

EXHIBIT D

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

Index No. EF002460/2024

ORAL CLARKE, ROMANCE REED, GRACE PEREZ,
PETER RAMON, ERNEST TIRADO, and
DOROTHY FLOURNOY,
Plaintiffs,

v.

TOWN OF NEWBURGH and TOWN BOARD OF
THE TOWN OF NEWBURGH,
Defendants.

-----/

REMOTE VIDEOCONFERENCE
DEPOSITION OF
Dr. Matt A. Barreto
Taken on behalf of Defendant

* * *

September 13, 2024

Rachel McRoy, RPR
Court Reporter

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Also Present: Chris Reyes, Videographer; Daniel Hassel,
Emma Kim, Michael Rios, Steven Still

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DEFENDANTS' EXHIBITS

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1 THE VIDEOGRAPHER: Good morning. We're.
2 Going on the record at 9:02 a.m. on
3 September 13th, 2024. Excuse me. Please note that this
4 deposition is being conducted. Virtually quality of
5 recording depends on the quality of camera and Internet
6 connection of participants. What is seen from the
7 witness and heard on screen is what will be recorded.
8 Audio and video recording continue to take place unless
9 all parties agree to go off the record.

10 This is Media Unit 1 of the video-recorded
11 deposition of Dr. Matt A. Barreto, in the matter of
12 Clarke Oral, et al., versus Town of Newburgh, et al.,
13 filed in the Supreme Court of the State of New York,
14 County of Orange, Case Number EF002460-2024.

15 My name is Chris Reyes representing
16 Veritext, and I am the videographer. The court reporter
17 is Rachel McRoy from the firm Veritext. I am not
18 related to any party in this action nor am I financially
19 interested in the outcome.

20 If there are any objections to proceed,
21 please state them at the time of your appearance.
22 Counsel and all present, including remotely, will now
23 state their appearances and affiliations for the record,
24 beginning with the noticing attorney.

25 MS. WEEKS: Mary Weeks of Troutman Pepper

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1 Hamilton Sanders I represent the named defendants in
2 this case.

3 MR. IMAMURA: I'm David Imamura, Abrams
4 Fensterman, LLP. Fensterman, F-e-n-s-t-e-r-m-a-n. I'm
5 representing plaintiffs.

6 MR. STILL: Steven Still, also with Abrams
7 Fensterman, and also representing the plaintiffs.

8 MR. HESSEL: Daniel Hessel of the Harvard
9 Election Law Clinic representing plaintiffs.

10 THE VIDEOGRAPHER: If that's everybody, will
11 the court reporter please swear in the witness, and
12 counsel may proceed.

13 THE REPORTER: Do you swear or affirm the
14 testimony you will give will be the truth, the whole
15 truth and nothing but the truth?

16 SEATTLE, WASHINGTON; WEDNESDAY,

17 September 14, 2024

18 9:04 a.m.

19 * * *

20 DR. MATT A. BARRETO,

21 Called as a witness on behalf of the

22 Defendants,

23 Having first been sworn by the Reporter,

24 Testifies as follows:

25 THE WITNESS: I do.

1

EXAMINATION

2

BY MS. WEEKS:

3

Q. Good morning, Dr. Barreto. My name is Mary

4

Weeks, and I am representing one of the named defendants

5

in this case.

6

MR. IMAMURA: Mary, you're coming off a
7 little muffled, at least for me, relative to other days.

8

MS. WEEKS: How about this?

9

MR. IMAMURA: That's better.

10

THE WITNESS: I was going to say, Ms. Weeks,
11 before we get started, I am in a hotel room and I just
12 heard housekeeping two doors down, so I am going to go
13 put my "Do Not Disturb" on my door and I will be back in
14 one second.

15

MS. WEEKS: Thank you.

16

THE VIDEOGRAPHER: Counsel, did you want to
17 go off the record or stay on?

18

MS. WEEKS: Assuming it is only a moment, I
19 think we're fine.

20

THE WITNESS: All good. Thank you.

21

BY MS. WEEKS:

22

Q. Let me just ask the question again just for a
23 clear record.

24

Dr. Barreto, have you ever been deposed before?

25

A. I have.

1 Q. Okay. How many times would you say?

2 A. 50. I don't know. A lot.

3 Q. Well, then I assume you're familiar with these
4 rules, but I just want to go over the ground rules so
5 that we're all on the same page today.

6 So as you were just sworn in, you understand
7 you're under oath today?

8 A. Yes, I do.

9 Q. Okay. And if there is any question that I ask
10 that you do not understand, I just ask that you please
11 let me know and I will try to rephrase it.

12 A. Okay.

13 Q. However, if you answer the question, I'm going to
14 assume that you understand what I was asking.

15 I would ask that you please give verbal answers
16 and refrain from using gestures to answer any questions
17 so that we have a complete record and the court reporter
18 can take down your spoken testimony.

19 A. Sounds good.

20 Q. Also, if you could just please wait for me to
21 finish any questions before responding; and I will try
22 to do the same for you. Again, so that we can ensure a
23 clear record today.

24 Finally, if you want to take a break at any
25 point, please let me know. I would just ask that when I

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1 have a question that is pending, that you would answer
2 that question prior to requesting the break or prior to
3 going on the break.

4 Other than that, I know that we're using a Zoom
5 platform. If any technical issues come up throughout
6 the day, just let us know.

7 A. Okay.

8 Q. So is there any reason why you cannot testify
9 truthfully today?

10 A. No.

11 Q. Your -- are you on any medications that might
12 affect your ability to testify truthfully today?

13 A. No, I am not.

14 Q. I assume you haven't had any alcohol or drugs
15 that would inhibit your ability to testify today?

16 A. Not at 9:00 a.m., no.

17 Q. What did you do to prepare for today's
18 deposition, Dr. Barreto?

19 A. I reviewed my report in this case yesterday. I
20 also sat in on the deposition two days ago that I
21 believe you were also in on.

22 Q. That was the deposition of Dr. --

23 MR. IMAMURA: Mary, we lost you for a
24 second. Sorry, could you repeat the question? You're
25 kind of coming in and out.

1 MS. WEEKS: I believe the witness is frozen.

2 Yes. I apologize.

3 THE WITNESS: I think you're frozen.

4 MR. IMAMURA: Yeah, you're frozen, Mary.

5 MS. WEEKS: Okay. Can you hear me now?

6 THE WITNESS: We can hear you, but your
7 video is frozen.

8 MR. IMAMURA: Mary, can you hear us?

9 THE WITNESS: I can hear you, David, so I
10 think you and I are fine.

11 DR. IMAMURA: Let's give her a second.

12 MS. WEEKS: How about now?

13 MR. IMAMURA: Yeah, you're back. You're
14 back.

15 MS. WEEKS: Apologize.

16 BY MS. WEEKS:

17 Q. Okay. So backing up, I think the last question
18 was whether or not that was Dr. Lockerbie's deposition
19 that you're referring to.

20 A. Yes, that's correct. Brad Lockerbie.

21 Q. Thank you. So in addition to reviewing your
22 report yesterday, have you reviewed any other documents
23 in preparation for this deposition?

24 A. The addendum of the report that I wrote. And I
25 think that's it.

1 Q. Okay. I will just note our objection to the
2 addendum. I believe that you and opposing counsel are
3 aware of the position of defendants, that it was
4 untimely and that it won't be within the scope of our
5 discussions today.

6 So with respect to speaking to anyone, did you
7 speak to anyone about your testimony today?

8 A. I spoke to David Imamura about ten minutes before
9 the call started just to make sure everything was still
10 moving forward. And we had about a five-minute
11 conversation, and that was it.

12 Q. Okay. So did you meet with any plaintiffs'
13 counsel to prepare for your testimony today?

14 A. I did not.

15 Q. Let's talk about your background and experience,
16 Dr. Barreto.

17 For your educational background, where did you
18 receive your bachelor's degree?

19 A. I went to a small school in the state of New
20 Mexico that was called Eastern New Mexico University.
21 It was a public university. I got a bachelor's degree
22 in political science.

23 Q. And I apologize. I want to back up and ask one
24 more foundational question which is just, do you have
25 any documents with you right now in front of you or in

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1 the room?

2 A. I have the PDF of my report and my addendum open,
3 and that's it. I have nothing else. I didn't know if I
4 was supposed to have that in PDF or if we would look at
5 it through the document share you sent. But I can close
6 the PDF viewer if you'd like.

7 Q. Yes, I will be sharing the exhibits through
8 Exhibit Share. And just to confirm, those documents
9 that you have, they have no markings, comments, anything
10 like that on them?

11 A. Correct.

12 Q. So moving on. Following your bachelor's degree,
13 did you receive your master's?

14 A. I did. I received my master's at the University
15 of California, Irvine, in social sciences.

16 Q. Okay. And, Dr. Barreto, you have a PhD. Where
17 and when did you obtain that?

18 A. I also obtained my PhD at the University of
19 California at Irvine in political science. It was
20 awarded in 2005.

21 Q. So after you received your PhD, what did you do
22 next?

23 A. I took a job as an assistant professor of
24 political science at the University of Washington in
25 Seattle.

1 Q. Okay. And what roles did you have there?

2 A. Teaching, research, and service are broadly the
3 three areas that all university professors take roles
4 in. And so I taught courses, I published books and
5 articles, and I helped found a research center and
6 advise students.

7 Q. Okay. And were you a professor for the entirety
8 of your tenure there?

9 A. Yes. I was at the University of Washington I
10 think nine and a half years. I started as an assistant
11 professor. I then became an associate professor with
12 tenure. And then in my last year I became a full
13 professor with tenure.

14 Q. Okay. So you were a professor there for one
15 year?

16 A. I was a full professor with tenure for the last
17 year that I was there before I moved to UCLA.

18 Q. Okay. Can you describe to me the courses you
19 taught?

20 A. At the University of Washington?

21 Q. Correct.

22 A. I taught courses on American politics,
23 immigration and -- immigration politics, racial and
24 ethnic politics, voting in elections, voting behavior,
25 Latino politics. I taught a course on the Voting Rights

1 Act. And then I taught a statistical intro to
2 regression analysis and advanced regression analysis to
3 PhD students. There might have been some others. They
4 are listed on my CV.

5 Q. You mentioned that you founded an institute; is
6 that correct?

7 A. Yes.

8 Q. Tell me about that.

9 A. A couple of years in, maybe my second or third
10 year at Washington, in collaboration with another
11 professor, we got some funding and started a center that
12 we called the Washington Institute for the Study of
13 Ethnicity & Race.

14 Q. And what were your responsibilities in connection
15 with that institute?

16 A. I was one of the faculty directors and just to
17 advise PhD students, to put on some conferences and
18 panels, administer grants to PhD students to support
19 their research.

