   MS. BRANCH: I have the same objection, Your Honor.
16   THE COURT: I'll allow it.
17   You may answer.
18   A. I'm not sure what the grounds for a claim are.
19   Q. Well, you testified in your report that the Black and
20   Hispanic voters here are being usually defeated because they
21   lost 15 -- or 15 out of 20 elections; is that right?
22   A. As an empirical calculation, that is correct. I don't
23   know the degree to which that is sufficient or not sufficient
24   for legal claims. I'm not a lawyer.
25   Q. Okay. Dr. Palmer, do you understand that petitioners

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1   have argued in this case that the New York Voting Rights
2   Act -- Act standards apply at the congressional district level?
3   A. That's my very broad understanding from listening to
4   lawyers yesterday morning. I haven't read all of the briefing
5   in this matter.
6   Q. And if that were the case, could a district be drawn so
7   that one group's preferred candidate is losing more than
8   25 percent of the time?
9   A. I'm sorry, could you repeat that? I'm not following
10   the hypothetical.
11   Q. If the New York Voting Rights Act applies at the
12   congressional district level, could a map be drawn where in a
13   congressional district, a group's preferred candidate is losing
14   more than 25 percent of the time?
15   A. When you say "could a map be drawn," is that a question
16   of could a map legally be drawn, or could a map be drawn in any
17   case?
18   Q. Would you say that -- excuse me. Would you say that
19   that group's preferred candidate is being usually defeated?
20   A. In a hypothetical where a district was drawn where
21   there was high levels of racially polarized voting and a group's
22   candidate was defeated 75 percent of the time, is that the right
23   question -- is that the right hypothetical?
24   Q. Yes. If the candidate was being defeated 75 percent of
25   the time or more, would you say that group -- that candidate is

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1   being usually defeated?
2   A. If there is strong evidence of racially polarized
3   voting so that we know who the preferred candidates of each
4   group are, like we have in CD 11 is the sort of the
5   non-hypothetical version of this, then that candidate is usually
6   defeated. But it requires that there is polarization and there
7   are preferred candidates for the different groups.
8   (Senior Court Reporter Karen Perlman was replaced
9   by Senior Court Reporter Monica Hahn.)
10   (Transcript continues on the following page.)

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1   MR. BRAUNSTEIN: I believe that is all I have
2   now.
3   Thank you.
4   THE COURT: Redirect?
5   MR. BUCKEY: May I go first, your Honor?
6   THE COURT: Oh, yeah. I'm sorry, yes. This is
7   still cross.
8   CROSS-EXAMINATION
9   BY MR. BUCKEY:
10   Q. Good morning, Dr. Palmer. My name is Christopher
11   Buckey. I represent three of the respondents here, Kosinski
12   Casale & Riley.
13   A. Good morning.
14   Q. In your report, sir, you did not reference race of
15   the candidates in the 20 elections that you examined, right?
16   A. That's correct.
17   Q. So it is fair to say you did not consider the race
18   of the candidates in those 20 elections, right?
19   A. No. I'm not focused on the race of the winning
20   candidates, just on the preferred candidates of each group
21   which may or may not be of the same race as the voters.
22   Q. The answer is, no, you did not consider race of
23   candidates, right?
24   A. That's correct.
25   Q. In your reply, which you discussed on your direct,

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1   you mention that you reviewed Dr. Alford's report; is that
2   right?
3   A.   Yes.
4   Q.   And, in fact, during your direct you testified
5   about Dr. Alford's report, right?
6   A.   Yes.
7   MR. BUCKEY: Can we pull it up?
8   Your Honor, may I approach the --
9   THE COURT: You may hand it to the court
10   officer.
11   MR. BUCKEY: Thank you, your Honor.
12   (Handed to the witness.)
13   THE COURT: Thank you.
14   Q.   Can we go to Table 4.
15   Dr. Palmer, you recall when you were reviewing
16   Dr. Alford's report that he, in fact, analyzed the race of
17   the respective candidates in those 20 elections that you
18   analyzed, right?
19   A.   Yes.
20   Q.   And that is at Table 4?
21   A.   Yes.
22   Q.   Okay. And is it your understanding, sir, he
23   actually did this by reproducing your EI results from your
24   report, is that your recollection?
25   A.   Yes, I believe he just uses the same EI results

1   from my report and just adds the column for the race of the
2   candidate.
3   Q.   Okay. In your reply, you did not dispute the
4   accuracy of Dr. Alford's analysis with respect to the race
5   of the candidates in those 20 elections, did you?
6   A.   No.
7   Q.   No. Nor did you during your direct testimony,
8   right?
9   A.   I did not.
10   Q.   So if we look at Table 4 it appears that Black
11   voters supported the Black democratic candidates about 89.6
12   percent of the time, right?
13   A.   Yes, that is the average here.
14   Q.   So -- and you would agree that is very similar to
15   the Black voter support of non-Hispanic White democratic
16   candidates that you found at roughly 90.9 percent, right?
17   A.   Yes.
18   Q.   And according to Dr. Alford's report which you
19   haven't challenged, Hispanic voters, they supported Black
20   democratic candidates at about 86.3 percent, right?
21   A.   Yes.
22   Q.   And you would agree that figure is similar to the
23   Hispanic voter support of non-Hispanic White democratic
24   candidates that you found which was 88.5 percent, right?
25   A.   Yes.

1   Q.   And so last according to Dr. Alford's analysis,
2   White voters supported Black democratic candidates at about
3   24.9 percent, right?
4   A.   Yes.
5   Q.   So you would agree this too is similar to the White
6   voter support for non-Hispanic White democratic candidates,
7   which is at 27.6 percent, right?
8   A.   Yes.
9   Q.   And would you agree you referred to it in direct as
10   you didn't necessarily look at the why behind the racial
11   polarization, right?
12   A.   I did not. I don't think that is the purpose of
13   this analysis or necessarily something we can do here.
14   Q.   You would agree to determine whether race rather
15   than partisanship explains polarization, the race of the
16   candidate can be usable, right?
17   A.   Can you repeat that, please.
18   Q.   Sure.
19   You would agree to determine whether race rather
20   than partisanship explains the polarization, the race of the
21   candidates, that would be useful?
22   A.   No. I think we're not interested in -- first of
23   all, we're not trying to explain why. That is not the
24   purpose of the analysis.
25   Second, the focus isn't on the race of the

1   candidates. It is on the race of the voters. This is a
2   voter-centered analysis, not candidate-centered analysis.
3   Q.   In your view, race of the candidate is irrelevant?
4   A.   Irrelevant to determining if racially-polarized
5   voting exists.
6   Q.   Is it relevant to determining why polarization
7   exists?
8   A.   Um, it is really hard to untangle race and party
9   and I don't think looking at the race of the democratic
10   candidates and any differences or lack of differences
11   necessarily tells us whether it is driven by the race of the
12   candidate or not.
13   Q.   You've been retained as an expert in, on
14   racially-polarized voting on a number of occasion, right?
15   A.   Yes.
16   Q.   And you testified a number of times, right?
17   A.   Yes.
18   Q.   You've given a number of reports, right?
19   A.   Yes.
20   Q.   And you were retained by the plaintiffs in a case
21   known as Pendergrass V. Raffensperger which was litigation
22   in the federal court in the Northern District of Georgia?
23   A.   Yes.
24   Q.   Ring a bell?
25   A.   It does.

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1   Q. In that case, you were retained to offer an opinion
2 on extent of racially-polarized voting in North West
3 Georgia, right?
4   A. Yes.
5   Q. You were also asked to evaluate the performance of
6 the plaintiffs illustrative map in the Sixth Congressional
7 District of Georgia, right?
8   A. That sounds correct. I haven't reviewed that
9 report.
10   Q. Okay. And in that case, you were also asked to
11 analyze the extent to which minority candidates have won
12 elections in a particular focus area, weren't you?
13   A. I believe so.
14   Q. And you provided data and plotted the vote shares
15 from the Black candidates in each election for this focus
16 area, didn't you?
17   A. Yes.
18   Q. According to your data, the Black candidate was
19 defeated by the White candidates in all 13 elections in your
20 focus area, does that ring a bell?
21   A. Um, that sounds right. I would have to look at the
22 report, but.
23   Q. Would you like to see the report?
24   A. If you want more detailed answers about it I'm
25 happy to look at it, but I don't need it to say that sounds

1 familiar.
2   Q. Okay. So you would agree at least in that case,
3 the race of the candidates was relevant to your analysis,
4 wasn't it?
5   A. It was relevant to analysis of a different question
6 which was were minority candidates able to be elected, and
7 my analysis here, does racially-polarized voting exist and
8 what is the degree of it. So I believe in that case I did
9 different analysis to answer different questions. That
10 wasn't a question I was asked to answer in that matter.
11   Q. Let's take a quick look. If we can pull up the,
12 what I think is now marked as Respondent's Exhibit 3, for
13 identification?
14   MR. BUCKEY: Your Honor, we're only offering
15   this, using this for impeachment. Not seeking to admit
16   it.
17   May the record reflect that I'm giving a copy
18   of Dr. Palmer's report in the aforementioned case.
19   (Handed to the witness.)
20   MR. BUCKEY: He now has it.
21   Would you like a copy?
22   MS. BRANCH: Yes, please.
23   (Handed to counsel.)
24   Q. Let's go to Page 2, Paragraph 5.
25   Dr. Palmer, do you see that?

1   A. I do.
2   Q. That appears to be the scope of your analysis for
3 this particular engagement, right?
4   A. That is what I wrote here, yes.
5   Q. And so what you wrote is that you were retained by
6 the plaintiffs to provide an expert opinion on the extent to
7 which voting is racially-polarized in North West Georgia,
8 right?
9   A. Yes.
10   Q. Also asked to evaluate the performance with
11 particular congressional district in a proposed illustrative
12 map, right?
13   A. Yes. And then in the section and minority
14 candidate performance, I know I was asked to analyze a
15 different question that I did not include in that summary
16 paragraph number five.
17   Q. That was just omitted?
18   A. Um, potentially, yes.
19   Q. So the scope of your analysis is far broader than
20 what you said in your report?
21   A. In Paragraph 24 of that report I said I was asked
22 to analyze the extent to which minority candidates won
23 elections in the focus area.
24   Q. You would agree upon the expressed words in this
25 report that you gave, your analysis was racially-polarized

1 voting, right?
2   A. I also note in Paragraph 24 of that report that I
3 was asked to do this additional analysis.
4   Q. But there is nothing about that in the scope of the
5 engagement at the beginning of this report, right?
6   THE COURT: Well, Paragraph 5 the only portion
7   of the engagement in this document or are there other
8   paragraphs that discuss your engagement?
9   THE WITNESS: Paragraph 24 discusses another
10   thing I was asked to do. It is not included as a
11   summary, the top of the report in Paragraph 5, but it is
12   discussed in the section on Page 8 starting with
13   Paragraph 24 that I was asked to do this.
14   THE COURT: Okay. Let's keep going.
15   MR. BUCKEY: Can you pull up the Cooper report
16   and the illustrative plan, Figure 8.
17   (Displayed in open court.)
18   Q. Now, Dr. Palmer, of course you looked at and
19 reviewed Cooper's illustrative plan in connection with
20 preparing your report, right?
21   A. I didn't review his report. I haven't read it. I
22 received a shape file or block assignment file of the map
23 which I used to identify the precincts.
24   Q. Are you familiar with what the vote shares were for
25 the various groups within the illustrative plan?

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1   A. From my racially-polarized voting analysis, yes.
2   Q. So would you agree that in the illustrative plan
3 the Black CD-8 shares increased from CD-11 by roughly one
4 percent?
5   A. I'm sorry. I misunderstood your previous question.
6 I understand the voting rates of each group. I don't have
7 all the demographic data in front of me.
8   Q. Did you understand -- at some point were you
9 familiar with the demographic data?
10   A. Yes. I haven't done any of that analysis myself.
11   Q. No. Okay. So if we want, if I told you that from
12 CD-11 to the illustrative plan that the Black CDAP increased
13 only about one percent, would that make sense to you; is
14 that consistent with your recollection?
15   A. Yes.
16   Q. Okay. And same thing with respect to the Hispanic
17 CDAP, it increased only about one percentage point into the
18 illustrative district, right?
19   A. Yes.
20   Q. Okay. In fact, the White share from CD-11 to the
21 illustrative plan, that increased by 2.5 percent, right?
22   A. Yes.
23   Q. So obviously the White share, it increased by a
24 greater percentage of the total of the increase of the Black
25 and Hispanic share, right; 2.5 percent is greater than two

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1 percent?
2   A. In percentage point terms, yes.
3   Q. Okay. And according to your analysis, the average
4 cohesion for Black voters in the illustrative plan declines,
5 right, it goes from about 90.6 percent to 87.9 percent?
6   A. Um, the average declined slightly, but well within
7 the balance of the confidence intervals. We know there is
8 uncertainty here. I don't believe that the difference in
9 cohesion is significant between the two maps.
10   Q. The cohesion went down though, right?
11   A. The point estimate went down. That doesn't mean
12 there is statistically significant decrease.
13   Q. Confirming that it went down?
14   A. Sorry. I'm not agreeing that it went down. I'm
15 saying there is a small difference in the estimates, but you
16 need to assess the full results of the ecological inference
17 analysis, and the confidence intervals are wide enough we
18 cannot say with any certainty that it went down.
19   Q. You would agree according to the numbers, the
20 average cohesion per Hispanic voters, that also declined
21 from about 87.7 percent to about 83.1 percent in terms of
22 the raw numbers?
23   A. Not in terms of raw numbers. In terms of just the
24 point estimates. Improper to think just about difference in
25 point estimates without also thinking about the uncertainty

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1 associated with them.
2   Q. And in your report, your analysis shows that the
3 illustrative plan, that it performs better for the minority
4 preferred candidate, right?
5   A. Yes. Minority preferred candidates win more
6 elections.
7   Q. You would agree the illustrative plan, the way it
8 is drawn, it brings in more democratic-leaning White voters,
9 right?
10   A. That is the case, and we know that not from how it
11 is drawn, but from the racially-polarized voting analysis
12 which shows more support by White voters for
13 minority-preferred candidates.
14   Q. Right. To try to be precise on that, the White
15 support for democrats increased from roughly 23.8 percent in
16 the current CD-11 to about 41.8 percent in the illustrative
17 plan, right?
18   A. Yes. That is the average of the point estimates.
19   Q. So you would, excuse me, agree that the improvement
20 that you identified in the illustrative plan comes largely
21 from the change in the White voter composition and to a
22 lesser extent the Asian composition?
23   A. Yes. Increased support from White voters does
24 allow minority candidates to one win more often here. I
25 don't have the exact numbers for Asian voters in front of

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1 me.
2   Q. And proves it doesn't come in from a substantial
3 increase in the Black or the Hispanic share of the vote or
4 cohesion, right?
5   A. That is a hard thing to determine without a further
6 analysis when you say where the improvement comes from.
7   For example, in 2022, we see very, very narrow
8 electoral results. 51.2 to 54 percent, um, those are tight
9 margins. Any one percent, two percent changes, there can be
10 enough to change the results. So when we are thinking about
11 narrow margins and tight elections, small differences can
12 matter a lot.
13   Q. You agree though that the improvements comes
14 largely from the change in the White voter composition in
15 the illustrative plan?
16   A. Um, there is substantial improvement from White
17 voter composition. Doesn't mean any one shift is
18 determinative.
19   Q. Is it fair to say, it is fair to say the
20 improvement then is driven in part by partisan geography by
21 bringing in more White democratic voters?
22   A. Yes. When you draw maps of different precincts, it
23 is going to change election results.
24   Q. You agree this so-called improvement wouldn't occur
25 unless the democratic-leaning voters were brought into the

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1   illustrative plan, right.
2   A.   Sorry. Can you repeat that?
3   Q.   You would agree that the improvements that you have
4   identified, it would not occur but for bringing in these
5   democratic leaning voters from, into the illustrative plan?
6   A.   Yes. There is improvement because we're changing
7   the composition of the district.
8   Q.   Okay.
9   MR. BUCKEY: That is it. Thank you.
10   THE COURT: Thank you.
11   MS. BRANCH: Just a few.
12   THE COURT: Do you want to take a break? Do
13   you need a break?
14   THE WITNESS: I'm fine. Thank you.
15   THE COURT: Anybody need a break? I don't need
16   a break. I'll keep going.
17   MS. BRANCH: I have just a few questions.
18   THE COURT: All right. Redirect. Thank you.
19   REDIRECT EXAMINATION
20   BY MS. BRANCH:
21   Q.   Good morning, again, Dr. Palmer. Aria Branch, for
22   the Petitioners. I would like to ask you a couple of
23   questions to follow up on some of the points you've been
24   discussing.
25   On cross-examination you were asked about the 2018

1   congressional election. Can you explain why you did not
2   include the 2018 or 2020 congressional elections in your
3   analysis?
4   A.   We're looking at a map that was adopted in, I
5   believe 2022. So it was only the boundaries of that
6   district didn't exist for the congressional district
7   elections in 2018 or 2020, even though the district might
8   have been generally similar.
9   Q.   Why was that?
10   A.   Because of the census and redirecting the
11   boundaries had to change.
12   Q.   Are you aware of whether the Black and Hispanic
13   preferred candidate won in the 2020 election in CD-11?
14   A.   Um, I don't recall. I would have to look at the
15   election results.
16   Q.   If I represent to you that representative Nicole
17   Malliotakis won in 2020, and if you included both the 2020
18   election and the 2018 election in your analysis, that would
19   include -- that would mean that you would look at 22
20   elections in total; is that correct?
21   A.   Yes.
22   Q.   And if we included those two elections in the Black
23   and Hispanic preferred candidate would have won six of the
24   22 elections; is that correct?
25   A.   Yes.

1   Q.   And is that about 27 percent of winning rate?
2   A.   That sounds right.
3   Q.   Would that change your conclusion about whether the
4   Black and Hispanic preferred candidate is usually defeated
5   in Congressional District 11?
6   A.   No.
7   Q.   On cross-examination you were also asked about
8   whether you can conduct a racially-polarized voting analysis
9   using the data from one congressional district.
10   Is your answer to that question the same in every
11   state across the country?
12   A.   No. Districts vary widely the way that precincts
13   are drawn. Is going to vary widely across the state, across
14   different states. It is not an apples to apples comparison.
15   If you are in rural areas it can have bigger
16   and fewer precincts. In urban areas we tend to have more
17   precincts. It is the amount of information available. I've
18   had cases where I couldn't draw -- sorry. Couldn't run a
19   collection inference at the district level, especially state
20   legislative elections, or where I would only be able to run
21   it in some of the districts, but not all of them, depending
22   on the electoral geography there.
23   Q.   Did you have enough data to draw conclusions about
24   racially-polarized voting in this case?
25   A.   I did.

1   Q.   Did Dr. Voss's analysis of city-wide data change
2   your conclusions about racially-polarized voting in the 11th
3   Congressional District?
4   A.   It did not.
5   Q.   I would like to call up Figure 3 from Dr. Palmer's
6   report. I believe during the cross-examination your Honor
7   asked a question about the 2017 mayoral election which is
8   displayed in this Figure 3.
9   Are you aware who ran for mayor in the 2017 mayoral
10   election?
11   A.   I believe the democratic candidate was Bill de
12   Blasio and republican candidate was Nicole Malliotakis.
13   Q.   What does it mean that the red dot in the 2017
14   mayoral election is so far below all the others?
15   A.   It means that there was more support for
16   Malliotakis in the district, in this district in that
17   election compared to other offices being elected at the same
18   time.
19   Q.   And what does it mean with respect to Black and
20   Hispanic support for Nicole Malliotakis in that 2017 mayoral
21   election?
22   A.   Um, the racially-polarized voting analysis shows
23   slightly higher support by Hispanic voters. There is still
24   cohesive in supporting de Blasio, but slightly higher share
25   support Malliotakis compared to Black voters in that

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1   election.
2   Q.   We can leave up Figure 3.
3   Does this figure show that, which candidate won
4   each election in Congressional District 11?
5   A.   Yes, by color.
6   Q.   And can voting be racially polarized in some parts
7   of New York and not in others?
8   A.   Yes.
9   Q.   What conclusions are you able to make with respect
10   to Congressional District 11 and whether or not
11   racially-polarized voting existed in that district?
12   A.   In the other analysis in my report I show that
13   there is strong evidence of racially-polarized voting in
14   District 11.
15   Q.   You were asked about whether a White preferred
16   candidate would usually be defeated in the illustrative
17   district.
18   Were you able to determine whether there was or is
19   or would be a White preferred candidate in the illustrative
20   district?
21   A.   In some of the elections I think we can identify
22   White preferred candidate, but in many of them we can't or
23   at least not a strongly preferred candidate. There isn't a
24   consistent pattern of cohesion across the elections that say
25   there is a clear White preferred candidate in each contest.

1   MS. BRANCH: No further questions.
2   Thank you, Dr. Palmer.
3   THE COURT: Thank you.
4   Okay. Let's have the witness step down.
5   Thank you for your testimony.
6   (Whereupon, the witness steps off the stand.)
7   THE COURT: Are there any other questions?
8   MR. DODGE: We are preparing to call our next
9   and final witness. Now might be a good time for us, a
10   short break.
11   THE COURT: We'll start to 11:45. Take a ten
12   minute break.
13   (Whereupon, a short recess is taken.)
14   THE COURT: Okay. Back on the record.
15   MR. DODGE: Thank you, your Honor. Christopher
16   Dodge on behalf of petitioners.
17   Petitioners call Mr. Bill Cooper as their next
18   witness.
19   THE COURT: Bring the witness up, swear him
20   in.
21   THE COURT OFFICER: Remain standing. Raise
22   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.

1   W I L L I A M   S E A T O N   C O O P E R,
2   called by the Petitioner, after being duly sworn, testified
3   as follows:
4   THE COURT OFFICER: Have a seat.
5   State your full name and address, for the
6   record.
7   THE WITNESS: My name is William Seaton Cooper.
8   202 Northwinds Drive, Bristol, Virginia.
9   THE COURT: Welcome.
10   THE WITNESS: Thank you.
11   DIRECT EXAMINATION
12   BY MR. DODGE:
13   Q.   Good morning, Mr. Cooper. Can I hand the deputy a
14   binder with some materials --
15   THE COURT: You may hand it to the court
16   officer.
17   (Handed to the witness.)
18   Q.   Good morning, Mr. Cooper.
19   You've been retained as an expert for the
20   petitioners in this case; is that right?
21   A.   That's correct.
22   Q.   The parties have already stipulated to your
23   expertise to speak to the issues in your report. I would
24   like to introduce you a bit to the court.
25   Can you tell the court what your profession is?

1   A.   I provide demographic analysis and do a lot of
2   redistricting work. Some of it is litigation-related. Some
3   of it is for local governments. Some non-profits around the
4   country frankly.
5   Q.   Fair to say you draw maps for a living?
6   A.   Yes.
7   Q.   And that includes drawing maps for jurisdictions,
8   counties, cities, schools and the like?
9   A.   Exactly.
10   Q.   As you said that also includes drawing maps in the
11   course of lawsuit?
12   A.   Yes.
13   Q.   And how long have you been doing this for?
14   A.   Um, actually goes all the way back to around 1988
15   or '87 when I first began drawing redistricting maps in
16   Virginia for litigation purposes under Section 2 Gingles,
17   G I N G L E S, related case.
18   Q.   Doing this work for about 40 years?
19   A.   Nearly, yes. It is frightening.
20   Q.   And have you previously been accepted as an expert
21   witness in lawsuits involving redistricting?
22   A.   Yes.
23   Q.   About how many cases have you testified in court as
24   an expert witness on map drawing and demographics?
25   A.   Now, over 60. Sometimes I've made multiple

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1   appearances, but 60 cases without taking account of multiple
2   appearances.
3   Q.   Some of those cases made it all the way up to the
4   Supreme Court, right?
5   A.   Yes.
6   Q.   And does it ring a bell that Chief Justice Roberts
7   made a note of your testimony recently being highly credible
8   in a case from Alabama?
9   A.   Yes.
10   Q.   And in those past cases where you testified, you
11 typically served as expert in the field of demographics and
12 map drawing, correct?
13   A.   Correct.
14   Q.   Has a court ever refused to recognize you as an
15 expert in the field of demographics or map drawing?
16   A.   No, never been, never.
17   Q.   In the 60 cases where you testified, has a court
18 ever discounted your testimony under either Daubert or Frye
19 standards?
20   A.   No.
21   Q.   You have a binder in front of you. Can you take a
22 quick look at Tab 1.
23   A.   Yes.
24   Q.   Does this material reflect your testimony, your
25 expert testimony up through the present?

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1   A.   Yes.
2   Q.   Mr. Cooper, you prepared two reports in this case,
3   right?
4   A.   I did.
5   Q.   That includes an opening report and rebuttal
6   report?
7   A.   Yes.
8   Q.   For the opening report, did you later submit some
9   amendments to that report?
10   A.   Yes. I corrected some typographical errors and
11 copy and paste errors and tables in that report.
12   Q.   Those amendments were listed to typographical
13 errors in a handful of figures?
14   A.   Yes.
15   Q.   Did those amendments change any of the substantive
16 analysis in your report?
17   A.   No. The text was not changed at all.
18   Q.   Did the amendments change or affect any conclusions
19 you reached in your report?
20   A.   No.
21   Q.   Could you take a brief look at Tabs 2 and 3 in the
22 binder in front of you, confirm those are your reports in
23 this matter.
24   A.   Um, I see two. I see two.
25   Q.   Three is going to be a bit further back. Two

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1   includes the exhibits?
2   A.   Oh, it is at the end of the -- yes, I see Tab 3 and
3   that is my reply declaration, right.
4   MR. DODGE: Your Honor, the parties already
5   stipulated to this. At this time, I would move
6   Petitioner's Exhibit 7 and 8 into evidence, which are
7   Mr. Cooper's amended opening report and rebuttal report.
8   THE COURT: Without objection, we'll admit
9   those.
10   (Petitioner's Exhibits 7 and 8 admitted into
11   Evidence by the Court.)
12   (Transcript continues on the next page.)

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1   DIRECT EXAMINATION
2   BY MR. DODGE:
3   Q.   Turning to your work in this matter, Mr. Cooper, can
4   you tell the Court what you were asked to do in this case?
5   A.   I was asked by the petitioners' attorneys to develop a
6   plan that would join Staten Island with Manhattan in a
7   congressional district.
8   Q.   And did you reach any conclusion as to whether it would
9   be feasible to draw such a district using traditional
10 redirecting criteria?
11   A.   Yes, I did, and it's clearly feasible.
12   Q.   Does your report reflect one illustration of how to
13 draw such a Staten Island-Lower Manhattan district?
14   A.   Yes.
15   Q.   Is that illustrative map the only possible
16 configuration for drawing such a Staten Island-Lower Manhattan
17 district?
18   A.   No. There would be multiple other configurations.
19   Q.   So, in essence, your report just provides one example?
20   A.   Correct.
21   Q.   Would it be fair to say that your report provides,
22 essentially, proof of concept for such a district?
23   A.   Yes.
24   Q.   In drawing your illustrative map in this case, were you
25 asked to look at whether Black and Latino voters would be able

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1   to elect their candidate of choice in any illustrative district?
2   A.   No.
3   Q.   Were you asked to aim for any racial targets when
4   drawing the illustrative plan?
5   A.   No.
6   Q.   Were you asked to look at any partisanship figures when
7   drawing the illustrative plan?
8   A.   No.
9   Q.   Were you asked to achieve any sort of partisan targets
10   when drawing the illustrative plan?
11   A.   No.
12   Q.   So let's get into your report a little bit. We
13   mentioned the term "traditional redistricting criteria." Can
14   you tell the Court at a high level what traditional
15   redistricting criteria are?
16   MR. DODGE: And at this point, can we also pull up
17   page 7 of Mr. Cooper's report.
18   A.   Yes. It's just a set of factors that a plan drawer
19   should take into account when creating election districts. So
20   the obvious one would be that the districts should be
21   contiguous, unless it's a strange geography that includes
22   disparate parts that are not connected by water or land.
23   Also, of course, one needs to draw reasonably compact
24   districts and there are ways to measure that using statistical
25   tools. And, also, just looking at it individually, one must

1   also take into consideration political subdivisions where
2   appropriate; that would include things like municipalities.
3   There are no municipalities under New York City in this case, so
4   that's less of an item to consider here. We have the separate
5   boroughs, of course.
6   Also, one should take into account other communities of
7   interest that are more important to people at the ground level,
8   like neighborhoods. And I really prioritized neighborhoods in
9   the way I drew this plan, the illustrative map.
10   Other factors you need to consider are precinct or
11   voting districts, which are designated areas that people
12   actually vote at in any given election.
13   Q.   Would you also have to account for equal population
14   between districts?
15   A.   Well, of course, that is a given, right. In a
16   congressional plan in New York, in particular, the districts
17   should be plus or minus one person.
18   Q.   And how should a map drawer -- drawer consider all of
19   those different criteria when drawing a district?
20   A.   It is a constant balancing factor that one has to
21   approach when drawing a plan. You're constantly balancing the
22   different -- the different factors.
23   Q.   You mentioned the concept of compactness. Can you tell
24   us in laymen's terms what compactness refers to in the
25   redistricting context?

1   A.   It's -- it's just the overall shape of the district.
2   Frankly, that's -- there's a way to measure it, using something
3   called the Reock score, which measures the area of a district as
4   it relates to a circle. And then there is the Polsby-Popper --
5   THE COURT: Spell the type of method for the court
6   reporter.
7   THE WITNESS: Polsby-Popper. P-o-l-s-b-y, dash,
8   P-o-p-p-e-r. Two lawyers who designed that -- devised that
9   measure. And it's -- it's perimeter based.
10   So you get different scores. But at the same
11   token, a district that is perfectly compact, and you almost
12   would never see that unless it's a perfect circle, would be
13   one, and a district that had a very bad compacting score --
14   I don't think you can possibly get to zero, but that would
15   be the lower limit.
16   Q.   And in your experience, is there a bright-line standard
17   for when a district is sufficiently compact?
18   A.   No, there is absolutely not. There are many different
19   factors that come into play with compactness.
20   Q.   So generally speaking, how do you determine whether a
21   district is sufficiently compact?
22   A.   Ultimately, it's a judgment call. You look at the
23   compactness scores, and you look at the map, and you say is that
24   reasonable? And, you know, different people can come up with
25   different conclusions in some cases.

1   Q.   You also mentioned the term "contiguous" when
2   discussing the traditional redistricting criteria. What does
3   that term mean in the redistricting context?
4   A.   Well, all parts of the district need to connect with
5   one another, either by land or water.
6   Q.   I also heard you use the term "community of interest"
7   in describing what that can entail a bit.
8   Can economic ties among different groups of individuals
9   reflect a community of interest?
10   A.   Yes.
11   Q.   Can cultural or language ties amongst --
12   A.   Absolutely.
13   Q.   -- individuals reflect a community of interest?
14   A.   Yes.
15   Q.   Shifting gears somewhat. Can you briefly tell the
16   Court what the concept of core retention is in the redistricting
17   context?
18   A.   Well, core retention is just a measure of how a new
19   plan stacks up against an old plan, in terms of the population
20   shifting around. So the largest subset of the population that
21   has moved from one district to another while still keeping that
22   component of the population together would represent one part of
23   the equation. The other being the remaining population.
24   So in this particular case, it's Staten Island, which
25   is the -- the core that stays together no matter which plan

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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.

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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?

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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?

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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?

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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

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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

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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.

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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

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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

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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

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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.

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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

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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

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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

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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.

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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

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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.

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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?

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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

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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

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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.

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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?

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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.

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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

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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

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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

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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 certainly 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.

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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

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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

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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.

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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?

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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 loses 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.

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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.)
20
21
22
23
24
25

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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.

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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.

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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

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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:

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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

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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

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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?

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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

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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

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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.

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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

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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.

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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

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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.

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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,

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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.

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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.

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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.)

1   (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

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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 bitter. 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

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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.

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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.)
21
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25

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2617a

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

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

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1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PT. 44
2 --x
MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO,
3 AIXA TORRES and MELISSA CARTY,
4   Index: 164002/2025
5   Petitioners,
   -against-
6
BOARD OF ELECTIONS OF THE STATE OF NEW YORK, KRISTEN ZEBROWSKI
7 STAVISKY, IN HER OFFICIAL CAPACITY AS CO-EXECUTIVE DIRECTOR OF
THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; RAYMOND J.
8 RILEY, III, IN HIS OFFICIAL CAPACITY AS CO-EXECUTIVE DIRECTOR OF
THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; PETER S.
9 KOSINSKI, IN HIS OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER
OF THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; HENRY T.
10 BERGER, IN HIS OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF
THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ANTHONY J.
11 CASALE, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE BOARD OF
ELECTIONS OF THE STATE OF NEW YORK; ESSMA BAGNUOLA, IN HER
12 OFFICIAL CAPACITY AS COMMISSIONER OF THE BOARD OF ELECTIONS OF
THE STATE OF NEW YORK; KATHY HOCHUL, IN HER OFFICIAL CAPACITY AS
13 GOVERNOR OF NEW YORK; ANDREA STEWART-COUSINS, IN HER OFFICIAL
CAPACITY AS SENATE MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF
14 THE NEW YORK STATE SENATE; CARL E. HEASTIE, IN HIS OFFICIAL
CAPACITY AS SPEAKER OF THE NEW YORK STATE ASSEMBLY; AND LETITIA
15 JAMES, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF NEW YORK,
16   Respondents.
17   -and-
18 NICOLE MALLIOTAKIS; EDWARD L. LAI, JOEL MEDINA, SOLOMON B.
REEVES, ANGELA SISTO AND FAITH TOGBA,
19
          Intervenors-Respondents.
20 --x
          January 7, 2026
21   60 Centre Street
          New York, New York 10007
22
B E F O R E:
23
      HONORABLE JEFFREY PEARLMAN
24   Justice of the Supreme Court
25

                    kp

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1 A P P E A R A N C E S:
2   ELIAS LAW GROUP, LLP
       Attorneys for the Petitioners
3   250 Massachusetts Avenue NW, Suite 400
       Washington, D.C. 20001
4   BY: ARIA C. BRANCH, ESQ.
          CHRISTOPHER DODGE, ESQ.
5   LUCAS LALLINGER, ESQ.
          NICOLE WITTSTEIN, ESQ.
6
       EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP
7   Attorneys for the Petitioners
       One Rockefeller Plaza, 8th Floor
8   New York, NY 10020
       BY: ANDREW G. CELLI, JR., ESQ.
9   EMILY WANGER, ESQ.
10   CULLEN AND DYKMAN, LLP
       Attorneys for the Respondents
11   80 State Street, Suite 900
       Albany, NY 12207
12   BY: NICHOLAS J. FASO, ESQ.
          CHRISTOPHER E. BUCKEY, ESQ.
13
       TROUTMAN PEPPER LOCKE
14   Attorneys for the Intervenor Respondents
       875 Third Avenue
15   New York, NY 10022
       BY: BENNET MOSKOWITZ, ESQ.
16   MISHA TSEYTLIN, ESQ.
          ROBERT PEALER, ESQ.
17   MOLLY DIRAGO, ESQ.
          ANDREW BRAUNSTEIN, ESQ.
18   LAUREN MILLER, ESQ.
19   OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
       Attorneys for Respondents
20   28 Liberty Street
       New York, NY 10005
21   BY: SETH FARBER, ESQ.
22
          Monica Hahn
23   Karen Perlman
          Senior Court Reporters
24
25

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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.

                    kp

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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.

                    kp

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

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

kp

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

kp

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,

kp

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,

kp

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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

kp

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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

kp

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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

kp

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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

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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

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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

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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

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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?