20 Q. Okay. Were you also one of the founding
21 directors of the center for democracy and voting rights?

22 A. At the University of Washington, towards the --
23 into the last three years I was there, I founded a
24 voting rights research -- I don't remember if it was a
25 center or a project. But we received some funding in

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1 collaboration with the law school and had a voting
2 rights center there. Yes.

3 Q. And what were your responsibilities with respect
4 to the Voting Rights Act?

5 A. Basically the exact same as what the other
6 center. Very generic professor responsibilities.

7 Q. And you said that you left the school in 2015.
8 Why did you leave?

9 A. I received a job offer from UCLA in Los Angeles.
10 I had a lot of family in the area, so it was a good fit
11 and good timing for us to move to Los Angeles.

12 Q. And was that a move that you were seeking to do,
13 or were you looking to separate from the school?

14 A. It was a recruitment, so what UCLA were
15 recruiting me. I had been looking probably for about
16 two years for different job opportunities in California
17 because most of my wife's family was in Los Angeles.

18 Q. Would you say that you left on good terms?

19 A. Yeah. I have lots of friends in the department
20 at the University of Washington.

21 Q. So you went to UCLA in 2015?

22 A. January of 2015.

23 Q. And you're still there?

24 A. I am.

25 Q. Tell me about your various roles at UCLA.

Page 15

1 A. My academic appointment is in the division of
2 social sciences. It's split between two departments
3 equally, the political science department and the
4 Chicana/Chicano Central American Studies department. I
5 teach classes and mentor students in both of those two
6 departments. I also have what's called a zero percent
7 courtesy appointment in the Department of Public Policy.
8 And I am the faculty director of the UCLA voting rights
9 project.

10 Q. Okay. So let's start with the courses that you
11 are -- have previously taught and are currently
12 teaching. What are those?

13 A. I teach a class on the Voting Rights Act and data
14 science related to the Voting Rights Act research. I
15 teach a Latino politics class. I teach a class on
16 research methods to PhD students. And I've taught
17 classes on voting in elections and political behavior.

18 Q. And you're teaching those currently, the voting;
19 or did you say in the past?

20 A. We are not in session right now because we're on
21 the quarter system, so I am not teaching anything
22 currently; but those are classes I would say I regularly
23 teach.

24 Q. Okay. So since 2015 you regularly taught those
25 courses?

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1 A. I would say since 2015 I've taught some sort of
2 rotation of those courses. Also, I've taught a intro to
3 Chicano studies. So the history of the Chicano civil
4 rights movement class in the Chicano studies department,
5 once or twice. There might be some others, but those
6 are -- the ones I mentioned, yes, I would say I more or
7 less regularly have taught those courses.

8 Q. Okay. And at UCLA, do you have tenure?

9 A. I do. I was appointed in 2015 as a full
10 professor with tenure.

11 Q. You're the faculty director of the Latino
12 Policy & Politics Institute; is that correct?

13 A. I was for six years. And as of July 1st, I
14 turned that over to Professor Amada Armenta in the
15 Luskin School; and I took over as the faculty director
16 of the UCLA voting rights project.

17 Q. Okay. So sticking for a moment with the faculty
18 director of the Latino Policy & Politics Institute
19 position, what were your responsibilities during your
20 time in that role?

21 A. I was the faculty director, so it was to oversee
22 the research, oversee the staff. We had a lot of PhD
23 students as well as undergrads and master's students,
24 help with their research and their professional
25 development. By the time I left, the center had grown

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1 fairly large and had a fairly large staff. And so I was
2 more of the overall faculty director and not running the
3 day-to-day.

4 Q. Okay. You mentioned becoming a faculty director
5 of the UCLA voting rights project. Did you say you've
6 only done that since July 1st, or were you involved
7 previously?

8 A. I founded the UCLA voting rights project. It was
9 a project or a program that was housed within my other
10 center, LP PI. So I have been the founding director of
11 that for five years or six years since whenever it was
12 founded. As of July 1, it attained status as an
13 independent research center at UCLA. And so when that
14 happened, it needed to have a faculty director and so I
15 assumed that role.

16 Q. Okay. And what are your responsibilities both
17 prior to becoming the faculty director and previously
18 with respect to the UCLA voting rights project?

19 A. I oversee the social science research component
20 of the voting rights project. I work with other social
21 scientists, PhD students, and data science staff on
22 research questions related to voting rights, as well as
23 teach a course that I previously mentioned related to
24 social science and voting rights.

25 Q. So in reviewing your CV, it also references

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1 affiliated research centers. I believe that includes
2 the Latino Policy & Politics Institute at UCLA, the
3 Chicano Studies Research Center at UCLA, and the Center
4 for the Study of Los Angeles at Loyola Marymount
5 University.

6 Can you tell me about your involvement with those
7 research centers?

8 A. We've already talked about LP PI. Chicano
9 studies center is a research department on campus here
10 at UCLA. There is probably 50 or so affiliated
11 professors. Basically if your research has something to
12 do with Latino studies, they put you down as an
13 affiliated faculty member. You might participate in
14 some of their conferences. You might go to some of
15 their meetings, et cetera.

16 And I have the same relationship with the Center
17 for the Study of Los Angeles. Occasionally Dr. Fernando
18 Guerra and I collaborate on projects. It is just more
19 of an affiliation. I don't have any formal duties.

20 Q. Have you ever taught a class about racial
21 discrimination?

22 A. Are you asking have if the title of the class was
23 racial discrimination? I don't follow the question.

24 Q. No, not title. Have you ever taught any classes
25 that dealt with racial discrimination?

1 A. Yes.

2 Q. What were those?

3 A. I would say probably any class on the topic on
4 American politics has covered racial discrimination.

5 Q. And is it an independent portion of the
6 curriculum? Or are you just saying that it's something
7 that is touched upon during the course of the semester?

8 A. I would say both.

9 Q. Have you ever taught any -- you said that you
10 taught political science classes, correct?

11 A. Yes.

12 Q. What about courses about the system of
13 government?

14 A. American politics, yes.

15 Q. Dr. Barreto, what would you describe as your area
16 of expertise?

17 A. With respect to this case, do you mean?

18 Q. Well, let's begin generally.

19 A. I would say in the area of political science,
20 research methodology, survey research methodology.
21 Voting in elections. Statistical analysis, in
22 particular, as it relates to voting in elections.
23 Racial and ethnic politics. Voting patterns by race and
24 ethnicity. Ecological inference. Voting rights policy.

25 Q. Okay. How about with respect to this case?

1 A. I would say many of those things I just mentioned
2 are quite relevant.

3 Q. Are any of them not relevant?

4 A. I guess it depends on the type of questions
5 you're going to ask me later.

6 Q. Fair enough.

7 So let's talk a little bit about your
8 publications -- and I think at this point it maybe makes
9 sense for me to add an exhibit.

10 Okay. I should have added what we are going to
11 mark as Defendants' Exhibit 1.

12 (Exhibit No. 1 was marked for identification.)

13 MR. IMAMURA: I have it. Do you see it,
14 Professor?

15 THE WITNESS: I see in the folder
16 PlaintiffsExpertReportBarreto.PDF.

17 MS. WEEKS: Correct. And I apologize.
18 Can we go off the record for one moment?

19 THE VIDEOGRAPHER: We are going off the
20 record. The time is 9:27 a.m.

21 (Recess taken from 9:27 a.m. to 9:30 a.m.)

22 THE VIDEOGRAPHER: We're back on the record.
23 The time is 9:30 a.m.

24 BY MS. WEEKS:

25 Q. Dr. Barreto, I have introduced what is marked as

1 Defendants' Exhibit 1.

2 Do you see that?

3 A. I can see that in the Veritext Exhibit Share
4 folder.

5 Q. Okay. And this is a copy of your expert report
6 submitted in this case?

7 A. I just clicked on it, so let me open it. I was
8 just looking at the folder. It has now come up. I need
9 to zoom in. It has my name on the first page, so I
10 presume that's what this is. It appears to be my
11 June 28th report.

12 Q. Okay. Thank you for verifying.

13 Now, I want to direct you to your CV which I
14 think begins on Page 61 of the document.

15 A. Okay. I'm there.

16 Q. And I would like to direct you to the list of
17 publications.

18 A. Okay. I believe that starts on Page 2 with my
19 CV.

20 Q. Now, in reviewing this, can you point out to
21 me -- identify any that are related to the Town of
22 Newburgh specifically?

23 A. I don't believe I have published a peer-reviewed
24 article yet on the Town of Newburgh.

25 Q. Are there any that are related to racial

1 discrimination?

2 A. What do you mean by "related to racial
3 discrimination"? That is an extremely broad topic.

4 Q. Are there any that you would identify as
5 specifically addressing racial discrimination?

6 A. Yes.

7 Q. Okay. Which ones are those? And I see that
8 they're numbered, at least with respect to the
9 peer-reviewed articles, so if it is easier, we can use
10 those.

11 A. So let's start on the book manuscripts. I would
12 say all of the book manuscripts touch on racial
13 discrimination at some point.

14 Q. Okay. And when you say "touch on racial
15 discrimination," what do you mean by that?

16 A. They acknowledge that it either existed
17 historically or continues to exist in America today. Or
18 they may go more in depth on it in terms of experiences
19 people report or viewpoints that people have about other
20 groups in America. We would have to go through each of
21 the books, you know, to decide what percentage of the
22 content is about discrimination, but certainly is a
23 topic that comes up.

24 Q. Okay. With respect to -- I mean, if you had to
25 give a general number as to how much of these

Page 23

1 publications deal with racial discrimination as you have
2 identified today, what would be that number?

3 A. In all my publications?

4 Q. Generally.

5 A. I would say that many of my publications touch
6 upon the topic of racial discrimination either as a
7 historical issue or a contemporary issue in American
8 politics today. I don't know sitting here what
9 percentage of the words in any manuscript, but it is
10 certainly a topic that I have acknowledged existed
11 historically. And from the perspective of Americans,
12 they acknowledge that it continues to exist today or
13 that it affects their lives. And so those are topics I
14 have written upon.

15 Q. Okay. Again, just sort of thinking about this
16 roughly, how much would you estimate if I were to pick
17 up any one of these five books and make a determination,
18 would it be that it's touching on it just very lightly?
19 Or are these books specifically about -- is that the
20 gist of the book and the main driver of what you've
21 written?

22 MR. IMAMURA: Objection. Form. You can
23 answer.

24 THE WITNESS: I don't know off the top of my
25 head. I would be happy to send you copies of all these

Page 24

1 books and then we can have a book club or something. I
2 don't know. But I don't really understand, and I was
3 not prepared to give a percentage of any of my articles
4 about racial discrimination.