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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

kp

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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.

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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

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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.

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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

kp

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.

kp

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

kp

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

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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

kp

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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.

kp

Dr. S. Trende - Direct/Moskowitz   Page 403

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.

kp

Dr. S. Trende - Direct/Moskowitz   Page 405

1   Q.   So when you said two-thirds, referring statewide,
2   correct?
3   A.   Um, 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?

kp

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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

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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

kp

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

kp

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

kp

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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

                              kp

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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

                              kp

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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?

                              kp

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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

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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

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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,

                              kp

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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.

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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

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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

kp

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?

kp

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

kp

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.

kp

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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

kp

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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

kp

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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

kp

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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

kp

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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?

kp

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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

kp

Dr. Trende - Cross/Mr. Dodge   Page 429

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.

kp

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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?

kp

Dr. Trende - Cross/Mr. Dodge   Page 431

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.

kp

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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.

kp

Dr. Trende - Cross/Mr. Dodge   Page 433

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?

kp

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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.

kp

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?

kp

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.

kp

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

kp

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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

kp

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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

kp

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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.

kp

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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.

kp

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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

kp

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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

kp

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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.

kp

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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.

kp

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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?

kp

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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?

kp

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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

kp

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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.

                          kp

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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.

                          kp

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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?

                          kp

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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?

                          kp

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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

                    kp

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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?

                    kp

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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.

                    kp

Dr. S. Trende - Cross/Dodge   Page 457

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

                    kp

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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

kp

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

kp

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,

kp

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

kp

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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

kp

Dr. S. Trende - Cross/Dodge   Page 463

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 legislate 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

kp

Dr. S. Trende - Cross/Dodge   Page 464

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.

kp

Dr. S. Trende - Cross/Dodge   Page 465

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?

kp

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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

kp

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?

kp

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.

kp

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

kp

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Dr. Trende - Cross/Mr. Dodge   Page 470

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.

kp

Dr. Trende - Cross/Mr. Dodge   Page 471

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

kp

Dr. Trende - Cross/Mr. Dodge   Page 472

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?

kp

Dr. Trende - Cross/Mr. Dodge   Page 473

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

kp

Dr. Trende - Cross/Mr. Dodge   Page 474

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.

                                kp

Dr. Trende - Cross/Mr. Dodge   Page 475

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 skiis 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.

                                kp

Dr. Trende - Redirect/Mr. Moskowitz   Page 476

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.

                                kp

Dr. Trende - Redirect/Mr. Moskowitz   Page 477

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

                                kp

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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.

kp

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

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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?

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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.

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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?

kp

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?

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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

kp

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

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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

                              kp

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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.

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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

                              kp

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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

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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

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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

kp

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

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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

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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

                                   kp

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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,

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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   *   *   *   *   *

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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.

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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.

                        kp

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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.

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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

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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?

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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

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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

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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

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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.

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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.

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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
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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

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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

kp

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

kp

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?

kp

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

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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   Brooklyners 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?

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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

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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

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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

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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.

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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.

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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

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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.

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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

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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

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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

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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

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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

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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

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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.)
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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

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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.

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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

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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

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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.

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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?

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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

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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

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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

kp

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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,

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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.

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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

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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

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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.

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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?

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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

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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.

kp

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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?

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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?

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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

kp

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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.

kp

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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.

                              kp

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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?

                              kp

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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

                              kp

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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

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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.

kp

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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:

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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.

kp

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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.

kp

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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

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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.

                              kp

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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   Brooklyners 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.

                              kp

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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   Brooklyners 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?

                              kp

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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.

                              kp

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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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 569:10
70 (2)
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9 (10)
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In The Matter Of:

Williams v.
BOE

Thomas Bryan D. Stephen Voss John Alford Joseph Borelli
January 8, 2026

Monica Hahn

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 1  SUPREME COURT OF THE STATE OF NEW YORK
    COUNTY OF NEW YORK : CIVIL TERM :  PT. 44
 2  -------------------------------------------------------x
    MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO,
 3  AIXA TORRES and MELISSA CARTY,

 4                              Index: 164002/2025

 5                    Petitioners,
                -against-
 6
    BOARD OF ELECTIONS OF THE STATE OF NEW YORK, KRISTEN
 7  ZEBROWSKI STAVISKY, IN HER OFFICIAL CAPACITY AS
    CO-EXECUTIVE DIRECTOR OF THE BOARD OF ELECTIONS OF THE
 8  STATE OF NEW YORK; RAYMOND J. RILEY, III, IN HIS OFFICIAL
    CAPACITY AS CO-EXECUTIVE DIRECTOR OF THE BOARD OF ELECTIONS
 9  OF THE STATE OF NEW YORK; PETER S. KOSINSKI, IN HIS
    OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF THE BOARD
10  OF ELECTIONS OF THE STATE OF NEW YORK; HENRY T. BERGER, IN
    HIS OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF THE
11  BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ANTHONY J.
    CASALE, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE
12  BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ESSMA
    BAGNUOLA, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE
13  BOARD OF ELECTIONS OF THE STATE OF NEW YORK; KATHY HOCHUL,
    IN HER OFFICIAL CAPACITY AS GOVERNOR OF NEW YORK; ANDREA
14  STEWART-COUSINS, IN HER OFFICIAL CAPACITY AS SENATE
    MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE NEW YORK
15  STATE SENATE; CARL E. HEASTIE, IN HIS OFFICIAL CAPACITY AS
    SPEAKER OF THE NEW YORK STATE ASSEMBLY; AND LETITIA JAMES,
16  IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF NEW YORK,

17                    Respondents.

18         -and-

19  NICOLE MALLIOTAKIS; EDWARD L. LAI, JOEL MEDINA, SOLOMON B.
    REEVES, ANGELA SISTO AND FAITH TOGBA,
20
                    Intervenors-Respondents.
21  -----------------------------------------------------------x
                    January 8, 2026
22                  60 Centre Street
                    New York, New York 10007
23
    B E F O R E:
24
              HONORABLE JEFFREY PEARLMAN
25            Justice of the Supreme Court
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 1  A P P E A R A N C E S:

 2          ELIAS LAW GROUP, LLP.
            Attorneys for the Petitioners
 3          250 Massachusetts Avenue, Suite 400
            Washington, D.C. 20001
 4          BY: ARIA C. BRANCH, ESQ.
                CHRISTOPHER DODGE, ESQ.
 5              LUCAS LALLINGER, ESQ.
                NICOLE WITTSTEIN, ESQ.
 6
            EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP.
 7          Attorneys for the Petitioners
            One Rockefeller Plaza, 8th Floor
 8          New York, NY 10020
            BY: ANDREW G. CELLI, JR., ESQ.
 9              EMILY WANGER, ESQ.

10          CULLEN AND DYKMAN, LLP.
            Attorneys for the Respondents
11          80 State Street, Suite 900
            Albany, NY 12207
12          BY: NICHOLAS J. FASO, ESQ.
                CHRISTOPHER E. BUCKEY, ESQ.
13
            TROUTMAN PEPPER LOCKE
14          Attorneys for the Intervenor Respondents
            875 Third Avenue
15          New York, NY 10022
            BY: BENNET MOSKOWITZ, ESQ.
16              MISHA TSEYTLIN, ESQ.
                ROBERT PEALER, ESQ.
17              MOLLY DIRAGO, ESQ.
                ANDREW BRAUNSTEIN, ESQ.
18              LAUREN MILLER, ESQ.

19          OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
            Attorneys for Respondents
20          28 Liberty Street
            New York, NY 10005
21          BY: RODERICK ARZ, ESQ.

22
                    Monica Hahn
23                  Karen Perlman
                    Senior Court Reporters
24
25
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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
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T. Bryan - Cross/Wittstein   Page 580

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 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.

1   D. S T E P H E N   V O S S,
2   called by the Respondents, after being duly sworn,
3   testified as follows:
4   THE COURT OFFICER: Have a seat. Would you
5   state your first and last name, for the record and your
6   address.
7   THE WITNESS: Professional name is initial D.
8   Stephen with a P-H, Voss, V as in Victor or violin if
9   you prefer, O S S.
10   THE COURT OFFICER: Address?
11   THE WITNESS: 162 Goodrich, one word, Avenue
12   Lexington, Kentucky.
13   THE COURT OFFICER: Thank you.
14   THE COURT: Welcome.
15   MR. BRAUNSTEIN: For the record, Andrew
16   Braunstein, Troutman Pepper Locke for the Intervenor
17   Respondents. Good morning, your Honor. Good morning,
18   Dr. Voss.
19   Your Honor, in the interest of trying to save
20   some time before I get started, pursuant to the
21   stipulation the parties filed, the parties stipulated to
22   tender Dr. Voss as an expert on ecological inference and
23   redistricting.
24   THE COURT: Thank you.
25   MR. BRAUNSTEIN: The parties have also

1   stipulated to admit Dr. Voss's corrected report as
2   Exhibit Intervenor Respondent's Exhibit 3.
3   May I please hand Dr. Voss a copy of those
4   exhibits?
5   THE COURT: The clerk will take it and hand it
6   up.
7   MR. BRAUNSTEIN: Thank you.
8   (Handed to the witness.)
9   DIRECT EXAMINATION
10   BY MR. BRAUNSTEIN:
11   Q.   Dr. Voss, I know we're trying to move quickly
12   today. I want to ask you some very brief questions about
13   your background.
14   Can you please tell us where you are currently
15   employed?
16   A.   Yes, I'm an associate professor at the University
17   of Kentucky in the City of Lexington.
18   Q.   And can you tell us about the courses that you
19   teach at the university?
20   A.   Sure. I teach courses across the board from
21   freshman intro to advanced graduate courses. Some of them
22   are on elections. I teach both undergraduate and graduate
23   elections course. I taught all the courses in our graduate
24   quantitative analysis sequence or what we call political
25   methodology and a handful of other American politics topics.

1   Q.   Do any of those courses concern racial or ethnic
2   politics?
3   A.   Oh, sure. Any topic in American politics if you
4   are ignoring race you are probably not handling adequately.
5   The only course I teach that is really focused on race, I
6   worked with the African American studies program at UK to
7   create a race ethnicity and politics course cross-listed
8   between them. I taught that a couple of times before I
9   passed it along to people who were excited to teach it so.
10   Q.   Understood. Thank you.
11   In addition to your teaching duties, do you have
12   any other roles at the University of Kentucky?
13   A.   In addition to my teaching and research duties,
14   yes, I'm an internship director, so I coordinate with
15   democrats and republicans in the state legislature to funnel
16   students to get some real life legislative experience.
17   I'm faculty advisor for a few student groups.
18   My longest running gig is I'm faculty advisor for the
19   college democrats. Later on I added the college
20   republicans, Phi Alpha Delta, the pre-law fraternity, and
21   I'm also sort of the face of the Department of Publicity.
22   I've emerged a role as a nonpartisan political commentator
23   in Kentucky. Political analyst for Spectrum 1 News. I am
24   on TV, quoted, on talk radio all the time.
25   Q.   Sounds like you are very busy. Thank you for

1   taking the time to be here.
2   Have you ever published work using ecological
3   inference?
4   A.   Sure. My dissertation at Harvard University was
5   advised -- my primary advisor was Gary King who is primarily
6   responsible for a lot of what we're going to be talking
7   about today. Also had another pioneer in ecological
8   inference on the committee. So my dissertation had some
9   ecological inference chapters that later went through peer
10   review, got published. And I've tried to ecological
11   inference since then when I could. My most recent
12   publication was last year, but as suspicion has grown about
13   ecological inference, partly for some of the problems we'll
14   discuss today, I kind of moved away from it. It is hard to
15   get ecological inference through peer review.
16   Q.   And Dr. Voss, ever been retained as an expert
17   witness before?
18   A.   Sure.
19   Q.   Approximately, how many times?
20   A.   Under ten if you are only talking political or
21   elections related things. But I've also been an expert
22   witness or consultant in things that had nothing to do with
23   elections.
24   Q.   And how many of those cases in which you've been
25   retained as expert have you been asked to perform an

1 ecological inference analysis?
2 A. Of the elections related I would say half. I've
3 done other things in some of the cases.
4 Q. Thank you.
5   Dr. Voss, you've been retained as expert in this
6 matter?
7 A. Yes.
8 Q. By which party?
9 A. By the intervenors, Troutman, I'm forgetting the
10 name, Pepper and Locke.
11 Q. There is a lot of us.
12   You're being paid for your services?
13 A. Eventually.
14 Q. We'll discuss that after.
15   Has any part of your soon to be received
16 compensation affected your conclusions, in this case?
17 A. Absolutely not.
18 Q. And Dr. Voss, did you prepare any written reports
19 in connection with your analysis, in this case?
20 A. I did. Either one or two depending how you count.
21   There was a single error that I, to which I was
22 alerted that I had to fix, which was originally the table
23 that was copied in as Table 3 was Table 1 again. And the
24 corrected one has the correct Table 3.
25   Let me note though the analysis always was

1 ecological inferences of my own the way I would do them.
2 Even as I tweak Dr. Palmer's method, it is still his method.
3 It is not how I would have gone about this. This is to
4 illustrate what happens when you change certain features of
5 the decisions he made.
6   The second thing I was not asked to do is make
7 judgments about racially polarized voting. As we heard from
8 prior testimony, that is not just a scientific judgment,
9 that is also contaminated by legal judgments. If you ask me
10 as a scientist does this group vote cohesively, I need to
11 know what is cohesive before I can tell you whether they do
12 or what the probability they do. If you ask me, are these
13 voters polarized, need to know how far apart is polarization
14 before I can say yes or no, or the probability is yes or no,
15 and unless you tell me scientifically what usually defeated
16 means, as a scientist I can't answer that.
17 Q. Understood. Thank you.
18   Can you tell us about the analysis that you
19 performed to verify the results in Dr. Palmer's report?
20 A. Initially, I literally ran Dr. Palmer's software
21 with Dr. Palmer's code and Dr. Palmer's data. Afterward, as
22 I said I made tweaks trying to stay as much as possible
23 within his universe, within his approach, just to illustrate
24 what the effects of those changes were.
25 Q. And did you use the same programming language and

1 about the right Table 3 and the code that I turned over for
2 Dr. Palmer to scrutinize was for the correct analysis. It
3 is just the clerical error that got copied into that box in
4 the first draft.
5 Q. Understood. Thank you for explaining that.
6   Would you recognize the corrected report if it were
7 shown to you today?
8 A. I believe so.
9 Q. And would you take a look at that and let me know
10 if that is your corrected report?
11 A. Yes, it seems to be.
12 Q. Thank you.
13   Dr. Voss, can you please tell us what the
14 intervenor respondents asked you to do as an expert, in this
15 case?
16 A. Well, my limit changed a little bit over time. The
17 main thing I was asked to do was scrutinize the ecological
18 inferences, the estimates submitted by Dr. Palmer to discuss
19 the extent to which the methods he chose I thought were not
20 the best ones, or to phrase it colloquially, when he
21 deviated from best scientific practices, and finally, to the
22 extent I could, to give lay people some sense of what the
23 consequences of his choices were.
24   I would like to stress what I was not asked to
25 do. I was not asked to produce authoritative or definitive

1 ecological inference packaged as Dr. Palmer?
2 A. Correct. Yes, I did.
3 Q. Dr. Voss, can you summarize in general terms the
4 opinions that you offer in your report?
5 A. Right. So first I argued that the estimates that
6 Dr. Palmer provided were inaccurate and not reliable based
7 on the method and data he used.
8   Second, that when he offered those results
9 they were done with a higher level of confidence and a sort
10 of false sense of precision then really were warranted, and
11 finally I think by the time I was done, I made a pretty good
12 case that his results are wrong. That he is overestimating
13 cohesion among some of the groups in the electorate and
14 overestimating racial polarization compared to what is
15 defensible.
16 Q. Thank you.
17   Dr. Voss, before we get into those three issues,
18 you mentioned you used ecological inference in this case and
19 in other matters on which you worked on.
20   Can you tell us more in terms that we can all
21 hopefully understand what ecological inference is?
22 A. Sure. That is probably the hardest question you
23 are going to ask me this hour. I don't think any of us want
24 this to turn into a statics seminar. But there is certain
25 intuitions what is going on with ecological inference that I

1 think need to be understood for everything else to make
2 sense.
3   Dr. Palmer told you how it is used, why it is
4 used, which is to fill in the holes created by the secret
5 balance lot. We don't know how Blacks voted. We don't know
6 in New York how many African Americans turned out, and so on
7 with the other groups.
8   So let's start with what we know about these
9 precincts.
10   THE COURT: When you say that though, I mean,
11   the census tracts track race. The election districts
12   are based on the census tracts, so you can look at a
13   election district and determine the percentage of race
14   and see how that turnout number was and what the outcome
15   was and draw a conclusion that includes race.
16   THE WITNESS: Right. That is right. That is
17   not wrong. In essence I think if I understood your
18   description is what is ecological inference will try to
19   do, okay.
20   Let's take a given election where we only have
21   two candidates, democrat and republican. The output,
22   the behavior we know is just how republican and
23   democratic votes bounce up and down from precinct to
24   precinct. That is our information.
25   THE COURT: Well, in New York it is more than

1   just democrat and republican, right. It might be
2   working families party, it might be third parties as
3   well.
4   THE WITNESS: Yeah, sometimes it is two,
5   sometimes it is more. It is not clear having those
6   other parties makes this easier though.
7   THE COURT: No argument.
8   THE WITNESS: So this is what you know, the
9   bounce up and down of the vote for the democrat and
10   republican relative to how many people there are, okay.
11   And from just that movement, ecological inference is
12   going to try to figure out the rate at which those White
13   citizens showed up to vote and of the ones who did,
14   which share picked the democrat. And it is going to try
15   to figure out the rate at which African Americans showed
16   up to vote and the rate of the ones that picked the
17   democrat. Two numbers for Hispanic. Two numbers for
18   Asians. Two numbers for everybody else.
19   If it sounds like you are trying to squeeze
20   milk from a stone, getting so much from so little, that
21   would be a fair assessment.
22   Now, how does ecological inference try to work
23   the magic of getting estimates of what all those groups
24   are doing, but whether they turn out and how they vote
25   when they turn out. It is more or less, every method of

1 ecological inference more or less assumes that people in
2 those groups behalf the same way everywhere. Aside from
3 a bit of random noise, aside from quirks from place to
4 place.
5   So there is some rate at which Whites want to
6 turn out to vote. That is going to be true regardless
7 of the type of community they live in, the type of
8 place, what their socioeconomic status, and so on.
9 Blacks turn out the same rate. Hispanic turn out the
10 same rate everywhere, more or less.
11   It then will assume the same thing, that of
12 those who turn out, they are going to be, all Hispanic
13 voters are going to be equally likely to vote for the
14 democrat regardless of the type of place where they
15 live, what their socioeconomic status is and the like.
16   Because the assumption is most of what varies
17 from precinct to precinct in terms of outcome is the
18 composition, who lives there, what their race is and
19 their ethnicity is. I'm going to use the term
20 compositional effects for that.
21   Now, what throws ecological inference off is if
22 it is not true that people are the same way everywhere.
23 If, in fact, White voters, White citizens in higher
24 minority areas are less likely to turn out to vote,
25 which a lot of research suggests they are less likely to

1   turn out to vote. That can blows your ecological
2   inference results.
3   THE COURT: In this particular case when we are
4   looking at dilution, don't we want to ask the questions
5   why they don't turn out? What are those reasons? And
6   didn't the prior expert witness testify to those
7   factors; law enforcement, education, opportunity to
8   employment, et cetera, can you speak to that?
9   THE WITNESS: Well, you are preaching to the
10   choir. The content of politics to a political scientist
11   is what we like to talk about.
12   In terms of estimating how much, how high the
13   turnout was among these groups or which way they voted,
14   insights you have about why turnout might be higher or
15   lower or why the support for the republican might be
16   higher or lower would certainly make ecological
17   inferences better.
18   For example, at one point you asked what is
19   going on in the 2017 mayoral election. The real life
20   what is going on in this one contest. My opinion, if
21   you are doing this right you would know that and you
22   would take it into account when conducted the ecological
23   inferences. I would know, for example, well the
24   republican subset of this, the city, and here is where
25   she represented she is probably doing better with Black

1   and Hispanic voters there, because she served some of
2   them then she is doing just as a generic republican
3   elsewhere in the city where they don't have the same
4   relation. You want to take into account the nuance, the
5   real life that you know about these places to get better
6   ecological inferences, absolutely.
7   But if we don't incorporate that outside
8   information and we are just run bulk ecological
9   inferences in the simple result, you are not getting
10   that nuance from case to case.
11   MR. BRAUNSTEIN: Thank you, Dr. Voss. Thank
12   you, your Honor.
13   Q. So turning back --
14   A. I didn't quite finish the contextual effects.
15   Insofar as you are getting these differences
16   that Hispanics who live in primary White areas have
17   different partisan preferences from Hispanics who lived in
18   overwhelming Hispanic or Black areas, that will often throw
19   off ecological inference. When your results are wrong
20   because you ignored those contextual effects, you are having
21   biased results. The term for that is aggregation bias,
22   because it is bias caused by how we grouped or aggregated
23   people.
24   Sometimes aggregation bias can be so serious
25   you reach exactly the wrong conclusion. And sometimes we'll

1   call that an ecological fallacy. So if you ignore
2   aggregation bias you can get very wrong estimates.
3   Q. Thank you.
4   Were there warning signs you identified that led
5   you to investigate in the first place whether there might
6   be some issues with Dr. Palmer's analysis that might be
7   resulting in some of these fallacies you are describing?
8   A. Well, part of it are just the inputs. My
9   experience, there is almost always -- people aren't the same
10   everywhere and there are generally differences in how
11   Hispanics behave from place to place and the like. When I
12   didn't see anything to deal with aggregation bias, that was
13   a red flag. But then also using my knowledge of practical
14   politics, right. We've all seen extensive coverage of the
15   Hispanic vote shifted republican.
16   MS. WITTSTEIN: Objection, your Honor.
17   Hearsay on general news reports.
18   THE COURT: Sustained.
19   A. I had a prior expectation that the Hispanic vote
20   was lower for democrats than the Black vote. I then checked
21   polling results statewide to see if in general in New York
22   State the Hispanic vote was as democratic as the Black vote.
23   It was not. It was significantly lower.
24   So again, to the extent I, as a someone watches
25   elections, was trying to decide if his results seemed

1   plausible, my gut told me probably not.
2   Q. Thank you.
3   And I believe Dr. Palmer suggested in his report
4   that accounting for the aggregation bias you are describing
5   here wouldn't be necessary in a place like New York City.
6   Do you agree with that?
7   A. No. Um, one thing that Dr. Palmer and I both kind
8   of danced around is there are circumstances if you have very
9   good data where this aggregation bias, these contextual
10   effects can be taken care of automatically.
11   What am I talking about very good data? I've
12   done this sort of analysis in the deep south. They used to
13   have to go to Title V clearance, very good election data.
14   They maybe able to tell you breakdowns by race of who turned
15   out. So you are only having to estimate vote choice.
16   Some of these places in the deep south and also
17   in certain hyper-segregated midwestern cities, Blacks and
18   Whites and even Hispanics are separated enough that you got
19   really good information about what Blacks are doing versus
20   Hispanics versus Whites.
21   In a place like New York City where the
22   Hispanic vote is only moderately segregated, ecological
23   inference is going to have a much harder time getting good
24   results, and you need more information.
25   You've also got the problem of, Dr. Palmer

1   talked about urban precincts versus rural precincts. Having
2   very large population urban precincts makes this harder, not
3   easier. I'm not sure I fully understood what you were
4   saying. In general, my experience as city districts can be
5   tough if they are not segregated because they have a lot of
6   people in them and you are trying to parse, they also have
7   more diversity, more groups that you are trying to estimate
8   what they are doing. Deep south, once you are looking at
9   the Black and White vote that might be all you need for an
10   election case.
11   Then finally, when I looked at the confidence
12   intervals in Dr. Palmer's analysis, especially for Asians,
13   his results were telling him that the Asian vote might be
14   50/50, but it could be as low as in the 30s, could be as
15   high as the 60s. That is a sign you need more information.
16   (Transcript continues on the next page.)

1   DIRECT EXAMINATION BY
2   BY MR. BRAUNSTEIN:
3   Q.   And so how did you go about accounting for the
4   aggregation bias that you suspected might be impacting
5   Dr. Palmer's results?
6   A.   Right. Well, given time, if I'd been doing this
7   myself, rather than trying to stick to his universe, I would
8   have done something more sophisticated than this. But I wanted
9   something simple, so I can tell you how I deviated from his
10   method.
11   So all I did is allow what's called a covariant, one
12   covariant, allow for the possibility that the turnout among
13   groups depends on how large the minority population is in their
14   precinct; allow for the possibility that how Hispanics vote
15   depends on whether they're in a very White place, or a place
16   with a very large minority population.
17   I allowed the model to adjust for that possibility, for
18   that contextual effect, for that that aggregation bias.
19   Q.   In your experience, is using those covariants to adjust
20   for potential aggregation bias a standard practice?
21   A.   In the peer-reviewed research I know, yes. I think all
22   or at least almost all of my publications had to deal with
23   aggregation bias in the data. Dr. Claudine Gay, who launched a
24   very successful career using ecological inference in her
25   research, was finding the same thing, that turnout rates depend

1   on the nature of the community you're in.
2   Yeah, I mean, I can't answer for what courts have been
3   allowing people to get away with, but in -- in the research,
4   yes.
5   MR. BRAUNSTEIN: All right. If we could please
6   pull up Table 3 from Dr. Voss's report.
7   BY MR. BRAUNSTEIN:
8   Q.   Dr. Voss, do you recognize what's on the screen here as
9   Table 3 from your report?
10   A.   Yes, I do.
11   Q.   And from your corrected report, right?
12   A.   That is the correct Table 3, yes.
13   Q.   Thank you.
14   Dr. Voss, could you just describe to us what this table
15   is depicting?
16   A.   Okay. So the top block represents Dr. Palmer's
17   results. I just put them there for reference purposes. The
18   bottom block represents my results after I tweaked it to allow
19   adjustment for aggregation bias, for contextual effects.
20   The way you read the chart -- I know it's a lot of
21   numbers, but it's, I think, a fairly straightforward
22   presentation. Each row represents one election contest, which
23   is labeled. Each, then, column represents what the method is
24   estimating for the various racial and ethnic groups.
25   The left-hand column is the best guess, the estimate

1   for the rate at which they voted for the -- the minority
2   candidate of choice, which was always the Democrat.
3   The other two numbers represent the confidence
4   interval. So loosely, the analyst is fairly confident,
5   according to the method, that the answer should be between those
6   two numbers.
7   The bottom one, as I said, comes from my analysis after
8   I did only one thing different. And it's just like 10
9   characters, a small change.
10   I told it, "It's okay for you to adjust the results
11   actively based on your sense of whether people's behavior
12   changes according to the racial and ethnic makeup of
13   their -- their community."
14   Q.   And this table is broken down by racial groups,
15   correct? So the column there with the border around it is the
16   Hispanic voters?
17   A.   That's right. So the leftmost is either what
18   Dr. Palmer or I estimated Hispanics were doing in that contest.
19   And then the other two numbers represent the range that
20   we're kind of confident it should be in.
21   Q.   Dr. Voss, specifically as it relates to the Hispanic
22   voters in this table, can you tell us how this table indicates
23   that your results with the covariant added differ from
24   Dr. Palmer's?
25   A.   Right. So you could pick any one row and compare

1   the -- that row across the two tables to see the difference in
2   what we got.
3   If you do that, you'll see that I am consistently
4   saying that the Hispanic vote for the Democrat is lower,
5   sometimes significantly lower. Sometimes we're talking
6   20 percentage points or more lower for the Democrat than what he
7   estimated it at.
8   He's estimating that the Hispanic vote is very similar
9   to the Black vote. And I'm saying no, that's not true,
10   according to this tweak.
11   The other thing you can notice, and it speaks to the
12   reliability of these ecological inferences using New York data,
13   if you look across my entire table, about half of my results are
14   outside of that range of confidence that Dr. Palmer's results
15   were offering to represent the precision. So just one tweak in
16   the method, and half the results are outside the range that he
17   told to -- represented his level of precision.
18   Even if you don't buy my estimates, it's showing you
19   that these ecological inferences were much less stable, much
20   less reliable than his report would have given the impression.
21   Q.   And, Dr. Voss, directing your attention to the numbers
22   for Black voters compared to Hispanic voters in your analysis,
23   looking at how those numbers track over time, can you tell us if
24   cohesion between Black and Hispanic voters is getting stronger,
25   weaker or staying the same?

1   A. Yeah. I probably should have just subtracted that one
2   number from the others illustrated, but I didn't. But what
3   you'll see is that there might be a little bit of Republican
4   drift among Black voters. There is a more substantial
5   Republican drift in the 2000s among the Hispanic voters. The
6   gap between Black voters and Hispanic voters appears to have
7   widened, as consistent with my expectations, my hypothesis,
8   based on what I know about US politics.
9   Q. Does Dr. Palmer's analysis show the same thing?
10   A. There's maybe a little drift. But, no, on balance,
11   he's still got Hispanics voting overwhelmingly Democratic,
12   sometimes even more Democratic than Black voters in some of
13   these contests.
14   Q. Dr. Voss, you mentioned you had looked at some polling
15   data. Did you look at any other sources to try to verify your
16   results here as compared to Dr. Palmer's?
17   A. Right. When you get the result this different -- and
18   that's a red flag. And just because my results were
19   dramatically different from his doesn't mean that mine are
20   right.
21   So what you want to do is due diligence. You want to
22   check some outside sources to see which ones seem closer
23   to -- or might be closer to real life.
24   The first thing I did was try to see if there were
25   polls taken for vote choice in Staten Island, or at least closer

1   regionally to see what was lining up. You can't get polls at
2   that granular level. All I had was New York-level polls, which
3   I wasn't going to trust.
4   Now, there is a group called VoteHub that had made
5   their own ecological inferences for the 2024 presidential
6   election. And they tried to take into account aggregation bias
7   even more elaborate -- way more elaborately, a more
8   sophisticated way than I did. So I checked, to do due
9   diligence, what are their numbers like? Are they like his or
10   are they like mine? VoteHub's results for District 11 are even
11   less polarized.
12   MS. WITTSTEIN: Objection. Hearsay. May I be
13   heard?
14   THE COURT: Sustained.
15   A. Okay. Anyway, can I say that they made me more
16   confident in my results because they looked more like mine?
17   Q. Sure. Thank you.
18   In his reply report, Dr. Palmer references an article
19   in the American Political Science Review which he says supports
20   his method of ecological inference over yours.
21   Did you review that article?
22   A. I did.
23   Q. And what did that article tell you about your method
24   versus Dr. Palmer's and the results?
25   A. Right. That's kind of funny. The -- it is indeed true

1   that that is a journal which is in our flagship American
2   Political Science Review Journal, used the simple or the naive
3   ecological inference that made no active steps to take into
4   account aggregation bias. They did use it. But they used it to
5   say how poor it is. They report, first, the confidence
6   intervals are too narrow. It gives a false impression of
7   precision, just as I've told you.
8   They say that it overestimates group cohesion
9   specifically, especially for Hispanics, just as I've told you.
10   It says that it overestimates racially polarized
11   voting, just as I told you.
12   And here's the kicker, it says that naive ecological
13   inference will miss the Hispanic vote according to their results
14   by 20 percentage points, just as I told you.
15   THE COURT: Where did you find this -- this
16   software?
17   THE WITNESS: Well, this is -- this is a research
18   paper that Dr. Palmer cited to show that others were using
19   the simple method. What he didn't tell you is that they
20   were using it to show how poor it was compared to what they
21   were offering as an alternative.
22   BY MR. BRAUNSTEIN:
23   Q. And, Dr. Voss, I apologize. I may not have been clear.
24   That article was cited by Dr. Palmer in his reply report as
25   support for his method, correct?

1   A. That's right.
2   And like I said, he's correct. They use the simple
3   method. It may be unfairly. If they had used the tweaked
4   method, they may have found ecological inference that performed
5   better.
6   They used the simple method, as he claimed, but the
7   simple method did not perform well in their paper. They -- they
8   show how poor it is, compared to what they're trying to
9   introduce as an alternative.
10   Q. I understand. Thank you.
11   So, Dr. Voss, if -- if Dr. Palmer's inferences are off,
12   and the actual results are closer to what you estimate, what
13   does that mean, in terms of potential real-world impact?
14   A. Well, you know, I don't know the legal impact. I'm not
15   a lawyer. In terms of the level of racial polarization, it is
16   lower than Dr. Palmer reported. In terms of the similarity in
17   vote choice between Blacks and Hispanics, they're not as similar
18   as Dr. Palmer reported.
19   And, again, I'm getting back to the real thing here,
20   which is ecological inference is not as precise with -- and
21   maybe not reliable with the low quality of New York data, such
22   that -- you know, I'm not sure I ever could have gotten a really
23   good -- authoritative, good ecological inferences using this
24   data because they're so data poor, they're so information poor.
25   Q. Thank you.

1   MR. BRAUNSTEIN: Dr. Voss, can we please turn to
2   Table 5 in Dr. Voss's report.
3   Q. Dr. Voss, do you recognize what is on the screen as
4   Table 5 in your report?
5   A. Yes, I do.
6   Q. So, Dr. Voss, can you tell us what this table
7   represents?
8   A. Right. So Dr. Palmer's code, even though it has to
9   estimate voter turnout by race and ethnicity, didn't report it.
10 In fact, he had stuck in an option that keeps the method from
11 reporting what he's estimating, in terms of turnout by race and
12 ethnicity.
13   At some point, I became suspicious of what those hidden
14 turnout numbers might have been. So all I did, once again,
15 slight tweak to his method, let me see what we're estimating for
16 voter turnout by race and ethnicity here. This is what,
17 therefore, came out of his code, his analysis, his data for
18 turnout.
19 Q. So what analysis, if any, did you perform to obtain
20 these estimates depicted here in Table 5?
21 A. Yeah. I literally just changed his code to say, "Don't
22 hide turnout estimates. Tell me what you're estimating for
23 turnout."
24 Q. So looking at the 2022 elections in Table 5, for
25 example --

1   A. Okay.
2   Q. -- could you just tell us what you view these numbers
3   to mean, and what the differences between them mean?
4   A. Sure. Well, I'm just looking to see if the turnout
5   rates seem plausible, right. That's what you do, due diligence.
6   You look at your numbers, compare it to what you know. If what
7   you're estimating out of ecological inference doesn't line up,
8   it's -- it doesn't mean you're wrong, but it's definitely an
9   argument you need to be more careful.
10   So, again, one thing I would have noticed about 2022 is
11 that Asian turnout was estimated to be really low. We're
12 talking -- it's one-third the size of Black turnout; a quarter
13 of the size of Hispanic turnout; almost one-fifth the size of
14 White turnout.
15   So immediately I'm wondering what's going on with Asian
16 citizens in this area that they should not be participating in
17 politics to that level? It was a red flag.
18 Q. Thank you.
19   Did these turnout estimates that were included in
20 Dr. Palmer's code that he used to perform his ecological
21 inferences appear anywhere in Dr. Palmer's report or his reply
22 report?
23 A. Well, as I said, the turnout was hidden by his code.
24 It -- I had to change his code to even see the results. These
25 turnout results, the ones he produced from his ecological

1   inferences, did not appear in his report that I saw.
2   Q. Is that common, to hide the turnout in a code that
3   you're using to perform ecological inference?
4   A. Yeah, it's hard to say. As I told you, most of
5   the -- most of the places I've analyzed, you had no turnout,
6   you're not trying to squeeze that much out of the very limited
7   data we have.
8   Q. Thank you.
9   MR. BRAUNSTEIN: If we could bring up Exhibit 6
10   from Dr. Palmer's report, please.
11 Q. Dr. Voss, you reviewed Dr. Palmer's report and his
12 reply report, correct?
13 A. I did.
14 Q. Do you recall this figure from his report?
15 A. Yes, I do.
16 Q. And, Dr. Voss, what is your understanding of the data
17 that's reflected in this Figure 6?
18 A. Right. So instead of giving his own estimates of voter
19 turnout by race and ethnicity for Staten Island, which could
20 have been computed, he went outside of his ecological inference
21 to a whole different source, and is reporting their estimates of
22 turnout by race and ethnicity for those three years.
23 Q. So to be clear, these are not the turnout estimates
24 that were included in Dr. Palmer's ecological inferences that he
25 used to obtain his estimates of voter preference?

1   A. That's right. These numbers did not come from his own
2   estimates of turnout. And if you paid attention earlier to the
3   proportions, they don't look much like the estimates of turnout
4   that came out of his ecological inferences.
5   Q. Do you know why he might have included turnout
6   estimates that he didn't generate from his ecological inference?
7   A. Well, I mean, if he thinks their results are more
8   reliable or more accurate than his own work, then, you know,
9   yeah, you go with the best thing you have.
10   Of course, as I've said, once you've run ecological
11 inferences -- because there's no way within the method to know
12 you're wrong -- you could be way wrong and it won't warn
13 you -- what you want to do is check things like this to see if
14 your results are realistic or plausible.
15   I would have wanted to check that. And what I would
16 have discovered is that the ecological inferences Dr. Palmer
17 submitted were getting turnout pretty far off.
18 Q. So, Dr. Voss, why does -- why does this turnout
19 estimate matter? In other words, Dr. Palmer is making
20 conclusions about voter preference. Why does it matter that his
21 turnout estimates might have been off?
22 A. Well, if you vastly underestimated the share of the
23 electorate that's Asian, and those Asian voters are voting for
24 candidates, you're assigning their votes to other racial and
25 ethnic groups. You're getting your vote preference numbers

1   wrong too if you've got turnout wrong. He's estimating turnout
2   and voter choice at the same time, so if one is wrong, the other
3   is wrong.
4   Q.   Thank you.
5   Dr. Voss, do you agree with the scope of the analysis
6   that Dr. Palmer performed?
7   A.   No. I -- I do not think it's appropriate to look at
8   the precincts in only one congressional district. And I want to
9   be clear, this is not a legal judgment.
10   Even if all you cared about is what's going on in
11 District 11, you should use more information to get better
12 estimates for District 11. If you think what you care about is
13 the whole city, you use the whole city. If you care about the
14 whole state, you probably still would only do it for a city, you
15 know, the whole city and break the state up into different
16 clumps. So the question of scope for an analysis is different
17 from the legal question --
18   THE COURT: When you're --
19   (Whereupon, the court reporter seeks a
20   clarification.)
21   THE COURT: I'm interrupting.
22   When you're referring to the city, right, we're
23   dealing with Richmond County, the Constitution says you've
24   got to keep working from the counties out, right?
25   THE WITNESS: Right.

1   THE COURT: So you've got to use all of Richmond
2   County, all of Staten Island, and then go outward from
3   there.
4   So when you talk about looking at the other
5   districts, we really have to start with Staten Island and
6   work outward. So tell me which -- which you would think is
7   best to avoid a vote dilution, or a way to address what
8   Petitioners allege.
9   THE WITNESS: Right. So you're asking me a -- as
10   an elections analyst, not as an ecological inference expert?
11   THE COURT: Well, from the results in an ecological
12   inference test, how would you choose, understanding that you
13   have to work from the county outward, and not -- this isn't
14   just one big city, this is five counties. And the
15   Constitution requires us to go from the local government.
16   THE WITNESS: Right. So this is what I'm saying.
17   Even if you told me, as a judge, "I don't care what's going
18   on anywhere else but in CD-11. Give me the best estimate
19   you can give me only in CD-11," I still would run the
20   ecological inference using a broader territory to improve
21   your CD-11 estimates over one that only looks at those
22   precincts.
23   THE COURT: Even if you're only looking for a
24   handful of voters?
25   THE WITNESS: Even if all you cared about

1   was -- you might only care about what's going on in the
2   subset of CD-11 that's moving to District 10, you want more
3   information to get better estimates.
4   And when you -- when you look at Dr. Palmer's
5   table, he's telling you, basically, in a lot of these cases,
6   "I have no idea what Asians are doing here," right? "I
7   don't know how they're turning out. Look at the confidence
8   intervals. I don't know how they're voting. Look at how
9   wide the confidence intervals are."
10   I know how to make that better. Let's borrow some
11 information about what Asian voters are doing on a broader
12 scope to refine our estimates for what Asians are doing only
13 in Richmond County.
14   So really the level of analysis is entirely
15 separate from the legal decision you have to make.
16   THE COURT: Okay.
17 BY MR. BRAUNSTEIN:
18   Q.   So, Dr. Voss, could you just tell us a bit more about
19 what you did in your analysis to determine whether expanding the
20 scope, as you were just discussing, might make a difference in
21 the results Dr. Palmer had obtained?
22   A.   Right. Unfortunately, Dr. Palmer did not give me data
23 for the rest of New York City comparable to what he used, so I
24 did have to do something else.
25   I contacted counsel and I said, you know,

1   the -- "Dr. Palmer is only looking at the precincts in a single
2   district. I don't think that's appropriate. Do you guys have
3   data like his for a broader scope?"
4   I was then provided data that looked somewhat different
5   from Dr. Palmer's. My understanding is that they were generated
6   by Dr. Sean Trende.
7   I tried in -- with the time I had to check the validity
8   of those data, but I am at some level operating at trust, in
9   terms of the data I was given.
10   I then ran one New York City-wide ecological inference,
11 okay. An ecological inference gives you an estimate of what's
12 going on in precinct by precinct.
13   Now, you want wouldn't to put too much stock in any one
14 of them. You wouldn't want to look up your grandmother's
15 precinct and think that is how people voted in that exact
16 precinct.
17   But then what you can do is you can take those
18 precinct-level estimates and aggregate them up to whatever
19 interested you. You can aggregate them up to a congressional
20 district, you can aggregate them up to parts of a congressional
21 district, you can aggregate them up to a county to see what it's
22 saying about a county, about the congressional district.
23   So my results give you results for District 5,
24 District 6, District 7, but they're all coming from that same
25 citywide ecological inference, so that I'm gathering information

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1   about how these groups vote citywide.
2   Why citywide? You don't want to go too big. I
3   wouldn't want to do this for the entire state; you're starting
4   to contaminate your results with people who are very dissimilar.
5   But because New York City is an entity that's
6   recognized, because there are a lot of economic entanglements,
7   as we heard, people who live in one, work in the other, that is
8   the kind of proper level of scope to try to get good ecological
9   differences, balancing we don't want too dissimilar people but
10   we want to get as much information as we can.
11   THE COURT: So we should look, for ecological
12   inference purposes, from where people live to where they
13   work?
14   THE WITNESS: What -- what -- when a metropolitan
15   area is defined by the U.S. government, one of the things
16   they take into account -- and maybe the dominant thing they
17   take into account is economic entanglements.
18   So, for example, you know, a lot of people who live
19   in Brooklyn work in Manhattan; a lot of people who live in
20   Staten Island work in Manhattan. So that's why those
21   counties would be considered part of the same metro area.
22   Now, when you're drawing districts, you may care,
23   okay, Brooklyn and Staten Island are commuter communities.
24   These are people who go into Manhattan to work but come back
25   to live with longer driveways and, therefore, they have

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1   commonalities and they should be grouped, versus the people
2   who actually choose to live in the city, they may represent
3   a different political interest that you would want to
4   represent in a different district.
5   THE COURT: But if a significant portion of the
6   driveway families, as you've described them, work in the
7   Financial District, then people who live in Lower Manhattan
8   work in the Financial District, does that make it an
9   ecological inference, where we should look at those
10   interests in how those voters from Lower Manhattan and from
11   the driveways of Staten Island vote because of their common
12   economic interests?
13   THE WITNESS: So with this being such a big city,
14   it's not exactly parallel.
15   But what you're asking is pretty similar to should
16   central cities be linked with their suburbs in smaller
17   cities or not. And what you'll find is that people move
18   around, whether they think the central city should be kept
19   together or split, depending on what party it helps.
20   THE COURT: Did you look at the north side of
21   Staten Island, those Black and Hispanic districts, and look
22   at the movement of those communities? Are they -- are those
23   communities transient, or have they been there for decades?
24   THE WITNESS: So I'm not a specialist at all
25   in -- in New York City. And, honestly, I think the people

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1   doing this sort of analysis either should be or should be
2   sitting down with people who know that level of granular
3   detail. I don't.
4   The only answers I could give you related to that
5   question was that I'm estimating the political behavior
6   across elections of those constituents in those places.
7   So, for example, the -- Table 6, only for the
8   governor's race, showed you, of District 10, what's the
9   behavior in the part being broken out versus what's the
10   behavior of the voters being left behind, and the same thing
11   with District 11, what is the behavior of the voters being
12   left in District 11 versus the behavior of the voters being
13   left behind?
14   So, for example, one thing you'd see with the
15   District 11 vote is you've got a fairly large White
16   population that votes overwhelmingly Republican in the
17   current District 11. But the illustrative maps crack that
18   White vote so that those Republican voters are being buried
19   in the new District 10, and buried in the new District 11.
20   And -- which gets to your question of should I look beyond
21   just one district? Yeah, you're not going to catch that
22   you're taking this White Republican vote between Brooklyn
23   and Staten Island and cracking it to create two Democratic
24   districts unless -- unless you're looking broader than a
25   single district.

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1   Q.   Thank you, Dr. Voss.
2   MR. BRAUNSTEIN: Thank you, Your Honor.
3   BY MR. BRAUNSTEIN:
4   Q.   So, Dr. Voss, you mentioned in your discussion with
5   Your Honor Table 6 in your report. Is this Table 6 from your
6   report?
7   A.   That's the table I was just referring to, yes.
8   Q.   So, Dr. Voss, for all of us in the room who have a hard
9   time understanding a lot of numbers on a chart, can you please
10   tell us about some of the key things to look at when trying to
11   understand the results reflected in Table 6?
12   A.   Yeah. Well, one thing that's interesting, keep in mind
13   that this is only one tweak to Dr. Palmer's method. This is the
14   expand the scope, run the ecological inference for the whole
15   city. So I'm no longer correcting for aggregation bias. Okay.
16   I got rid of that fix; I'm trying is something new.
17   One thing that jumps out is that this correction, this
18   completely independent correction, shows the Hispanic Democratic
19   vote much lower than the Black Democratic vote. I'm getting
20   more or less the same kind of finding that I got with the last
21   tweak. Hispanics are not high 80 to low 90 Democratic voters.
22   They're -- they're numbering at lower numbers.
23   The other thing to note is while, again, I think my
24   confidence intervals are too precise, too confident just as
25   Dr. Palmer's are, the fact that they narrow tell you I got a lot

1   more information to try to improve what my estimate of what
2   Asians are doing, including in District 11, than I did when I
3   tried to get all of my knowledge about Asians from just CD-11,
4   where they're barely more than 10 percent of the population.
5   Q.   Dr. Voss, just to make sure I'm understanding, you
6   performed -- you tried to correct Dr. Palmer's results in two
7   totally separate ways and reached the same finding that his
8   results were incorrect in the same way; is that right?
9   A.   Yeah. In a way I'm validating Dr. Palmer's claim that
10   if you have enough information, then ecological inference can
11   get closer to the right answer without actively correcting for
12   aggregation bias. Using the greater information I had from the
13   city as a whole, I have caught more than aggregation bias than
14   by accident. But you need good data, and just the precincts
15   from District 11 were not good data.
16   Q.   Understood. Thank you.
17   MR. BRAUNSTEIN: Your Honor, we're now going to put
18   up a demonstrative.
19   Q.   So this -- Dr. Voss, do you recognize this as
20   individual rows from Tables 3 and 6 in your report?
21   A.   Okay, yes. So the first row is only the results for
22   2022 governor from the top of Table 3, and also the top of
23   Table 1.
24   The middle row is only the results from 2022 governor
25   from the bottom of Table 3.

1   And the very last numbers, which, by the way, I'm
2   having a little -- hard time seeing, they come from Table 6.
3   So these are three different estimates of what happened
4   for 2022 governor.
5   Q.   If you're having trouble seeing, feel free to refer to
6   the Table 6 in the copy of your report, if that would be
7   helpful.
8   A.   At this age, that's hard too, but I'll do it. Okay.
9   Q.   So, Dr. Voss, could you tell us, how do the results in
10   Table 6 from your report compare to the results for this same
11   election in Table 3 in your report?
12   A.   Right. So this is just illustrating the claim I made a
13   second ago. If you look at what I'm estimating for Hispanics
14   using the covariant tweak, and if you look at what I'm
15   estimating for Hispanics using the citywide analysis, in both
16   cases I'm getting numbers in the mid 70s. So both unrelated
17   tweaks are telling us the same thing, compared to Dr. Palmer's
18   claim that Hispanics voted 90 percent for Kathy Hochul.
19   You'll also notice that the -- unfortunately, Table 6
20   was in proportions, whereas the other table was in percentages.
21   But if you move the decimal place twice, you'll see that because
22   I was using the wider information from the city, my estimates
23   for Asian vote -- the confidence interval is much narrower, so
24   I'm -- I'm getting more precise estimates according to the
25   software because I used that additional information than I was

1   getting when I tried to do it only with the precincts from
2   District 11.
3   Q.   And do these numbers tell you anything about
4   Dr. Palmer's conclusions about cohesion?
5   A.   It -- as all of the things that we've talked about or
6   consulted indicate, the cohesion between Black and Hispanic
7   voters is less, and the gap between Hispanic voters and White
8   voters is less than he reported.
9   Q.   Dr. Voss, let's just return back to Table 6, if we can
10   put that back up on the screen?
11   A.   Okay.
12   Q.   A couple more questions before we wrap up.
13   Again, this is Table 6 from your report that's on the
14   screen?
15   A.   Yes.
16   Q.   What does Table 6 show you about Black, White, and
17   Hispanic voter support for the Black and Hispanic preferred
18   candidate in District 5?
19   A.   District 5?
20   Q.   In the 2022 governor's race.
21   A.   Okay. For District 5, it shows the White vote for the
22   Democratic candidate for governor had a little over one out of
23   three. The Black vote is overwhelmingly -- about
24   96 percent -- for the Democratic candidate, and the Hispanic
25   vote is about three-quarters for the Democratic candidate.

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.   And the White and Hispanic numbers is to use the
2   percentages being consistent?
3   A.   You want me to say?
4   Q.   Sure?
5   A.   96 percent for the democrat was the estimate for
6   Blacks. 33.8 percent was the estimate for the democrat for
7   Whites, and 74.89 percent was the estimate for Hispanics,
8   yeah.
9   Q.   What about District 8?
10   A.   Eight, um, okay. The White vote here is a little
11 over 40 percent for the democrat. They still prefer the
12 republican. 97.1 percent for the Black voters. 78.2
13 percent for the Hispanic voters.
14   Q.   What about District 9?
15   A.   37.9 percent White vote for the democrat. 96.2
16 percent Black vote for the democrat. 77.6 percent Hispanic
17 vote for the democrat.
18   Q.   Dr. Voss, definition of racially-polarized voting
19 in the New York Voting Rights Act is, "voting in which there
20 is a divergent in the candidate, political preferences or
21 electoral choice of members in a protected class for the
22 candidate, or electoral choice of the rest of the
23 electorate," anticipating any objection and understanding
24 you are not a lawyer and without asking you to reach any
25 legal conclusion here, do you believe that 96 percent of one

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1   A.   Sure. The White vote is still republican leading,
2   a little more democratic. 42.2 percent for the democrat in
3   illustrative District 11. Black vote still overwhelmingly
4   democratic, 95.1 Hispanic vote is still three quarters
5   democratic.
6   Q.   Do you believe that still represents a divergence
7   in preference between Black and White voters?
8   A.   Not quite deep south levels anymore, but you are
9   still looking at a Black vote that is more than twice as
10 democratic as the White vote.
11   Q.   And you believe that is a significant difference?
12   A.   It can make a real difference in elections.
13   MR. BRAUNSTEIN: Thank you, Dr. Voss. I will
14 now pass the witness.
15   MS. WITTSTEIN: Your Honor, I think we are
16 actually a little ahead of our agreed on timeline here.
17 I would appreciate a five, ten minute recess.
18   MR. BRAUNSTEIN: Just being cognizant of the
19 time here.
20   THE COURT: Five minutes is fine. I appreciate
21 the banter. Let's take a five minute break.
22   You may step down. Please don't speak with
23 your attorneys during the break about this case.
24   THE WITNESS: Understood. Thank you.
25   (Whereupon, a short recess is taken.)

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1   group voting for certain candidate and only 34 percent of
2   another group voting for the same candidate like we saw in
3   District 5 represents a divergence between those two groups
4   political preferences?
5   A.   Well, I'll put on my southern accent for this one
6   and say that is the polarization I used to see analyzing
7   deep south elections in the 1990's.
8   Q.   So, yes?
9   A.   That is a big gap.
10   Q.   Okay.
11   A.   No idea whether it is legally a divergence, but it
12 is a big gap. Like I said deep south elections in the
13 1990's the White vote was in the 30's for the democrats.
14 The Black vote was in the mid 90's for the democrats.
15   Q.   Dr. Voss, Table 6 also contains results from your
16 broader scope analysis for illustrative District 11; is that
17 right?
18   A.   Yes. Once you got the estimates for the precincts
19 you can aggregate them up different ways. So this is the
20 same estimate aggregated up to current District 11 or
21 aggregated up to illustrative District 11.
22   Q.   Can you tell us those same numbers you discussed
23 for Black, White and Hispanics support for the Black and
24 Hispanic preferred candidate in these results in the
25 illustrative District 11?

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1   THE COURT: When everybody is ready, we can
2   continue.
3   MS. WITTSTEIN: For the record, Nicole
4   Wittstein for the Williams petitioners.
5   Good morning, Dr. Voss.
6   THE WITNESS: Good morning.
7   CROSS-EXAMINATION
8   BY MS. WITTSTEIN:
9   Q.   I want to start with one thing you stated on
10 direct. I would like to make clear for the record.
11   So the first report that you filed, it contained an
12 incorrect table, right?
13   A.   Yes. I copied the wrong table into the box for
14 Table 3.
15   Q.   Just didn't change any of your substantive analysis
16 in the first draft of your report?
17   A.   That is correct.
18   Q.   When you are moving quick, mistakes happen with
19 copy/paste?
20   A.   Clerical errors happen, yes.
21   Q.   Thank you, Dr. Voss.
22   I want to go back to some of the qualifications you
23 testified to on direct-examination, okay?
24   A.   Okay.
25   Q.   So you don't have much experience testifying in

1   redistricting cases, do you?
2   A. No, no. I usually avoid this.
3   Q. You usually turn down offers to testify to
4   consulting work?
5   A. I do.
6   Q. You testified on direct-examination that you've
7   consulted on what you call a handful of voting rights cases,
8   under ten?
9   A. Sorry. What was the last word you said?
10   Q. Under ten I think you said on direct?
11   A. I think that is correct, yes.
12   Q. And those cases, about half of them required
13 ecological inference?
14   A. Um, okay. So if the question put to me was the
15 share I testified on, I may have misspoken because I have
16 been involved as an expert consultant as a consulting
17 witness as well, and at least one of the cases where I use
18 ecological inference was only as a consultant witness.
19 Actually, maybe two.
20   Q. Okay. Well, let's pin this down. I think there
21 are three cases that you've testified about ecological
22 inference; is that right?
23   I might be able to walk you through them, help you
24 remember?
25   MR. BRAUNSTEIN: Objection. Can you clarify

1   testimony in what form?
2   THE COURT: Please.
3   MS. WITTSTEIN: Sorry, I couldn't hear the
4   objection.
5   MR. BRAUNSTEIN: Can you clarify what you mean
6   by testimony, in what form?
7   Q. Is it true that you either were deposed or
8   testified at trial in three redistricting cases about
9   ecological inference?
10   A. No, more than that.
11   Q. Peterson V. Borst in Indiana?
12   A. I'm not going to remember them by name. Yes, the
13 Indiana case.
14   Q. We have Florida in 2024?
15   A. Tampa case.
16   Q. Louisiana Nairne v. Landry earlier this year, 2025?
17   A. Okay. Um, so the only, the only question is I was
18 involved with two Indiana cases and I think they both
19 involved ecological inference. Yeah, that is probably
20 right.
21   Q. Okay. Thank you, Dr. Voss.
22   Now, of those cases I just named off, only the
23 Nairne v. Landry case in Louisiana this year, 2026 now last
24 year, involved the minority vote dilution claims?
25   A. That maybe true. I don't pay attention what the

1   lawyers are fighting about in these cases.
2   Q. So to the extent you are able to recall on the
3   stand today, you haven't conducted or evaluated ecological
4   inference in any other minority vote dilution cases besides
5   those I just named off?
6   MR. BRAUNSTEIN: Objection. Mischaracterizes.
7   THE COURT: Rephrase.
8   Q. Dr. Voss, are you able to recall on the stand any
9   additional specific cases involving redistricting and
10 minority vote dilution case in which you've evaluated
11 ecological inference besides the three I just listed off?
12   A. No, not -- no. I'll say, no.
13   Q. Okay. Dr. Voss, I want to move to your assessment
14 of Dr. Palmer's report in this case.
15   Now, I understand that you have various
16 disagreements with his methods. We'll get to those. I want
17 to start by focusing on where you two disagree.
18   You began your analysis by successfully replicating
19 Dr. Palmer's results from his ecological inference, correct?
20   A. Yes. And the level of professionalism with which
21 he provided his results and the transparency really stood
22 out. That is not common. And in my report, now here, I
23 want to stress that our differences are over methodical
24 choices, not in terms of professionalism.
25   Q. Dr. Voss, I want to walk through your verification

1   results, okay?
2   A. Sure.
3   Q. Your results were for all intents and purposes
4   statistically identical to Dr. Palmer's when you ran the
5   verification, correct?
6   A. That is right.
7   Q. Like to call up Table 1 on Page 2 of intervenors
8   Exhibit 3.
9   These two tables show your verification results,
10 right?
11   A. Well, the top is just his numbers. The top block
12 are his numbers. The bottom is my verification that shows
13 that the results are very close and that the standard, that
14 the confidence intervals are very similar.
15   Q. You have a copy of your report before you, right?
16   A. I do.
17   Q. I'm going to ask about some numbers. Maybe easier
18 to reference there than on the screen.
19   Are you with me?
20   A. I am with you.
21   Q. I would like to first direct your attention to the
22 fifth line up from the bottom in the 2022 house race?
23   A. Okay. 2022 US House.
24   Q. So in this election, representative Nicole
25 Malliotakis defeated Max Rose in Congressional District 11,

1   right?
2   A. Yes.
3   Q. And the percentages you list in this chart reflect
4   the estimated support for the candidate Max Rose, right?
5   A. Yes.
6   Q. You and Dr. Palmer both estimated about 90 percent
7   of Black voters supported Rose?
8   A. That is correct.
9   Q. And about 89 percent of Hispanic voters?
10   A. That is correct.
11   Q. But only about 24 percent of White voters, right?
12   A. That is correct.
13   Q. And as you characterized it on direct-examination,
14   these numbers look like some of the races in the deep south
15   in terms of divergence between races?
16   A. Those numbers are closer, yes. Those are similar
17   to the deep south spans.
18   Q. And Max Rose was defeated in that election, right?
19   A. Yes.
20   Q. Now like to direct your attention to the 2024 house
21   race. This should be a couple more lines down.
22   A. I can see.
23   Q. The results for this house race were similar when
24   verified Dr. Palmer's results, right?
25   A. Correct.

1   Q. In this election, the incumbent representative,
2   Nicole Malliotakis defeated Andrea Morse in Congressional
3   District 11?
4   A. I will take your word for that.
5   Q. You and Dr. Palmer both estimated somewhere between
6   86 to 89 percent of Black voters supported Morse?
7   A. Correct.
8   Q. About 88 percent of Hispanic voters likely
9   supported Morse?
10   A. Yeah. You know, I take issue with the way you
11   worded that though. These are not my estimates. This is
12   literally Dr. Palmer's code, Dr. Palmer's program,
13   Dr. Palmer's data, and something we haven't mentioned, when
14   running these routines you can do what is call set a seed,
15   in other words tell the computer how to generate what looks
16   like random numbers. I'm even using the same seed as he
17   did. So this is -- this -- if it weren't for differences
18   in our computers, my table should look exactly the same as
19   his.
20   Q. I understand, Dr. Voss. Happy to clarify for the
21   record that this is your verification of Dr. Palmer's
22   results, correct?
23   A. Yes, thank you.
24   Q. When you verified Dr. Palmer's results, your
25   estimates were between 86 and 89 percent of Black voters

1   supporting Andrea Morse?
2   A. That's correct.
3   Q. 88 percent of Hispanic voters supporting Morse?
4   A. I agree. That is what Dr. Palmer got.
5   Q. And 20 percent of White voters supporting Morse,
6   right?
7   A. That is correct.
8   Q. And you did not dispute in your report that this is
9   a very widespread suggesting racially-polarized voting?
10   A. I do not dispute that.
11   Q. Here, Andrea Morse also was defeated in this
12   election, right?
13   A. The democrat was defeated, yes.
14   Q. Now, for the remaining 18 elections, Dr. Palmer's
15   -- apologize.
16   Dr. Palmer estimated that Black voters supported
17   their preferred candidate with around 90.5 percent of the
18   vote?
19   A. That seems to be an average -- an approximation of
20   the average of the column, yes.
21   Q. And Hispanic voters did the same with 87.7 percent
22   of the vote?
23   A. I can believe that is the average of that column,
24   yes.
25   Q. White voters, 26.3 percent of the vote?

1   A. Again, I am willing to accept that as the average.
2   Q. Applying Dr. Palmer's methodology, you don't
3   dispute those conclusions, right?
4   A. I do not.
5   Q. Let's turn to where your analysis departs from
6   Dr. Palmer's.
7   Now, there is a lot of technicalities here on
8   statistical analysis. So I want to run through your
9   disagreements quickly to make sure we are on the same page
10   here, okay?
11   A. Yes.
12   Q. So one dispute that you have with Dr. Palmer is
13   about the scope of his ecological inference, right?
14   A. Yes.
15   Q. Specifically, you contend that his ecological
16   inference should not have been confined to the precincts in
17   Congressional District 11?
18   A. Correct.
19   Q. Now, your second criticism is that Dr. Palmer
20   should have adjusted his ecological inference to include a
21   covariate to control for aggregation bias, right?
22   A. That is not the only way he could have adjusted for
23   aggregation bias. That is the way I did, yes.
24   Q. So your third criticism is that you noted some
25   counterintuitive trends in his voter turnout estimates,

1 right?
2   A. Yes.
3   Q. I want to take those one by one. We will start
4 with the scope issue, okay?
5   A. Sure.
6   Q. So you stated on direct-examination that his
7 decision to include only the precincts from Congressional
8 District 11 is contrary to best practices, right?
9   A. Correct.
10   Q. But you also state in your report that there is no
11 consensus about how much precinct data to include in
12 ecological inference to obtain the best results?
13   A. Definitely not, and I said that under oath in
14 multiple cases.
15   Q. And you also advised that too much data itself can
16 be a problem, right?
17   A. Too wide a scope can be problematic as well, yes.
18   Q. Because you might aggregate data from areas too
19 dissimilar in a way that might skew results?
20   A. That is correct.
21   Q. And, in fact, in your view, statewide ecological
22 inference is usually not advisable, right?
23   A. I avoid it in my research, yes.
24   Q. Now, you stated that in this case, both in your
25 report and on direct-examination that you believe the

1 appropriate scope for this case is the entirety of New York
2 City, right?
3   A. That is what I used to expand my scope, yes,
4 because a Metropolitan area is a meaningful community.
5   Q. A Metropolitan area is a meaningful community?
6   A. Yes.
7   Q. Are you aware that New York City is the single
8 largest Metropolitan area in the United States?
9   A. I am.
10   Q. Its population is around eight and a half million
11 people?
12   A. Okay.
13   Q. In fact, that is larger than most states in the
14 country, to your knowledge?
15   A. I appreciate that.
16   Q. Are you familiar with New York's boroughs?
17   A. Um, define familiar?
18   Q. Are you aware that New York City is divided into
19 various boroughs?
20   A. Yes.
21   Q. You have Manhattan?
22   A. Yes.
23   Q. Brooklyn?
24   A. Yes.
25   Q. Queens?

1   A. Yes.
2   Q. Staten Island?
3   A. Yes.
4   Q. In your report, you didn't consider whether New
5 York's boroughs might also be meaningful social constructs
6 for purposes of ecological inference?
7   A. No, I did not have time to play around with
8 multiple levels of scope.
9   Q. You didn't investigate whether differences in the
10 boroughs in New York City might introduce some of the
11 population variations that can skew results in ecological
12 inference, did you?
13   A. No, because I only tweaked Dr. Palmer's method one
14 way at a time. I did not try to both expand the scope and
15 the model aggregation bias.
16   The farther you get from what a different
17 research/analyst has done, the easier it becomes for them to
18 say, well, it is not because of X, it is because of Y. I
19 found that when you are judging someone else's work and
20 presenting the issues with it, it is cleaner to just do one
21 tweak at a time to show the effect of it.
22   Q. I would like to call up Table 6 on Page 21 of
23 Intervenor's Exhibit 3, Dr. Voss's technical report.
24   This is the Table 6 from your report, right?
25   A. Yes, it is.

1   Q. This is the citywide ecological inference that you
2 discussed on direct-examination?
3   A. Yes, it is.
4   Q. This uses the data I believe you said you obtained
5 from Dr. Trende?
6   A. Correct.
7   Q. And it includes all of the New York congressional
8 districts that comprise New York City, right?
9   A. Correct.
10   Q. Now, the data that you receive from counsel or
11 Dr. Trende included citizen voting age population and
12 returns for multiple recent elections, right?
13   A. It did, yes.
14   Q. But you only examined one contest, correct?
15   A. Mostly correct. I extracted some of the results
16 from a second one for Table 7, but as we discussed, the
17 risk of clerical errors is not small. I told them there
18 was no way by the deadline I could reproduce Table 6 for
19 other contests.
20   Q. So Table 6 reflects only the results of the 2022
21 Gubernatorial Election, right?
22   A. That is what I picked as the focal example, yes.
23   Q. And as you just stated, you focused on this
24 election in the interest of time?
25   A. The reason I focused was in the interest of time,

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1   yes.
2   Q.   In fact, you stated in your report it took you
3   12 hours to complete the ecological inference for this
4   election?
5   A.   Yes. To be clear though, I wasn't working 12 hours
6   on it. These things take a long time for the computer. So
7   you set it going, you go to sleep, you wake up, hope it is
8   done and has not crashed.
9   Q.   Your computer took 12 hours?
10   A.   The computer worked for 12 hours.
11   Q.   Counsel provided you with copy of Dr. Palmer's
12   reply report?
13   A.   Yes.
14   Q.   You reviewed it?
15   A.   Yes.
16   Q.   Did it surprise you to learn Dr. Palmer
17   successfully replicated this analysis in less than eight
18   minutes?
19   A.   Um, the speed of it surprised me, yes, but the fact
20   that he might have a better computer than I do did not
21   surprise me.
22   There are also adjustments. Somebody who
23   really knows these computers, adjustments one can make to
24   exploit the processors and the like to speed it up. I have
25   no idea if he did that. I do know that is possible.

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1   Q.   So if you had been able to exploit the processors
2   to speed up the ecological inference, we might have gotten
3   results from more elections than just the 2022 Gubernatorial
4   race?
5   A.   You still needed the step of producing the tables
6   but, yes.
7   Q.   Let's turn to the results from this table.
8   I would like to direct your attention to the line
9   for the totals for Congressional District 11, okay?
10   A.   Yes.
11   Q.   I think we can get the highlights in the total
12   column. I see there are a few columns under CD-11.
13   So your ecological inference estimates here that
14   95 percent of Black voters in the city voted as a block for
15   Governor Hochul, correct?
16   A.   Sorry. Would you repeat the question?
17   Q.   Your ecological inference estimate here found that
18   95 percent of voters in the city voted as a block for the
19   democratic candidate, Governor Hochul?
20   A.   96.2.
21   Q.   96.2?
22   A.   I'm sorry, are we talking New York City as a whole
23   or?
24   Q.   No, for Congressional District 11.
25   You stated on direct examination when you run the

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1   citywide inference you can narrow that down to estimates for
2   one congressional district, right?
3   A.   Sorry.
4   Q.   That is all right.
5   A.   Yes, only in CD-11 the precinct estimates suggest
6   that the Black vote was 95 percent for Hochul.
7   Q.   And 75 percent of the Hispanic vote went to
8   Governor Hochul as well, right?
9   A.   That is what it estimates, yes.
10   Q.   And only 20 percent of White voters in
11   Congressional District 11 under your estimate supported
12   Governor Hochul?
13   A.   Correct.
14   Q.   So in other words, 80 percent of White voters per
15   your estimates voted as a block against Governor Hochul?
16   A.   I believe that is correct, yes.
17   Q.   Thank you. We can take down that exhibit.
18   Now, I want to turn to your methodological disputes
19   with Dr. Palmer about aggregation bias, okay?
20   A.   Okay.
21   Q.   So you testified that Dr. Palmer did not adhere to
22   best practices with ecological inference research, right?
23   A.   Correct.
24   Q.   And that is because he used the simple model for
25   ecological inference, correct?

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1   A.   Correct.
2   Q.   And you stated that he should have, I believe the
3   word you used was tweaked his analysis to include a
4   covariant, right?
5   A.   No. I said that all I did to illustrate the
6   problem of not concerning aggregation bias was to tweak his
7   model. All I did was tell it you are allowed to notice
8   these contextual patterns and adjust the estimates based on
9   it. That is not at all what I would have done to properly
10   develop ecological inferences to take into account
11   aggregation bias.
12   Q.   Okay. So your testimony is that best practices
13   would have been to include multiple covariants, run the
14   models different ways using covariants, correct?
15   A.   Yes. I mean, it is unclear what I can tell you
16   about VoteHub, but they did something a lot more
17   sophisticated than what I did.
18   What that APSR article that we were talking
19   about did much more sophisticated than I did. I'm just
20   showing you -- I'm just showing you what happens when you
21   operate within most of the parameters which Dr. Palmer was
22   operating and you tweak the one thing.
23   Q.   All right, Dr. Palmer -- apologies, Dr. Voss.
24   We'll discuss the VoteHub results in a moment. I want to
25   focus back on what you describe as best practices, okay?

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1   A.   Yes.
2   Q.   In your report, you did not identify a single
3   redistricting case where any expert has relied on this
4   adjusted form of ecological inference to estimate
5   racially-polarized voting, do you?
6   A.   I assume you mean other than myself.
7   Q.   Other than yourself?
8   A.   No, I have not -- I'm not part of the consulting
9   industry. I did not good try to figure out what courts are
10   letting analysts get away with.
11   Q.   You are aware that the same lawyers who hired you
12   in this case also hired Dr. Sean Trende to offer opinions?
13   A.   I am.
14   MR. BRAUNSTEIN: Objection.
15   THE COURT: Sustained.
16   Next question.
17   Q.   Are you familiar with Dr. Trende's work?
18   A.   I'm familiar with his research.
19   Q.   Are you aware that Dr. Trende also performed
20   racially-polarized voting analysis in redistricting cases?
21   A.   Maybe vaguely. I don't pay attention to this
22   industry.
23   Q.   In compiling your report in this case, did you
24   identify a single case in which Dr. Trende has adjusted
25   ecological inference in the way that you described?