5 So I don't know, I would say it is
6 definitely a topic that I acknowledge exists, has
7 existed historically. Much of my work has to do with
8 public opinion data, and that's a common question that
9 we ask people, about their experiences with
10 discrimination or their perceptions, their attitudes
11 towards other racial groups.

12 So those are topics that I would say I
13 regularly cover. To what extent that it takes up all
14 the words or only two paragraphs, I don't know.

15 BY MS. WEEKS:

16 Q. Okay. And it won't be necessary for you to share
17 the books following the deposition.

18 A. You can buy them and I will get royalties, so
19 that would be even better.

20 Q. Understood.

21 With respect to the peer-reviewed articles, are
22 there any in particular that you would say touch on
23 racial discrimination as you've identified it?

24 A. I would probably generally give the same answer,
25 that it is, you know, definitely a topic that I am aware

Page 25

1 of and that I believe impacts American politics, both
2 historically and today.

3 So if you start with the very first one that's on
4 the list, Black Lives Matter and racialized support for
5 the January 6th insurrection, you can imagine if you
6 read this there's probably a lot that has to do with
7 perceptions of racial issues and racial discrimination
8 in America. As you go down you can probably determine
9 how much of those papers confront that issue of racial
10 discrimination. It is certainly something that I would
11 say is covered or at least acknowledged in many of the
12 papers I have written.

13 Q. Okay. So would you say that among these
14 peer-reviewed articles identified that it is covered in
15 all or many, just to be clear?

16 A. I don't know. Do you want me to go off record?
17 I can go probably take six hours to read them off. But
18 I don't know.

19 Q. That's not necessary. There is a -- at least
20 that you would say many of these touch on the topic of
21 racial discrimination?

22 A. Probably.

23 Q. Okay. Are there any related to the law? You
24 mentioned that the VRA in particular -- and we're
25 speaking about the Voting Rights Act. Are any of these

1 related to the Voting Rights Act or other loss?

2 A. Any of my papers?

3 Q. Correct. Or any of your publications, so I would
4 include your books as well.

5 A. I would say yes.

6 Q. Okay. Which ones?

7 A. Is the question which ones are specifically about
8 the Voting Rights Act of 1965? Or what is the question?

9 Q. Related to the Voting Rights Act of 1965 or other
10 laws -- other related laws?

11 A. You mean other related voting rights laws such as
12 voter ID laws, or do you just mean other related laws?

13 Q. Other related voting -- voting-related laws?

14 A. So without looking at all of them, a very common
15 topic I write about is voter turnout and vote choice.

16 So to some extent almost every paper I write has
17 something to do with voting laws. I talk about
18 registration requirements. I've talked about voting ID
19 requirements. I talked about proof of residency and
20 proof of citizenship requirements that come about in
21 general voter registration cases.

22 And then many of my publications are specifically
23 about the Voting Rights Act of 1965 or state voting
24 rights acts such as the Washington Voting Right Acts or
25 the California Voting Rights Act. But without knowing

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1 specifically what you're looking for, I would just that
2 say yes, that many of my papers have touched on voting
3 related laws.

4 Q. Have any of them discuss the New York Voting
5 Rights Act?

6 A. I don't believe so. It is a fairly new law, and
7 I don't believe I have published any pieces related to
8 it.

9 Q. Okay. Now are there any publications that are
10 related to or touch upon racially polarized voting?

11 A. Yes.

12 Q. Which ones are those?

13 A. Well, for sure my book Ethnic Queues in 2010.
14 And then I'm going to refer to the rest by number. 82,
15 80, 70, 55, 59, 56, 52, 51, 45, 44, 37, 33, 29, 26, 22,
16 5, 4. That's my best guess.

17 Q. Okay. Thank you. Now, I see that your
18 curriculum vitae is dated April 2024 here. Are there
19 any publications that you've since written that are not
20 included in this list?

21 A. I don't think so, but I will check when this is
22 over. And if for some reason a new article got
23 published, I will send it over to you. But I don't
24 think so.

25 Q. Generally with respect to your CV, are there any

1 other updates that wouldn't be reflected?

2 A. I don't think so.

3 Q. Dr. Barreto, to your knowledge, have your
4 publications ever been cited in a court decision or a
5 peer-reviewed academic journal?

6 A. Yes.

7 Q. Okay. I know that you just listed each of the
8 publications that addresses racially polarized voting.
9 Are any of those publications that have been cited in a
10 court decision or a peer-reviewed academic journal?

11 A. I believe so.

12 Q. Which ones?

13 A. Probably all the ones I just numbered. I don't
14 know. I mean, I don't have the directory. It is
15 possible to figure it out, but I don't know.

16 Q. Okay. Let's put a finer point on that.

17 Do you know whether any of the articles -- or the
18 publications that you just identified that address
19 racially polarized voting have been cited by a court?

20 A. I believe they have.

21 Q. And do you know which ones?

22 A. Not off the top of my head. I know at some point
23 when I have read a court decision, I have seen a
24 reference to an article I've written. But I don't have
25 that memorized.

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1 Q. Okay. Do you know if that reference by the court
2 was critical or positive?

3 A. Normally they have been positive, but I'm sure
4 some have been critical. But I don't know off the top
5 of my head.

6 Q. I want to ask you a few questions about your
7 engagement in this case. By whom are you engaged?

8 A. By the plaintiffs' attorneys.

9 Q. Okay. And when you say "plaintiffs' attorneys,"
10 can you just identify who you mean?

11 A. Primarily I've worked with David Imamura and
12 Steven Still.

13 Q. Do you remember when you were engaged in this
14 case?

15 A. I do not. Earlier this year.

16 Q. And by that do you mean within last six months,
17 the last three months? Can you put any finer pin on it?

18 A. Probably six, but I don't recall.

19 Q. Okay. Can you identify the scope of your
20 engagement in this case?

21 A. I think I have that laid out somewhat in my
22 expert report, if you want to turn to that, but I don't
23 know the scope off the top of my head.

24 Q. Okay. So I would direct you then to the
25 beginning of your report. I believe you're referring to

1 Paragraph 6; is that correct?

2 It says, "I was retained in the case to assess
3 voting patterns in the Town of Newburgh, New York to
4 determine if Hispanic or Latino and black voters exhibit
5 racially polarized voting in comparison to white
6 voters."

7 A. Yes. I think that's Page 2, paragraph 6, maybe
8 paragraph 7 and 8 also get into that. Thank you.

9 Q. You would agree that this appropriately states
10 the scope of your engagement?

11 A. I would say paragraph 6, 7 and 8 explain that.
12 As I mentioned at the outset, at some point I was asked
13 to draw some districts to understand if districts would
14 perform. That was certainly something I was asked to
15 do --

16 Q. Go ahead.

17 A. I was just going to say not at the time that I
18 wrote this. At the time that I wrote this I was only
19 asked to consider different possible remedies, which I
20 did, and there is a section at the end. But then later
21 at some point I was asked to also consider specifically
22 different districting schemes.

23 Q. At what point were you asked to consider
24 different districting schemes?

25 A. Fairly recently. I don't remember the exact

1 date.

2 Q. And when you say "fairly recently," do you mean
3 within the last -- well, the report was issued in
4 June -- on June 28th of 2024.

5 A. Sounds right.

6 Q. Recently as in last month, last week?

7 A. I would say probably within the last two or
8 three weeks. I don't remember exactly. We could
9 probably look at the date on the addendum. It's
10 probably a week or so before that would be my guess.

11 Q. So turning back to the report, which is your
12 opinion in this case, did anyone assist you with your
13 work?

14 A. Yes.

15 Q. And who was that?

16 A. As I lay out in paragraph 6, Michael Rios was a
17 data scientist assisting me with data collection and
18 analysis.

19 Q. Anyone else?

20 A. No. No one else assisted me.

21 Q. Were plaintiffs' counsel involved in any way with
22 respect to reviewing or revising your report?

23 A. I probably sent them a draft at some point. They
24 were not involved in revising it certainly. But at some
25 point I'm sure I sent them a draft or we talked about my

1 findings.

2 Q. So was anyone else involved in drafting the
3 report?

4 A. Just me.

5 Q. Since being retained, Dr. Barreto, how much time
6 have you spent working on this matter?

7 A. I have zero idea.

8 Q. What is your hourly rate?

9 A. I think my hourly rate in this case is \$500 an
10 hour for analysis and reports, \$600 an hour for
11 testimony.

12 Q. And does your time here today at this deposition
13 count as \$600 an hour for testimony?

14 A. That is my expectation.

15 Q. Do you know what your total fees to date have
16 been in connection with this matter?

17 A. I do not.

18 Q. Okay. I know that you said you have zero idea
19 how much time you have spent working on your report in
20 this matter. But within reason, I mean, was it
21 10 hours, 20 hours, 5 hours?

22 A. I am going to try to say this in the nicest way
23 possible. The number of things that I am working on
24 right now is very large, and I have absolutely no idea
25 sitting here today at all how many hours I have spent

1 working on this. But somewhere there is a spreadsheet
2 that I presume I sent to plaintiffs' attorneys, and I
3 know I've sent them an invoice. So I don't want to
4 mislead you and confuse this case with six other cases
5 or this other giant project I am working on.

6 So I honestly do not know how many hours I have
7 spent on this.

8 Q. Okay. So you don't know how many hours you have
9 spent. You don't know how much you have charged for
10 your time. But you have sent an invoice to plaintiffs'
11 counsel?

12 A. That's right.

13 Q. Okay.

14 A. So that would have the answer on it. That's why
15 I don't want to guess, because it is an actual empirical
16 fact we can know. I am not sitting on some invoice
17 somewhere.

18 Q. And, Dr. Barreto, has your invoice been paid?

19 A. I don't know. I think so, but I don't know.

20 Q. So other than plaintiffs' counsel, who have you
21 spoken to about your opinion and testimony in this case?

22 A. That's it. No one.

23 Q. Except for Mr. Rios?

24 A. He assisted me with getting data, preparing the
25 data.

1 I don't recall what your question was. Did I
2 speak to him about my opinion? Probably not.

3 Q. Okay. Have you spoken to any of the other
4 experts -- expert witnesses in this case?

5 A. I have not. I only saw for the first time ever
6 Professor Lockerbie two days ago. I don't -- that's it.
7 And I didn't speak to him.

8 Q. Okay. Did you read his report in connection with
9 this case?

10 A. I did.

11 Q. When did you read Dr. Lockerbie's report, if you
12 recall?

13 A. Probably within two days of him filing it, I
14 would say.

15 Q. Did you read any of the underlying data or
16 authorities that were cited in Dr. Lockerbie's report?

17 A. I would have to have his report in front of me to
18 know exactly what you're referring to, but I read his
19 report pretty carefully.