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1   A.   I have never read anything Dr. Trende has produced
2   for any case.
3   Q.   Are you familiar with Dr. Alford's work in the
4   redistricting space?
5   A.   I am not.
6   Q.   Were you able to identify any case Dr. Alford
7   adjusted ecological inference in the way you described?
8   A.   I did not try.
9   Q.   Now, it is your understanding that ecological
10   inference is not employed in the way that you described in
11   redistricting cases, isn't that right?
12   A.   I only have a sample of a few cases as you
13   established. I agree that what the experts did there was
14   similar to this and that they ran simple ecological
15   inference in bulk without any refinements based on the
16   circumstances of the election or the place or anything.
17   Q.   In fact, as we discussed earlier, you offered an
18   expert report in the case of Nairne v Landry, right?
19   A.   I did.
20   Q.   And you submitted that report in June of 2025?
21   A.   I will take your word for it.
22   Q.   And do you dispute that in that report you stated
23   that it is your understanding that consultant expert
24   witnesses on redistricting cases do not employ the method
25   that you discussed?

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1   A.   I did not dispute that before, and my position then
2   was consistent with what I just told you.
3   Q.   Now, you mentioned a couple of times a tool that
4   you did reference in your report of VoteHub's website,
5   right?
6   A.   Correct.
7   (Transcript continues on the next page.)

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1   CROSS-EXAMINATION
2   BY MS. WITTSTEIN:
3   Q.   And you stated that they ran an ecological inference
4   analysis on the 2024 presidential election?
5   A.   They did.
6   Q.   Now, VoteHub.com is a political media organization,
7   right?
8   A.   That's right.
9   Q.   You noted in your report that that tool has been
10   available for some time now?
11   A.   Okay.
12   Q.   Is that what you stated in your report?
13   A.   That sounds familiar.
14   Q.   And just to make sure the record is clear, that tool
15   has been available since September of 2025, correct?
16   A.   If -- if that is what you want me to stipulate, I don't
17   know.
18   Q.   You're not aware of how long VoteHub's tool has been
19   available?
20   A.   VoteHub, as a whole, has existed for a while. Not
21   off -- not off the top of my head do I know when they released
22   the specific analysis you're talking about.
23   Q.   I'd like to call up VoteHub's presidential precinct
24   map, demographics methodology page.
25   Do you recognize this as the page describing the

1 methodology that you reviewed in putting together your report?
2   A. It could be.
3   Q. Do you see the date in the top corner?
4   A. Yes. September.
5   Q. So when you stated in your report that this precinct
6 data has been available on their website for some time now,
7 September of 2025?
8   A. We've now quantified "some time."
9   MS. WITTSTEIN: We can take down the exhibit.
10   Q. Now, you also stated just now and on direct examination
11 that VoteHub's methodology sought to account for aggregation
12 bias in more sophisticated ways than you did in your report,
13 right?
14   A. Correct.
15   Q. But you have not analyzed that methodology in detail,
16 have you?
17   A. No, no. And my report was very clear on that. I was
18 merely using that for validation purposes, to see if their
19 results were similar to mine. I did not offer it as
20 authoritative. I was very clear that I did not know, if I
21 performed a more refined analysis, if I would end up agreeing
22 with them or not.
23   Q. And you acknowledge that their methodology might be
24 flawed, right?
25   A. Absolutely.

1   Q. I want to get some clarity on the numbers you're
2 providing. You did not generate authoritative estimates of
3 racial patterns within CD-11?
4   A. I see what you're saying. Yes, that is correct. I do
5 not think that my analysis is done. And as I said, I'm not
6 convinced, with the poor data for District 11, that an
7 authoritative ecological inference could be conducted.
8   Q. Well, if it can be conducted, you don't know whether
9 the covariant that you offered that you applied to tweak
10 Dr. Palmer's analysis produces the best estimate for racial
11 voting patterns in CD-11, right?
12   A. No. In fact, without going to outside sources, there's
13 nothing in the ecological inference software or output that can
14 tell you if you've gotten your estimates horribly wrong. This
15 is one reason why it's so hard to get ecological inferences
16 through peer review because scholars recognize that it's
17 dependent on the contextual knowledge, the knowledge of the
18 politics, the knowledge of -- of the place in order to correct
19 for the very high possibility -- very high probability that
20 naive application of ecological inference will send you very far
21 off.
22   Q. Now, to develop what you would have described as
23 authoritative estimates, you would have run your model multiple
24 different ways, right?
25   A. Yes.

1   Q. Now, as far as you know, VoteHub's methodology has not
2 been peer-reviewed, has it?
3   A. It has not.
4   Q. Or published in any reputable journal?
5   A. Not so far as I know.
6   Q. Are you aware of who authored the VoteHub methodology?
7   A. I mean, I know the name, but it doesn't mean anything
8 to me.
9   Q. You're not familiar with the author as a member
10 of -- or an established member of the scientific community?
11   A. I -- I know him as a participant in election Twitter is
12 about the extent to which I know that analyst.
13   Q. And are you familiar with that analyst as -- in
14 election Twitter as someone who graduated college just last May?
15   MR. BRAUNSTEIN: Objection. Asked and answered.
16   THE COURT: Overruled.
17   A. No, I did not investigate anything but read the
18 methodology and check the results.
19   Q. Okay. Now, despite your criticisms of Dr. Palmer, you
20 made very clear on direct examination that you did not do a
21 comprehensive assessment of racially polarized voting in
22 Congressional District 11, right?
23   A. I'm not offering opinions on the -- the legal side.
24 I'm providing numbers that would let others who have the legal
25 training I don't to make those judgments.

1   Q. You would have used different priors related to the
2 covariant?
3   A. Correct.
4   Q. But you did not do that analysis before submitting this
5 report, right?
6   A. No. These are just -- this is Dr. Palmer's methodology
7 with illustrative or demonstrative single changes in what he did
8 so that those of you who knows the law could see what happens.
9   Q. You have not done that analysis since submitting your
10 report, correct?
11   A. No.
12   Q. You were never retained to obtain authoritative
13 results?
14   A. No. I would have refused such a gig. That wasn't
15 going to be doable in such a short amount of time.
16   MS. WITTSTEIN: I would like to call up Table 4 on
17   page 14 of Intervenors' Exhibit 3.
18   Q. Dr. Voss, this is a table that's contained in your
19 report, correct?
20   A. Correct.
21   Q. It states a conclusion that Dr. Palmer likely
22 overstated RPV in Congressional District 11?
23   A. Yes, I believe that to be true.
24   Q. And it includes a line stating your estimate for voter
25 choice just in the 2024 election, right?

1   A. Yes, that's correct.
2   Q. So the estimates in this table, this is not an average
3 of your results across all the elections that you reviewed,
4 right?
5   A. That's correct.
6   Q. This is just the 2024 presidential?
7   A. Yes, because the purpose was to show where VoteHub fell
8 relative to those other three numbers, and they only did 2024.
9   Q. Dr. Voss, did you generate an average of the Hispanic
10 vote for all of the elections that you reviewed?
11   A. Not that I recall. If I did, it's not in my report.
12   Q. Do you have a basis to dispute that if you average out
13 those numbers, the estimate for the Hispanic vote is north of
14 70 percent?
15   A. No, that sounds right.
16   Q. Now, if you had worked your way to what you call the
17 best estimates you would have been able to with the data, you
18 have no way of knowing whether they would have been closer to
19 Dr. Palmer's or closer to VoteHub, right?
20   A. I -- I don't know whether I would have gotten close to
21 VoteHub, no. But the -- the analysis with covariants followed
22 indicators, diagnostics from ecological inference software
23 telling me that aggregation bias had been detected. So by the
24 time I had produced these results, I already know there's
25 something in the data that the naive model is missing.

1   Q. Well, if you had worked your way to the best estimates,
2 you don't know whether it would have showed cohesive voting
3 among Hispanic voters, do you?
4   A. How do you define "cohesive"?
5   Q. You don't know whether the vote estimate for Hispanic
6 voters would have been north of 70 percent, right?
7   A. I cannot say for certain, no.
8   Q. You can't say whether the estimate would have been
9 north of 75 percent?
10   A. It's getting much less likely, but no, I can't say for
11 certain.
12   Q. You don't know whether it could have been closer to
13 80 percent?
14   A. Really unlikely.
15   Q. Okay, Dr. Voss.
16   MS. WITTSTEIN: I'd like to call up Table 3 on
17   page 13 of Intervenors' Exhibit 3.
18   Q. Now, Dr. Voss, this table includes the results that you
19 did get when you ran Dr. Palmer's analysis with the tweak,
20 right?
21   A. Correct.
22   Q. And the table on top shows Dr. Palmer's ecological
23 inference results?
24   A. Correct.
25   Q. And the table on the bottom is those results with the

1 tweak?
2   A. Correct.
3   Q. Now, isn't it true that more than half of your
4 estimates were not outside of Dr. Palmer's confidence intervals?
5   A. That's right. It was close to 50-50.
6   Q. So put another way without the double negative, more
7 than half of your estimates applying a covariant fall within
8 Dr. Palmer's confidence intervals?
9   A. Half do, half don't, yes, roughly.
10   Q. Now, some of the disparities that you notice between
11 your results and Dr. Palmer's raise what you called a red flag,
12 right?
13   A. Yes.
14   Q. And it raised a red flag because you noticed that
15 groups were only trending down, but no group had a
16 correspondingly increased estimate in voter choice for the
17 Democratic candidate?
18   A. I did offer that as an example of the things I saw,
19 yes.
20   Q. Now, as you explained in your report, each group's
21 Democratic voting rate, when weighted by the size of the
22 electorate, needs to add up to the known vote totals for that
23 candidate, right?
24   A. Yes.
25   Q. Now, one thing that might explain the disparities

1 between yours and Dr. Palmer's results is differences in turnout
2 estimates, right?
3   A. Correct.
4   Q. And that's because the ecological inference model that
5 you run produces estimates both for voter choice and for voter
6 turnout, right?
7   A. Yes, that is correct.
8   Q. So if the total percentage of voters supporting a
9 candidate in a group goes down, but more people within that
10 group turned out to vote than originally estimated, that could
11 help explain the differences in the estimates you're seeing
12 here?
13   A. I'm really sorry. I need you to ask that again.
14   Q. You know what, let's move away from the abstract.
15   THE COURT: Okay.
16   Q. So you tried to make some sense of the mathematical
17 differences between your voter choice estimates and Dr. Palmer's
18 estimates, right?
19   A. Again, I don't -- I don't know what that question
20 means.
21   Q. You re-ran your verification of Dr. Palmer's work, but
22 with voter turnout kept in the mix?
23   A. So I could see what the results were, yes.
24   Q. And as you described on direct examination, you said
25 that analysis didn't make very much sense, right?

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1 A. Yes.
2 MS. WITTSTEIN: I'd like to call up Table 5 on
3 page 18 of Intervenors' Exhibit 3.
4 Q. So this table reflects the results that you described
5 in your report as not making sense?
6 A. Yes.
7 Q. Specifically, you highlight in your report that some
8 Black voters appeared to sit out the 2024 presidential contest
9 compared their participation in congressional elections?
10 A. Again, that was a small example, but yes.
11 Q. That was the example you cited in your report, right?
12 A. I said "for example." But yes.
13 Q. Now, these turnout results are reported in the bottom
14 three rows here, right?
15 A. I'm sorry, the 2024?
16 Q. 2024.
17 A. Yes. The bottom three rows are for 2024.
18 Q. So the example you highlighted in your report as not
19 making sense is that it was irregular that Black voter turnout
20 for US senate and congressional elections were about
21 1 percentage point higher than the turnout result for the 2024
22 presidential?
23 A. Yes. And to be clear, in Dr. Palmer's reply, he said,
24 "Well, these aren't really statistically different results
25 because when you look at the error in the estimate, they're

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1 electorate, practically, more often than not, than there
2 were African Americans in the electorate voting for president
3 more often than not --
4 (Whereupon, the court reporter seeks a
5 clarification.)
6 A. So even though a 41.8 and a 40.7 may not be
7 significantly different, such that someone would say, "Okay, I'm
8 confident now, more African Americans voted for senator than
9 president," still, when you're estimating vote choice among
10 those voters, you're going to have more African Americans in the
11 electorate for senator and, therefore, assume you've got more
12 Black votes to distribute than you would have for the
13 presidential result, more often than not.
14 So statistically insignificant errors are not
15 necessarily insignificant with the rest of the results that
16 you've produced.
17 Q. Dr. Voss, you also stated that it didn't make sense
18 that more Black voters appeared to vote in the 2022 elections
19 for senator and Congressional District 11 than for New York
20 attorney general and governor, right?
21 A. Yeah. Again, these are just some quirky results that
22 would make you want to keep refining the model.
23 Q. The quirk that you highlighted is that the difference
24 between these elections was between one and one and a half
25 percentage points in election turnout?

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1 statistically effectively the same." That's not wrong.
2 And the point was this was not an -- this was not final
3 evidence that the results were bad. It's just a red flag that
4 gets you to probe and try to refine your model.
5 So I agree with what he said. I mean, those are
6 effectively the same. But when you see something that doesn't
7 go in the direction you expect it to, it's -- it's just
8 something to keep checking, just as if VoteHub disagrees with
9 somebody, you don't stop there, it's just a little red flag to
10 keep checking.
11 Q. So just to be clear, you stated in your report that
12 Dr. Palmer's results did not make sense, right?
13 A. There were patterns that don't fit with what we know,
14 yeah.
15 Q. Patterns that you now agree are statistically
16 insignificant, in terms of the difference?
17 A. Yes. I don't dispute that.
18 Now, keep in mind, though, even though the differences
19 may not be statistically different, those differences are still
20 influencing what you're also estimating for vote choice. So
21 even though, looking at those differences, you can't say with
22 confidence that African Americans were less likely to vote for a
23 president than they were for a senator, when it then goes to
24 estimate how Blacks voted for president or senator, it's still
25 usually assuming that there are more African Americans in the

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1 A. Yes. And again, I'm not claiming that it's
2 statistically significant. It's just something to see if it
3 goes away as you refine the model.
4 Q. The other final point that you highlighted in your
5 report as a reason Dr. Palmer's turnout results didn't make
6 sense is that Black voters appear to participate in the 2021
7 public advocate race more than in the mayoral race?
8 A. That was another example of turnout being higher among
9 minority voters for lower ballot contests than for upper ballot
10 contests.
11 Q. A .7 percent difference, right?
12 A. Yes.
13 Q. And, again, you agree that that is statistically
14 insignificant?
15 A. That is correct.
16 Q. So after rerunning Dr. Palmer's ecological inference to
17 determine if his turnout results made sense, you did not do the
18 same for your own ecological inference with the tweak with the
19 covariant, right?
20 A. Well, at the time of my report, I had not.
21 Q. Have you done so since?
22 A. Yes, I have.
23 Q. You haven't supplemented your report to include those
24 turnout estimates?
25 A. No.

1   Q. Now, in your report you stated that those results were
2 likely to contain anomalies, right?
3   A. Yes.
4   Q. Did you find anomalies when you re-ran to estimate
5 voter turnout?
6   A. Yes. I'm -- I'm back to what I've said before. This
7 is not my analysis. This is not the analysis I would do. This
8 was Dr. Palmer's analysis with one setting changed.
9   Q. Well, this is the analysis that you're testifying to
10 here today, right?
11   A. It is what I'm testifying you get when you allow the
12 model to take into account aggregation bias.
13   Q. Were you present for Dr. Palmer's testimony -- I think
14 it was two days ago now?
15   A. I was.
16   Q. Did you hear that he also ran your ecological
17 inferences again with turnout estimates?
18   A. I did. And I heard him say that they were -- they
19 were -- they were -- I don't know his word choice -- wonky.
20   Q. Did you hear him testify that your EI model predicted
21 75 percent turnout among Hispanic voters in some elections?
22   A. I heard that reference, yes.
23   Q. To the extent of your knowledge, is that consistent
24 with national trends and polling that you stated that you
25 reviewed?

1   A. No, no. This is definitely not where I would end in an
2 ecological inference.
3   And as I've said, and I'll say again, with the data
4 we're using here, only from CD-11, only those precincts, with
5 the low level of information New York provides, I never would
6 have offered this as authoritative. I don't think an
7 authoritative analysis could be done with so little data.
8   Q. In fact, you even stated on your direct examination
9 that turnout estimates are typically lower among minorities in
10 areas that are heavily populated with White people?
11   A. Yes. And one anomaly of the turnout results for the
12 analysis with the covariants is that it's estimating a minority
13 turnout higher than Whites. Yet, again, that's the sort of
14 thing that if you're doing this properly, you would keep working
15 at.
16   Q. Now, did you hear Dr. Palmer testify that in the other
17 races category, your model estimated turnout north of
18 95 percent?
19   A. Yes.
20   Q. To the extent of your knowledge, is that consistent
21 with the sort of polling that you reviewed on national turnout
22 estimates?
23   A. I mean, "other" isn't a real category. But, yes, that
24 would have been a quirk that would have caused me to keep
25 working.

1   Q. All right. Dr. Palmer -- apologies. Dr. Voss -- it's
2 the second time I've done that.
3   I want to turn to the last subject that you discussed
4 with counsel on direct examination, which was your estimates of
5 voter cohesion in Districts 5, 8 and 9, okay?
6   MS. WITTSTEIN: And we can take down Table 5.
7   Q. So you -- you stated in your report that there is
8 racially polarized voting in Congressional Districts 5, 8, and
9 9, right?
10   A. I hope I didn't.
11   Q. Would it surprise you to learn that you did?
12   A. Yes. Because I was trying to avoid that language.
13   Q. I would like to direct your attention briefly to
14 page 20 of your report. Are you with me?
15   A. Yes.
16   Q. Second paragraph down, beginning with "Third."
17   A. Okay. Got you.
18   Q. And the third line begins, "Specifically, in the case
19 of this contest, we see racially polarized voting in
20 Congressional Districts 5, 6, 8, and 9."
21   A. Yes, I see I used that language.
22   Q. You did use the language --
23   A. I did.
24   Q. -- "racially polarized voting"?
25   A. I did.

1   Q. You would back off that here today?
2   A. Yeah. I was not meaning that in a legal sense.
3   Q. Okay, Dr. Voss.
4   Now, you would agree with me that a prerequisite to
5 finding racially polarized voting is that a racial group has a
6 clearly preferred candidate, right?
7   A. That is my understanding of the law, yes.
8   Q. And you would agree with me that cohesion in some
9 cases, as you've stated several times today, can be clearer in
10 some cases than others, right?
11   A. "Can be clearer"?
12   Q. Can be clearer.
13   A. Yes.
14   Q. For example, we can probably agree that 95 percent
15 cohesion among a group in support of a candidate represents
16 cohesive racial voting?
17   A. If -- if your definition of cohesion is how lopsided
18 their vote is, then, yes, you could have a vote that is more or
19 less lopsided.
20   Q. If we're defining cohesion in the sense of whether
21 voters of a particular racial group agree on a particular
22 candidate, 95 percent is pretty -- pretty close, right?
23   A. Yes, that is what I meant by "lopsided."
24   Q. Would you say that 51 percent of voters supporting the
25 same candidate represents cohesive voting?

1   A.   Again, that's a legal judgment. I have no opinion on
2   that.
3   Q.   Well, I would like to take a look at the numbers that
4   you reported in your analysis here. Okay?
5   MS. WITTSTEIN: I would like to call up Table 6 of
6   Dr. Voss's report.
7   Q.   Now, just to remind the Court, this table reports
8   ecological inference estimates for the 2022 gubernatorial
9   election only, right?
10   A.   Yes.
11   Q.   So in Congressional District 5 first, about 34 percent
12 of White voters supported Governor Hochul, right?
13   A.   Correct.
14   Q.   Meaning that only 66 percent of White voters supported
15 Governor Hochul's opponent in that election?
16   A.   I think this is mostly two parties -- I mean it's not
17 that I can't subtract, but with that caveat, yes.
18   Q.   And in Congressional District 8, only 6 -- only 60
19 percent of White voters supported the defeated Republican
20 candidate, right?
21   A.   If subtraction gives us that number, then yes.
22   Q.   And in Congressional District 9, only 62 percent of
23 White voters supported the Republican candidate?
24   A.   With the same caveat, yes.
25   Q.   Well, let's take a look at the additional analysis that

1   you ran. You noted that you ran results for another election in
2   Table 7, right?
3   A.   Correct.
4   Q.   And it was counsel that asked you to see if there was
5   racially polarized voting in this particular election?
6   A.   They expressed a particular interest in Districts 5, 8,
7   and 9. I did not know why; I didn't care.
8   They asked me if I had run the citywide analysis for
9   any other elections so that I can give them more information
10 about Districts 5, 8, and 9.
11   I said, "Well, I've run the presidential but I don't
12 think I'm going to be able to have a pretty table for you."
13   They said, "Well, will you just give us what you've got
14 for 5, 8, and 9?"
15   And so I added it -- I think transparent as it was, I
16 added it in case that was useful to others.
17   MS. WITTSTEIN: I'd like to call up Figure 7 on
18   page 21 of Intervenors' Exhibit 3.
19   Q.   So this table reports the results for the 2020
20 presidential election, right?
21   A.   Correct.
22   Q.   And this is using the same citywide data that you used
23 to produce Table 6?
24   A.   Correct.
25   Q.   And you stated in your report that you found similar

1   polarization in this election, right?
2   A.   Would you direct me to where I said "similar"?
3   Q.   We can go back to page 20 of your report.
4   A.   Mm-hmm.
5   Q.   Same paragraph.
6   A.   Okay.
7   Q.   It says, "Late in this process, I was asked whether
8   such polarization was appearing in other contests, especially
9   for 5, 8, and 9."
10   A.   Yes.
11   Q.   The answer is yes, it appeared in other contests?
12   A.   Yes.
13   Q.   Table 7 shows similar polarization in the 2020
14 presidential election?
15   A.   Yes.
16   Q.   Well, let's talk about those results here in Table 7.
17   A.   And -- and to be clear, "similar" is a vague word. At
18 this point all I mean by "polarization" is that, best guess,
19 White voters were supporting one candidate, Black and Hispanic
20 voters were supporting a different candidate.
21   Q.   Well, I would like to discuss the -- the degree of
22 polarization that you deem similar. The percentages listed here
23 reflect support for the Democratic candidate, right?
24   A.   That's correct.
25   Q.   And White voters in Districts 5, 8, and 9 in this

1   election were even less cohesive than in the 2022 gubernatorial
2   election, right?
3   A.   That is correct.
4   Q.   In Congressional District 5, only 55 percent of White
5   voters supported Donald Trump?
6   A.   That -- I'm almost certain that's correct, yes.
7   Q.   And in Congressional District 11 -- I'm sorry. In
8   Congressional District 8, it was only 51 percent that supported
9   President Trump?
10   A.   That is the best guess. With confidence intervals it
11 could be above or below 50, actually.
12   Q.   It might have been below 50 percent supported
13 President Trump?
14   A.   Could have been, yes.
15   Q.   And the same thing in Congressional District 9, only
16 about 54 percent of White voters supported President Trump?
17   A.   That is correct.
18   Q.   And this doesn't include confidence intervals either?
19   A.   The table doesn't have the confidence intervals. The
20 replication code I gave would have allowed Dr. Palmer to look at
21 the confidence intervals, but I did not get them into the table,
22 no.
23   Q.   You did not include the confidence intervals?
24   A.   I did not.
25   Q.   And it's possible that White support for the Republican

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1   candidate here was actually under 50 percent?
2   A. Yes.
3   MS. WITTSTEIN: Thank you.
4   I pass the witness.
5   THE COURT: Redirect?
6   MR. BRAUNSTEIN: Could we have one moment,
7   Your Honor?
8   THE COURT: Yes. You know what, everybody stay in
9   place. I'll be right back.
10   (A recess is taken.)
11   MR. BRAUNSTEIN: Your Honor, we have nothing
12   further for Dr. Voss. Sorry.
13   THE COURT: Thank you for your testimony. Safe
14   travels home.
15   Please watch your step on the way down, it's
16   multiple steps.
17   (Witness excused.)
18   THE COURT: Do you want to call the next witness?
19   MR. BUCKEY: Good morning, Your Honor.
20   Christopher Buckey on behalf of the respondents.
21   We would like to call Dr. John Alford.
22   THE COURT: Bring up the witness and administer the
23   oath.
24   THE COURT OFFICER: Raise your right hand. Do you
25   swear or affirm to tell the truth, the whole truth, and

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1   nothing but the truth?
2   THE WITNESS: I do.
3   THE COURT OFFICER: Thank you. Please have a seat.
4   For the record, please state your full name and
5   address.
6   THE WITNESS: My name is John Alford, A-l-f-o-r-d.
7   And I live at 14827 Heather Valley Way, in Houston, Texas.
8   J O H N   A L F O R D,
9   having been first duly sworn/affirmed by the Court Officer, took
10   the stand and testified as follows:
11   DIRECT EXAMINATION
12   BY MR. BUCKEY:
13   Q. Dr. Alford, good morning.
14   A. Good morning.
15   Q. Could you just tell the Court briefly what your current
16   professional position is?
17   A. I'm a full professor of political science at
18   Rice University. My specialty is American politics, voting
19   behavior, elections, and the statistical methods.
20   Q. Thank you.
21   MR. BUCKEY: And, Your Honor, again, in the
22   interest of the brevity for today, I'm not going to go into
23   Dr. Alford's otherwise very impressive qualifications, and
24   would offer him now as an expert in both voter dilution and
25   polarization.

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1   And since Dr. Alford has done a report, I would
2   also move that into evidence now. That's Respondents'
3   Exhibit 2, both requests are in accordance with the parties'
4   stipulation.
5   THE COURT: Without objection, both the witness is
6   accepted as an expert witness for the reasons just mentioned
7   and the report is admitted on -- by stipulation.
8   MR. BUCKEY: And we request that the clerk provide
9   a copy now of Dr. Alford's report to Dr. Alford.
10   (Handing.)
11   MR. BUCKEY: Thank you.
12   BY MR. BUCKEY:
13   Q. Just briefly, Dr. Alford, you have testified as an
14   expert witness in redistricting and voting rights litigation in
15   the past; is that right?
16   A. Yes. Over 40 years, well over 50 cases.
17   Q. And have you provided consultation to municipalities
18   regarding redistricting?
19   A. I have provided assistance to municipalities and school
20   boards. I have drawn districts for municipalities and school
21   boards -- I've assisted -- I've provided support to both
22   municipalities and school districts in drawing districts. And
23   I've assisted them in the Section 5 era in obtaining justice
24   department preclearance for those district plans.
25   Q. Okay. And for this particular matter, what materials

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1   did you use and rely upon in forming your opinions?
2   A. So here I'm working primarily with data disclosed by
3   and the reports provided by Dr. Palmer; the report of
4   Dr. Cooper; and then to a narrower extent, to some data from
5   Dave's Redistricting.
6   Q. Okay. And broadly, what questions were you asked to
7   analyze for this engagement?
8   A. Initially, was broadly to simply address the voter
9   polarization analysis that was provided by Dr. Palmer.
10   Q. And did you accept Dr. Palmer's methodology?
11   A. Yes.
12   Q. And did you use his data and his evaluations in forming
13   your conclusions?
14   A. Yes. So to be clear, when I say I accepted
15   Dr. Palmer's data, I performed a variety of checks on the data
16   that he provided disclosure, checked the analysis to see that I
17   could confirm his results. And when I was confident that the
18   data was appropriate and the results were accurate, I then
19   proceeded relying entirely on Dr. Palmer's results.
20   Q. Okay. And what did Dr. Palmer analyze?
21   A. He analyzed the voting behavior of various racial
22   groups in the existing Congressional District 11 and in the
23   illustrative District 11.
24   (Senior Court Reporter Karen Perlman was replaced
25   by Senior Court Reporter Monica Hahn.)

1   Q.   And how many elections was that, do you recall?
2   A.   Twenty elections for the existing district, 18 for
3   the I will active district.
4   Q.   Can we pull up Dr. Palmer's report, please.
5   Dr. Palmer, did you review CD-11's 2024
6   demographics?
7   A.   I'm Dr. Alford.
8   Q.   Excuse me. First time for me.
9   A.   I'm the older guy. Dr. Palmer is the young, virile
10   looking fellow. I'm the old gray-headed guy.
11   Q.   Let me rephrase.
12   Dr. Alford's, did you review CD-11 2024
13   demographics?
14   A.   Yes.
15   Q.   And that is in table one of your report that we're
16   showing now?
17   A.   Yes.
18   Q.   And where did you get this data?
19   A.   This was directly from Dr. Palmer's report and
20   disclosures.
21   Q.   What does this data show you?
22   A.   It shows me that given what is provided in the
23   table, that Black voters are voting cohesively. Hispanic
24   voters are voting cohesively. Asian voters probably not
25   cohesively, and White voters somewhat less cohesively than

1   Black voters, but also voting cohesively.
2   Q.   Does it show anything to you about the size of the
3   minority population in CD-11?
4   A.   No.
5   Q.   Dr. Alford's, did you also reviewed Dr. Palmer's
6   racial-polarized voting analysis in the illustrative plan?
7   A.   Yes.
8   Q.   And did you, in fact, compare the results from the
9   actual CD-11 to the illustrative plan?
10   A.   Yes.
11   Q.   Okay. And how did you do that?
12   A.   So the, basically provide again directly from
13   Dr. Palmer the comparable analysis for the, the territory of
14   illustrative 11, then comparing the average cohesion for
15   each of these groups. Not including in the case of actual
16   CD-11, the two congressional contests. So looking at the
17   18 elections that are common between the two geographies.
18   Looking at the average cohesion estimates for each of those.
19   Q.   Okay. What conclusions did you draw from doing
20   this comparison?
21   A.   There is -- it is certainly not the case that the
22   illustrative district encompasses more cohesive Black voting
23   population or a more cohesive Hispanic voting population.
24   In both cases, the point estimates are actually lower for
25   the groups in the illustrative district. That is in

1   contrast to the much more substantial difference for
2   non-Hispanic Whites and Asian voters, both of which are
3   substantially more likely to vote democratic in the
4   illustrative district compared to the actual CD-11.
5   Q.   And within your analysis, did you see any change in
6   the total amount of minority voting shares in the
7   illustrative plan?
8   A.   No.
9   Q.   So in your opinion, Dr. Alford, is there a
10   practical implication of these comparisons when the court is
11   going to try to determine whether there is dilution that can
12   be remediated through this illustrative plan?
13   A.   I think there are two things you would look at when
14   you are trying to understand what the illustrative plan is
15   offering to the court.
16   One would be is the illustrative plan uniting
17   or perhaps reuniting a minority population that has been
18   divided by the lines that have been drawn. So that is a
19   fairly common notion of vote dilution with regard to
20   districting is that the district lines dilute minority
21   voting either by dividing minority population between
22   districts or by overcrowding, compacting minority population
23   into a single district.
24   That doesn't appear to be the issue here
25   because again you have minority population in the

1   illustrative district is not significantly different than
2   the minority population in the original district. And in
3   fact, the balance of population really doesn't shift at all.
4   You also might argue that you are looking for a
5   more politically cohesive minority population in drawing the
6   illustrative district. That is not the case here either.
7   So it is, it certainly indicates that the, that
8   the, what is being offered here is essentially the remedy,
9   sort of what is it that is being remedied. That seems to be
10   essentially a partisan issue related to the vote, not of
11   minority, of any of the minority groups that are at issue
12   here but rather the behavior of non-Hispanic White and
13   non-Hispanic Asian voters.
14   Q.   So you would agree with Dr. Palmer's conclusion
15   that the minority preferred candidate does better in the
16   illustrative plan?
17   A.   So the, what is different about, besides the
18   obvious geography that has been discussed at some length,
19   to me the, what is clear, politically different about the
20   plans is that both are, both suggest a competitive CD-11, a
21   rarity these days at congressional elections, a competitive
22   CD-11 in its existing form that leans republican to be
23   replaced by a competitive CD-11 that leans democratic.
24   Q.   Is that accomplished by swapping in democratic
25   leaning White voters from outside of the current CD-11?

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1   A.   Both more democratic leaning White voters,
2   non-Hispanic White voters and non-Hispanic Asian voters,
3   yes.
4   Q.   Dr. Alford, why is this partisan substitution, why
5   is that material to evaluating claims about
6   racially-polarized voting and overall district performance?
7   A.   I think for me, at least, I'm interested in as it
8   connects to the broader picture about the nature of the
9   polarization itself. So I believe polarization itself is,
10   reflects a very strong influence of partisanship. And I
11   think interestingly the dispute here, as I understand it
12   between the existing district and the illustrative district
13   also turns out to be essentially a partisan issue.
14   Q.   And in your analysis, Doctor, did you also consider
15   the race of the candidates in the elections that Dr. Palmer
16   examined?
17   A.   Yes. So if you look at Dr. Palmer table you can
18   see there are two things that aren't included there that I
19   think are useful to the, certainly to me as an analyst and
20   to the court, and that is the party affiliation of the
21   candidates as reflected on the ballot and the race or
22   ethnicity of the candidates. So that is an important
23   consideration. That is a very common consideration in these
24   kinds of cases.
25   Q.   That is in Table 4 of your report?