20 Q. Dr. Barreto, do you anticipate testifying at
21 trial?

22 A. I guess that depends on plaintiffs' counsel, but
23 typically when these things go to trial, I have
24 testified, but that's up to the lawyers.

25 Q. And consistent with your earlier testimony, your

1 hourly rate would be \$600 an hour for that testimony?

2 A. That sounds right.

3 Q. Okay. I would like to turn to your report and
4 discuss some of your opinions in more detail.

5 So I think you mentioned earlier that you had
6 assistance with performing all of the data analysis
7 that's described in your report. Can you identify for
8 me more specifically what data analysis you received
9 assistance with?

10 A. I would say in compiling the datasets needed to
11 run the analysis of voting patterns and then compiling
12 the program to run the actual ecological inference
13 analysis.

14 Q. With respect to this opinion and the conclusions
15 in it, have any of your opinions changed since it was
16 written, the opinions captured in this report?

17 A. I don't think so.

18 Q. Okay. Were any of the opinions contained in this
19 report formed prior to learning facts specific to this
20 case and the Town of Newburgh?

21 A. None of the opinions about Newburgh would have
22 been formed at all until I analyzed the data. There
23 might be opinions that I have about how statistical
24 software works. Those are opinions I have been forming
25 over my career. So I don't want to mislead you. If you

1 can be more specific about some of the opinions, I can
2 probably tell you when I formed them.

3 Q. No, I think you've answered my question.

4 So I want to go through the expert reports that
5 are listed. I will refer you to page 70. And I do
6 believe this brings us back down to your CV.

7 I believe you testified earlier that you have
8 submitted more than 50 expert reports over time.

9 A. Something like that.

10 Q. However, this list that begins on page 70, is
11 that -- does that comprise all of your expert reports
12 done to date?

13 A. Let me go find page 70.

14 I think it does; but some of the older stuff that
15 didn't go to trial, I don't know. But I would say I
16 have tried to include everything. That's my objective
17 here.

18 Q. So did any of these reports, to the best of your
19 recollection, involve determining racial -- racially
20 polarized voting?

21 A. Yes.

22 Q. Which ones?

23 A. Lots.

24 Q. Okay. Dr. Barreto, to the extent you're able,
25 can you be more specific? I am happy to walk through

1 each one.

2 A. I don't have them in front of me. So I am going
3 to give you the ones I am fairly certain about.

4 Q. Fair enough.

5 A. I think the first one there, the voter ID log
6 North Carolina, I might have touched on racially
7 polarized voting at the end. It was not the primary
8 topic.

9 The second one, North Carolina State Senate,
10 included analysis of racially polarized voting.

11 The next one, Dodge City, included analysis of
12 racially polarized voting.

13 The next one, Florida Statewide Redistricting,
14 was not the primary topic but included the analysis of
15 racially polarized voting.

16 Galveston County included analysis of racially
17 polarized voting.

18 Signature Rejection -- this is the Reyes versus
19 Chilton -- was not the primary topic, but it may have
20 referenced racially polarized voting as a phenomenon at
21 the end.

22 San Juan County, New Mexico concerned racially
23 polarized voting.

24 Texas Statewide Bluewack v. Abbott was about
25 racially polarized voting.

1 Franklin County -- that's Portugal versus
2 Franklin -- was about racially polarized voting.

3 Texas Statewide, Brooks v. Abbott, Senate
4 District 10, was about racially polarized voting.

5 Baltimore County was about racially polarized
6 voting.

7 Maryland Office of the Attorney General -- this
8 was a redistricting consultancy for the State --
9 concerned racially polarized voting.

10 Pennsylvania Districting Consulting concerned
11 racially polarized voting.

12 Washington State, also a statewide redistricting
13 consulting that concerned racially polarized voting.

14 City of San Jose concerned racially polarized
15 voting.

16 Santa Clara County, California concerned racially
17 polarized voting.

18 The next couple I think are not.

19 The Georgia vote-by-mail case in 2020 might have
20 touched on racially polarized voting. I don't recall.

21 North Carolina 2019 voter ID, I believe it
22 touched on racially polarized voting as existing at the
23 end.

24 East Ramapo Central School District was about
25 racially polarized voting.

1 Dallas County, Texas was about racially polarized
2 voting.

3 North Dakota Brakebill versus Jaeger was about
4 racially -- it was about voter ID primarily but touched
5 on racially polarized voting at the end.

6 I don't recall Texas 2014 -- it was a voter ID
7 lawsuit -- if it also touched on racially polarized
8 voting.

9 Galveston County in 2013 was about racially
10 polarized voting.

11 Pasadena, Texas, was about racially polarized
12 voting.

13 Harris County, Texas was about racially polarized
14 voting.

15 I don't recall Pennsylvania in 2012, which was a
16 voter ID lawsuit, and Milwaukee County. They might
17 have, but the primary concern with those was access to
18 voter ID.

19 Orange County Florida was about racially
20 polarized voting.

21 Anaheim, California, was about racially polarized
22 voting.

23 The Los Angeles County 2011, I think that's like
24 four cases maybe there -- three. Those were all about
25 racially polarized voting.

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1 The next, Harris County one, I don't recall.

2 I am now in the sort of realm of if it doesn't
3 have it in the bullet, I don't really recall because
4 we're in 2011 now.

5 Monterrey County, it says racially polarized
6 voting. So I'm going to take my own word for it.

7 Los Angeles County 2011, this says racially
8 polarized voting.

9 State of California -- it was a statewide
10 redistricting -- that was about racially polarized
11 voting.

12 Asian American Pacific Legal Center, that was
13 about racially polarized voting.

14 Lawyers Committee for Civil Rights -- this is
15 San Mateo County -- that was about racially polarized
16 voting.

17 ACLU of Washington State Yakima, that was about
18 racially polarized voting.

19 Los Angeles County Chicano Employees Association,
20 that was about racially polarized voting.

21 Los Angeles County Chicano Employees Association
22 2007, that was about racially polarized voting.

23 Sweetwater Union, that was about racially
24 polarized voting.

25 Mexican America Legal Defense Fund, City of

1 Whittier, racially polarized voting.

2 ACLU of Washington 2008, that was about racially
3 polarized voting.

4 That's as good as I can remember.

5 Q. Thank you, Dr. Barreto.

6 Is it safe to assume that this CV is your
7 standard CV and you have not tailored it specifically to
8 this case and the facts of this case for any reason?

9 A. As you said, it's from April. I probably have
10 one on my public website from June, but this is my
11 standard public CV that is for the whole world to see.

12 Q. Okay. So in each of those, how often did you
13 serve as an expert for -- well, strike that.

14 Generally, how often do you serve as an expert
15 for plaintiffs when submitting a report?

16 A. The ones I just reviewed, there -- I am often an
17 expert for the plaintiffs, although many of them are
18 also being retained by jurisdictions, which is the
19 defense side during redistricting. So I have also been
20 the defense expert many times. But I would say it's
21 true that more often I have been retained by plaintiffs.

22 Q. Are you able to give a rough percentage of how
23 often?

24 A. Not sitting here today. I would say more often I
25 have been plaintiffs' expert. That's definitely the

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1 case. But I have been retained by cities, counties, and
2 states to be their redistricting/racially polarized
3 voting expert most often during redistricting cycles, so
4 in 2011 and in 2021.

5 Q. Do you usually represent Democrats?

6 A. In what respect?

7 Q. Do you usually represent a party who is
8 affiliated with Democrats, the Democratic party?

9 A. Are you talking about in Voting Rights Act
10 lawsuits or in some other way?

11 Q. In -- yes. To the extent that the party that you
12 are representing, whether plaintiff or defendant, is
13 involved in a lawsuit and you are submitting an expert
14 report in connection with that lawsuit, is it usually --
15 is the party affiliated with the Democratic party?

16 MR. IMAMURA: Objection, form. You can
17 answer.

18 A. I don't think I have ever once in my life been
19 hired as a plaintiffs' expert in a voting rights lawsuit
20 by the Democratic party during -- ever. I don't, as a
21 part of my regular routine, inquire and ask people who
22 they are affiliated with. Twice I have been hired by
23 state parties. Those are on my CV very clearly.

24 The Washington State Senate Democratic party
25 hired me as their redistricting consultant in 2021, and

1 the Pennsylvania House Democrats hired me as their
2 redistricting consultant in 2021. That was just to do
3 consultancy during the redistricting process.

4 And all the times that I have been a plaintiffs'
5 expert during a VRA challenge to a state or a federal
6 lawsuit, I don't believe I have ever been hired by the
7 Democratic party of any city, county or state.

8 BY MS. WEEKS:

9 Q. Have you been qualified previously as an expert
10 at trial?

11 A. Yes.

12 Q. Okay. Can you point to which cases that occurred
13 in?

14 A. Every single case that I have given testimony in,
15 I have been a qualified expert.

16 Q. I take that to mean that your testimony has never
17 been excluded?

18 A. I don't know if it has been excluded. I don't
19 know legally what that phrase means. I have had a
20 handful of instances in which some judges gave less
21 weight to my testimony; but I have never, to my
22 knowledge, had my credentials challenged or not been
23 considered an expert.

24 Q. So you're unaware of any time where a court has
25 determined that -- that your testimony could not be

1 admitted and you could not be qualified as an expert?

2 A. I would agree with that, that I could not be
3 admitted or qualified. As I said, there certainly in
4 everyone's career are times where a judge did not agree
5 with what you said and maybe gave your testimony less
6 weight than others. That's happened to me, just like
7 everyone. But I can't recall a time where I was not
8 admitted as an expert.

9 Q. Can you tell me specifically any one of these
10 cases where, as you said, a court gave less weight to
11 your testimony?

12 A. Yeah, when -- sure. One that I recall was the
13 challenge to the Pennsylvania voter ID law. This was in
14 state court, not federal court. And in the district
15 court ruling, the judge excluded I believe all of the
16 plaintiffs' experts and said that he was not putting
17 weight on any of the plaintiffs' experts' analysis,
18 including mine. It was appealed to the supreme court or
19 common law court, whatever they call it there; and then
20 they handed it back to the judge and told him maybe try
21 again. And on the second round, he decided to admit all
22 of the expert witnesses; and ultimately the voter ID law
23 was struck down. But in the district court ruling, he
24 said put less to no weight on my testimony.

25 Q. Okay. And is that -- referring back to page 78

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1 of your list of expert reports, is that one of the cases
2 on here that you're referencing?

3 A. Yeah. It was an old one. It was a Pennsylvania
4 voter ID law. I worked with the State of Pennsylvania
5 ACLU on that case. I don't recall the name of the
6 plaintiffs' witness.