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1   A.   That's correct.
2   Q.   And you started to get into that on your prior
3   answer. Why is the race of the candidate relevant for the
4   court here?
5   A.   So it is relevant in a broad sense and relevant in
6   an analytical sense.
7   In the broad sense the race of candidate is
8   important. Its always been important in these cases. It is
9   part of the totality of circumstances, the degree to which
10   members of the group --
11   MS. BRANCH: Objection, to the extent he is
12   testifying to what the law requires or what the law
13   says.
14   MR. BUCKEY: Your Honor, he has to apply the
15   law in his analysis. This is the standard that has been
16   given to him.
17   THE COURT: I will allow it.
18   A.   So again, I've been doing this for 40 years. I've
19   never been involved in a case where the race or ethnicity of
20   the candidates was irrelevant. It is in, I would say in
21   almost, by far the majority of the cases I was involved in.
22   In my early involvement it has been the essential element of
23   the vote dilution inquiry and it remains an important
24   element in my view. But there are players experts I have a
25   lot of respect for that will only look at racially-contested

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1   elections. Think the race of the candidates is so important
2   that they don't even analyze elections that aren't racially
3   contested. So I think racially-contested elections have
4   always been considered to be of some utility both within the
5   academic discipline and in the evidence that is, that I've
6   seen brought before the court. So I can, I continue to
7   consider it as I always have.
8   Q.   Okay. Thank you. Can we pull up Table 5.
9   Dr. Alford's, what does your Table 5 show?
10   A.   Sorry?
11   Q.   What does your Table 5 show?
12   A.   So Table 5 just looks again at another aspect of
13   this issue about the race of candidates and the degree to
14   which members of the minority group are elected to office.
15   It shows that the, in terms of the elections that are being
16   looked at here, it is, it is not the case that the election
17   of minority candidates to office is sort of deeply affected
18   by the contrast between CD-11 and the illustrative district.
19   Both in its current form and it's illustrative form the
20   district would be expected to elect minority candidates to
21   office.
22   Q.   Okay. So let's get back to this, to
23   Dr. Palmer's analysis and his assessment that the minority
24   preferred candidates performance improves in the
25   illustrative district. Again, in your opinion, is that

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1   accomplished primarily through altering the partisan
2   composition of CD-11?
3   A.   It is.
4   Q.   So to say it a different way, is it fair to say
5   petitioners, they didn't improve the performance in the
6   illustrative district by materially increasing the cohesion
7   of the minority voters or the amount of their votes share;
8   is that right?
9   A.   That is correct. The overall change in the
10   district is not a function of the combined cohesion and
11   numerosity of minorities. It is the result of, again, a
12   change in the composition of the non-Black, non-Hispanic
13   population.
14   Q.   Do you agree with Dr. Palmer that there is
15   polarization in CD-11?
16   A.   Yes.
17   Q.   And in your 40 years of experience has, is
18   polarization common?
19   A.   It is common, has been common, and I would say in
20   that 40 years is increasingly common.
21   Q.   So based solely on the data that is in
22   Dr. Palmer's report, do you have an opinion as to whether
23   the polarization he identifies in CD-11 is partisan?
24   A.   Yes. I think that is exactly what my Table 4
25   indicates. So that is -- my conclusion is that the

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1   empirical evidence from Dr. Palmer's analysis is that we --
2   the degree of partisan polarization matches the overall
3   degree of polarization in the district and, well, that is
4   what the data shows.
5   Q. And we'll talk about Dr. Palmer's reply, but you
6   did review that reply report?
7   A. Yes.
8   Q. Okay. Is there anything in his reply that rebuts
9   your opinion that there is partisan polarization in CD-11?
10   A. So he indicates that he believes that the evidence
11   of partisan polarization is not relevant or not important
12   which is a different assessment than saying he doesn't
13   believe in the analysis. He does not in any way challenge,
14   alter or provide other empirical evidence to suggest that my
15   analysis is in any way problematic. He just suggests that
16   it is irrelevant.
17   Q. So, again, operating solely based on the data in
18   Dr. Palmer's report, do you have an opinion as to whether
19   the polarization he identified in CD-11 is racial?
20   A. So from the evidence that we have and the -- it is
21   important to understand that the evidence we have is here
22   that I'm presenting is not by adding sort of new variables
23   or new models or new specifications. This is
24   Dr. Palmer's analysis. So what is it that
25   Dr. Palmer's analysis tells us when we take into account

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1   something that both we know and that typically the voters
2   know which is the party affiliation of the candidates is
3   indicated on the ballot, the race of the candidates. And
4   what we can see here is that the response of different
5   racial and ethnic groups in CD-11 to republican and
6   democratic candidates is very different. So overwhelmingly
7   democratic. Hispanics in this area vote substantially
8   democratic although less democratic than Black voters.
9   White non-Hispanic voters vote decidedly republican. Asian
10   voters are a much more mixed pattern.
11   So if we are talking about their voting
12   behavior relative to the party affiliation of candidates, it
13   is dramatically different by racial groups, which is what
14   some people would characterize as racially-polarized voting.
15   But I hesitate to use that terminology because I think the
16   implication of that is broader than what the data shows.
17   It leaves out the fact that that is relative to
18   the party of the candidates. So in my table we can see that
19   when we look at the issue of the race of the candidates, is
20   the same thing true? Do the voters respond in very
21   different ways. Are Black voters much more likely to
22   support, for example, a Black democratic candidate then a
23   White democratic candidate. The answer is, no. Blacks
24   overwhelmingly support Black democratic candidates. They
25   overwhelmingly almost exactly the same percentage support

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1   White democratic candidates when you go through the racial
2   groups.
3   So the issue of are the groups, are these
4   groups polarized with regard to their willingness to support
5   candidates of different races, the answer is there is no
6   evidence of that here. I'm not saying that it is not a
7   possibility somewhere. I'm just saying what is the evidence
8   before the court about voting in CD-11 and illustrative
9   CD-11. And in those districts, evidence from Dr. Palmer
10   that is before the court is very clear. Those voters are
11   polarized with regard to the, their partisan preferences,
12   but they are not polarized with regard to their preferences
13   for the race of a candidate.
14   Q. Thank you.
15   Can we pull up Dr. Palmer's reply, please?
16   MR. BUCKEY: Your Honor, can I give a copy of
17   Dr. Palmer's reply to the witness?
18   THE COURT: You may.
19   MR. BUCKEY: Appreciate it.
20   THE COURT: Thank you so much.
21   (Whereupon, the document is handed to the
22   witness.)
23   THE WITNESS: Thank you.
24   THE COURT OFFICER: You're welcome.
25   Q. Dr. Alford, you've been handed Dr. Palmer's reply

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1   report?
2   A. Yes.
3   Q. In Paragraphs 3 and 4 he addresses your report, do
4   you see that?
5   A. Yes.
6   Q. And first of all, again, does Dr. Palmer dispute in
7   any way your opinion that there is partisan polarization in
8   CD-11?
9   A. No. Again, he does not consider it to be
10   particularly important, but he doesn't dispute that that is
11   what his data illustrates.
12   Q. Dr. Palmer says the fact that there is partisan
13   polarization does not cancel out or supersede racially
14   polarized voting.
15   How would you respond to that?
16   A. So we have without, again, going out into some
17   extensive multivariant modelling or talking to voters
18   directly, within the sort of data traditionally presented
19   here exactly what Dr. Palmer presented, we have the
20   opportunity to examine a prominent queue for voters. The
21   party of candidates and the race, and when we do that
22   analysis it does show something that I think is unsurprising
23   which is voters are happily partisan in partisan elections.
24   A very polarized period in American politics.
25   It also let's us see what the effect of the

1   queue of race is. And what we see here is that the evidence
2   Dr. Palmer has provided to the court does not provide
3   evidence that there is a response to the racial queue of the
4   race of the candidate. It is not the only racial queue out
5   there, the only way race might effect things. It is the
6   only one that we have with the data that has been provided
7   to the court.
8   I will say that, that this is, this fact is
9   not one that would, was -- is in any sense universal in my
10   experience with American voting. I grew up in the south in
11   the era of the voting rights act in the 60s and 70s. And
12   the idea, at that time, in the south or in my experience in
13   much of the north, that the race of a candidate was
14   irrelevant to the behavior of voters, either partisan or
15   non-partisan elections was, would be a foolish assumption.
16   The overwhelming majority of Americans in 1960
17   openly admitted in a survey to the gallop organization that
18   they would not support a Black candidate of their own party
19   for president. That proportion has disappeared so quickly
20   in the era of the Voting Rights Act that beginning, I think
21   the last time the gallop poll asked that question was in the
22   late 19 -- late 2019 because there simply was no meaningful
23   proportion of the American public that won't support a Black
24   candidate of their party.
25   THE COURT: Wouldn't you agree that the Voting

1   Rights Act of even 2019 is not the same as the Voting
2   Rights Act of 2026?
3   THE WITNESS: So --
4   MR. BUCKEY: The federal one, your Honor?
5   THE COURT: Federal.
6   THE WITNESS: In what sense? I want to make
7   sure --
8   THE COURT: There has been several Supreme
9   Court decisions that have addressed the act directly, so
10   the interpretation is different then, than it is now,
11   question?
12   THE WITNESS: I can answer that from a
13   political science --
14   THE COURT: That is what I want.
15   THE WITNESS: Better than I can say from say a
16   legal prospective. Your experience would be different
17   maybe than mine.
18   My view is, yes, that the politics, one of the
19   things that I personally believe the Voting Rights Act
20   is maybe the most successful piece of legislation in the
21   modern era of American government, which I mean since
22   1900. And there is lots of academic scholarship to show
23   that success, almost all focusing on the race of
24   candidate. Huge literature about what proportion of
25   school boards are Black before the Voting Rights Act.

1   The answer is virtually nothing. And now proportionate.
2   Proportionate state legislature are Black and Hispanic.
3   Now proportion to nothing.
4   What we've been able to track is the Voting
5   Rights Act, something unusual for social legislation,
6   profound impact exactly the thing that was so notable
7   which was the exclusion of minorities from American
8   political life at the elected level.
9   And one of the hopes of that from a social
10   science prospective is that once people saw that the
11   world didn't end when you had racial representation in
12   city counsel, when you have a Black mayor, when you have
13   a Black President, that that would then in some sense
14   take out some of the racial animus that was motivating
15   American politics.
16   Again, I think that question about, you know,
17   would you support Colin Powell for President.
18   Republicans would, democrats wouldn't. The fact that
19   the issue of race of candidates is now of much less
20   important to the public, both in public opinion surveys
21   and in at least some part of the country in this kind of
22   ecological inference analysis to me is an indication how
23   the Voting Rights Act succeeded. I don't think it is
24   necessarily the terminus of our attempt to eliminate
25   race in American politics, but I think it is really

1   important to acknowledge that it has happened and that
2   is, that that -- while there may be still some, it is
3   always some work to be done on moving forward, that it
4   is important to acknowledge we are in a different era.
5   That a finding, so recently a case in North Carolina,
6   when you said voting is racially polarized in North
7   Carolina in 1965 or 1975, it meant that, clear in the
8   discussion in the court, as well as, in public, it meant
9   that voters would not support, democratic voters would
10   not support Black democratic candidates -- they would
11   not support White, Black democratic candidates at the
12   same level. They would support White democratic
13   candidates. It was polarized in terms of that level
14   intensity. It no longer is.
15   THE COURT: Wait. Because that, every expert
16   leading up to you in this matter has equated the vote
17   concentrations of the minority voters and the trends
18   they do to the deep south, which I find to be somewhat
19   insulting, and a bit of a dog whistle for racism. And
20   so what I hear when I hear the deep south is that there
21   is still racism based on the testimony of the witnesses
22   here. And so bringing it back a little bit to the
23   context in the illustrative district that petitioners
24   put forth by their witness, is that going to be
25   enough -- I want to finish the thought properly.

1   Is that going to be enough of a percentage to
2   enable the Black and Latino voters to overcome that
3   persistent racism that everyone has inferred leading up
4   to you?
5   THE WITNESS: Two elements of that I want to be
6   really careful about. I want to address you. There is
7   a microphone over here.
8   When we talk about the persistent racism, I'm
9   not disputing the persistence of racism everywhere in
10 the world. I'm just trying to focus, if I can, on what
11 the empirical evidence provided to the court here tells
12 us about the role of race in the behavior of voters.
13   It tells us unequivocally that the party choice
14 of voters is influenced by the race. It also tells us
15 that the race or candidates is not influential. That is
16 important.
17   So we might suspect as an expert like
18 Dr. Palmer might suggest that maybe the partisanship
19 itself is somehow complicated and implicated with race.
20 That is a suggestion that might be, but it is not
21 empirical evidence for the court to evaluate in this
22 case.
23   What we have in Dr. Palmer's analysis that is
24 empirical evidence is that at least in the, in this
25 district in New York, the voters, both Black voters,

1   Hispanic voters, Asian and White voters are pretty much
2   indifferent to the race of candidates.
3   So what that leaves us with is a polarization
4   that is deeply partisan. It leaves us with a district
5   in which the minority population has not been diluted by
6   division or by packing, but rather just a district in
7   which the minority population votes democratic and the
8   district leans republican.
9   It maybe that that is a legitimate area for the
10 court to intervene. I don't want to get involved in
11 that. But I will say this, it opens up a different
12 vista for the Voting Rights Act relative to the courts
13 in the legislature than the one that I think was
14 envisioned in the Voting Rights Act politically as it
15 was passed in a bipartisan fashion.
16   This is fundamentally a case about
17 partisanship. Again, what I think is interesting about
18 our current state of political polarization is our party
19 polarization is so strong now that it has done something
20 I think that is miraculous which is actually now when we
21 look at voting behavior, what we see is extreme partisan
22 polarization. We don't see the effect of race. The
23 truth is republicans will vote, White republicans will
24 vote for a Black republican and Black democrats will
25 not, right. The race is just not as important right now

1   as that party queue for whatever that means.
2   Also, the disputes about this, I think this
3   case is a hallmark of that. The cases that are being
4   disputed under the Voting Rights Act are distinctly
5   about the current partisan disputes in the country. As
6   a political scientist, to me what this case is about,
7   this case is more about republican than my home state of
8   Texas at the legislature than it is about minorities in
9   Staten Island.
10   MS. BRANCH: Objection.
11   THE COURT: What is --
12   MS. BRANCH: This is outside the scope of his
13 report.
14   THE COURT: That is fine. I asked the
15 question. I appreciate it.
16   Your objection is noted.
17   One more question.
18   In the context of the state's constitution
19 where it cites that "district shall be drawn so that
20 based on the totality of the circumstances, racial or
21 minority language groups do not have less opportunity to
22 participate in the political process." In the context
23 of the illustrative district, does that give the
24 minority parties, regardless of what you just told me,
25 the opportunity to participate in the political process?

1   THE WITNESS: So I think my first response to
2   that is I would, I would try to think carefully about
3   whether minority democrats on Staten Island are, with
4   regard to their opportunity are differently situated
5   from Angelo democrats or Asian democrats. That is,
6   similarly situated democrats in the district that leans
7   republican are all in the same boat. Right similarly
8   situated republicans, Black republicans, Hispanic
9   republicans are better off in a district that leans
10 republican.
11   So the first thing is to be careful that we're
12 not talking about something here that disadvantages
13 minority democrats differently than it does White
14 democrats. And White democrats are very important to
15 this case, because that is the population that is being
16 moved around.
17   THE COURT: Right. We're talking about
18 Richmond County, Staten Island. Talking about Richmond
19 County not having enough of a population to create a
20 congressional district, forcing under the federal and
21 state constitution to go into another municipal district
22 to get that population, and so now the choice is where
23 are we going to get that population? We have a
24 district. Parties are bringing an action here, and the
25 question is, in their proposal, understanding the state

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1   constitution as requiring us to look at race, as well
2   as, political affiliation, and address it in the context
3   of allowing those of the minority groups we've described
4   here, the Black and brown populations, to participate,
5   and because of the dynamic in Richmond County the
6   question presented is, does the illustrative district
7   give them that opportunity?
8   So I hear what you are saying about your
9   rational for voter choice, but what I'm looking at is
10   purely from a racial prospective.
11   (Transcript continues on the next page.)
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1   Long Island.
2   THE COURT: So flip it back to where we were
3   talking about -- I'll let you continue in a second -- where
4   we were talking about partisanship and the polarization in
5   Districts 6, 7, 8? 7, 8, 9? and the diverse partisanship
6   there. Is that problematic?
7   THE WITNESS: It -- again, I have -- I have no
8   either political or legal sort of dog in this fight. I'm a
9   liberal democrat. I'm a great supporter of the Voting
10   Rights Act. And I'm often more often than not, for reasons
11   I understand now, employed primarily by Republicans. That's
12   why I deal with the facts as they are, and I think they're
13   interesting facts.
14   I -- I have trouble understanding how this -- this
15   particular situation differs from any of the -- of the what
16   are now a diminished number, but still a numerous number
17   of -- in every competitive district in New York and in the
18   United States that leans Republican, there -- there is a
19   minority population. That minority population is
20   sub-majority, but not insignificant, as is true with
21   Staten Island.
22   And it becomes a question of whether is it -- is it
23   the case that any minority population -- are there -- so
24   you're probably aware, recently Haredim have become recently
25   Republican voters, in particularly Trump -- sort of part of

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1   THE WITNESS: So the first part of your discussion
2   is really important. You're talking about Staten Island not
3   being populous enough to be a congressional district. But
4   suppose it were.
5   The logical congressional district to draw for
6   Staten Island, if it was the right size, is Staten Island.
7   But that district would, in fact, lean Republican, as least
8   that's my belief. So you would have exactly the same issue.
9   Would you need to go off of Staten Island in order
10   to find some Democrats simply because there is a minority
11   population on Staten Island? That is -- the issue here is
12   that --
13   THE COURT: But in regards to the people of color
14   is my question.
15   THE WITNESS: The illustrative plan doesn't seek to
16   add people of color to Staten Island, it seeks to add White
17   Democrats and -- and Asian Democrats to the mix of the
18   congressional district that includes Staten Island.
19   Again, it's an unusual case, not just because there
20   is not a majority-minority population in the illustrative
21   district, but because the illustrative district does not
22   seek to reunite like-minded minority voters, and, therefore,
23   let them participate. It seeks to do something else.
24   It's not apparent on the surface to me how this
25   differs at all from the two Republican districts you have on

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1   the Trump conversion. And Hassidic Jews are a recognized
2   minority group.
3   So if you have -- if you have a population of
4   Hassidic Jews that reaches 7, 8, 9 percent, as the Black
5   population does on Staten Island, do they have a right to be
6   put in a Republican district to get out of a Democratic
7   district? Because the district is going to dilute --
8   I'm -- there is -- I'm -- again, I have no disrespect for
9   what the Voting Rights Act has done, but I also recognize
10   there are limits of what it can do.
11   And it just seems to me that this -- as currently
12   written, this may be the point at which this just puts you
13   into a territory that is both so open-ended and so
14   hopelessly partisan that it really is --
15   THE COURT: Thank you.
16   Next question.
17   DIRECT EXAMINATION
18   BY MR. BUCKEY:
19   Q. Well, Dr. Alford, the Court has covered a portion of
20   the rest of your direct examination.
21   What I'd ask is -- you referenced when you were
22   discussing with Your Honor, you referenced the unusual nature of
23   this case. Can you just -- can you tell us, again, why you see
24   this case as being particularly unusual in your 40 years of
25   experience?

1   A.   Yeah, I -- I don't want to be repetitive, but I think
2   I've covered most of the other -- the acts that I haven't talked
3   about that I do find unusual is that the drawing of the
4   illustrative district begins with a -- with basically a partisan
5   gerrymander, that is, an instruction to the map drawer,
6   Mr. Cooper, to incorporate Lower Manhattan. And that's -- we
7   can see why. That's a Democratic area. So it what appears to
8   be a partisan gerrymander.
9   MS. BRANCH: Objection, Your Honor. That was not
10   the instruction given by counsel to Dr. Cooper. I think
11   that is a mischaracterization.
12   MR. BUCKEY: He -- Dr. Alford is entitled to form
13   an opinion based upon the facts here, and in his view. And
14   he's been very clear through his entire direct testimony
15   that this is a partisan engineering.
16   THE COURT: I'll allow it.
17   A.   I don't want to mischaracterize Mr. Cooper's testimony.
18   I understood him to say that the -- the decision to include
19   southern Manhattan was an instruction from his -- from
20   the -- from the people who hired him.
21   And then apparently almost all of what Dr. Cooper
22   actually did after accepting that was to spend a great deal of
23   time trying to effect a kind of racial gerrymander in which he
24   was extremely attentive --
25   MS. BRANCH: Objection. This is a legal

1   conclusion.
2   MR. BUCKEY: Can he finish his answer?
3   MS. BRANCH: He's testifying that something is a
4   racial gerrymander or partisan gerrymander. That is for the
5   Court to decide.
6   THE COURT: Sustained.
7   Next question, please.
8   MS. BRANCH: Thank you, Your Honor.
9   BY MR. BUCKEY:
10   Q.   You expressed some concern about the manner in which
11   Mr. Cooper drew the plan, I believe you were going to discuss,
12   with respect to Chinatown; is that right?
13   A.   Yes.
14   Q.   Okay. Can you explain why you found that part of this,
15   of his map drawing, to be unusual?
16   A.   So I'll say that in my experience, in listening to
17   cases like this and participating in them in courtrooms in
18   recent years, there's been an increasing question about whether
19   the illustrative districts are, in fact, racial gerrymanders,
20   possibly illegal gerrymanders.
21   I personally find that legal point deeply confusing. I
22   thought the whole idea of drawing the illustrative district was
23   to take race into account, draw a majority district. So I guess
24   I'm a little uncertain why courts sometimes think that having
25   done exactly what you're supposed to do in drawing illustrative

1   districts and using race that you have somehow run afoul of
2   something.
3   So I'm accustomed to having -- to listening to experts
4   who draw illustrative districts talk about the fact that they
5   weren't, you know, beyond just reaching 50 percent plus one,
6   they really weren't making narrow decisions about race.
7   And Mr. Cooper seemed to suggest that he was making
8   very narrow block-by-block, precinct-by-precinct decisions based
9   entirely on race or ethnicity of a group that's not a party in
10   the case.
11   I just -- again, I'm not saying that's right or wrong
12   or legal or illegal. I'm just saying it's very unusual.
13   Q.   Okay.
14   MR. BUCKEY: Thank you.
15   We pass the witness, Your Honor.
16   THE COURT: Okay. Thank you. Thank you so much,
17   Counsel, for letting me ask the questions.
18   Are you okay? Do you need a break?
19   THE WITNESS: No, no.
20   THE COURT: Okay. We'll press on until lunch.
21   CROSS-EXAMINATION
22   BY MS. BRANCH:
23   Q.   Aria Branch for the petitioners.
24   Good afternoon, Dr. Alford.
25   A.   Good afternoon.

1   Q.   My name is Aria Branch. I represent the petitioners in
2   this matter. It's nice to meet you.
3   I would like to start today with what I hope are a few
4   points of agreement.
5   You submitted one expert report in this case; is that
6   correct?
7   A.   That's correct.
8   Q.   And you respond primarily to Dr. Palmer's report,
9   correct?
10   A.   That's correct. I have a section that borrows some
11   information from Dr. Cooper's report, but both my task and my
12   report are largely responsive to Dr. Palmer.
13   Q.   And in terms of the scope of your analysis, you did not
14   analyze the compactness of the current Congressional
15   District 11?
16   A.   That's correct.
17   Q.   You did not analyze the compactness of the illustrative
18   District 11?
19   A.   That's correct.
20   Q.   You did not analyze communities of interest?
21   A.   That's correct.
22   Q.   You did not analyze contiguity?
23   A.   That's correct.
24   Q.   You didn't analyze the totality of the circumstances
25   factors in this case, correct?

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1   A.   With the exception of the -- of Senate Factor Two,
2 racially polarized voting, obviously that is the central point
3 of my report. But in terms of the other so-called totality
4 factors, no.
5   Q.   And you understand, Dr. Alford, that this is not a case
6 where Petitioners are asserting claims under the Federal Voting
7 Rights Act; is that correct?
8   A.   I understand that that's not the nature of the legal
9 claim, yes.
10   Q.   So when you just mentioned the senate factor, do you
11 understand that those apply to analysis conducted under the
12 Federal Voting Rights Act, correct?
13   A.   All I know is that I've heard discussion that they're
14 within the State Voting Rights Act, there is discussion of
15 totality of circumstances. So all I can tell you is how I would
16 characterize the area that I testified about, which is what I
17 would characterize as Senate Factor Two.
18   Q.   The focus of your report was on Dr. Palmer's racially
19 polarized voting analysis, correct?
20   A.   Yes.
21   Q.   And you would agree that the geographic focus of his
22 analysis was on Congressional District 11, right?
23   A.   Yes.
24   Q.   And in your report, you didn't critique the geographic
25 focus of his analysis, right?

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1   A.   That's correct.
2   Q.   I'd like to turn to talking about your methods. Both
3 you and Dr. Palmer utilized the statistical technique of
4 ecological inference, right?
5   A.   That's correct.
6   Q.   And if I refer to ecological inference as "EI," you'll
7 understand what I mean?
8   A.   Yes.
9   Q.   And you agree that EI is an appropriate methodology to
10 determine how racial groups vote; is that right?
11   A.   Yes, I do.
12   Q.   You reviewed Dr. Palmer's report in this case?
13   A.   Yes.
14   Q.   And you would agree that he is an expert on racially
15 polarized voting analysis?
16   A.   Yes, I would.
17   Q.   Let's turn to Dr. Palmer's opening report, which is
18 Petitioners' Exhibit 3, at Table 1, which is on page 10. And
19 this shows Dr. Palmer's EI estimates for the existing
20 Congressional District 11, correct?
21   A.   Did you say on page 10?
22   MR. BUCKEY: He doesn't have Dr. Palmer's report.
23   MS. BRANCH: We can give him a copy of that.
24   Do you have a copy?
25   Let me ask the court officer to please provide

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1   Dr. Alford with a copy of Dr. Palmer's opening report in
2   this matter, which has been admitted into evidence as
3   Petitioners' Exhibit 3.
4   (Handing.)
5   THE COURT: Thank you.
6   MS. BRANCH: Thank you.
7 BY MS. BRANCH:
8   Q.   If you could turn -- I think it is on page 10; is that
9 correct? And that is -- that Figure 3 shows Dr. Palmer's EI
10 estimates for the existing Congressional District 11, correct?
11   A.   Correct.
12   Q.   In your report, you don't raise any critiques; you
13 don't have any quarrel with Dr. Palmer's EI results as a
14 quantitative matter, do you?
15   A.   No.
16   Q.   Your colleague, Professor Randy Stevenson, was able to
17 easily replicate the result of Dr. Palmer's analysis?
18   A.   Yes.
19   Q.   And just to be clear, you did not personally run your
20 own ecological inference analysis for your report?
21   A.   For this, no.
22   Q.   Your colleague ran the EI for you?
23   A.   That's correct.
24   Q.   And the results that he got and that you analyze in
25 your report do not differ substantively from those reported from

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1 Dr. Palmer; is that right?
2   A.   That's correct.
3   Q.   There were no errors in Dr. Palmer's analysis that
4 would have impacted Dr. Palmer's conclusions?
5   A.   I can't say for certain there were no errors. But
6 there's -- the sort of fairly extensive data checks we do
7 revealed no errors.
8   Q.   So any errors that might have existed would not have
9 impacted his conclusions; is that correct?
10   A.   My conclusions -- I don't believe my conclusions will
11 be affected by any errors. But I -- again, I'm not able to
12 identify any errors, so I can't say that comprehensively.
13   Q.   And, in fact, you base some of the conclusions you drew
14 and came to in your report based on Dr. Palmer's EI results,
15 right?
16   A.   That's correct.
17   Q.   And I assume that you reviewed Dr. Voss's report in
18 this matter?
19   A.   I have seen Dr. Voss's report, yes.
20   Q.   And you were here when he testified earlier today; is
21 that correct?
22   A.   Yes.
23   Q.   So you're aware that Dr. Voss critiques Dr. Palmer for
24 not using certain variables in his analysis; is that right?
25   MR. BUCKEY: Objection. It's far beyond the scope

1   of the direct examination. We had no discussion whatsoever
2   of Dr. Voss.
3   THE COURT: Sustained.
4   Q. You wrote in your report that Dr. Palmer relies in this
5   case on the same implementation of ecological inference that you
6   have used; is that correct?
7   A. That's correct.
8   Q. And that implementation of ecological inference is
9   called EI R by C; is that correct?
10   A. That is correct.
11   Q. And in prior litigation, you have submitted expert
12   reports where you rely on that same type of ecological inference
13   analysis; is that correct?
14   A. That's correct.
15   Q. And I assume you stand by those reports?
16   A. I do.
17   MS. BRANCH: If we could pull up Table 2 of
18   Dr. Alford's report.
19   Q. Table 2 of your report reproduces Dr. Palmer's EI
20   estimates from his -- from his Table 1, and this is for the
21   existing congressional district, correct?
22   A. That's correct.
23   Q. As displayed in this table, Black voters gave an
24   average of 90.5 percent of their vote to their preferred
25   candidate; is that right?

1   A. That's correct.
2   Q. And Black voters prefer the Democratic candidate?
3   A. Uniformly.
4   Q. So you would agree that Black voters have voted
5   cohesively in support of the Democratic candidate, correct?
6   A. Very clearly.
7   Q. And Hispanic voters gave an average of 87.7 percent of
8   their vote to their preferred candidate, right?
9   A. That's what the table shows, yes.
10   Q. And Hispanic voters also prefer the Democratic
11   candidate, correct?
12   A. That's correct.
13   Q. So you would agree that Hispanic voters have voted
14   cohesively in favor of the Democratic voters?
15   A. That's what this table shows.
16   Q. And White voters give an average of 26.3 percent to
17   their -- to the Democratic candidate?
18   A. That's what the table shows.
19   Q. Stated in the inverse, this means that White voters are
20   voting, on average, at levels of approximately 73.7 percent for
21   the Republican candidate; is that right?
22   A. That would be correct.
23   Q. So you'd agree that that represents at least some level
24   of cohesion among White voters, right?
25   A. I agree. Cohesion is a spectrum or a continuous

1   variable. I don't think there is any question that when you get
2   to 90 percent, you're talking about cohesive behavior. I think
3   when you're splitting 25 -- when you get a quarter of the
4   population voting a different way, I think you can disagree
5   about exactly where that is, but I would say, you know,
6   three-quarters of White voters are voting in this case
7   Republican rather than Democratic.
8   Q. And so you would agree that White voters cohesively
9   oppose the Democratic candidate in CD-11 based on the estimate
10   we just discussed?
11   A. Yeah. And I try to say it's not as cohesive as Black
12   voting. And it also is -- quite frankly, it is almost certainly
13   an overestimate of Hispanic cohesion, so I like to be -- we know
14   less about that behavior than we know about Black behavior. But
15   this number suggests that Hispanics are voting pretty
16   high -- fairly high -- moderately high degree of cohesion for
17   Democratic candidates, as were Black voters were voting very
18   cohesively for Democratic candidates.
19   Q. So you would agree with me, based on the numbers we
20   just discussed, that different racial groups have different
21   levels of support for the two different parties in Congressional
22   District 11?
23   A. Yes. So when I -- when I say that the voting is
24   partisan -- when there is partisan polarization here, I mean
25   that there are partisan polarization in the sense that different

1   racial groups are voting very differently for the parties in
2   these -- in these partisan contests.
3   Q. So you don't characterize that as racial polarization,
4   you characterize that as partisan polarization?
5   A. My concern is that when you say "characterize it," it
6   is pretty much that how do we characterize this or how do we
7   speak about it? And while I understand that at least according
8   to your assertion, Voting Rights Act isn't the issue here,
9   there -- in litigation about the Federal Voting Rights Act there
10   are two areas where we talk about the difference in the way
11   racial groups vote. One is in the initial threshold inquiry and
12   then, later, in Senate Factor Two.
13   And Senate Factor Two talks about racially polarized
14   voting. But as I understand it, meaning that in a very broad
15   sense about the role of race in voting.
16   The test -- the threshold test that we deal with
17   earlier is -- has become commonly -- although it's actually a
18   test of cohesion among minority voters, and then block voting
19   among non-minority voters. It's also often labeled merely
20   racially polarized voting, even though those are two distinct
21   inquiries.
22   So I try to be careful about not using the same term
23   for those two things. These groups are voting very differently
24   with regard to party. And so you can say, well, these are
25   different racial groups, so that's racially polarized voting.

1   But then the question is what do we mean when we say "racially
2   polarized voting"?
3   Q.   You would agree with me that Black voters and White
4   voters in Congressional District 11 are voting differently; is
5   that right?
6   A.   In partisan contests, right. So all we have here is
7   partisan contests. In partisan general elections, where there
8   is a party on the ballot, they're voting very differently with
9   regard to their partisan choices.
10   Q.   And the same with respect to Hispanic voters and White
11   voters, you agree they're voting differently in partisan
12   elections?
13   A.   We have less certainty with Hispanic voters, and
14   they're less extreme, but I would say based on the data, I would
15   suspect that Hispanic and White voters are voting differently
16   with regard to the party candidates.
17   Q.   Now, there is certainly a strong correlation between
18   partisan affiliation and partisan voting patterns and race in
19   Congressional District 11; would you agree with that?
20   A.   A correlation between race and partisan voting
21   patterns, that would follow from what we just discussed.
22   Q.   Can we turn to Petitioners' Exhibit 4. This is
23   Dr. Palmer's rebuttal report which I think we need to hand up to
24   you.
25   THE COURT: I believe he still has it.

1   Q.   Do you have the -- you have the rebuttal report?
2   A.   I do.
3   Q.   Great.
4   Turning to page 1, in paragraph 4, Dr. Palmer says that
5   "race and party are fundamentally linked in American politics."
6   Do you see that?
7   A.   Well, again, if we mean that racial groups --
8   Q.   I just -- the question was do you see that on -- on the
9   screen, in the report? If you could just answer that question?
10   MR. BUCKEY: Do you have --
11   A.   It's a very broad statement and I'm not even sure
12   exactly what Dr. Palmer means by that.
13   Q.   My question was just if you -- if you see it and
14   I -- do you have Dr. Palmer's rebuttal report?
15   A.   I see that in Dr. Palmer's -- that sentence appears.
16   Q.   Okay. And would you agree that polarization can
17   reflect both race and politics?
18   A.   It can.
19   Q.   And you would agree with me that a voter's race can
20   influence their partisan affiliation then?
21   A.   It can. Again, I want to be careful about what we have
22   evidence of here, and what is in the realm of possibility. It's
23   in the realm of possibility. But what we see here doesn't
24   provide evidence of that.
25   Q.   You also mentioned on direct that you did an analysis

1   of the race of the candidates. And I would like to turn to
2   again to Petitioners' Exhibit 4, which is Dr. Palmer's rebuttal
3   report, on page 1, paragraph 5.
4   A.   Yes. And I -- I disagree with this.
5   Q.   So turning to paragraph 5, do you see the section
6   of -- of the report where it says that "racially polarized
7   voting can occur even when the Black and Hispanic preferred
8   candidate is White"? Do you see that?
9   A.   Yes.
10   Q.   And you disagree with that?
11   A.   I don't.
12   Q.   You agree with that?
13   A.   I do agree with that.
14   Q.   And the White -- and racially polarized voting can also
15   occur when the White preferred candidate is Black and Hispanic.
16   You agree with that -- Black or Hispanic, excuse me, you agree
17   with that?
18   A.   I agree that that can be true and that I also
19   agree -- I also will say there is evidence that can show whether
20   that is true or not, and that evidence hasn't been presented
21   here.
22   It's actually the sentence above that that I disagree
23   with.
24   Q.   Okay. Let's move on.
25   If we could pull up Table 5 of your report, which

1   appears on page 11 of your report. This is related to your
2   analysis of the race of the candidate.
3   And in this table, I believe you have reproduced
4   Dr. Palmer's EI results from his Table 1 -- I'm sorry. I'm
5   sorry. I meant to pull up Table 4 of your report. Excuse me.
6   And in Table 4, you have reproduced Dr. Palmer's EI
7   results. But you've organized the contest into six contests
8   where the Democratic candidate was Black, and 13 contests where
9   the Democratic candidate was White Hispanic -- non-Hispanic
10   White; is that correct?
11   A.   That's correct.
12   Q.   So the elections where the Democratic candidate was
13   Black, those are grouped in the top section of the table?
14   A.   That's correct, that's the upper panel.
15   Q.   And the elections where the Democratic candidate was
16   non-Hispanic White is grouped in the second section of the
17   table, correct?
18   A.   That's correct.
19   Q.   And this analysis is focused, it appears, exclusively
20   on the race of the Democratic candidate; is that correct?
21   A.   That's correct.
22   Q.   So it doesn't control for or consider the race or
23   ethnicity of the Republican candidate; is that right?
24   A.   That's correct.
25   Q.   So this analysis is not limited to racially contested

1   elections, right?
2   A. That's correct.
3   Q. Did you determine or consider the Republican candidates
4 or the race of the Republican candidates in preparing this
5 chart?
6   A. No.
7   Q. So, for example, in the 2020 presidential election,
8 which is listed in your chart, both major party candidates --
9 Donald Trump and Joe Biden -- they are white; is that correct?
10   A. That would be correct.
11   Q. And you would agree with me that a voter's choice
12 between two white candidates does not tell you anything about
13 whether that voter would have preferred to vote for a Black or
14 Hispanic major candidate for president had there been one on the
15 ballot; is that right?
16   A. Yes. So --
17   Q. Can you just answer that question?
18   A. I said yes.
19   Q. And it doesn't tell you whether the voter perhaps
20 strongly prefers White candidates; is that right?
21   A. I'm not sure in this instance what -- I'm really not
22 sure what you're asking, doesn't tell us --
23   Q. If a voter has the option to choose to vote between two
24 White major party candidates, that doesn't tell you anything
25 about whether the voter perhaps would strongly prefer White

1   candidates; is that right?
2   A. That's correct.
3   Q. Because the voter's only option in that contest is to
4 vote for a White candidate or not vote at all; is that correct?
5   A. That's correct.
6   Q. But you still included on your chart races where both
7 the two major parties were of the same race; is that right?
8   A. That's correct. So here -- I'm taking this
9 again -- this is -- this is what Dr. Palmer tells us, which is
10 he's focused exclusively on Democratic candidates, so I'm
11 taking -- in restructuring his table, I'm also focusing
12 exclusively on Democratic candidates.
13   Q. Dr. Alford, you're not a lawyer, correct?
14   A. I'm not a lawyer.
15   Q. You're not offering any legal conclusions or opinions
16 in this case; is that correct?
17   A. I try to do my best to be aware of the context in which
18 this information is useful in my profession as a teacher, and I
19 try to -- when -- whether I'm working with local government or
20 in a court, I try to be cognizant of the factual information
21 that is helpful and try to work in that direction. But I also
22 try not to become a lawyer just because it's a legal case, and I
23 always appreciate it when judges don't try to become
24 statisticians just because it's a statistical issue.
25   I think none of us are completely successful with that,

1   but I try to, the best I can, to stay in the realm of what is
2 the factual -- what is the empirical evidence at hand in the
3 case that has been provided that the Court can look at.
4   Q. So just to restate my question, you're not offering
5 legal conclusions in this case, right?
6   A. That's correct.
7   Q. And you are a political science professor, right?
8   A. Yes.
9   Q. And you included with your expert report your CV; is
10 that correct?
11   A. That's correct.
12   Q. And I reviewed your CV. As far as I can tell, you have
13 not done any academic work related to racially polarized voting;
14 is that right?
15   A. It's not an area that I do academic work.
16   Q. And you never published an article about EI
17 methodology?
18   A. It's not a methodology I use in my academic work.
19   Q. You're not an expert yourself in EI methodology?
20   A. I'm certainly competent to use it. I've used it, I
21 understand it, but I don't use it in my own work and I don't
22 consider myself to be among the people who are -- like say
23 Dr. Voss working with Dr. King, who are sort of experts in that
24 area of methodology because it's -- quite frankly, it's not by
25 any sense a prominent methodology in political science.