7 Q. Is that at the top of page 11 of your CV?

8 A. Let me go back over there. I am not on that page
9 anymore.

10 It is Applewhite versus Commonwealth of
11 Pennsylvania.

12 Q. Okay. Can you think of any others?

13 A. Not off the top of my head. But certainly in any
14 case I am involved in, even in cases that the plaintiffs
15 win, you know, the judge typically takes some issue with
16 every expert on both sides. But my very global, general
17 perception is that mostly judges have been accepting of
18 what I have said, even if they don't always find all of
19 the facts to be exactly what they're looking for. I
20 have never been excluded or unqualified, as far as I can
21 remember.

22 Q. Okay. So looking back at these expert reports --
23 I know we walked through those that involved racially
24 polarized voting. I don't know, Dr. Barreto, that we
25 need to go through each of them; but I would like to ask

1 you about a few.

2 The -- so at the top, this North Carolina 2024
3 case, North Carolina and NAACP versus Hersch, do you
4 recall what election results you looked at?

5 A. I am going to say this globally for all the
6 questions you're about to ask me. I do not recall any
7 of it. I would need to get the report out, have it in
8 front of me. You would have to give me a full day to
9 analyze my report. That's my style. I don't like to
10 guess. I don't like to maybe. I don't like to mislead
11 the court. I like to be very precise. So other than
12 that it was in North Carolina, I have absolutely no
13 idea.

14 Q. Okay. With respect to any of them, do you --
15 understanding your caveat, I will, nevertheless, ask:
16 Do you --

17 A. Please.

18 Q. -- recall whether the -- any minority voters that
19 were involved preferred Republican or Democratic
20 candidates?

21 A. I do not recall any of the details of that case
22 without having the data in front of me.

23 Q. Okay. And just to be clear, the North Carolina
24 2024 case, is that ongoing presently?

25 A. What's the name of the case you're referring to?

1 Q. It is --

2 A. Or ID lawsuit?

3 Q. It is listed on page 10 of your CV as the North
4 Carolina NAACP versus Hirsch.

5 A. Yeah. I don't think we've gotten a decision in
6 that case.

7 Q. Okay.

8 A. That means it's ongoing. The case is over. The
9 trial is over. I testified at trial.

10 Q. Okay. And do you recall when you testified at
11 trial?

12 A. Maybe it was May.

13 Q. May of this year?

14 A. It was definitely this year.

15 Q. Okay. So despite having testified about this in
16 May of this year, sitting here today, you have no
17 recollection about this case?

18 A. I would say 97 percent of my testimony was about
19 access to voter ID and whether or not different racial
20 or ethnic groups have IDs or the underlying documents
21 needed to get IDs or whether or not they have knowledge
22 of the ID law. And then at the end of the report, my
23 recollection is that I did have a section explaining
24 that North Carolina also has a history of racially
25 polarized voting in their elections. So I probably have

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1 a little more familiarity, if you want to talk about who
2 does and doesn't have ID in the state of North Carolina.
3 That was the overall crux of that report.

4 Q. And do you recall with respect to that report and
5 your analysis in that case whether the minority voters
6 there preferred Republican or Democratic candidates?

7 A. I don't recall which types of elections I
8 analyzed, if they were state, local, federal, national.
9 So I don't.

10 Q. Okay. What about with respect to the next one on
11 the list, North Carolina 2023? That was a state senate
12 redistricting democracy project, 2/200. When did you
13 issue that expert report?

14 A. I don't recall. I think it was in 2024. I don't
15 recall.

16 Q. Okay. So this year?

17 A. Might have been. I don't recall. It seems like
18 it was earlier this year, is what it feels like sitting
19 here; but I have not reread any of these reports. I was
20 not asked or prepared to read any of my dozens of
21 previous reports. So I don't know.

22 Q. Dr. Barreto, do you recall whether you identified
23 this particular report as touching on racially polarized
24 voting?

25 A. My recollection is that there was some analysis

1 of racially polarized voting in that.

2 Q. Okay. And do you know what election results you
3 looked at in the report that you issued earlier this
4 year?

5 A. It would have been elections in the state of
6 North Carolina for sure.

7 Q. Okay. And do you recall whether the minority
8 voters there in the state of North Carolina preferred
9 Republican or Democratic candidates?

10 A. I don't recall what types of elections they said.
11 There are some partisan elections in every state. There
12 are also some nonpartisan elections in every state. And
13 I don't recall, sitting here, what was in that report.

14 Q. Based on your experience, would you expect that
15 the minority voters preferred Republican or Democratic
16 candidates?

17 A. In that region of North Carolina?

18 Q. Sure.

19 A. Your question?

20 This report was about a specific senate district
21 region of North Carolina.

22 Q. Okay. So in that region.

23 A. I don't recall which elections I analyzed. I try
24 to go into every case letting the data guide me and not
25 bringing in too many expectations.

1 Q. Okay. Well, more generally, based on your
2 experience, would you expect that minority voters would
3 prefer Republican or Democratic candidates?

4 A. I guess it depends on what part of the country
5 you're in and how the candidates are running and whether
6 it's congressional, state legislative, US president,
7 et cetera. So I -- without knowing which election, like
8 if you want to talk about a specific candidate, I can
9 try to recall what I have either written or have read
10 about different candidates who have run. But I try not
11 to make overarching, blanket statements.

12 Q. All right. We'll get to that, Dr. Barreto.
13 So we have been going for a while. Just as a
14 courtesy, I want to see if you would like to take a
15 break.

16 A. I am good.

17 Q. Okay. Well, you let me know. So let's move to
18 demographics.

19 THE REPORTER: Counsel, can we take a break
20 when you get a chance, though?

21 MS. WEEKS: Of course. This is fine time
22 for me to break. I apologize to the court reporter for
23 not asking. We'll go off the record.

24 THE VIDEOGRAPHER: We're going off the
25 record. The time is 10:21 a.m., and this marks the end

1 of Media No. 1.

2 (Recess taken from 10:21 a.m. to 10:31 a.m.)

3 THE VIDEOGRAPHER: We're back on the record.

4 The time is 10:31 a.m., and this marks the beginning of
5 Media No. 2.

6 BY MS. WEEKS:

7 Q. So, Dr. Barreto, during the break did you speak
8 to anyone on plaintiffs' counsel?

9 A. David called me and just asked me how I was
10 feeling and reminded me to drink water and have snacks.
11 So that was it.

12 Q. Fair enough. Can you -- before the break, I had
13 mentioned that I wanted to speak a little bit about
14 demographics for the Town of Newburgh. Can you
15 summarize for me the changes in racial and ethnic
16 demographics in the Town of Newburgh from, say, 2010
17 through 2020?

18 A. I can. Let me go to that section in my report.
19 I believe on page 3, starting at paragraph 11, I have a
20 section called "Town of Newburgh Population Growth
21 Characteristics," which is what I presume you're
22 referring to.

23 And on the next page, page 4, I have a table,
24 Table 1, which shows the Newburgh population changes
25 from 2010 to 2020.

1 Would you like me to speak about those?

2 Q. Yes.

3 A. So according to Table 1, Newburgh has remained a
4 town of about 30,000. It went from 29,801 to 31,985
5 according to the U.S. Census. It became about 9 percent
6 less white, a 9 percentage point change in white
7 population. It had a 51 percent increase in its Latino
8 population and a 29 percent increase in its the black
9 population. So, generally speaking over the last
10 decade, Newburgh town became less white/non-Hispanic and
11 more black and Latino combined.

12 Q. So what are the implications of these demographic
13 changes for voting patterns in the Town of Newburgh?

14 A. For patterns, I don't believe there's any
15 implications. Whether there's 4,000 Latinos or 7,000,
16 their patterns of voting are probably about the same.
17 It means that the town is more heavily minority in 2020,
18 approximately 43 percent.

19 Q. Okay. And in your opinion, is there any
20 significance to that for purposes of your analysis?

21 A. Is there any significance to the growing minority
22 population? Is that what --

23 Q. Correct.

24 A. I think it is just a fact for the court to
25 understand that the minority population has been

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1 growing. It is larger. It is now over 40 percent. And
2 I contrast that with the fact that no minority preferred
3 candidate has ever been elected to the at-large town
4 council elections.

5 Q. And the minority preferred candidates that you're
6 referring to, are those Democratic candidates in the
7 Town of Newburgh?

8 A. I don't have their partisanship in front of me.
9 I just know from my tables, Tables 2 and 3, that I
10 analyzed Newburgh town council elections; and then I
11 have their names there. I think they are Democrats,
12 after reading Lockerbie's report. He constantly
13 referred to their partisanship. I don't think I have
14 ever referred to their partisanship at all in my report.

15 Q. Let's talk a little bit about your methodology.
16 Can you explain to me the methodology you used to assess
17 voting patterns in the Town of Newburgh?

18 A. Yes. I use a methodology called ecological
19 inference which uses precinct level vote choice data and
20 precinct level racial ethnic information about the
21 voters to estimate how different racial and ethnic
22 groups are voting.

23 Q. And you analyzed data across more than two dozen
24 elections for local, state and federal, correct?

25 A. That sounds right. I presume you're quoting from

1 my report. I don't remember the number off the top of
2 my head, but sounds right.

3 Q. So, in fact, I believe you looked at 34 elections
4 across 9 election cycles, correct?

5 A. If you tell me what paragraph you're in, then I
6 can confirm it quicker. But it sounds right.

7 Q. I am looking at paragraph 10 of your report.

8 A. Yes. So paragraph 10 says, "In 34 elections
9 analyzed across 9 election cycles from 2011 to 2022, a
10 strongly consistent pattern of racially polarized voting
11 is found in the Town of Newburgh, New York."

12 Q. Okay. Sorry. To ask the question again, for the
13 record, you looked at 34 elections across 9 election
14 cycles. Am I getting that right?

15 A. Yes.

16 Q. All right. How did those results differ between
17 local, state and federal elections?

18 A. Well, if we go to Table 2, it is the first place
19 where I present the results. You can get a view of the
20 different patterns in these elections and see how both
21 whites and nonwhites voted in each of these elections .
22 There is general consistency in whites and nonwhites
23 voting for opposite candidates in most of the elections
24 in Newburgh. But the percentage points that we
25 estimate, you know, vary depending on the quality and

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1 the type of outreach the candidate does, I presume.

2 Q. And when you say "opposite candidates," do you
3 mean Republicans and Democrats?

4 A. I don't mean Republicans or Democrats. I mean
5 exactly what I said, they both are opposite candidates.
6 The candidate's partisanship is not a central feature of
7 racially polarized voting analysis. It may be the case
8 that that's the partisanship that the candidates have,
9 but that's not what I mean to your question.

10 Q. So when you say "opposite candidates," opposite
11 of what?

12 A. Each other. One voted for Smith, the other voted
13 for Jones who ran against Smith. They were voting for
14 the opposite choices.

15 Q. And in each instance, was one running Democrat
16 and one Republican? Or was there other parties involved
17 in the races you analyzed?

18 A. I did not analyze the partisanship of the
19 candidates for this report. As I said before, I don't
20 even think the word "Democrat" or "Republican" appears
21 in my report. I'm not denying that there are Democrats
22 and Republicans running for office in New York, but that
23 was not the focus of my report. So I would need to
24 separately take each of these candidates, look at the
25 ticket they ran on, add that as a column, and then I

1 could most effectively answer your question.

2 Q. Okay. In looking at the data from the 34
3 elections across 9 election cycles, can you tell me how
4 the results differed from 2011 to 2022?

5 A. Just those two years?

6 Q. Yes.

7 A. 2011 and 2022? So in 2011 -- I am looking at
8 Table 2 now by the way.

9 In 2011, there is a Newburgh town supervisor
10 election and a Newburgh town council election. In the
11 Newburgh town supervisor election, white voters which
12 are in the first column voted in support of a candidate
13 named Green and -- no, that's Newburgh town council.
14 Excuse me. In the Newburgh town council election, white
15 voters voted for a candidate named Green and a candidate
16 named Ruggiero. And minority voters voted for a
17 candidate named McCormick and a candidate named Tirado.

18 And Newburgh town supervisor election, minority
19 voters voted for a candidate named Krasner, and white
20 voters voted for a candidate named Booth. And in
21 another Newburgh town council election -- although I
22 think the first I gave you might have been 2013. I'm
23 just looking at the paginations so apologies for that.

24 In the other Newburgh town council election we
25 have the same pattern where minorities and whites are

1 voting for opposite candidates. In 2011 minorities
2 voted for Corbin and Tirado, and whites voted for
3 Woolsey and Piaquadio. That is 2011. You want to
4 contrast a that to 2022? I don't remember your
5 question.

6 Q. Just comparing 2011 and 22 -- 2022, not the
7 specifics but just to the extent that Table 2 and what
8 you've included here is relevant to support your report.
9 Are those -- are the results generally the same to the
10 extent that you are pointing out the disparity, the
11 opposite candidates that are voted by white elec- -- the
12 white electorate versus nonwhites, are those the same or
13 different?

14 A. The pattern is consistent across 2011 to 2022.
15 Minorities and whites have preferred opposite
16 candidates.

17 Q. Okay. Now in your analysis, how many of the
18 elections were even-numbered election cycle years?

19 A. 2022, 2020, 2018, 2016. It doesn't look like I
20 have any 2014 elections. So '22, '20, '18 and '16. So
21 four of the years were odd -- or even. And then 2011,
22 2013, 2017, '19 and '21 -- five of the years were odd
23 years.

24 Q. Does your analysis of these elections differ
25 where they are even-numbered election cycle years?

1 A. Do you mean the conclusion of how minorities and
2 whites are voting? Is that your question?

3 Q. The percentage difference as to how they're
4 voting?

5 A. The percentages vary in every single election.
6 None of the percentages to my mind are identical. The
7 conclusion is quite similar that in odd-numbered years,
8 you still see minorities and whites voting for opposite
9 candidates and not typically voting for the same
10 candidates. Usually two candidates are running against
11 each other; minorities are voting for one and whites are
12 voting for the opponent.

13 Q. Did you notice any differences between the
14 even-numbered years and the odd-numbered years?

15 A. Well, as I said, the percentages are different.
16 They are different for every candidate. But I would say
17 the patterns are -- in terms of vote support and
18 racially polarized voting are consistent.

19 Q. What about the spread between them, whether its
20 even or odd years?

21 A. Are you talking about how divergent whites and
22 minorities are?

23 Q. Correct. In even versus odd years.

24 A. I would say it is about the same. Again,
25 sometimes it depends on very specific candidates might

1 do slightly better or worse with different communities.
2 But I observe it as a fairly consistent pattern of
3 racially polarized voting.

4 Q. Did the nonwhite preferred candidates perform
5 better in even-numbered election years versus
6 odd-numbered election years on average?

7 A. I don't have the total vote tallies in this
8 report, only the vote support ratio. So did they get
9 70 percent or 60 percent. But I don't have the overall
10 election results front of me.

11 Q. Do you know?

12 A. I don't recall the specifics. I know there were
13 some close elections in even-numbered years, but we'd
14 have to go through them. If you have some of them, I
15 would be happy to go through this specific election.
16 But I did not for this report analyze the vote totals.

17 Q. So if there was an election every year between
18 2011 and 2022, do you think the inclusion of
19 odd-numbered elections and even-numbered elections --
20 well, hold on one moment.

21 For your analysis it looks as though you did not
22 include elections from the years 2012, 2014 and 2015.
23 Do I have that right?

24 A. Let me go back to my report. I think there were
25 some years that there was either less elections

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1 available or -- yeah. So the elections I analyzed were
2 2011, 2013, 2016, 2017, 2018, 2019, 2020, 2021 and 2022.

3 Q. By my estimation you did not just list 2012, 2014
4 and 2015. Would you agree?

5 A. Yes. I would agree.

6 Q. Do you know why those were not included?

7 A. I think I started -- I don't know. I am going to
8 give you my theory. I think I started with '16 to '22
9 as the most recent elections, feeling that that was a
10 good number and then decided to add maybe some other
11 local town council elections in farther back years.
12 That is the best I can remember.

13 Q. Okay. But from 2011 to 2022 you included every
14 year except for three. So I am just trying to
15 understand why those three years?

16 A. I am going to attempt to say the exact same words
17 I said. I probably won't get it perfect. But my theory
18 is that I started with '16 to '22, thinking that that
19 was the elections I would analyze. And then I thought
20 let me get a couple more town council local years, and
21 so I got '13 and '11. I don't know why '15. There may
22 not have been a contested election that year. Maybe no
23 one ran. But I wanted to get a couple more endogenous
24 elections is my recollection, so that would have been
25 '11 and '13. I wasn't looking for anything in

1 particular.

2 Q. Do you know whether you looked at the 2012, 2014
3 or 2015 election results?

4 A. I don't believe I did. I don't recall though.

5 Q. Do you know whether they were consistent or
6 inconsistent with the rest of the results that you have
7 captured here?

8 A. I don't know.

9 Q. Just to be clear, there is no other reason that
10 you're aware of or can recall that you chose to omit the
11 results for 2012, 2014 and 2015?

12 A. My recollection -- we'd have to go look -- is
13 that '15 didn't have town council elections. I went
14 back to '16 and I got every election from '16 to '22.
15 And then I thought let me get more endogenous elections,
16 town council elections, which is why I would have gotten
17 '11, '13 and '15.

18 But my recollection -- and I don't know; I could
19 be wrong -- was that there may not have been a contested
20 town council election in '15. So if there was no
21 election, I would have skipped it. It would be hard to
22 analyze.

23 Q. Okay. Just so that I am -- go ahead.

24 A. I just said I don't recall.

25 Q. Just so that I am understanding correctly then,

1 with respect to the 2011 and 2013 results, did you only
2 include the endogenous races, or does this include the
3 same level of particularity that you did with all the
4 years of 2016 through 2022?

5 A. I think it includes the local elections. So if
6 you're looking at one of the tables, I think for 13 I
7 have town supervisor, tax assessor, town council,
8 supervisor council. I tried to analyze local elections
9 in those even- or odd-numbered years.

10 Q. Okay. So in 2011 and 2013 there were other
11 elections in the Town of Newburgh that are not captured
12 here; is that correct?

13 A. I have no idea what they voted on. I just like
14 to get a smattering of data from a lot of years. The
15 endogenous elections to me are typically the most
16 probative town council. And then other things that are
17 sort of similar like a town supervisor or a town clerk
18 or something like that might be similar.

19 So some people, some experts only analyze the
20 endogenous elections and they don't get any other
21 elections. I like to look at a couple of elections so
22 that I can see what is the general pattern here. So I
23 wasn't doing anything other than I started with '16, and
24 then I thought let me go see if there is even more
25 pattern of this if we go back further in time, which is

1 why I would have focused on '11, '13 and '15.

2 As I said, I think there was no endogenous
3 elections in '15, but I am going to check on the next
4 break so that I know. But that is why I would have
5 gotten '11 and '13.

6 Q. Okay. But for all the other years, 2016 to 2022,
7 you included in your table results that were not
8 endogenous. You were much more thorough potentially
9 with those?

10 A. I think "thorough" is the wrong word for sure. I
11 would say I included other elections.

12 Q. Okay. So then if there was an election every
13 year between 2011 and 2022, would inclusion of the years
14 we just discussed have changed -- two of which -- or one
15 of which is an odd-numbered election year, would it have
16 changed your opinion?

17 A. What is your question?

18 Q. If there is an election every year between 2011
19 and 2022, including the odd-numbered election year of
20 2015, which you did not include in the table, as well as
21 2012 and 2014, which we discussed, would it have changed
22 your opinion?

23 MR. IMAMURA: Objection.

24 You can answer.

25 A. I don't believe it would have changed my opinion.

1 I don't believe there was a contested endogenous
2 election in 2015. As I said, I've got 11 years' worth
3 of data that is quite consistent. So if somebody else
4 analyzed 2012 and 2014 and felt that this showed a
5 completely different pattern ten years ago, I would be
6 happy to have a discussion with them about it. But I
7 did not feel that those elections from that long ago in
8 nonendogenous years were relevant, which is why I didn't
9 include them.

10 Q. Would you agree that in odd-numbered years it is
11 more likely that Democrats will succeed in an election
12 in the Town of Newburgh?

13 A. Would I agree that in odd-numbered years.

14 Q. Oh, I apologize. It -- let me strike that.

15 Would you agree that in odd-numbered years it is
16 more likely that Democrats will succeed in an election
17 in the Town of Newburgh?

18 A. You just said the same thing.

19 Q. Oh, I apologize.

20 MR. IMAMURA: I think you mean even.

21 Counsel, can you repeat the question? I'm
22 sorry.

23 MS. WEEKS: Let me strike that.

24 BY MS. WEEKS:

25 Q. Would you agree that in even-numbered years it is

1 more likely that Democrats will succeed in an election
2 in the Town of Newburgh?

3 A. That is not something I analyzed. So I don't
4 know with any certainty the answer to that. I do recall
5 Professor Lockerbie opining about that, and he seemed to
6 believe that even-numbered years had better Democratic
7 turnout. But I have not done a thorough analysis of
8 that myself.