1   Q. You have -- you testified on direct that you've been
2 doing this type of work for over 40 years and you've offered
3 reports and testified in a significant number of redistricting
4 cases, right?
5   A. Correct.
6   Q. And in almost all of those cases you have opined on
7 racially polarized voting?
8   A. Yes, I would say that's correct.
9   Q. And in at least some of those cases, you have offered
10 the same opinion that you offer in this case, which is the
11 differences in voting between racial groups are the result of
12 partisan rather than racial polarization, yes?
13   A. That's correct.
14   Q. Is it fair to say, Dr. Alford, that in several recent
15 cases, courts have not adopted your conclusion?
16   A. I would say in recent cases, some courts have valued
17 and endorsed my opinions, my methodology, and have utilized it.
18 In other cases, courts, I think, have taken a position similar
19 to Dr. Palmer's, that my work is not of any value to them in the
20 legal decision they need to make. That's a -- a legal -- I
21 respect that opinion.
22   If this is not important to the legal decision the
23 Court faces, then the Court should ignore it. But I don't think
24 that means that the Court shouldn't have that information.
25   (Senior Court Reporter Karen Perlman was replaced

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1   by Senior Court Reporter Monica Hahn.)
2   (Transcript continues on the following page.)
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1   Q.   You testified in Robinson v. Ardoin in Louisiana in
2   2022, correct?
3   A.   Correct.
4   Q.   That was a racial vote dilution in the context of
5   congressional redistricting?
6   A.   That's correct.
7   Q.   And you testified in that case that while voting
8   in Louisiana polarized between Black and White voters that
9   polarization was attributable to partisanship rather than
10   race; is that right?
11   A.   That's correct.
12   Q.   And that is quite similar to your opinion in this
13   case, right?
14   A.   That's correct.
15   Q.   And the court did not credit that opinion as
16   helpful, did it, Doctor?
17   A.   They did not.
18   Q.   Can we pull up a portion of the Robinson case. If
19   we can go to, I believe it is 75 of the PDF, and there this
20   is a from Robinson v. Ardoin, and there it says, "Dr. John
21   Alford testified as an expert for the defendants on
22   racially-polarized voting. He does not dispute that voting
23   in Louisiana is polarized as between Black and White voters.
24   Rather, it is his opinion that polarized voting in Louisiana
25   is attributable to partisanship, not race. The court does

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1   not credit his opinion as helpful, as it appears to answer a
2   question that Gingles II does not ask and in fact squarely
3   rejects, namely why Black voters in Louisiana are
4   politically cohesive."
5   Do you see that?
6   A.   Yes.
7   Q.   Have you changed your methodology since that
8   decision was issued?
9   A.   So I, again, I take some pride in this. I have not
10   changed my methodology. If I was changing my methodology
11   every time I found that a court was unhappy with the resolve
12   that would suggest I was something of a charlatan. So I do
13   exactly the same method, and I do that even knowing that
14   some courts find it irrelevant.
15   I would have to say in this particular context
16   that you are quoting here, I'm not sure I disagree at all
17   with the judge in the sense that is it relevant to know what
18   the source of Black-voter cohesion that Gingles II,
19   Black-voter cohesion is. I don't think I'm saying much of
20   anything about that at all. I think it is important from my
21   view, it is important for the court to understand what is
22   motivating or what is, what we can say is empirically
23   connected to the behavior of White voters that is Gingles
24   III. I think you start getting into what I'm talking about.
25   But also aware in multiple courts, including courts that

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1   found my work to be very helpful --
2   Q.   Okay. Let's talk about some --
3   MR. BUCKEY: Can we let the witness answer?
4   Objection, your Honor. The witness was not
5   done answering.
6   MR. MOSKOWITZ: I join in that objection.
7   THE COURT: Let's let him finish.
8   MS. BRANCH: Sure.
9   A.   So you are quite correct that the court is saying
10   that this is not relevant to Gingles. And in North Carolina
11   in a series of recent cases where the court endorsed and
12   relied on this exact same analysis that I have not changed
13   either between Louisiana and North Carolina or North
14   Carolina to New York, the court found it very helpful,
15   useful, incorporated in their opinion precisely because they
16   said the importance is to address, factor two, the totality
17   of the circumstances, and that it may not be helpful at all
18   to addressing the Gingles test. That is an area for lawyers
19   to deal with. I don't know where this matters in the
20   inquiry.
21   My belief is that it is important for the court
22   to be aware of it. I don't think in any way that the court
23   here is saying that either as a empirical matter or as a
24   legal matter that it makes no difference to the totality of
25   the circumstances.

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1   Q. You testified also in Georgia redistricting case in
2 2022; is that correct?
3   A. That's correct.
4   Q. Was that a Section II case?
5   A. Yes.
6   Q. Let's pull up that opinion from Alpha Phi Alpha
7 Fraternity v. Raffensperger. Go to Page 7 9 of that
8 opinion.
9   Do you see where it says, "Dr. Alford's was tasked
10 with responding to Dr. Palmer's expert report in providing
11 expert opinions about the nature of polarized voting in
12 Georgia. Dr. Alford assumed that Dr. Palmer's ecological
13 inference analysis of the existence of racially-polarized
14 voting was sound because he knows from his past work that
15 Dr. Palmer is competent in performing such analyses.
16 However, he raised concerns that Dr. Palmer's results were
17 more attributable to partisanship rather than race;" is that
18 right?
19   A. I accept your reading of it. I can't see any of it
20 from here, but I accept that you're reading it correctly.
21   Q. Okay. We can hand you a copy of the opinion.
22   A. That would be helpful. Thank you.
23   MS. BRANCH: If I could ask the court officer
24   to provide Dr. Alford with a copy of this opinion?
25   THE COURT: Thank you.

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1   (Handed to the witness.)
2   THE WITNESS: Thank you. What page should I be
3   on?
4   Q. I think it is Page 79 of the printout. It is also
5 on the screen that I just read.
6   A. Sorry. Did you say Page 7.
7   Q. 79. Maybe 64. I apologize. The printout, the
8 number pagination is off?
9   A. Okay.
10   Q. Do you see that section of the opinion?
11   A. Yes.
12   Q. And do you see immediately after that part of the
13 opinion the court says that it cannot credit your testimony;
14 is that right?
15   A. That is what they say.
16   Q. About halfway down that paragraph the court wrote,
17 "nor is there any evidence aside from Dr. Alford's
18 speculation that partisanship is the cause of racial
19 polarization identified by Dr. Palmer."
20   Is that what the court found from that part of the
21 opinion?
22   A. That is what the court found and that is incorrect.
23   Q. And I would like to go to the next paragraph which
24 is still on Page 12 of that opinion.
25   Here, the court notes that "other courts have

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1 discounted Dr. Alford's testimony for similar reasons," and
2 it provides a string cite of nine other cases supporting
3 that statement, do you see that?
4   A. Yes.
5   Q. You've also testified in redistricting cases in
6 New York; is that right?
7   A. That's correct.
8   Q. You testified in NAACP Spring Valley Branch v. East
9 Ramapo School District; is that correct?
10   A. That's correct.
11   Q. That was a case where plaintiff successfully proved
12 racial vote dilution in school Board of Education elections;
13 is that right?
14   A. That's correct.
15   Q. Let's pull up a portion of that opinion. I can
16 provide you with a copy of that.
17   (Handed to the witness.)
18   MS. BRANCH: Thank you.
19   THE WITNESS: Thank you.
20   Q. And in Paragraph 18 of that opinion there is the
21 section of the opinion where the court accounts your
22 credentials and on the last sentence of the paragraph it
23 states, quote, "your testimony while sincere did not reflect
24 current established scholarship and methods of analysis in
25 racially-polarized voting and voting estimates."

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1   Do you see that?
2   A. I'm getting to it.
3   Q. It is also on the screen if that is helpful.
4   A. Yes.
5   MS. BRANCH: No further questions. Thank you.
6   MR. BUCKEY: We are all set.
7   THE COURT: Okay. Thank you for your
8   testimony.
9   THE WITNESS: Thank you.
10   THE COURT: You may step down. Please be
11   careful of the steps on your way down.
12   (Whereupon, the witness steps off the stand.)
13   THE COURT: You want to break for lunch.
14   MR. TSEYTLIN: Your Honor, could we convene by
15   2:15 in case your Honor has questions for the last
16   witness? I've negotiated one hour, one hour. Some
17   chance we may have a good number of questions.
18   THE COURT: I think we're on track. I feel
19   confident we can complete before close of business
20   today.
21   So let's come back at two.
22   MR. TSEYTLIN: Great.
23   THE COURT: Open up, get started sharply as
24   soon as everybody is ready.
25   (Whereupon, there is a luncheon recess taken

1   and the case adjourned to 2:00 p.m.)
2   A F T E R N O O N S E S S I O N
3   THE COURT: Call the witness.
4   (Whereupon, the witness takes the stand.)
5   THE COURT OFFICER: Please remain standing.
6   Do you swear or affirm the testimony you are
7   about to give is the truth, the whole truth and nothing
8   but the truth?
9   THE WITNESS: I do.
10   J O S E P H B O R E L L I,
11   called by the Respondent, after being duly sworn, testified
12   as follows:
13   THE COURT OFFICER: Thank you. Have a seat.
14   For the record, please state your full name and
15   address.
16   THE WITNESS: Joseph Borelli. 291 Shirley
17   Avenue, Staten Island, New York 10312.
18   THE COURT: Good afternoon.
19   DIRECT EXAMINATION
20   BY MS. DIRAGO:
21   Q. Mr. Borelli, you stated your address. What borough
22   do you live in?
23   A. Staten Island.
24   Q. How long have you lived there?
25   A. Forty-three years and six months.

1   Q. Have you spent your entire career there?
2   A. Yep. Obviously, with the exception of college I
3   was a dorming student but, yes, the entirety of my career
4   was spent working on Staten Island for the people of Staten
5   Island.
6   Q. The court mentioned your elected position.
7   Can you go into detail about that?
8   A. Yep. In 2012, I was elected to serve the 62nd
9   Assembly District which comprises the lower half, southern
10   half of Staten Island, third roughly of Staten Island.
11   Then in 2015, I was elected to serve the City
12   Council in the 51st District which is the lower third of
13   Staten Island, as well.
14   Q. Are you also a professor anywhere?
15   A. Yes. I'm a lecturer at CUNY. Done that for
16   nearly 20 years. 2007 is the year I started. And I teach
17   courses on political science ranging from American
18   government politics to classes City Hall, Albany, that sort
19   of thing.
20   Q. So as you know you are here to testify about
21   Staten Island. Have you written any books about Staten
22   Island?
23   A. Yes. I wrote two. The first being a history of
24   Staten Island during the American Revolution, which was
25   notable time for Staten Island. The second was about

1   Staten Island in the 19th century.
2   Q. And can you talk a little about the process of your
3   research that you did for those books?
4   A. Yeah. For those I relied on primary documents
5   going back to the colonial records of Dutch New Amsterdam,
6   primary records of the American revolution. Obviously, as
7   you got forward toward the 19th century, newspaper sources
8   became more prevalent and more heavily relied upon.
9   In addition to that, there is a wealth of
10   literature on the history of not just New York City, but in
11   particular on Staten Island.
12   Q. Have you written anything else about Staten Island?
13   A. Yep. I write frequently op-ed's, editorials. I
14   also did my graduate research on the political history of
15   Staten Island in the later half of the 20th Century which is
16   significant for our purposes here. I've also written on
17   Staten Island secession, both politically and analytically
18   on different political topics that affect the borough.
19   MS. DIRAGO: Your Honor, at this time I would
20   like to tender Mr. Borelli as expert of the history
21   Staten Island and current conditions.
22   THE COURT: Any objection? It is stipulated
23   to.
24   MS. BRANCH: No objection.
25   THE COURT: Since there is no objection, you

1   can move forward.
2   Q. Have you been engaged as an expert, in this matter?
3   A. Yes, ma'am.
4   Q. And who retained you?
5   A. Troutman Pepper Locke.
6   Q. Are you being paid for your services?
7   A. I am.
8   Q. Does your payment depend at all on the outcome of
9   this case?
10   A. No.
11   Q. Does it depend on the opinions that you render for
12   this case?
13   A. No.
14   Q. Did you render a written report in connection with
15   this work?
16   A. I did.
17   MS. DIRAGO: I would like to introduce into
18   evidence your expert report.
19   THE COURT: Also without objection?
20   MR. LALLINGER: No objection.
21   THE COURT: Report is in evidence.
22   MS. DIRAGO: That is IRX02.
23   Q. Mr. Borelli, what were you retained to do by the
24   Intervenor Respondents, in the case?
25   A. Analyze the petitioners complaint, as well as,

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1   primary the report of Dr. Sugrue.
2   Q.   Did you look at the NYVRA totality of the
3   circumstances factors?
4   A.   Yes.
5   Q.   As part of your analysis, did you consider whether
6   Staten Island has more in common with Brooklyn than lower
7   Manhattan?
8   A.   I did.
9   Q.   Did you also provide a historical analysis of
10   Staten Island?
11   A.   I did.
12   Q.   Can you describe your process of research you did
13   for your report?
14   A.   Sure. Obviously, it relies on a great deal of
15   newspaper sources. It also relies on a great deal of
16   government data, both from the census sources, American
17   community survey, government publications through the city
18   and state governments. Certainly, a host of secondary
19   literature on the history of the region, New York. But
20   then also literature that discusses particularly Staten
21   Island.
22   Q.   Okay. Any particular literature that stood out to
23   you and that you relied on more than any others?
24   A.   Yeah, I think there is some great works written by
25   Professor Rich Flanagan and Dan Kramer. They wrote a

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1   political history of essentially the second half of the
2   20th century and how Staten Island basically developed as a
3   borough after the Verrazzano Bridge was built, which is kind
4   of a seminal, noteworthy the point in the history of Staten
5   Island.
6   Q.   Do you have any personal connection with them?
7   A.   Yep. Rich is my department chair and my advisor on
8   my graduate research. Dan Kramer before he passed away
9   actually gave me all the notes to that book, handwritten
10   notes while I was doing my graduate research. He was a
11   lovely man.
12   Q.   Did Dr. Sugrue rely on that resource, as well?
13   A.   He did. Not frequently. Not nearly enough. And I
14   think because it doesn't paint the picture of the -- it
15   doesn't paint the picture of Staten Island that I think he
16   was seeking to paint.
17   Q.   So I want to first -- if you can, please turn to
18   Page 3 of your report. I want to go through briefly the
19   summary of conclusions and then we'll take them one by one.
20   I know we are getting near to the end of the day on our last
21   day of trial. I'm going to try to speed things up. So like
22   I said, Page 3 lists your summary of conclusions.
23   Can you just summarize your first conclusion for
24   the court?
25   A.   I mean, basically that Staten Island's unique

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1   demographics and physical geography and its relationship to
2   the other four boroughs doesn't do a great job of connecting
3   the communities of interest anywhere but Brooklyn.
4   The other boroughs, specifically Manhattan have
5   little in common with Staten Island.
6   Q.   What about your second conclusion?
7   A.   He basically says that Staten Island's history is,
8   you know, full of racial appeals and full of segregation,
9   and he talks about Staten Island's history going back to
10   periods before the civil war. And I think he leaves out,
11   deliberately, a lot of context about the history of the
12   abolition movement, nationally and locally, and I think that
13   was deliberately done to paint a picture of Staten Island
14   that does not exist.
15   Q.   When you say he, referring to --
16   A.   Dr. Sugrue, yes.
17   Q.   What about your third conclusion?
18   A.   Yeah, his premise that blacks and Hispanics were
19   summarily excluded from participation in Staten Island
20   politics, I think he ignores the fact that a third of our
21   elected legislators are people of color. I think he ignores
22   the fact that our member of Congress, Nicole Malliotakis and
23   former assembly member is a very proud Hispanic person,
24   someone who touted throughout her career her Hispanic
25   heritage, and it, um, I think he ignored that purposefully.

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1   Q.   Okay. And your next conclusion, I think we are
2   onto the fourth conclusion?
3   A.   The points he made about issues that blacks and
4   Hispanics had with voting through literacy tests and
5   measures like that are not unique to Staten Island. He
6   presents it as unique to Staten Island. These are factors
7   and challenges that impact everyone of the states
8   congressional districts, everyone of the assembly districts.
9   I don't think he presents any justification or rational why
10   Staten Island uniquely is a, um, problematic for that
11   population when it comes to that, considering things like
12   literacy tests were banned 50 years ago.
13   Q.   Okay. Your next conclusion?
14   A.   Dr. Sugrue provides no support or evidence that
15   Blacks or Hispanics were -- excuse me, Hispanics were
16   ineligible to vote or had difficulty voting unique to Staten
17   Island.
18   Q.   And your sixth conclusion?
19   A.   That his examination of discrimination in things
20   like housing, disparate outcomes in income and education,
21   he failed to include the host of evidence that shows that in
22   many ways Staten Island is a better opportunity for people
23   of color to achieve educational outcomes that are favorable.
24   Certainly to achieve homeownership. He fails to actually
25   address any of that.

1   Q. Okay. And next?
2   A. Um, he fails to talk about in his one-sided history
3 of Staten Island any efforts to eradicate or challenge race
4 and racist ideas, discrimination, we have a rich history of
5 that fails to address any of that in terms of how he framed
6 the recent political history of Staten Island.
7   Q. Okay. Your next conclusion?
8   A. Discussion of racial appeals in political campaigns
9 is often taken out of context. It doesn't discuss several
10 races. It also has an unfair and a-historic description of
11 the secession movement. And in many ways it doesn't really
12 meet his own standard of what a racial appeal is.
13   Q. And finally what is your last conclusion?
14   A. That taken as a whole, essentially Dr. Sugrue did
15 not paint a picture that there is any unique circumstances
16 that would make Staten Island not a community of interest
17 with southern Brooklyn where it is, and that the southern
18 portion of Manhattan, lower Manhattan would serve the
19 population better.
20   Q. Okay. Great. In the interest of time, I'll take
21 the factors a little out of order. We'll start with the
22 last one.
23   There has been a lot of discussion during this
24 trial about the similarities and differences between Staten
25 Island and the lower part of Manhattan, and then the

1 Brooklyn communities.
2   So are you familiar with the real estate pattern of
3 people who move to Staten Island?
4   A. Yes, and I included that, a little portion of that
5 in my report.
6   Now, it is not fair to say that everyone who
7 moves out of Brooklyn moves to Staten Island. But just
8 about every single person who moves to Staten Island not
9 only moves from Brooklyn, but moves from the specific
10 neighborhoods in Brooklyn that are currently represented by
11 New York -- and I pointed that out in my report, came from
12 a real estate survey, and it showed that 92 percent of home
13 buyers that weren't Staten Islanders already came from
14 Brooklyn. This is long established pattern. I included
15 some notations of articles in New York Times and other
16 publications talk about migratory pattern that happened in
17 the 80's and 90's. My parents were part of this migratory
18 pattern. They were like third generation Italian home
19 owners. Their grandparents didn't own a house so they were
20 the first homeowners and they bought property on Staten
21 Island in the late 1970's and we've seen that pattern stay
22 the same regardless of what ethnic community actually
23 occupies that portion of southern Brooklyn.
24   So now in this portion of southern Brooklyn
25 your Arab population, you have Chinese, you have Jewish, you

1 have Russian speakers and these are the people who are now
2 primarily buying homes in Staten Island. I say this
3 anetodermally. I get a knock on my door all the time from
4 people, real estate brokers who portend to be able to broker
5 buyers from communities that I may not have access because
6 of language barriers and things like that.
7   Q. What about lower Manhattan, who moves to lower
8 Manhattan?
9   A. In my experience, typically folks moving from other
10 parts of the country, if not other parts of the world. It
11 is more transitory population. It certainly mostly renters,
12 people who are renting homes, not necessarily plopping their
13 life savings on a house intending to live there a long
14 period of time. That is wonderful. That is a great part of
15 the fabric of New York. That is why many people come to the
16 city. It is not the same population as generational New
17 Yorkers who are plopping down their life savings on buying a
18 home.
19   Q. Can you talk about the homeownership rates Staten
20 Island and vis-a-vi Manhattan?
21   A. Yeah, I mean, if you refer in the report I give you
22 exact numbers but Staten Island homeownership rates are the
23 highest, double, more than double the rest of the city.
24   The majority of Staten Islanders do own their
25 own homes. This is unlike lower Manhattan where the

1 majority of residents in lower Manhattan are renters. It is
2 similar to the Brooklyn portions of New York 11 that exist
3 now where a majority of those folks are living in homes that
4 they own.
5   THE COURT: Do you think the homeowners in
6 Brooklyn like the homeowners in Staten Island commute
7 into lower Manhattan to work?
8   THE WITNESS: I'm glad you asked that. I did
9 have time to review the testimony of one of the previous
10 experts, and he made the case that there is some
11 similarity between lower Manhattan and Staten Island
12 because people from Staten Island, I think he said there
13 were 60,000 of them, I assume is the correct number,
14 that they commute to Manhattan. If that were the case
15 then the majority of the region would be a community of
16 interest with Manhattan.
17   I mean, our entire transportation network is a
18 spiderweb that all seeps into the two central business
19 districts of midtown and lower Manhattan. So that would
20 be the same as saying that, you know, Westchester County
21 is a community of interest in Manhattan. I don't know
22 the data, but I'm pretty sure the majority of people who
23 live in Westchester and commute to work are commuting to
24 Manhattan. So that makes us more similar to an adjacent
25 borough, the southern portion of an adjacent borough

1   where the majority of people who aren't working in their
2   immediate neighborhood are commuting into lower
3   Manhattan or midtown. That is different from the
4   majority of people that live in Manhattan who have you
5   shorter commutes and likely work in the borough.
6   THE COURT: You are using, I won't belabor it,
7   I know time is short, but if you are talking about, as
8   they've been described in the past these driveway
9   neighbors.
10   THE WITNESS: Yeah.
11   THE COURT: Um, being the community of interest
12   between Brooklyn and Staten Island, but they all work in
13   lower Manhattan, um, let's focus on the region rather
14   than compare it to Westchester, because I while I agree
15   with your premise, it is as they say apples to oranges
16   so to speak, because on Staten Island we don't have
17   enough to make a congressional district.
18   THE WITNESS: Sure.
19   THE COURT: We have to go somewhere, and the
20   question is where does the center of gravity take us to
21   do what is right for the people not only -- to have the
22   representation in Congress that serves them, so the
23   reason why I'm trying to get to what are we talking
24   about here is, how is that congressional member going to
25   help the community?

1   THE WITNESS: I'm glad you asked. I'm glad you
2   framed it that way, because it is too generic to say
3   that all commuter neighbors are the same.
4   New York 11, the Brooklyn portion and Staten
5   Island are extremely similar. The best way I can
6   illustrate that is by talking about the issues that
7   matter most in terms of peoples political frustrations
8   and anger with their government.
9   So I was the author of probably five or six
10   op-ed's about property tax reform. Property tax reform
11   is a tremendously important issue for people in these
12   driveway communities. And the person I co-authored not
13   just legislation on this top, on other real property
14   formula changes, but specifically on the property tax
15   formula was the democratic council member from Bay Ridge
16   Brooklyn and the democratic council member from sort of
17   Graves End and Bath Beach. Those were staunch allies
18   and had a very similar idea of what should be done to
19   address that. Probably had a similar way of framing
20   that in terms of how strong of an issue that was for
21   their constituents.
22   Same thing with congestion pricing and other
23   car issues. You have the member of the city council,
24   the state legislature from southern Brooklyn united in
25   their opposition to congestion pricing, which was a hot

1   topic recently.
2   Conversely, you have members of the state
3   legislature, city council, et cetera in Manhattan,
4   specifically lower Manhattan who talk about cars as to
5   use their quote, "breaking the car culture" that was
6   speaker Corey Johnson who was a Manhattan council
7   member. That was his big phrase phrase, we are going to
8   break the car culture. That is, you know, alien to
9   people on Staten Island and southern Brooklyn who rely
10   on their cars to get their kids to school, go the
11   grocery store, et cetera.
12   This is a such a disparate-issue set that are
13   the focus of legislatures from these two communities
14   that it is almost incredible to think that there would
15   be more similarity in the issues, the political issues
16   legislatively focus on between Staten Island and
17   Manhattan legislatures and Brooklyn and Manhattan
18   legislatures.
19   THE COURT: Members of Congress don't deal with
20   land use. That is your local legislators, and they have
21   their districts. And those can be compact and
22   contiguous within Richmond County.
23   Now we're talking about going outside. Let's
24   talk about the federal issues that have to be
25   considered, infrastructure, the port.

1   THE WITNESS: Yeah.
2   THE COURT: The funding of the ferry. So,
3   those types of federal aid, where is the community of
4   interest there?
5   (Transcript continues on the next page.)

1   THE WITNESS: So you get a good example. You
2   offered me an opportunity to give a good example. The
3   tolling on the Verrazzano Bridge has been the subject of a
4   lot of, you know, not just press releases but lawsuits,
5   federal laws, Congressman Guy Molinari, who was a
6   congressman from Staten Island who represented parts of
7   Staten Island and Brooklyn, he banned a certain formula of
8   tolling, basically making one-way tolling required so that
9   the cars wouldn't stack up and pollute the community.
10   And so I don't think it's fair to say that -- that
11   just because issues are locally based, they don't have
12   federal ramifications.
13   We had federal Representative Malliotakis who
14   joined lawsuits, if not initiated lawsuits, about congestion
15   pricing. Congestion pricing is a federal issue.
16   And, you know, the members of Congress, you know,
17   specifically Rep Goldman, Rep Nadler were all on the
18   opposite sides of the issues.
19   THE COURT: Thank you.
20   DIRECT EXAMINATION
21   BY MS. DIRAGO:
22   Q. So this kind of plays into what I was going to ask you
23   next. The zoning districts between Manhattan and Staten Island,
24   can you talk about the differences or similarities there?
25   A. Yes. So Lower Manhattan has the highest density FAR,

1   which is floor area ratio, it's how people -- it's how we say
2   how big and wide and -- footprint of buildings.
3   So not only does Lower Manhattan have some of the
4   highest-density zoning regulations in the city, but it has some
5   of the highest-density zoning regulations in the United States
6   of America.
7   I mean, it's remarkable, right? We have the tallest
8   building, The Freedom Tower. We have beautiful buildings
9   that -- you know, the Gehry building that was just built across
10   from City Hall. We have the Woolworth Tower -- the tourists
11   comes here for the skyscrapers.
12   The Woolworth Tower, it's a cathedral in the sky. You
13   got to look at it. If you ever want to see it -- I know it's
14   not pertinent to this, but I'm going off an a tangent.
15   The point is that people come here to see the
16   skyscrapers, and that is reflective in the policy, the zoning
17   policy.
18   Now, Staten Island, some of the higher-density areas,
19   of which there are very few are R-5, which the FAR is five or
20   six times less than the FAR in these C-6 districts that are in
21   Lower Manhattan. So it's -- it's not the same. These districts
22   are similar to the districts that are in south Brooklyn, in
23   southern Brooklyn, in Bay Ridge, Bensonhurst, Bath Beach. These
24   are all one- to three-family homes, what you call driveway
25   communities.

1   We call them driveway communities because the zoning
2   code requires parking spots because the policy acknowledges the
3   difference.
4   In fact, if you read the New York City Zoning Guide,
5   the layman's guide on the website, it even starts by saying
6   these high-density C-6, C-8 districts are zoned this way because
7   of the ability of people to get there with mass transit and they
8   don't need parking.
9   THE COURT: When we're drawing congressional lines,
10   we should care about council issues?
11   THE WITNESS: No, you should care about the
12   similarities and issues that affect the residents. People
13   in Manhattan have much different issues than people in
14   Staten Island. Those issues are much more similar to those
15   felt by folks in southern Brooklyn, and probably southern
16   Queens. There are other places in the city where it would
17   fit better.
18   THE COURT: Should we draw southern Queens into a
19   Staten Island district too?
20   THE WITNESS: I mean, it would theoretically make
21   more sense than this.
22   BY MS. DIRAGO:
23   Q. And let's talk about the ferry a little bit. Does the
24   ferry, the Staten Island Ferry, carry cars?
25   A. It doesn't.

1   Q. And does that have an impact on who comes from
2   Manhattan to Staten Island?
3   A. To some degree. It makes it a little bit more -- less
4   convenient for people, depending on where they live on
5   Staten Island.
6   Q. And what is the -- what's the difference between taking
7   the ferry to Manhattan versus the Verrazzano Bridge or the
8   express buses?
9   A. There's sort of a popular myth out there that the ferry
10   is free. And while the ferry itself is free, almost no one -- I
11   think the number is down to 1 or 2 percent of people walk on the
12   ferry and walk off. Very few people live within walking
13   distance of the Saint George Ferry Terminal. It's not -- it's
14   surrounded by parking lots, offices, and a railroad track.
15   If you don't take a one-seat ride on the ferry, you are
16   paying the MTA for that -- for that ride. Staten Islanders
17   swipe their MetroCard when they enter a bus, or when they leave
18   the Staten Island railroad station at Saint George. And then
19   there, they're oftentimes taking a third seat, whether it be a
20   subway or a bus. But they're usually taking a third-seat ride
21   from Whitehall Street to take either, you know, the A and C line
22   or the N -- whatever line they're taking.
23   So, for example, if I were to take public transit to
24   come here, it would be a four-seat ride because, like most
25   Staten Islanders, I don't live within walking distance -- unless

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1   I want to walk through the woods of a train station. So I would
2   drive to my park and ride, about a mile and a quarter, I would
3   park, I would take the Staten Island railroad, I would get off
4   of the Staten Island railroad, and take the Staten Island Ferry,
5   and then take, in this case, probably the N line to here.
6   Q. Okay. So just -- are you saying that if -- just
7   because Staten Islanders may go to Lower Manhattan by the ferry,
8   do they necessarily work there, in Lower Manhattan?
9   A. No. I mean, there's no reason to -- to indicate that
10 they specifically work in that part. I mean, there are two
11 major central business districts in New York, in Midtown and
12 Lower Manhattan.
13   You know, there is no data that I've seen -- I'm sure
14 it's available -- to say exactly where they work. I'm not sure
15 of that.
16   However, we also have to take into account that a lot
17 of Staten Islanders are municipal workers, cops, firemen
18 teachers. So many of them will work in particular precincts,
19 particular firehouses, schools that aren't necessarily in the
20 southern extreme of Manhattan Island.
21   Q. Okay.
22   A. And that's getting less every year. As more office
23 buildings in Lower Manhattan are converted into condos -- in
24 fact, Lower Manhattan leads the country in places that we can do
25 this because Lower Manhattan has an older building stock, where

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1   the buildings -- just like this building, has more windows.
2   1960s on, buildings are steel and glass, you can't really
3   partition them for condos. The older buildings in Lower
4   Manhattan, you can.
5   Q. I want to switch gears a tiny bit. Can you attest to
6   the religious differences between Manhattan and Staten Island?
7   A. Well, I mean -- excuse me. We're seeing -- similar to
8   the migratory pattern of people, we're seeing that there are
9   religious institutions that were prevalent in Brooklyn over the
10 past couple of years, we're seeing -- specifically mosques,
11 we're seeing mosques now become more prevalent on Staten Island.
12   And this is as a result of the different and diverse
13 people that are moving from that portion of Brooklyn. So we see
14 the fact that, you know, certain denominations of religions are
15 moving here, they're bringing their previous Brooklyn-based
16 religious institutions with them.
17   Q. I would like to talk a little bit more about the
18 demographics on Staten Island.
19   Did Dr. Sugrue's report discuss Asians on Staten Island
20 in his report?
21   A. It did not.
22   Q. And did that concern you?
23   A. It did. So Asians are -- after Hispanics and
24 Whites -- the third-largest population on Staten Island. They
25 are a -- a very vibrant part of Staten Island and they're

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1   located all over Staten Island. They're widely dispersed.
2   Their index of dissimilarity is 32 or 34. It's in the
3   report. And it shows that Staten Island is a welcoming and
4   thriving place for this population.
5   And it's not just Chinese people which are coming over
6   lately in larger numbers. There's been a historic Korean
7   population, and then moving into sort of Southeast and Southern
8   Asia, there's been significant Bangladeshi; Sri Lankan, we have
9   a great Michelin Sri Lankan restaurant for many years; India;
10 Pakistan; even moving further to the west, we have a large
11 growing Arab community. Again, directly related to families
12 moving into Bay Ridge, being priced out of Bay Ridge, and moving
13 to Staten Island.
14   Q. Actually, I would like to pull up the map on page 9 of
15 your report. And do you recognize this map?
16   A. Yes.
17   Q. What is this showing?
18   A. It is showing the percentage of Asian non-Hispanic by
19 census tract.
20   Q. And can you point out where is the Staten Island
21 Expressway?
22   A. It is the white line. It's probably marked 278. I
23 can't see that -- yeah, 278. It's going from east to west or
24 west to east.
25   Q. And so can you tell me what you see there, vis-à-vis

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1   the white line or the Staten Island Expressway and the
2   disbursement [sic] of Asians?
3   A. Well, it confirms visibly what I said, that the Asian
4   population, which is the second-largest non-White group in
5   Staten Island is widely dispersed and is, you know, occupies
6   residences in every part of this borough.
7   Q. And I know you read Dr. Sugrue's report. Did you have
8   a -- did you have time to read his testimony when he testified?
9   A. I did.
10   Q. And I think you'll remember he referred to the
11 Staten Island Expressway as the Mason-Dixon Line?
12   A. Yes.
13   Q. What are your opinions on that?
14   A. That is patently offensive to use a term from the
15 Antebellum South to describe his idea of what Staten Island was.
16 I think it's offensive as a Staten Islander. I think it
17 belittles people. And I think it is undermined by the visual
18 evidence that is there.
19   Q. Does it ring true to you?
20   A. No. There's a wide variety of diversity. There is a
21 lot of flavors across Staten Island. And we see more and more.
22 You know, 30 years ago, 40 years ago, we were less diverse.
23 There is no secret; the data plays that out. But we're seeing
24 time and time again, as different groups move in, they're
25 spreading their -- they're spreading out their footprint across

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1   the borough.
2   Q.   So as someone who has lived and worked in
3   Staten Island, I think you said 40-something years, is
4   there -- I don't know -- two Staten Islands, an us and a them?
5   A north and a south?
6   A.   Yes, outside of the local high school football rivalry,
7   there isn't.
8   Q.   All right.
9   MS. DIRAGO: I would also like to pull up page 15.
10   Q.   There is a map on page 15 of your report. Do you
11 recognize this map?
12   A.   Yes.
13   Q.   And what is this showing?
14   A.   This is the non-Black/non-Hispanic population in
15 New York City.
16   Q.   Okay. And what are you showing here with respect to
17 Lower Manhattan?
18   A.   That the population of Blacks in Lower Manhattan is
19 negligible, it's nonexistent.
20   Q.   So the illustrative CD-11, is that trying to unite a
21 population on the north shore of Staten Island with Lower
22 Manhattan?
23   A.   Could you repeat that? I couldn't hear with the
24 coughing.
25   Q.   Yeah. So the illustrative -- the map that petitioners

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1   proposed using, is that uniting some kind of community of
2   interest between northern Staten Island and Lower Manhattan?
3   A.   No, and nor should it when the premise was that
4   increasing diversity of the district might make it easier for
5   people of color to participate electorally.
6   THE COURT: Could it?
7   THE WITNESS: I don't see how adding -- I don't see
8   how adding -- I don't see how taking the portion of
9   New York 10 that is the least diverse and replacing it with
10   the portion of New York 11 that is, by this map, more
11   diverse would somehow increase minority participation in
12   government. I don't think that's anything that -- I don't
13   think there could be any justification.
14   THE COURT: Based on the proposed as described
15   illustrative map, that's your opinion?
16   THE WITNESS: Correct.
17 BY MS. DIRAGO:
18   Q.   And let's pull up the map on --
19   THE WITNESS: I do have opinions on why it was
20   done, though.
21   THE COURT: Well, let's see if counsel will ask
22   those questions.
23 BY MS. DIRAGO:
24   Q.   Well, let's go first to the map on page 12, Figure 3?
25   A.   I don't have something on page 3.

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1   Q.   Well, this one, Figure 3?
2   A.   Oh, yeah.
3   Q.   I may have -- is it the wrong page?
4   A.   This was in the Sugrue report, I think.
5   Q.   I'm sorry. You're right. From Dr. Sugrue's report.
6   I'm so sorry.
7   A.   This is a map that was in our report, but Dr. Sugrue
8   responded to it.
9   Q.   So where can -- well, do you know what this map was
10 showing, first of all?
11   A.   It's showing the Latino population of Staten Island
12 over time.
13   Q.   And where can Latinos on Staten Island be found?
14   A.   Throughout the borough.
15   Q.   How many ZIP codes does the Island have?
16   A.   That's trivia. I don't know that answer.
17   Q.   Okay. Can Latinos be found in every one of those ZIP
18 codes?
19   A.   Latinos are found in every ZIP code but they are the
20 majority in none. Meaning that their -- their percentage of the
21 population is spread fairly evenly throughout the borough.
22   Q.   And so do Latinos live on both sides of the expressway
23 in Staten Island?
24   A.   Yes.
25   Q.   Now, we talked a little bit about Dr. Sugrue's

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1   testimony. And do you remember when he was talking about the
2   burnt-orange, the very dark orange area there, most prevalent on
3   the 2010 map?
4   A.   Yes, I do.
5   Q.   Can you tell us what that area is?
6   A.   Part of that area was formerly the Fresh Kills
7   Landfill, but I did read in Dr. Sugrue's testimony that he
8   believed that the rate of Hispanics in that community was high
9   because there were so few people.
10   Well, unfortunately, Dr. Sugrue, I live on the border
11 of that burnt-orange place. And -- one of the darker portions.
12 And I've lived there; my parents still own a house there. And
13 this was a community that -- that -- perhaps there isn't a
14 better one that illustrates this map in -- in -- in experience.
15   My neighborhood was built in the late '70s. It was
16 called Village Greens. It was thousands of units after the
17 Verrazzano Bridge was built. And it was primarily populated by
18 Italian and Jewish families. And my parents still live there.
19   So we see the neighborhood changing. It changes
20 ethnically. And it's become tremendously more diverse,
21 including Hispanics. We just sold my grandmother's house to a
22 Pakistani family who moved in a couple of years ago.
23   So this is really illustrative. Now, in that
24 burnt-orange point, which he says there's no one living there,
25 is the Town of Travis.

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1   The Town of Travis on Staten Island dates back to the
2   19th Century. It used to be called Linoleumville. So if you
3   have an old floor in your house, it was made in Linoleumville
4   probably in the 19th Century. But these are towns and
5   communities that have been there for thousands of years. It's
6   very populous; the population is still growing.
7   The school in Travis just had to be expanded because of
8   the growth that's happening. So it's not just because a few
9   Hispanics out of a small population live there. It's because
10   there's a thriving Hispanic population living there.
11   THE COURT: Despite the growth in this, have they
12   been able to, as a voting bloc, the way they vote, elect
13   their candidate of choice?
14   THE WITNESS: Yeah, I mean, I'll point out the
15   member of Congress is a Hispanic woman --
16   THE COURT: That's not my question. I know the
17   answer that you're giving me, but that's not my question.
18   My question is, as a Hispanic voting bloc, is
19   there -- by race, do they have the opportunity to
20   participate in the political process the same way other
21   racial members -- as you described earlier, the Asian
22   community, and how they are able to participate, so you say.
23   Does the Hispanic community here, based on your looking at
24   these maps that counsel is showing you, have enough
25   population to be able to participate actively in the

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1   political arena?
2   THE WITNESS: Yes, I think they do. And I base
3   that not being able to know who people vote for, obviously.
4   But we see a trend also in Staten Island that when people
5   move to Staten Island, they actually tend to vote and
6   register as registered Republicans. And that's in line with
7   a lot of the political choices Staten Islanders have made.
8   I think that's part of the reason why there is so
9   much sudden interest in changing New York 11 is that
10   regardless of who is moving into this borough, whether it be
11   Spanish people, or Pakistani people, there is a
12   likelihood -- and we see it in the registration data -- that
13   people are registering as Republicans. They're becoming
14   homeowners; they're becoming car drivers; they're becoming
15   property taxpayers.
16   The person I referenced who bought my grandparents'
17   house, a Pakistani family, he's an NYPD cop. He's, to my
18   knowledge, as conservative as anyone else who has moved into
19   that neighborhood.
20   MS. DIRAGO: Okay. And can you pull up page 16 of
21   Mr. Borelli's report.
22   BY MS. DIRAGO:
23   Q. What is this map showing, Mr. Borelli?
24   A. The Hispanic population of New York City by race.
25   Q. And can you talk a little bit about what it is showing

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1   especially vis-à-vis Lower Manhattan and the western part of
2   Brooklyn?
3   A. It's showing that this population that exists in the
4   areas encompassing New York 11 now are more diverse with respect
5   to the Hispanic population than the inclusion of the
6   illustrative map's portion of Lower Manhattan as proposed.
7   And so if the theory is that somehow changing this
8   district will empower Hispanics, I believe it would do the
9   opposite.
10   Again, you have two districts that are adjacent to each
11   other, New York 10 and New York 11. This is removing one of the
12   most diverse portions of New York 11, and replacing it with one
13   of the least diverse portions of New York 10. I mean, that to
14   me only reeks of partisanship and not any sort of social justice
15   reason.
16   THE COURT: What about in helping the Asian
17   community?
18   THE WITNESS: Well, I think -- I mean, the -- the
19   primary portion of the Asian community in Brooklyn is
20   located just outside of New York 11 and New York 10.
21   If New York 11 was extended into what's commonly
22   called the Brooklyn Chinatown, it would make more sense. In
23   fact, when the City Council redistricted itself three years
24   ago now, I appointed members to the panel, the focus was
25   actually in uniting that Chinese district into a Chinese

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1   dominant -- and we have it now. We have
2   Councilwoman Susan Zhuang who represents it now.
3   If the petitioners did the same thing, it would
4   make more sense, in terms of empowering minority voices than
5   the current proposed map.
6   BY MS. DIRAGO:
7   Q. Okay. I'd like to move on to racial appeals. And did
8   you analyze that factor for your report?
9   A. Yes.
10   Q. And I think it starts on page 52, if you need to
11   reference your report.
12   But the first question I want to ask is are racial
13   appeals common in elections in Staten Island?
14   A. No.
15   Q. And what was your research method for researching
16   of -- searching for racial appeals in Staten Island?
17   A. It was primarily using newspaper sources and search
18   queries, using the term "racism" and "racist" and "issues," and
19   the purpose in doing that was to be methodical, objective, and
20   replicable.
21   And this same method was used in
22   Pierce v. North Carolina, a short time ago. And this method was
23   embraced by the judge there and preferred to the other method
24   offered.
25   And I -- I recognize that Dr. Sugrue made some

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1   criticisms of this. But his criticisms didn't amount to much
2   when he could have replicated the method that I used and came up
3   with a host of racial appeals that my method seemingly missed,
4   and yet that did not happen.
5   Q. And did Dr. Sugrue provide his research methods so that
6   you could replicate his methods?
7   A. I don't recall. I think he did. I don't recall.
8   Essentially, his method was to find issues and then to try to
9   put his own narrative together that made issues that were
10   perhaps out of context into racial appeals. And -- again, I
11   couldn't put my -- I can't put myself in the head of --
12   MR. LALLINGER: Object to the extent he's
13   speculating about Dr. Sugrue's motives.
14   THE COURT: Sustained.
15   MS. DIRAGO: We'll leave it there.
16   BY MS. DIRAGO:
17   Q. Let's talk about the results of your search. Did you
18   find any racial appeals in Staten Island?
19   A. Yes, there were two of them. One was a case -- both
20   instances I'm personally familiar with, having been involved in
21   politics.
22   One was a case where two Republican candidates were
23   running for Congress. One candidate made an issue that the
24   other candidate changed his name -- not legally, but changed his
25   name in advertising from Jamshad Wyne to Jim Wyne. And that's

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1   sort of the fact pattern of the case. The candidate basically
2   accused Dr. Wyne of trying to hide his Muslim identity during
3   that case.
4   Q. What year was that?
5   A. It was 2008. And so, I mean, Dr. Wyne made a very
6   strong case that this was against his race, and against his
7   religion, and that was his opinion. That -- that certainly was.
8   A little more context. Dr. Wyne was a very prominent
9   doctor with an office on Richmond Road, one of the primary
10   thoroughfares. You know, he was known to the community as
11   Dr. -- Dr. Jamshad Wyne. So it was a little odd that he did
12   change his name for the -- for the purposes of his political
13   campaign.
14   Q. And what was the other one that you found?
15   A. The other was a campaign between former
16   congressman -- Congressman Michael McMahon and Michael Grimm, in
17   which there was some photo taken or -- where -- or video taken
18   where there was a file marked "Jewish money" on a desk that was
19   controlled by Congressman McMahon.
20   There were -- like many campaigns do, they were
21   tracking different bundlers of money and they referred to it as
22   "Jewish money." And Michael Grimm called out his opponent for
23   doing that and made the case that it was an anti-Semitic
24   incident.
25   Q. And do you remember what year that was?

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1   A. 2010.
2   Q. In either of these elections, were the central issues
3   to the elections race or racial disparity or racism?
4   A. No. I mean, in 2008, it was a very interesting
5   election. The previous congressman had stepped down in scandal
6   and that was a big part of it.
7   In 2010 was the "Tea Party year." So the Tea Party
8   movement was taking shape and it was vocal. And Michael Grimm
9   ran as a Tea Party candidate against the incumbent Michael
10   McMahon, and he won. It was mostly national issues.
11   Q. When Dr. Sugrue testified, he referred to a specific ad
12   that I want to pull up. It's on page 50 of his report,
13   Figure 11. Have you seen this ad?
14   A. I have.
15   Q. Are you familiar with the circumstances, including who
16   created this ad?
17   A. Unfortunately, yes.
18   Q. Can you describe those circumstances?
19   A. So the perpetrator -- and I use that term because he
20   was convicted of various crimes relating to his false
21   impersonation of somebody I knew from Cub Scout Troop 5, if you
22   want to believe how long we go back.
23   He did not only make fake accounts for
24   Councilwoman Rose, who is obviously a Black woman, but he also
25   made fake accounts about candidates for office and judges on

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1   Staten Island who were not Black.
2   I mean, most notably a candidate named Janine Materna,
3   who ran for City Council on --
4   (Whereupon, the court reporter seeks a
5   clarification.)
6   A. I'm sorry. Janine Materna, M-a-t-e-r-n-a. And he also
7   did fake accounts and, you know, incendiary and defamatory posts
8   about Judge Judy McMahon, who was the administrative judge for
9   Staten Island.
10   Q. Does the -- does the ad represent Staten Island?
11   A. No. I mean, this was universally denounced.
12   Republican elected officials were witnesses in the case against
13   him. White elected officials were witnesses against the
14   case -- in the case against him.
15   So, you know, this is not something that reflects in
16   any way how Staten Island conducts politics. In fact, it's just
17   the opposite. It became newsworthy because it was so absurd and
18   the perpetrator was so bizarre that it was newsworthy for that
19   respect.
20   Q. Dr. Sugrue also discussed an ad that was targeting
21   Max Rose involving the Young Leaders and a march that they had.
22   Do you know what ad he was referencing?
23   A. Yes.
24   Q. And was this in -- in 2020?
25   A. Yes. 2020.

1   Q.   Can you describe the ad?

2   A.   So it's an ad that shows video of Max Rose at a

3   protest. And it is interspersed with scenes of urban

4   lawlessness, police cars on fire, you know, police -- protestor

5   interactions, violent interactions, general criminality

6   interspersed with protesters marching and rallying.

7   Q.   And Dr. Sugrue says there were racial overtones in

8   that. Was that the case? Is that your opinion?

9   A.   I can't speculate what he feels when he sees an ad.

10   But there's a lot of context that he's missing. All right?

11   He called that a march through New Dorp. That was not

12   a march through New Dorp. That was a march specifically to the

13   122nd Precinct.

14   He wouldn't know that -- I don't think he has much

15   experience with the geography of Staten Island or the streets.

16   But the march was to the 122nd Police Precinct to protest the

17   police, to demand defunding the police. This was the summer of

18   2020.

19   Now, why is that significant in the context? Both

20   candidates in that race -- Max Rose, who is a friend of mine, a

21   dear friend of mine, wonderful rep, he sought the police union

22   endorsements. So did Nicole Malliotakis, right?

23   Police union endorsements are important because

24   Staten Island is home to a tremendous amount of police officers.

25   In fact, I believe the most union members of all five NYPD

1   unions are actually home -- living in Staten Island. So police

2   endorsements are very important.

3   Both candidates sought them. So it was very

4   significant that a person who was running as a pro-police

5   Democrat would somehow switch positions to now appear in "defund

6   the police" rallies.

7   So the ad was to create a wedge between Max Rose and

8   some of his moderate Democratic base. That's what political ad

9   makers do.

10   And the second thing was -- the second part of this was

11   this was part of a broader context in the summer of 2020 about

12   defund the police.

13   This was the summer of the George Floyd riots. Right?

14   And, you know, collaterally with -- with that, there were a

15   number of "defund the police" protests.

16   As you can imagine, as I just said, Staten Island is

17   home to a tremendous number of law enforcement officers. The

18   popularity of the "defund the police" movement was not very

19   strong on Staten Island.

20   This ad was, you know, just one of many ads that

21   focused on Max Rose's "defund the police" comments and -- and

22   participation at those rallies. And it mimics ads that were ran

23   all over the country against Democrats who have taken certain

24   positions against law enforcement or what was perceived as

25   against law enforcement.

1   "Defund the police" was one of the driving issues of

2   votes in the 2020 election cycle. And there is no reason why we

3   would assume Max Rose should be excluded from that, especially

4   when he showed up to an anti-police rally in the most

5   police-populated borough in the city.

6   The point is to win the election, not -- I think he

7   would tell you it was a mistake to go.

8   Q.   Okay. Let's switch. A related topic is hate crimes.

9   And this is one of the factors that you considered on

10   page 19 -- pages 19 to 29, whether there's a history of

11   discrimination in or affecting the political subdivision?

12   A.   Yeah. I mean, so my report has some statistics on hate

13   crimes that show that hate crimes have decreased on

14   Staten Island over the years.

15   I find it odd that Dr. Sugrue would sort of make the

16   case that there are racially motivated attacks, racial appeals

17   that are happening without utilizing the most robust hate crime

18   database that, to my knowledge, exists in the country.

19   The NYPD tracks hate crimes more so than any -- and

20   more specifically than any other department, to my knowledge, in

21   the country. They track by the race, gender, ethnicity of the

22   perpetrator, by the victim, the type of crime, et cetera. All

23   of this stuff is available publicly.

24   But if you're making a case that Staten Island was

25   this -- this racist bastion that I believe he makes it out to

1   be --

2   MR. LALLINGER: Objection. Objection, Your Honor.

3   Speculating again. Mischaracterizing the testimony.

4   THE COURT: Sustained.

5   Next question.

6   BY MS. DIRAGO:

7   Q.   So how does Staten Island hate crimes occurrence

8   compared to the rest of New York City?

9   A.   This is why I think the statistics were ignored.

10   Staten Island's hate crimes over the last five years --

11   MR. LALLINGER: Objection, again, to

12   mischaracterizing his testimony and speculating about his

13   motives.

14   (Senior Court Reporter Karen Perlman was replaced

15   by Senior Court Reporter Monica Hahn.)

16   (Transcript continues on the following page.)

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1   MS. DIRAGO: He is allowed to say that
2   Dr. Sugrue did not address the New York Police
3   Department's statistics on hate crimes. It was not in
4   his report. He didn't address them.
5   MR. LALLINGER: He can say that. He can't say
6   why.
7   MS. DIRAGO: I don't think he said why.
8   THE COURT: Let's continue.
9   A.   Nonetheless, the hate crimes statistics were not
10   included in Dr. Sugrue's report and paint a very different
11   picture then what is sometimes conceived about Staten
12   Island's racial views.
13   Staten Island in the last five years had four
14   percent of the City's hate crime reports, and three percent
15   of the City's hate crime arrests. Now, Staten Island is
16   about six percent of the City's population. When you do the
17   math you realize Staten Island's hate crime's are far lower
18   than the rest of the city.
19   When you look at the last five years, there is
20   an uptake in hate crimes after the October 7th attack and
21   the development of events in Israel and Palestine. And
22   since that time, there have been a sharp uptake in
23   antisemitic hate crimes. That effects that number.
24   When you take out that number, as offensive as
25   that maybe to some, when you take out antisemitic hate

1   crimes, the number of hate crimes against Blacks and
2   Hispanics is far lower than the race in the rest of the
3   city. In fact, I think there was one hate crime against
4   Hispanics in the last five years.
5   Q.   Dr. Sugrue also talks about protests against
6   immigration and connects those to anti-Latino sentiment.
7   Do you agree that all of these protests demonstrate
8   anti-Latino sentiment on Staten Island?
9   A.   No.
10   Q.   Why not?
11   A.   Because to say that you are protesting a migrant
12   shelter because you hate Latinos is not just offensive to
13   frame Staten Island like that, but it ignores the fact that
14   every neighborhood, or nearly every neighborhood where a
15   migrant shelter was placed, there was opposition to it.
16   And not only did we see protest in Staten Island, um, but we
17   saw protest in some of the most progressive neighbors in New
18   York City. Even neighbors where you had politicians who
19   were saying we should built more migrant shelters, they just
20   didn't want them in their district. One in Clinton Hill,
21   Brooklyn comes to mind there. You have major protests in
22   Brooklyn by Floyd Bennett Field on Flatbush Avenue, really
23   in a predominantly West Indian neighborhood. People were
24   protesting shelters there. You had shelter protests when
25   they were housing folks on Randall's Island. You had

1   protests, again, in the Bronx. There was a proposal for a
2   two thousand bed migrant shelter in the Bronx that was met
3   with Bronx cheer as they would say. So it is not unique
4   that Staten Island protest against homeless sheltering being
5   built in people's residential neighbors. In fact, it is the
6   normal.
7   In some of the cases he mentioned, being one
8   of the cases, it was a former high school in the middle of a
9   residential neighborhood that suddenly and overnight became
10   a migrant shelter housing, you know, a hundred or so
11   families, that is significant. And that was protested by a
12   bipartisan coalition. Bipartisan muti-racial coalition of
13   Staten Island elected officials opposed that site.
14   There was another protest, and where I'll
15   concede things got out of hand. People were throwing things
16   at buses, that is not right. I'm not justifying that.
17   There was a lot of anger in that community, Midland Beach,
18   just like there was elsewhere. This was a senior center, a
19   senior residence where the residence of the senior center,
20   people who lived there however long were removed from their
21   homes and replaced by a migrant facility. Those are the
22   kinds of things that are going to be unpopular. Homeless
23   shelters are unpopular in every Congressional district in
24   the country. If you want to win the election, you are not
25   going to run on that platform.

1   The point being, this is not unique to Staten
2   Island.
3   Q.   I'm going to switch gears and wrap it up soon. I
4   want to talk about election success.
5   Dr. Sugrue contends that minorities in Staten
6   Island have long been underrepresented in political offices
7   in Staten Island.
8   Do you agree with that statement?
9   A.   No. I think they are well represented now and for
10   the last 25 years.
11   Q.   So I would like to pull up Paragraph 90 of his
12   report, of Dr. Sugrue's report. I believe this is where he
13   is talking about elected officials of color in Staten
14   Island.
15   What is your opinion on what he says or maybe
16   doesn't say?
17   A.   Well, I mean, I think it is interesting, I don't
18   doubt that any of this is true. Certainly without
19   exception. But you have to look at the bigger picture of
20   why there was a lack of representation in some offices in
21   the city.
22   In 1989, after a court case here in New York
23   City, the city passed a new City charter. The city council
24   went from 35 members to 51 members. The reason in doing
25   that was in part because of a lack of minority

1   representation in the City council. That problem existed
2   on Staten Island. But the focus of that charter revision
3   was actually the failure to achieve representation by Blacks
4   and Hispanics predominately in the other boroughs where at
5   the time those populations were larger.
6   So there was a citywide failure of electing
7   people of color to offices. There was a citywide movement
8   to challenge those laws, and there was a massive
9   voter-approved charter revision in 1989 to address that by
10 aiding more members of the City council, exceptionally make
11 the districts smaller and more neighborhood based to almost
12 guarantee that people of color would be represented in
13 perhaps the proportion to their overall population of the
14 city.
15   Q.   So what successes have Blacks and Latinos had in
16 getting elected in Staten Island?
17   A.   Start with running. So Black and Hispanic
18 candidates have been on the ballot numerous times. They've
19 qualified for matching funds. Received major party
20 endorsements, successfully. Debbie Rose was the first
21 African American elected. She was a city council member.
22 Her district continues to be African American. It is held
23 by Kamillah Hanks. Kamillah Hanks is now the co-chair of
24 the Staten Island delegation to the council. The assembly
25 seat on the North Shore is held by an African American man,

1   Charles Fall, who is also the chairman of the democratic
2   party. He has been ostensibly one of the most powerful, if
3   not the most powerful elected official of the county of
4   Richmond of the democrat party chair. He is an African
5   American.
6   As Dr. Sugrue sort of pushes under the rug
7   and he notes that she was a Hispanic person when she ran for
8   assembly, but the, one of only two island-wide legislative
9   seats, New York 11 seats is held by a Hispanic woman, and
10 I'll point out she is a Hispanic woman that hasn't hid from
11 the fact, hid from the voters she is Hispanic. If anything
12 she touted it at many opportunities, if not every
13 opportunity she could.
14   Q.   And then I believe on Page 30 there was something
15 you wanted to clarify about judges being elected?
16   A.   Yes, yes. It should have been selected, not
17 elected. Not all judges in this state are elected. Many
18 are appointed, but they are selected by elected officials as
19 we all know how judges get made in the state.
20   Q.   Does that undermine the achievement in your mind?
21   A.   No. It still shows that African Americans,
22 Hispanics, Asians are still a vital part of the Richard
23 County bar, Richard County fiduciary.
24   Q.   So Mr. Borelli, based on your deep knowledge of
25 Staten Island, in your expert opinion does -- which map

1   makes more sense, Dr. Cooper's illustrative map or current
2   congressional map?
3   A.   There is --
4   MR. LALLINGER: Objection.
5   Beyond the scope of his expert report and
6   expertise.
7   MS. DIRAGO: I just would disagree.
8   THE COURT: Can the reporter read it back. I'm
9   sorry. I was distracted.
10   (Whereupon, the record was read back by the
11 reporter.)
12   THE COURT: I will allow it.
13   A.   So the current map of New York 11 represents a
14 district that is 50 percent White. So for the purposes of
15 having a enhanced ability for people of color to
16 participate, on that part of the question it makes
17 absolutely no sense to switch the moderately, but certainly
18 more than the other part, but moderately diverse portions of
19 New York 11 in Brooklyn for the almost exclusively White
20 portions of lower Manhattan. And I believe this was done
21 with partisan rational. This is one of the strongest vote
22 of democratic voting areas --
23   MR. LALLINGER: Objection. Speculation.
24   THE WITNESS: It is not speculation.
25   THE COURT: I will allow it.

1   A.   It is the voter history. I mean, every elected
2   official represents lower Manhattan is a democrat. They
3   voted overwhelming against Trump. Battery Park City is
4   filled with White people. This is not stipulation. It is
5   reality. Replacing moderately diverse portion of New York
6   10, New York 11 with the non-diverse portion of New York 10
7   doesn't make sense from that prospective.
8   As far as the community of interest notion,
9   if I blindfolded someone and opened their eyes right outside
10 of this courtroom in lower Manhattan, nobody would think
11 they were in Staten Island. If I did that in southern
12 Brooklyn or did that in Rockaway, if did that in parts of
13 Queens, you might.
14   This part of New York City is so unique, it is
15 why tourists come here to take pictures. It is in no way
16 similar. In terms of homeownership, in terms of ethnicity,
17 in terms of voting patterns. It is no way, in terms of
18 issues that matter to voters, it is in no way similar to
19 Staten Island, New York.
20   MS. DIRAGO: No more questions right now.
21   THE COURT: Thank you. All right. On track.
22 Are you okay? Do you need a break?
23   THE WITNESS: No, thank you.
24   THE COURT: All right. Let's start cross.
25   MR. LALLINGER: Your Honor, can we take a five

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1   minute break before we --
2   THE COURT: You can take a five minute break.
3   We're all going to stay here and wait until you are
4   ready to come back, and then we'll get started. You can
5   take your time.
6   MR. LALLINGER: Thank you, your Honor.
7   THE COURT: If the witness doesn't want to go,
8   we will all stay.
9   (Whereupon, a short recess is taken.)
10   THE COURT: Back on the record.
11   Counsel, when you are ready, you may proceed.
12   MR. LALLINGER: Lucas Lallinger, on behalf of
13   the Williams Petitioners.
14   CROSS-EXAMINATION
15   BY MR. LALLINGER:
16   Q. I would like to begin with a clarification on the
17   scope of your report.
18   In your expert report you only respond to the
19   expert report of Dr. Sugrue; is that right?
20   A. Correct, but I've had the opportunity to review
21   some of the other testimony throughout the week.
22   Q. You do not offer any opinion in response to the
23   expert reports of Dr. Max Palmer or Mr. Bill Cooper,
24   correct?
25   A. Not to the reports, but I've read much of their

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1   witness; is that right?
2   A. Correct.
3   Q. And is that because you never testified as an
4   expert witness in any case involving claims of racial vote
5   dilution?
6   A. Correct.
7   Q. Prior to this case, had you ever performed an
8   analysis of the totality of the circumstances factors in a
9   case involving the New York Constitution or the New York
10   Voting Rights Act?
11   A. No.
12   Q. Have you ever analyzed the senate factors under
13   Section 2 of the federal Voting Rights Act?
14   A. Previous to this, no.
15   Q. Have you ever testified as an expert witness in any
16   case before?
17   A. As a witness, yes. Expert witness, no.
18   Q. Now, let's turn to what you have done.
19   We've heard you've been elected to political
20   office, correct?
21   A. Yes, sir.
22   Q. And you were elected to a partisan political
23   office; is that right?
24   A. Yes, sir.
25   Q. You were elected to the state assembly and the City

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1   testimony.
2   Q. Mr. Borelli, your report lists your qualifications
3   on Pages 1 through 3; is that right?
4   A. Yes.
5   Q. Now, you listed you earned a Master's degree
6   correct?
7   A. Yes.
8   Q. You don't have a Ph.D. or doctorate; is that right?
9   A. No, sir.
10   Q. You let us know you are adjunct profession
11   currently?
12   A. Correct.
13   Q. You are not an associate professor?
14   A. No.
15   Q. Not tenured?
16   A. No.
17   Q. And your report does not list any articles that
18   you've published in any peer reviewed academic journals; is
19   that right?
20   A. Correct.
21   Q. Is that because you never published in a peer
22   review academic journal?
23   A. I never attempted.
24   Q. Now, your report does not list any racial vote
25   dilution cases in which you have testified as an expert

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1   council; is that right?
2   A. Correct.
3   Q. And you've run and been elected as a republican
4   candidate for political office every time you've run,
5   correct?
6   A. And conservative party member. We have fusion
7   voting in New York.
8   Q. Now, do you dispute that you've been described in
9   media report as quote, "staunch republican"?
10   A. No.
11   Q. Would you agree with that characterization?
12   A. No.
13   Q. You don't agree that you are a staunch republican?
14   A. I've been characterized by that, but if you ask me
15   how I feel personally about different things, you might find
16   a different person. Just this week I hosted a fundraiser
17   for a democratic state candidate. The characters we play on
18   TV are not always the characters we are.
19   Q. Do you dispute you've also been described as a
20   voice of Staten Island's south shore, predominately White
21   neighborhoods, filled with homeowners and car drivers who
22   voted heavily for president Donald Trump in 2016 and again
23   in 2020?
24   A. I don't remember reading that, but could have been.
25   If you are telling me a description, I do believe you.

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1   Q.   And would you agree with that characterization?
2   A.   I agree that it is a characterization.
3   Q.   You have also been a spokesperson for the New York
4   State Republican Party; is that right?
5   A.   Correct.
6   Q.   You also been a surrogate for the Trump campaign;
7   is that right?
8   A.   Correct.
9   Q.   You've also been a surrogate for the Republican
10   National Committee; is that right?
11   A.   Correct.
12   Q.   And you were a co-chair of the Trump 2016 statewide
13   campaign?
14   A.   Correct.
15   Q.   Now, in your role as a spokesman and as a
16   surrogate, you've made multiple television appearances on
17   behalf of the republican party and particular republican
18   candidates; is that right?
19   A.   Correct.
20   Q.   As a surrogate, as a spokesperson, have you made
21   more than five television appearances on behalf of the
22   republican party and republican political candidates?
23   A.   I'm being booked for these segments sometimes as an
24   elected official, sometimes as a surrogate, sometimes as the
25   only available republican voice. It is hard to say as a

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1   surrogate. If you are asking how many times I've appeared
2   on TV to talk generally about right-leaning causes, 1,500
3   maybe.
4   Q.   1,500?
5   A.   Probably.
6   Q.   So it would be fair to say that you've had far, far
7   more experience as a republican spokesman in your career
8   than the zero experience you had serving as an expert
9   witness?
10   A.   Serving as an expert witness perhaps, but not
11   serving as an expert and knowledgeable about the political
12   history of Staten Island, the demographics of Staten Island.
13   I think part and parcel to my job as an elected official was
14   to understand those things. Part and parcel as an adjunct
15   professor is to understand those things.
16   Q.   So the answer to my question is, yes?
17   A.   Repeat your question.
18   Q.   It would be fair to say that you've had far more
19   experience as the republican spokesman in your career than
20   the zero experience you've had serving as an expert witness?
21   A.   No. I wouldn't say that. I go on TV for five
22   minutes of the day. I spend nine hours of the day as an
23   elected official, or I did at least. Sometimes I don't even
24   put pants on to go on TV and be a spokesman. I just sit in
25   my basement.

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1   Q.   We can agree you never served as an expert witness,
2   right?
3   A.   That part we agree.
4   Q.   You no longer hold any political office; is that
5   right?
6   A.   Um, no, it is not correct. I am, I was appointed
7   by the Democratic Mayor of the City to serve on the school
8   board, panel for education policy. I was appointed by the
9   Democratic Mayor of the City to serve on the board education
10   retirement system, the teachers' retirement system and the
11   United Nation Development Corporation. All of them are
12   required to file public official conflict of interest board
13   statements. So depending how you characterize your
14   question, that is the answer.
15   Q.   You currently hold all those roles?
16   A.   Yes.
17   THE COURT: You are the Mayor's appointee on
18   the UNDC?
19   THE WITNESS: I am. Nobody else has put me on
20   a billion dollar real estate board, so. Take what I can
21   get.
22   THE COURT: State authority.
23   THE WITNESS: Yeah. Mayor gets six appointees.
24   THE COURT: Understood.
25   Q.   In your direct-examination and in your report, you

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1   discuss hate crimes and the presence of hate groups on
2   Staten Island; is that right?
3   A.   Yes.
4   Q.   In your direct-examination I think you mention the
5   New York City Police Department hate crimes dashboard; is
6   that right?
7   A.   We use the dashboard and the, I use the
8   spreadsheets, as well.
9   Q.   On Page 48 of your report, you wrote that according
10   to the New York City Police Department hate crimes dashboard
11   there were two hate crimes targeting Black people on Staten
12   Island in 2025, correct?
13   A.   Yes, to date. That was through the third quarter.
14   Q.   Thank you.
15   Did you visit the hate crimes dashboard when making
16   this report?
17   A.   Yes.
18   Q.   And when you did that, you noticed that you could
19   expand the date range beyond 2025, right?
20   A.   Yes. I looked at the hate crimes through the
21   spreadsheets back to 2020 because the spreadsheets give you
22   a full year rather than quarterly.
23   Q.   But you only reported the 2025 numbers for Black
24   Staten Islanders in your report, correct?
25   A.   Correct.

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1   Q. You didn't report that if you measured, for
2   example, from January 1, 2020, the dashboard identifies 32
3   arrests from 29 incidents of hate crimes against Black
4   people specifically in Staten Island over that time period,
5   right; you didn't report that?
6   A. I didn't report that, but I referenced it in
7   today's testimony. I talked about the hate crimes going
8   back to 2020.
9   Q. Would you consider 32 arrests from 29 incidents of
10   hate crimes in the past six years a significant number of
11   hate crimes?
12   A. It is significant in the sense that any hate crime
13   is he appalling. Any hate crime should be denounced, and
14   I'm glad the police got the perpetrators. In respect to the
15   ratio of hate crimes that are occurring on Staten Island
16   compared to the rest of the city, we have a significantly
17   lower ratio. When you extrapolate antisemitic ones,
18   especially since October 7th, that ratio does get lower.
19   Q. Again, I just want to be clear, the number 29
20   incidents, 32 arrests in the last six years, that was
21   particularly for Black people, you understand that, correct?
22   A. Yes, I believe that is correct.
23   Q. And do you recall that in his report Dr. Sugrue
24   identified numerous hate crimes over a period from 1925 on
25   forward?