9 Q. Okay. So is it your opinion -- or is it your
10 testimony today that you don't know the answer to that
11 question?

12 A. My testimony is that I have not, as a political
13 scientist, done an analysis of the question you asked
14 me. I do believe that Democrats have better turnout in
15 even-numbered years and I believe there has even been
16 one endogenous election in an even-numbered year, but
17 Democrats lost it. So, so far, as far as I know, they
18 have not been able to win any town council elections at
19 all even in even-numbered years.

20 Q. Would you agree some Democrats usually win in
21 elections during even-numbered years in the Town of
22 Newburgh?

23 MR. IMAMURA: Objection, asked and answered.

24 You can answer.

25 A. I -- if you put the table up in front of me of

1 election results in even-numbered years, I will gladly
2 go through it; but I, unfortunately, do not have it
3 committed to memory. And I -- as I said, I did not
4 analyze Democrat/Republican performance by year in my
5 report, so I don't know.

6 Q. Well, at least in the generic sense, isn't it
7 correct that based on an exogenous view, so looking at
8 what a generic Democrat or Republican would do, the
9 Democrats have a fair opportunity, let's say close to
10 50 percent, of winning in even-numbered year elections?

11 MR. IMAMURA: Objection, asked and answered.

12 You can answer.

13 A. I would say not for town council if you use
14 history as a guide. There has been a town council
15 election I believe in '20 that Democrats lost. And I
16 don't have the other data in front of me. But we should
17 pull it up and look at it together, and then we can
18 answer the empirical question.

19 It's not an opinion or a theory. This is a fact
20 that you're asking me, and I don't want to tell you the
21 wrong answer because I don't have the data in front of
22 me.

23 Q. All right. And when you say the data in front of
24 you, you mean your tables, you would be able to look at
25 those with me and go over whether or not the candidates

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1 listed while you -- I hear you that you saw you haven't
2 identified them here, you are familiar with the party
3 for those?

4 A. The data I mean is the election results for
5 Newburgh and Orange County. I don't remember. It would
6 be the county election results. So we'd have to look at
7 the election results subset to the Town of Newburgh and
8 then see who wins and loses. I think your expert did
9 that. I remember seeing that. So as far as I am
10 concerned, it's just like an empirical fact. Like
11 whoever got more votes won. The only one that I can
12 recall is that there was a town council election in '20
13 and the Democratic candidate lost.

14 Q. Well, let's walk through one of your tables.
15 Let's look at Table 2 on page 10, which is where I
16 believe we left off. And if you would walk me through
17 it. How could we tell based on -- and perhaps your
18 answer is that we cannot -- based on reference to this
19 chart, whether the candidates listed are the Democratic
20 or Republican candidate?

21 A. Which table are you on -- 2 or 3?

22 Q. Table 2.

23 A. 2. So I, as I said already, did not consider or
24 analyze the partisanship of the candidates. I just --
25 the software just attempts to essentially correlate or

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1 regress the racial and ethnic demographics against the
2 vote support, and then it tries to determine if there is
3 a pattern or a correlation, in very basic terms. It
4 doesn't care who the parties of the candidates are.

5 So I did not use that information in this report.
6 So other than in 2022, the very first name, the attorney
7 general who is quite well-known, I would say, and is a
8 Democrat, James -- I am not personally familiar with any
9 of the other parties listed, I don't think. So from
10 this table I don't have a partisanship analysis; but we
11 can separately go look at the, you know, election
12 results and then look at the partisanship, if any, of
13 the candidates.

14 Q. Okay. So it's your testimony that you are
15 unfamiliar with the political party of virtually all the
16 candidates listed?

17 A. My testimony is that I did not consider
18 partisanship and nor did I attempt to tie partisanship
19 to the candidates at this time I was doing this report.
20 As I said, aside from attorney general names, I was
21 mostly unfamiliar with lots of these candidates,
22 especially local candidates for office. Certainly there
23 is a presidential election in here as well. I probably
24 could get that one right. But that's my testimony. It
25 was not a part of my analysis.

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1 Q. So looking at this table, how can we tell which
2 candidate won each of the elections?

3 A. This table was not meant for purposes of winning
4 and losing separately in this report, as well as your
5 expert has concluded, that the minority preferred
6 candidates have never won ever an election to Newburgh
7 town council. So that's just a fact. I wasn't trying
8 to establish that with analysis.

9 This report and these tables were just merely
10 meant to show do whites and blacks and Latinos vote in
11 opposite directions. That's all I was trying to
12 establish was whether or not they are cohesive together
13 or whether they are voting in polar opposites, racially
14 polarized voting. That was my only intention with these
15 tables.

16 Q. Okay. So, Dr. Barreto, with respect to all of
17 the tables in your report, you do not know whether the
18 candidates listed won or lost any particular election?

19 MR. IMAMURA: Objection, mischaracterizes
20 his testimony.

21 You can answer.

22 A. I think I already said clearly that no minority
23 preferred candidate has won election to town council,
24 and that is sentence is somewhere in my report. So I am
25 aware of that, that no minority preferred candidate has

1 won.

2 I think the asterisks next to them denote who won
3 the election in the local elections for local office.
4 The exogenous elections, no one, quote, wins in Newburgh
5 because they are running statewide or countywide or
6 national. But I think, in looking closer at it, there
7 are like little asterisks next to candidates who won;
8 and so from there we could, you know, have a sense of
9 who won and who lost.

10 Q. Okay. And you mentioned no minority preferred
11 candidate has won town council. Do you know in any of
12 the town council races that you analyzed, were those
13 minority preferred candidates you're mentioning, were
14 they Democrats or Republicans?

15 A. As I said, I did not assess the partisanship of
16 the candidates themselves for any of these offices.
17 When I read Dr. Lockerbie's report, he did point out the
18 partisanship. And so I am familiar at this time, having
19 read his report and listened to his deposition two days
20 ago, that all of the candidates who have been elected to
21 Newburgh town council have been Republicans and
22 preferred by whites and all the candidates who have lost
23 have been Democrats and were preferred by minorities.
24 But that is not something I considered in my analysis.
25 I did not consider it to be relevant. I just look at

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1 which candidate gets the most votes from minorities,
2 which candidate gets the most votes from whites.

3 Q. Okay. And you don't have any reason to disagree
4 with the analysis and what was evidenced in
5 Dr. Lockerbie's deposition where you sat on Wednesday?

6 MR. IMAMURA: Objection.

7 You can answer.

8 A. I would say I have lots of reasons to disagree
9 with him.

10 BY MS. WEEK:

11 Q. Right. Apologies. Strike that.

12 You don't have any reason to disagree with his
13 conclusion that all the town council candidates that
14 have been elected were Republicans?

15 A. I have no reason to disagree that only white
16 preferred candidates who happen to be Republicans have
17 been elected and that minority preferred candidates who
18 happen to be Democrats have never been elected to
19 Newburgh town council. I think on that point both
20 Lockerbie and I are in full agreement.

21 Q. So let's at least try to look at these statistics
22 a bit more closely. And you mentioned the 2020 race,
23 the presidential race, and that you might be familiar
24 with who was the Democratic candidate for president
25 there. So I assume you're referencing the race between

1 President -- this is on page 11 of your report,
2 Chart 2 -- President Biden versus President Trump.

3 A. Yes, I see that. It's right at the top of
4 page 11.

5 Q. Okay. And just for the record, can you confirm
6 who the Democratic candidate for president?

7 A. Yes, sure. President Biden is the Democratic
8 candidate, and former President Trump was the Republican
9 candidate.

10 Q. And what percentage of the weight of vote did Joe
11 Biden get?

12 A. According to this chart, Joe Biden got -- in the
13 first model, which we have labeled EI, Joe Biden got
14 31.9 percent of the white vote; and in the second model
15 to the right-hand side, which we have labeled RxC, Joe
16 Biden got 36 percent of the vote.

17 Q. Okay. And what percentage -- are we able to tell
18 the percentage of the -- oh, I apologize. Let's go to
19 Table 3 which I believe has the results broken down by
20 race. That's at page 12.

21 A. Yes, bottom of page 12.

22 Q. The same race, 2020. We're looking at the
23 presidential race between Biden and Trump.

24 So the percentage of the white vote there, what
25 did Biden -- President Biden get?

1 A. According to this chart, which is EI, is the
2 first of the two models, President Biden got 32 percent
3 of the white vote, 97 percent of the Latino vote, and 99
4 percent of the black vote in Newburgh.

5 Q. So with respect to this race, isn't it true that
6 black and Latino voters preferred the Democratic
7 candidate for president in 2020?

8 A. That is true.

9 Q. Okay. Let's go down to 2016, which is the
10 presidential election before that. Are you familiar
11 with Hillary Clinton and former President Trump listed
12 there?

13 A. Yes. Clinton was the Democrat. Trump was the
14 Republican.

15 Q. Okay. And what percentage of the white vote did
16 Hillary Clinton garner?

17 A. According to this table, which is the EI
18 analysis, Hillary Clinton received 27 percent of the
19 white vote, 96 percent of the Latino vote, and 99
20 percent of the black vote in Newburgh.

21 Q. Okay. So isn't it true that black and Latino
22 voters preferred the Democratic candidate for president
23 in 2016?

24 A. Yes.

25 Q. In fact, are you aware of any presidential

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1 elections in the last 20 years where the Democratic
2 candidate was not the preferred candidate of minority
3 voters?

4 A. I would say my election knowledge of voting
5 patterns in Newburgh only stretches back to 2011, and I
6 think the only presidentials I analyzed were '20 and
7 '16. So I don't know about Newburgh.

8 But were you asking me just nationally or what?

9 Q. Yes. Based on your wealth of experience and --
10 as we've discussed today, about voting patterns and all
11 of that, in the last 20 years are you aware of any
12 presidential elections where the Democratic candidate
13 was not the preferred candidate of minority voters
14 generally?

15 A. There's significant differences in Florida with
16 the Hispanic electorate, particularly in South Florida.
17 I would say generally African-Americans probably in all
18 states have voted strongly for the Democratic
19 presidential candidate in the last 20 years. I would
20 say Hispanic voters have voted majority Democrat but
21 that there is more variation by state and by candidate.
22 As I said, the exception being Florida and south Florida
23 where there is exceptional variation in the Hispanic
24 electorate.

25 Q. Well, let's take -- you've pointed out

1 the disparity with Florida. Let's take Florida out.
2 And then the question is: With the exception of
3 Florida, would you agree that the -- within the last
4 20 years, the preferred candidate of Hispanic voters was
5 the Democratic candidate?