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1   A. Yes. I mean, he referenced KKK incident in the 20s
2   if I remember correctly, and that certainly happened. But
3   it excludes the context that the KKK was a national
4   organization and the newspapers of that era are filled with
5   stories of KKK activities, not just from Staten Island, but
6   mostly other places, not Staten Island, New York. I think
7   that is significant in the context of whether this is some
8   unique place that is acting in a bias and prejudiced way.
9   Q. Now, in his report Dr. Sugrue, for example,
10   identified a hate crime in 2021 when Ralph Tedesco pleaded
11   guilty, defacing the campaign posters of Kelvin Richards,
12   Black council candidate with the phrase, "F-U, N-words and
13   vandalizing an MTA bus with graffiti that read Black slaves
14   matter, they will never be equal, kill the N-word," you
15   don't dispute that even in your report?
16   A. No, I don't dispute it and denounce it. It is
17   terrible. Again, we are tracking statistics and that
18   incident as profoundly insulting and offensive and wrong as
19   it was, counts as one instance in the hate crime reporting.
20   When we look at the context of all the data,
21   we see that Staten Island has a very good record, not a bad
22   record on hate crimes.
23   Q. That is, you are talking about comparing it to
24   places outside of Staten Island; is that right?
25   A. It is specifically that, places other than Staten

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1   Island in New York City because I don't, I didn't look at
2   the data elsewhere. I used NYPD data.
3   Q. Now, going back further, Dr. Sugrue wrote in 2009
4   the US Department of Justice indicted three White men in
5   Staten Island for brutal attacks against Blacks and Latinos
6   in Park Hill and Richmond on the night President Obama was
7   elected President, you don't dispute that account?
8   A. No.
9   Q. You also identify in your report that in 1995,
10   60 skinheads tried to disrupt an anti-hate rally in Staten
11   Island, correct?
12   A. Look, I don't dispute that. My report makes no
13   attempt to whitewash history.
14   Q. On the same page of your report, you discussed the
15   discovery of literature identifying a KKK group on Staten
16   Island in the early 90's, correct?
17   A. Yes.
18   Q. And going back further, you don't dispute
19   Dr. Sugrue's accounts that in 1987 as part of what the New
20   York Amsterdam News reported was a series of attacks on
21   Blacks and Hispanics on the island in that year. 30 Whites
22   chased two African Americans from the Staten Island mall in
23   New Springville, correct?
24   A. I don't dispute that. To go back to the book that
25   Dr. Sugrue cited and I referenced earlier, why I brought up

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1   earlier, the Kramer and Flanagan book, part of their
2   conclusion is that, yes, these incidents happened and they
3   are unfortunately part of the history of Staten Island, but
4   they are not evidentiary of what happens exclusively on
5   Staten Island. And in fact, these incidents happened at a
6   lower rate.
7   You know, Brooklyn in the 1970's and 80's was
8   the location of far more race-based violence then Staten
9   Island. There were incidents in Park Slope where if I
10   remember correctly Hispanic. I think at the time referred
11   to as a Puerto Rican person, obviously they are Hispanic, on
12   the roof of a building shooting at Black people. There were
13   race riots at John Jay High School in the 1960's and 70's.
14   There is a great book out there called Canarsie, ethnography
15   of the neighborhood of Canarsie and it talks about repeated
16   race-based violence in Brooklyn.
17   So I don't dispute any of this that Dr. Sugrue
18   pointed out. I don't think he made up these facts. He is
19   not painting a picture of why this is exclusive to Staten
20   Island.
21   Q. Is it your understanding that under the totality of
22   the circumstances the history of racial discrimination needs
23   to be exclusive to the particular jurisdiction that you are
24   investigating?
25   A. Yes.

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1   Q. Now, at Page 22 of Dr. Sugrue's report he writes
2 that "when hate crimes or hate incidents occur during
3 elections, they can send a message that it is dangerous to
4 vote and deter members of historically marginalized groups
5 from participating in the democratic process, by
6 discouraging communities of color and others from voting,
7 perpetrators of hate incidents attempt to stifle the voices
8 of historically marginalized groups resulting in skewed
9 elections."
10   You didn't present anything in your report that
11 disputes this conclusion, correct?
12   A. No, I think that was a factor in race-based
13 violence around the country.
14   Q. Now, you do however write in your report at Page 19
15 that quote, "there is no history of discrimination in or
16 affecting the political subdivision," correct?
17   A. Repeat that.
18   Q. You write in your report at Page 19 that quote,
19 "there is no history of discrimination in or affecting the
20 political subdivision;" is that right?
21   A. I'm not seeing it, Page 19. Sorry. Give me a
22 second.
23   Q. I believe it is the heading?
24   A. Oh, yes. I see it. The point being there is no
25 history of political discrimination that affects political

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1 races in the subdivision.
2   Q. Okay. But the quote is, "there is no history of
3 discrimination in or affecting the political subdivision,"
4 correct?
5   A. It should have been written in the context of.
6   Q. And by political subdivision there you are
7 referring to Staten Island, correct?
8   A. Yes.
9   Q. Now, do you recall that Dr. Sugrue in his report
10 discusses redlining?
11   A. Yes.
12   Q. And he talks about it as one of a series of
13 discriminatory real estate and lending practices that
14 systematically excluded after African Americans from large
15 parts of Metropolitan New York, including Staten Island?
16   A. Yes.
17   Q. Now, you also discuss red-lining in your report; is
18 that right?
19   A. Yes.
20   Q. And you cite an article by Price Fishback and a
21 couple of other authors entitled, "New Evidence on redlining
22 by Federal Housing Programs in the 1930's," is that right?
23   A. Yes.
24   Q. Did you review this article in preparing the
25 report?

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1   A. Briefly.
2   Q. You write that the article is quote, "especially
3 useful in understanding federal housing mortgage policy and
4 allegations of federal racial discrimination through
5 lending;" is that right?
6   A. Yes. It presents some contrary evidence.
7   (Transcript continues on the next page.)

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1 CROSS-EXAMINATION
2 BY MR. LALLINGER:
3   Q. And you write that the article discusses a study of
4 Baltimore, Maryland; Peoria, Illinois; and Greensboro,
5 North Carolina, right?
6   A. Yes.
7   Q. And you quote the study as stating that the evidence
8 from the three cities shows that the Home Owners' Loan
9 Corporation refinanced loans in neighborhoods throughout each
10 city and that the share of loans made by the HOLC to Black
11 Americans was close to proportionate to the shares of homeowners
12 who were Black, right?
13   A. Yes.
14   Q. But you didn't report that when the HOLC made loans, it
15 did so along segregated lines, right?
16   A. No. But I mean, that was an accepted point of
17 Dr. Sugrue's report. That -- that portion is not really in
18 dispute.
19   MR. LALLINGER: Let's bring up the article. And
20   can we go to page --
21   Q. Actually, first, is this the article that you reviewed?
22   A. Yes.
23   Q. And can we turn to page 4?
24   MS. DIRAGO: Do you have a copy for him? Is it
25   in --

1   MR. LALLINGER: Certainly.
2   Thank you.
3   (Handing.)
4   THE WITNESS: Thank you.
5   A. What page are we on? What page?
6   Q. Turn to page 3. Actually, page 4.
7   And do you see in the middle of the second paragraph,
8   where it states that when the HOLC issued loans broadly
9   throughout American cities, including to Black homeowners, it
10 did so within the existing patterns of segregation?
11 A. Yes.
12 Q. And you don't dispute that statement, correct?
13 A. No.
14 Q. Now, let's turn to page 27 of that article.
15   And at the top of the second paragraph on that
16 page -- and it's also on the screen here, "This is not to say
17 that the HOLC defied the existing pattern of segregation and
18 discrimination in housing markets. Neither the HOLC nor the
19 Federal Housing Authority was charged with that mission and
20 neither embraced it."
21   Did I read that correctly?
22 A. Yes.
23 Q. And you don't dispute that either?
24 A. No.
25 Q. And, finally, let's go to page 7.

1   And down at the bottom of the page, the authors write,
2   "Altogether, staff at both agencies clearly espoused views that
3   were discriminatory, pro-segregation, and amount to what today
4   is called redlining."
5   Did I read that correctly?
6   A. Yes.
7   Q. And you don't dispute that either?
8   A. No.
9   Q. So it would be fair to say that based on this article,
10 which you concluded was especially useful in understanding
11 federal housing mortgage policy and allegations of federal
12 racial discrimination, that the Home Owners' Loan Corporation
13 and the Federal Housing Authority loan practices reinforced
14 segregation?
15 A. I think there is a broad segment of research that does
16 indicate that and concurs with your opinion. I mean, the issue
17 that I take with it is that, number one, these are events that
18 took place decades ago, before Staten Island was even largely
19 developed.
20   I mean, Staten Island's population previous to the
21 bridge opening up was -- at this period of time, 150,000 people.
22 It is a half million now.
23   The other portion of this is that it's not unique to
24 Staten Island. This is not an argument that Staten Island
25 homeowners, be it Black or Hispanic or anything, faced a

1   challenge that didn't exist in Lower Manhattan or Brooklyn.
2   It's the same challenge.
3   MR. LALLINGER: Okay. We can take this down.
4   And can we bring up Figure 5 on page 19 of PX-1,
5   which is Dr. Sugrue's report.
6   BY MR. LALLINGER:
7   Q. And you don't have a copy of Dr. Sugrue's report?
8   A. I don't on me, no.
9   MR. LALLINGER: Thank you.
10   (Handing.)
11 A. What page?
12 Q. Figure 5 on page 19.
13   That figure is also up on the screen.
14 A. Thank you.
15 Q. Now, this figure is a map showing redlined
16 neighborhoods in Staten Island in 1940; is that right?
17 A. Yes.
18 Q. Now, at pages 38 and 39 -- I'm sorry, at paragraphs 38
19 and 39 of Dr. Sugrue's opening report, he identifies particular
20 neighborhoods in Staten Island, including Sandy Ground,
21 Rossville, Charleston, Willowbrook, Meiers Corners, and part of
22 West Brighton that were redlined and given the lowest
23 neighborhood rating by the HOLC; is that right?
24 A. Yes.
25 Q. And in your report, you don't dispute any of that,

1   correct?
2   A. No. It's evident on the map.
3   Q. Now, let's turn to page 21, paragraph 40 of
4   Dr. Sugrue's report.
5   And here, Dr. Sugrue discusses the effect that
6   redlining has had today.
7   He writes, "There is now a substantial body of
8   scholarship by historians, sociologists, public health scholars,
9   and economists, demonstrating that redlining in the
10 mid-20th Century has had a long-term impact on nearly every
11 aspect of community life."
12   Do you see that?
13 A. I see it.
14 Q. Did I read that correctly?
15 A. Yes, you read it correctly.
16 Q. And he continues that "Redlined neighborhoods -- even
17 those that were mostly White when the maps were composed -- are
18 more likely to house non-Whites today. Residents of those
19 neighborhoods are more likely to have lower incomes than
20 residents of higher-ranked neighborhood? And by most measures,
21 health outcomes in historically redlined neighborhoods are
22 poor."
23   Did I read that correctly?
24 A. Yes.
25 Q. Now, you didn't provide anything in your report, any

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1   scholarship that challenges this body of scholarship about the
2   present-day impact of redlining on formerly redlined
3   neighborhoods; is that right?
4   A. No. I mean, I do think it's tough to draw comparisons
5   when the borough was so sparsely populated to what it is today.
6   But I suppose that's not unique to Staten Island as well.
7   Q. Now, you also discuss residential segregation today on
8   Staten Island in your report, right?
9   A. Yes.
10   Q. At page 13 of your report, you provide the results of
11 your calculation of the index of dissimilarity for Latino and
12 White Staten Islanders; is that right?
13   A. Yes.
14   Q. And in your report, for the year 2023, the
15 dissimilarity value was 42, right?
16   A. For Hispanics.
17   Q. For Hispanics?
18   A. Yes.
19   Q. And you agree that a dissimilarity value of 42 means
20 that Latinos and Whites face moderate racial residential
21 segregation on Staten Island, right?
22   A. That's correct. Although 42 would be at the very low
23 end of what is considered moderate.
24   Q. And I want to be clear again because we've been
25 discussing historical discrimination before, but that is based

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1   on 2023 data, which is the most up-to-date data that you have in
2   your report, right?
3   A. Correct.
4   Q. Now, in your report, you don't calculate the index of
5   dissimilarity value for Black Staten Islanders, right?
6   A. No.
7   Q. But Dr. Sugrue does in his report; is that right?
8   A. He does. I don't recall the number.
9   Q. Right. So he reports it to be 75. Do you dispute
10 that?
11   A. I don't. Do you want the number for the rest of the
12 city?
13   Q. No.
14   A. It's 84. Which is far worse than Dr. Sugrue's number
15 on Staten Island.
16   Q. And dissimilarity index value of 75 means high racial
17 segregation between Blacks and Whites on Staten Island, right?
18   A. High, but not as high as other parts of the city.
19   Q. And you agree that the level of residential segregation
20 for Black Staten Islanders has increased since 2010, correct?
21   A. You have to show me the statistics. I don't know that
22 to be the case anecdotally.
23   MR. LALLINGER: Can we pull up page 15,
24   paragraph 26, Figure 4 of Dr. Sugrue's report.
25   THE WITNESS: Did you say page 15?

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1   MR. LALLINGER: Yes. It's Figure 4.
2   BY MR. LALLINGER:
3   Q. Now, do you see this figure is entitled "Residential
4   Segregation on Staten Island 1990 to 2019 Through 2023"?
5   A. Yes.
6   Q. And do you see for the White-Black dissimilarity value
7   in 1990 it was 72?
8   A. Yes.
9   Q. And that in 2019 to 2023 it was 75?
10   A. Yes.
11   Q. So do you agree that segregation has increased from
12 1990 to 2023?
13   A. According to the index of dissimilarity, yes.
14   Q. Now, shifting gears some. You also discussed racial
15 appeals on direct. Is that right?
16   A. Yes.
17   Q. And one of the totality of the circumstances factors is
18 whether there are racial appeals in campaigns in the political
19 subdivision?
20   A. Yes.
21   Q. Now, you also discuss your methodology for attempting
22 to identify racial appeals, right?
23   A. Yes.
24   Q. And your methodology was, to be clear, to search for
25 the word "racism" and the word "issues" in the newspaper

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1   database, newspapers.com, in election years from 2000 to 2024;
2   is that right?
3   A. Yes. And the word "racist" as a variation.
4   Q. But you didn't include that variation in the discussion
5   of your methodology in your report?
6   A. No. In error.
7   Q. And looking for these three keywords was the entirety
8   of your methodology for your search; is that right?
9   A. Correct.
10   Q. And other than switching "racism" to "racist" -- is
11 that the other term that you identified?
12   A. Correct.
13   Q. So other than switching "racism" to "racist," you
14 didn't refine your search with any other search terms; is that
15 right?
16   A. No. Because the goal of this method is to see what was
17 reported as a racial appeal contemporaneously as it
18 occurred -- right? -- whereas Dr. Sugrue's method was to find
19 issues, differences, attacks, political attacks, and then try to
20 back in the notion that they were racial appeals.
21   Our method, which again was -- was cited in the Pierce
22 case in North Carolina as the preferred method, was to do
23 something objective and replicable that we can look and see how
24 it was reported.
25   Now, if you look around the country, you can see this

1   as an effective method of finding other ads and political
2   attacks that have been deemed racial appeals.
3   I'll give you a great example. We had the professor
4   here earlier today who was from Kentucky. Thomas Massie is from
5   Kentucky. Thomas Massie was in a primary in 2020. I forget the
6   name of his challenger but there were some clear racist comments
7   that were made and that received national news that was called
8   out contemporaneously by his opponent as racism. It was
9   reported nationally, in that instant.
10   Same thing with Georgia, Georgia -- Bryan Kemp ran for
11   governor I think in 2018. He had a pretty offensive ad. He
12   pulled up in a pickup truck to a Home Depot or something, and
13   waited for Hispanic men to come over as day laborers and then
14   basically ostracized them in an ad. That was called out as
15   racist and xenophobic and all of these things. But it was
16   reported as a racial appeal contemporaneously at the time. I
17   mean, that's objectivity.
18   Again, the method we used could have been replicated by
19   Dr. Sugrue and he could have come up with, you know, more. I
20   just don't think he did. He didn't put it in his report. He
21   didn't put it in his rebuttal.
22   Q.   So you would agree that in using your methodology, in
23   order for you to identify any racial appeal using your
24   methodology, you -- they would have to use one of those three
25   particular terms, correct?

1   A.   Yeah, or the algorithm would pick it up in a search
2   database. You know, sometimes there are tag words --
3   Q.   You mentioned -- you mentioned on direct that this was
4   an approach that you took from Pierce, the Pierce case in
5   North Carolina?
6   A.   Yeah. So one of the assistants that assisted me on
7   this case was Dr. Donald Critchlow, who was the expert witness
8   in that case.
9   Q.   You didn't include any citation to any scholarly
10   sources or to any court cases when you identified your
11   methodology for identifying racial appeals; is that right?
12   A.   Correct.
13   Q.   Now, you discussed the Young Leaders on direct. Do you
14   recall that?
15   A.   I discussed an ad. Yes.
16   Q.   And ad involving the Young Leaders of Staten Island,
17   correct?
18   A.   I don't know any of the Young Leaders personally. So
19   there was some indication that they were in the ad. I -- I
20   could not attest to that.
21   Q.   Okay. So at page 48 of your report, you described the
22   Young Leaders as one of a couple of groups that support minority
23   rights, and along with other groups held several rallies around
24   the borough in an effort to get voters engaged in the 2020
25   election; is that right?

1   A.   That is correct.
2   Q.   And on that page of your report you cited to an article
3   in the city that's Footnote 119, that's entitled, quote, Their
4   Anti-Racism Marches Were Twisted in a $4 Million GOP Attack Ad
5   Campaign. Now They Just Want to Get Out the Vote; is that
6   right?
7   A.   Yes.
8   Q.   Now, that article detailed a couple of pro-Malliotakis
9   advertisements that were run during the 2020 race for the
10   11th congressional district; is that right?
11   A.   Yes.
12   Q.   And Dr. Sugrue quotes the article at page 16,
13   paragraph 41 of his rebuttal report.
14   MR. LALLINGER: Can we put that up on the screen?
15   And we'll get you a copy of the report.
16   (Handing.)
17   THE WITNESS: Thank you.
18   THE COURT OFFICER: You're welcome.
19   BY MR. LALLINGER:
20   Q.   And we're at page 16, paragraph 41.
21   A.   Got it.
22   Q.   And I'm reading from the second sentence. "The article
23   describes that footage of one peaceful march" -- and they're
24   talking about a march by the Young Leaders -- "was interspersed
25   with doctored images of police cars ablaze -- became the

1   centerpiece of an attack ad touting Assembly member
2   Nicole Malliotakis and trashing Representative Max Rose, in her
3   successful bid to oust the Freshman Democrat from the
4   Staten Island house seat."
5   Did I read that correctly?
6   A.   Yes.
7   Q.   Further down on that same page, he identified another
8   racial appeal concerning the Young Leaders. He writes, "The
9   city continued one Republican political action committee, the
10   Congressional Leadership Fund poured in at least $4 million into
11   televising ads focused on Rose attending the march. One of the
12   spots showed some of the Young Leaders of Staten Island and
13   footage of their June 3rd march in New Dorp, spliced with
14   violent scenes, while a narrator spoke of criminals hailed as
15   freedom fighters."
16   Did I read that correctly?
17   A.   Yes.
18   Q.   And Dr. Sugrue identifies that as a racial appeal
19   because "Linking candidates to Black criminality is a common
20   strategy in electoral racial appeals. Contrary to how they were
21   depicted in the advertisements, the Young Leaders called for
22   better police community relations, opposed calls to defund the
23   police, and stated their concerns about crime."
24   Do you see that?
25   A.   I do.

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1   Q. Now, Dr. Sugrue, in his report, cites "Academic
2 scholarship that explains that racial appeals often involved
3 negative stereotypical imagery that might activate voters'
4 negative racial attitudes including depictions of African
5 Americans as criminals."
6   And did you see that? That is at paragraph 42.
7   A. I did. But just to go back to your previous
8 question --
9   Q. The only question is if you saw that.
10   A. I did see it.
11   Q. Okay. Thank you.
12   Now, you do not present any academic scholarship in
13 your report that challenges the association of Black people with
14 criminality as a common tactic in racial appeals, correct?
15   A. No, I challenged the context of that ad.
16   Q. All right.
17   So the answer to my question is yes, you do not present
18 any academic scholarship in your report that challenges the
19 association of Black people with criminality as a common tactic
20 in racial appeals?
21   A. No.
22   Q. Is that right?
23   A. Correct. Yes. Excuse me.
24   Q. Now, you also discussed --
25   MR. LALLINGER: We can take this down.

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1   Q. You also discussed socioeconomic factors on
2 Staten Island; is that right?
3   A. Yes.
4   Q. You discussed education, income, and housing?
5   A. Yes.
6   Q. On pages 38 and 39 of your report, you present three
7 tables showing educational attainment by race in Staten Island;
8 is that right?
9   A. Yes.
10   MR. LALLINGER: And can we bring up the first table
11 which is entitled "2024 Educational Attainment By Race" on
12   page 38.
13   Q. Now, the last column here is labeled "Percent of
14 White." So that means if we look at what's in the fourth row of
15 that column, which is labeled "Black bachelor's degrees or
16 higher," it's telling us that Black Staten Islanders graduate
17 college or have bachelor's degrees at 71.77 percent of the rate
18 that Whites do; is that right?
19   A. Yes.
20   Q. And you would agree that demonstrates a greater than
21 28 percent disparity in college completion rates between Blacks
22 and Whites on Staten Island?
23   A. Yes. The point I'm showing against the percentage of
24 White is to show the disparity between this number and the
25 number a decade earlier has improved for the most part for most

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1 of the races.
2   Q. And Latino Staten Islanders have college degrees at
3 52.63 percent of Whites, correct?
4   A. Yes.
5   Q. And that amounts to a greater than 47 percent
6 disparity?
7   A. Yes.
8   MR. LALLINGER: Okay. Can we bring up the first
9   table on page 39. Next to this table. Thank you.
10   Q. And that is entitled "2020 Educational Attainment By
11 Race."
12   Now, you just said that generally the disparities have
13 gone down; is that right?
14   A. Yes. For the most part.
15   Q. So if we take a look at the 2020 figures, and we focus
16 on the fourth column there entitled "percent of White," and we
17 look at the row entitled "Black bachelor's degree or higher,"
18 the square identifies 76.33 percent, correct?
19   A. Yes.
20   Q. And if we compare 76.33 to 71.77, then it shows that it
21 was actually higher in 2020?
22   A. Yes.
23   Q. Right? So the disparity has grown since 2020?
24   A. In this instance, yes.
25   Q. And the same is true for the Latinos's bachelor degree

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1 are a higher percentage; is that right? So that is comparing
2 56 --
3   A. Yes.
4   Q. -- .12 in 2020 with 52.63 in 2024?
5   A. Yes.
6   Q. And the same is also true about the Latino high school
7 graduation rate, correct?
8   A. Yes.
9   MR. LALLINGER: Okay. We can take this down.
10   Q. Now, you also discussed housing on Staten Island; is
11 that right?
12   A. Yes.
13   MR. LALLINGER: Can we pull up page 40,
14   paragraph 79, Figure 9 of Dr. Sugrue's opening report.
15   Q. Now, this figure is entitled "Housing Tenure By Race
16 and Ethnicity on Staten Island 2019 to 2023," correct?
17   A. Yes.
18   Q. And you agree that this shows that nearly 77 percent of
19 Whites on Staten Island are homeowners, but less than 36 percent
20 of Blacks, and less than 44 percent of Latinos are homeowners,
21 correct?
22   A. Correct.
23   Q. And this is the most recent, up-to-date data that is in
24 either of your reports, correct?
25   A. That I'm aware, yes.

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1   MR. LALLINGER: Okay. We can take this down.
2   Q. At page -- you also discuss income in your report; is
3   that right?
4   A. Yes.
5   MR. LALLINGER: Can we bring up page 44 of
6   Mr. Borelli's report. That is IRX-002.
7   Q. And here you present three tables that describe
8   household income by race on Staten Island?
9   A. Yes.
10   Q. Now, to shorten things a little bit, you would agree
11   that in all of these charts, neither Black nor Hispanic mean
12   household income ever exceeds 66 percent of White household
13   income; is that right? It's never greater than 66 percent?
14   A. Yes.
15   Q. And I would like to be very clear again since we
16   discussed some historical disparities and you've mentioned
17   progress, but this is the most current data that is in evidence
18   that shows in 2024 there was a greater than 34 percent disparity
19   between White and Black mean household income; is that right?
20   A. Yes. But it's an improvement.
21   Q. And a greater than 35 percent disparity between Latino
22   and White household income; is that right?
23   A. Yes, but, again, it's an improvement.
24   MR. LALLINGER: And we can take this down.
25   Q. You also agree that one factor of the totality of the

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1   circumstances factors examines the extent to which members of a
2   protected class in the state or political subdivision vote at
3   lower rates than other members of the electorate, right?
4   A. Yes.
5   Q. And you present some data on voting rates in your
6   report?
7   A. On Hispanics, yes.
8   MR. LALLINGER: Let's pull up Table 4.
9   Q. This is on page 35 of your report. That is IRX-002.
10   And this presents the percentage of the electorate that
11   registered and voted by race and ethnicity in the 2018 midterm
12   elections; is that right?
13   A. Yes. For the state.
14   Q. Now, does this -- does this present data for the entire
15   United States?
16   A. I forget off the top of my head. I think it's for the
17   State of New York. No, I'm sorry, this is nationwide.
18   Q. Thank you.
19   Now, the four bars on the right show the percent of the
20   electorate that voted, correct?
21   A. Yes.
22   Q. And this shows broadly a disparity between the
23   non-Hispanic White vote and the non-Hispanic Black and Latino
24   vote, correct?
25   A. Yes.

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1   Q. Let's take a look at your Table 5 on page 35 of your
2   report.
3   Now, this is a similar chart, but it shows a percentage
4   of the electorate registered and voted by race and ethnicity in
5   the midterm elections in 2022, correct?
6   A. Yes.
7   Q. And your own data again show -- shows a disparity
8   between the percentage of the White vote as compared to the
9   percentage of the Latino and the Black vote, correct?
10   A. Correct.
11   Q. And that disparity in 2022 was more than 19 percent for
12   the Latino-White comparison?
13   A. I trust your subtraction, yes.
14   Q. And it was greater than 12 percent for the Black-White
15   voter disparity?
16   A. Yes.
17   Q. So, again, for the most current data that you present,
18   you -- your own data shows disparities between voter turnout by
19   race on Staten Island, correct?
20   A. Well, I don't have Staten Island-specific data.
21   Q. I'm sorry, in the United States.
22   A. Yes, correct.
23   MR. LALLINGER: Let's bring up page 9, Figure 6 of
24   PX-3, which is the expert report of Maxwell Palmer.
25   MS. DIRAGO: Objection. This goes beyond the scope

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1   of the direct.
2   MR. LALLINGER: We were talking about voting
3   rights -- voting rates in the scope of the direct. This is
4   directly related. This is the actual data of -- from
5   Staten Island.
6   MS. DIRAGO: We did not discuss Dr. Palmer's report
7   or his data on this at all.
8   MR. LALLINGER: This is relevant to the rate of
9   votes --
10   THE COURT: In the context of -- I'll allow it
11   because it's in the context of race and I want to hear the
12   expert witness regarding race.
13   MS. DIRAGO: Okay, Your Honor.
14   BY MR. LALLINGER:
15   Q. Do you see that this figure is labeled "Estimated voter
16   turnout by race and election in Staten Island"?
17   A. Yes. This is the first I'm seeing this.
18   Q. Do you see that it has three dates above the three
19   charts in the figure: 2020, 2022, and 2024?
20   A. Yes.
21   Q. And do you see that in 2024, White voter turnout was
22   71 percent?
23   A. That's what the chart says.
24   Q. Hispanic voter turnout is labeled at 58 percent?
25   A. That's what the chart says.

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1   Q.   And Black turnout was labeled at 54 percent?
2   A.   That's what the chart says.
3   Q.   Do you have any reason to dispute these figures?
4   A.   Yes. It says "estimated voter turnout by race and
5   election." It's not an accurate count of voter turnout by race.
6   It's an estimate. If there was this data actually available,
7   the politician in me, the political consultant in me would be
8   using that data to try to win supplemental elections. But this
9   is the first I'm seeing this.
10 Q.   Do you have any reason to dispute that this is an
11 accurate estimate of voter turnout by race and election in
12 Staten Island?
13   MS. DIRAGO: Objection. He doesn't even know what
14   this is.
15   THE COURT: Sustained.
16   MS. DIRAGO: Thank you.
17   THE COURT: Next question.
18   MR. LALLINGER: Okay. We can take this down.
19 BY MR. LALLINGER:
20 Q.   Now, you also talked about Black and Latino elected
21 officials on Staten Island in your direct?
22 A.   Yes.
23 Q.   You'd agree that Black people have lived on
24 Staten Island for at least 200 years, correct?
25 A.   Yes.

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1   Q.   And its entire -- and in its entire history,
2   Staten Island has only elected two Black City Council members;
3   is that right?
4   A.   Yes.
5   Q.   And the first one was in 2009; is that right?
6   A.   Correct.
7   Q.   And you would agree that it has no -- it had no Latino
8   City Council members?
9   A.   Not in the City Council, no.
10 Q.   And there has never been a Black US Congressional
11 representative from Staten Island; is that right?
12 A.   No.
13 Q.   And a Charles Fall, who currently represents Assembly
14 District 61, is the first and only Black person to represent
15 Staten Island in the state legislature?
16 A.   Yes.
17   (Senior Court Reporter Karen Perlman was replaced
18   by Senior Court Reporter Monica Hahn.)
19   (Transcript continues on the following page.)
20
21
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23
24
25

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1   MR. LALLINGER: I pass the witness.
2   THE COURT: Thank you.
3   Redirect?
4   MS. DIRAGO: I don't have any redirect, your
5   Honor.
6   MR. FASO: We have no questions, your Honor.
7   THE COURT: Okay. Well, thank you for your
8   testimony.
9   MS. DIRAGO: We rest, your Honor.
10   MR. FASO: Likewise.
11   THE COURT: Let's take a five minute break.
12 Let me gather some thoughts. I want to just address the
13 parties and we can discuss next steps, et cetera, all
14 right.
15   Let's take five minutes.
16   (Whereupon, a short recess is taken.)
17   THE COURT: All right. Well, back on the
18 record.
19   Good job everybody. Nice working, getting it
20 done on time. Gives me a little bit of time and I want
21 to use that time wisely.
22   So I'm going to put an order on the record
23 that will help you all finalize this matter for us. I
24 have one question that I'll ask that I want briefed and
25 then I'll give deadlines for that, the summations, et

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1   cetera.
2   So forgive me, I'm going to read it. I wrote
3   it down. And here we go:
4   So the state respondents have requested the
5   opportunity to submit extra papers on the proper remedy
6   in this case, should the court find the current lines
7   unconstitutional. They believe that ordering specific
8   lines is improper.
9   While the court currently reserves judgment on
10 the constitutionality of the current congressional
11 lines, we would like to give the state respondents and
12 all interested parties to have that same opportunity,
13 so by Monday, January 12th, please submit. I'll give
14 you until close of business, what maybe the proper
15 remedy should the court find in favor of the
16 petitioners. Let's keep the page limit to no more than
17 ten pages.
18   And then in relation to the written summations,
19 those will be due by close of business Wednesday,
20 January 14th. Also ordered all without prejudice.
21   That is all I have for on the record.
22   Does anyone else want to put anything on the
23 record? And then I want to go off the record and
24 discussion, you know, cleaning up the evidence,
25 virtually evidence courtroom that I think we can do

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1   before close of business today.
2   So on the record?
3   MS. BRANCH: I have one question with respect
4   to the written summations, your Honor. This is Aria
5   Branch, for Petitioner.
6   Is there a particular format you would like
7   those briefs to be in?
8   MR. TSEYTLIN: I was going to ask the same, do
9   you want proposed, do you want, I was going to ask the
10   same, do you want proposed findings of fact, conclusions
11   of law, or do you want in the nature of the briefing
12   that your Honor received so far, counsel argument with
13   citations. Kind of similar, but a little bit different
14   in tone at least.
15   THE COURT: I will leave it open. So you can
16   respond however you see fit. As far as format goes, I'm
17   not partial to a format.
18   What I'm trying to get to is, if the court,
19   because of what the state has requested, the state
20   respondents have requested, I would expect they are
21   going to submit something. I want to give these, you
22   two the same opportunity to write the brief that says
23   if the court finds the current lines unconstitutional,
24   if the court finds the illustrative as described lines
25   unconstitutional, what is the next step, what is the

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1   remedy.
2   MR. TSEYTLIN: Your Honor, I think Ms. Branch
3   and I were asking about the submissions on Wednesday and
4   what format the court wants those in, proposed findings
5   conclusions of law.
6   THE COURT: I didn't hear your words.
7   MR. TSEYTLIN: The filing on Wednesday, the
8   post-trial submission, the big one, not on the remedy,
9   whether the court prefers conclusions of fact, proposed
10   conclusions of fact and conclusions of law?
11   THE COURT: Yes. I'm sorry. I misunderstood
12   the question. Yes, I would like proposed conclusions of
13   fact and standards of law, and that is all.
14   MR. FASO: Is that distinct from the summation,
15   I think the summation is a summary of, you know, counsel
16   is making at the end of a trial.
17   THE COURT: Exactly. So that is all I'm
18   looking for is wrap it up.
19   MR. FASO: Okay.
20   THE COURT: You can use your findings of fact
21   and conclusions of law in the summation, yes.
22   MR. FASO: Thank you.
23   THE COURT: I'm sorry, maybe I'm not as
24   litigious just in understanding of what it is I'm
25   looking for. I'm looking for you to wrap it up. Put

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1   it all together in a nice neat bow and explain to me
2   what I should do from your prospective as respondents
3   and respondent intervenors and petitioners and as state
4   respondents. Okay.
5   Understanding the state, I know we are still
6   on the record, but the state, it is my understanding in
7   their briefs believe, the state believes that my
8   ordering of a specific set of lines would be improper,
9   and so by that statement I want to know what you think
10   is proper.
11   Anything else on the record? Okay. Thank you.
12   Let's go off the record.
13   (Whereupon, a short recess is taken.)
14   THE COURT: Okay. Thank you.
15   (Whereupon, the case is adjourned.)
16   I, Monica Hahn, do hereby certify the foregoing
17   to be a true and accurate verbatim transcription of the
18   original stenographic record.
19
20   Monica Hahn
21   Senior Court Reporter
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EXHIBIT Q

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---X

Michael Williams, José Ramírez-Garofalo, Aixa Torres, and
Melissa Carty,

                                                            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-

Representative Nicole Malliotakis, Edward L. Lai, Joel
Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba

                                Intervenor-Respondents.

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**Expert Report of Thomas J.
Sugrue**

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