6 A. That's probably been the case. There were some
7 fairly significant variation in 2004 in the Bush v.
8 Kerry election where President Bush did much better than
9 average with Hispanic voters, particularly in Texas, his
10 home state. I don't recall off the top of my head if he
11 crossed over the 50 percent mark. But I would say
12 excluding Florida, that's generally the case; but
13 typically I like to go in and look at each specific
14 jurisdiction, each state, and not make national
15 generalizations.

16 Q. Let's look a little bit more at these statistics.
17 So what we just looked at was presidential races. We
18 can stick with Table 3, and let me direct your attention
19 to the 2022 election results.

20 Do you know in 2022 who was the Democratic
21 candidate for attorney general? I believe you said you
22 knew that it was James.

23 A. That's right. I agree with that.

24 Q. Okay. And reading this table, what percentage of
25 the white vote did Ms. James get?

1 A. According to Table 3, which is the EI iterative
2 model, Ms. James received 26.5 percent of the white
3 vote, 92.9 percent of the Latino vote, and 99 percent of
4 the black vote among voters in Newburgh.

5 Q. Okay. So isn't it true that the black and Latino
6 voters preferred the Democratic candidate for the
7 attorney general in 2022?

8 A. That is correct.

9 Q. And let's look at the governor for 2022.

10 Are you familiar with who was the Democratic
11 candidate for governor among those listed here, Hochul,
12 Delgado, Zeldin and Esposito?

13 A. I believe it's Kathy Hochul, the governor who is
14 a Democrat.

15 Q. I would represent to you that that is correct.

16 A. Right. We got it.

17 Q. So I will ask: What percentage of the white vote
18 did Ms. Hochul get in this race?

19 A. According to Table 3, she got 25.5 percent of the
20 white vote in Newburgh.

21 MR. IMAMURA: And as the one New Yorker
22 here, I will say it's Hochul, not Hochul (pronouncing).

23 MS. WEEKS: Thank you. Hochul
24 (pronouncing).

25 BY MS. WEEKS:

1 Q. Okay. What percentage of the black vote did
2 Ms. Hochul get?

3 A. 99 percent, according to Table 3.

4 Q. What percentage of the Latino vote did Ms. Hochul
5 get?

6 A. Also 99 percent.

7 Q. Okay. So isn't it true that the black and Latino
8 voters preferred the Democratic candidate for governor
9 in 2022?

10 A. That is correct.

11 Q. All right. What about the senate race listed
12 here? Are you familiar with whether Schumer or Pinion
13 served as the Democratic candidate?

14 A. Schumer.

15 What year are you in?

16 Q. 2022.

17 A. Oh, I see it. Yeah, right there at the bottom.

18 Q. And what percentage of the white vote did
19 Mr. Schumer get?

20 A. According to Table 3, he got 27.4 percent of the
21 white vote in Newburgh.

22 Q. Okay. And what percentage of the black vote did
23 Mr. Schumer get?

24 A. 98 percent of the black vote and 99 percent of
25 the Latino vote in Newburgh.

1 Q. Okay. So isn't it true that black and Latino
2 voters preferred the Democratic candidate for U.S.
3 Senate in 2022?

4 A. That is correct.

5 Q. Okay. So, Dr. Barreto, would you agree with me
6 Democrats are the preferred candidates of the minority
7 electorate in statewide races in the Town of Newburgh?

8 A. I would agree with you in the ones that we just
9 went through, that they appear to have done quite well
10 with Latino voters in Newburgh, yes.

11 Q. And you have no reason to believe that it would
12 be -- you have no reason to believe that it would be
13 different if we continued down for each of these
14 elections?

15 A. I don't have the partisanship of the other
16 candidates; but if you, you know, pull up their website
17 or their election results with their partisanship, I
18 would not doubt you. All I have attempted to do in this
19 table is to show who whites are voting for and who
20 blacks and Latinos are voting for and what the
21 statistical analysis is tells us is the vote choice
22 estimate.

23 Q. So we have gone through a few examples of federal
24 and statewide elections in the Town of Newburgh, and
25 we've seen that the black and Latino voters prefer the

1 Democratic candidate. Does that surprise you?

2 MR. IMAMURA: Objection.

3 You can answer.

4 A. I don't know if that surprises me. I was not
5 trying to surprise or not surprise myself. That's kind
6 of a weird question for a data scientist. I just run
7 the data and let the data tell me the answer to the
8 question.

9 BY MS. WEEKS:

10 Q. Does it -- does it seem like that is inconsistent
11 with what you've seen in your 20 years of -- about
12 how -- the regular voting patterns of minorities with
13 respect to favoring Democratic candidates?

14 A. Well, as I've said many times, like I don't go
15 into any jurisdiction with some sort of preconceived
16 notions. I need to analyze the data in that
17 jurisdiction and see what it tells me, and that's what I
18 did here. I have seen other jurisdictions where
19 minorities might vote Republican, and I have seen other
20 jurisdictions where minorities vote Democrat. So all I
21 was attempting to do in this report was get voting data
22 for the Town of Newburgh and see how people voted. I
23 wasn't trying to say, huh, I wonder how that makes me
24 feel based on what I saw in other states.

25 Q. In this Table 3, in 2021 for Newburgh town

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1 council -- we have Smith, Blancato-Horton, Greene and
2 Ruggiero -- do you know who or whether any of these were
3 the Democratic candidates for Newburgh town council?

4 A. I can guess based on what Dr. Lockerbie said
5 because I don't doubt his ability to identify
6 partisanship. But when I analyzed these and -- I have
7 no idea what the partisanship of the candidates is, only
8 how the voters voted. But my recollection was that
9 Dr. Lockerbie said whites preferred Republicans and
10 those were the ones who won and minorities voted
11 Democrat and those were the ones who lost. So if he's
12 right, then the Democrats are the minority preferred
13 candidates who lost. But I didn't do my own analysis.
14 So I don't know.

15 Q. So this is -- so based on what you've just said,
16 you understand that Greene and Ruggiero were the
17 Republican candidates?

18 A. What I am telling you is that that's information
19 that I learned after reading Dr. Lockerbie's report. It
20 was not a part of my analysis; and looking at names on a
21 list, I don't know the partisanship of them. I just
22 know that in his report he said that only Republicans
23 have been elected to town council. I don't know if
24 that's true or not. I have no reason to believe he
25 would make that up. So what I am telling you is that

1 when I read his report, I learned that information; and
2 I know that no minority-preferred candidate has ever
3 won. So he's probably right that those are the
4 Republicans, they are white preferred, and that they
5 have won every town council election.

6 Q. So going back to the elections that we just
7 reviewed with respect to at the federal level and then
8 also at the state level, for Newburgh and those races
9 you would agree that the minority preferred candidates
10 are typically -- or were Democrats?

11 A. I would agree based on trusting Lockerbie's
12 analysis that they're Democrats, but I did not attempt
13 to determine their partisanship nor take that into
14 account in my analysis.

15 Q. Okay. And in the elections that we looked at,
16 how did black voters usually vote?

17 A. Which elections?

18 Q. The -- we just looked at, on Table 3, the 2022
19 elections and the 2020 and 2016 elections.

20 A. In those specific elections, blacks were cohesive
21 for who you helped me identify as the Democratic
22 candidate.

23 Q. And I apologize. Did I help you identify that
24 Chuck Schumer was the Democratic candidate in 2022 for
25 the U.S. Senate?

1 A. I will say who you reminded me.

2 Q. Okay. And you knew that James was the Democratic
3 candidate for the attorney general in 2022?

4 A. That's right.

5 Q. And then in 2016 you were aware that -- in 2020
6 you were aware that Biden was the Democratic
7 candidate -- President Biden was the Democratic
8 candidate for -- in that race?

9 A. Yes. I think he was vice-president during the
10 race, but yes.

11 Q. Okay. How did the -- in the elections that we
12 looked at, how did Latino voters usually vote?

13 A. In those elections they voted similarly to
14 African-Americans, in support of the Democratic
15 candidates.

16 Q. Do you know how Asian voters usually voted?

17 A. Not in Newburgh.

18 Q. Okay. That was not part of your analysis?

19 A. It was not. I believe their population is a bit
20 smaller.

21 Q. And was it the size of their population that lead
22 to your decision not to include them in your analysis?

23 A. Probably so. I think they're maybe only around 2
24 or 3 percent.

25 Q. Okay. And it's fair to say that in the races

1 that we reviewed, not a single candidate preferred by
2 black and Hispanic voters was a Republican?

3 A. That's fair.

4 Q. So explain to me why you don't believe it matters
5 what candidate -- I think you said you haven't listed
6 here who won the election; is that right?

7 A. I said the local races, some of them have an
8 asterisk next to their name; and so that was the
9 candidate who I think won the local office. For the
10 larger races that encompass more geography, no one
11 really won because they might have ultimately lost even
12 if they received more votes there. So I didn't identify
13 who won or lost. But this table was just meant to
14 determine voting patterns by race and ethnicity,
15 racially polarized voting.

16 Q. Okay. So your testimony is that for the local
17 races it mattered who won, and you testified here that
18 for town council, for instance, that in Newburgh, your
19 position is that no Democrat has ever won the town
20 council spot; is that right?

21 A. I --

22 MR. IMAMURA: Objection. Misstates his
23 testimony, but you can answer.

24 THE WITNESS: My position is that no
25 minority-preferred candidate has ever been elected to

1 Newburgh town council and that that's the single most
2 important question before the court, is whether or not
3 minority-preferred candidates are able to win office
4 under the current at-large system that is being
5 challenged.

6 The rest of the elections are informative
7 and they help us understand the larger voting patterns
8 in this jurisdiction, but it was not my intention to
9 attempt to create a tally of non-town council elections
10 and whether or not somebody can get elected to a
11 different office. The only real question is whether or
12 not somebody can get elected to the town council. It
13 doesn't matter how many supervisor and tax assessors and
14 state legislators you can elect. That doesn't get you
15 on the town council.

16 BY MS. WEEKS:

17 Q. Can you explain to me the difference -- when we
18 looked at Table 3 several times, you said that this was
19 the EI method. If we look at Table 4, is there any --
20 any distinction in the results of Table 4 that would
21 affect your testimony about Table 3, the RxC method?

22 A. Let me pull that table up. Just scrolling to it.
23 That's 2. So 3 is what we call iterative EI. This is
24 Gary King's iterative EI. And in Table 4 is a separate
25 type of model that's called EI rows by columns or RxC.

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1 There -- the two leading method -- the two methods that
2 courts accept and have accepted, and so I also attempt
3 to run both of those when the data allows. They're
4 quite similar. And in this case, they lead to the same
5 conclusions, but the point estimates themselves might
6 vary a little bit from election to election.

7 Q. Now, it's your testimony that with -- with the
8 exception of Newburgh town council that who won the
9 races, that that's not relevant?

10 MR. IMAMURA: Objection. Mischaracterizes
11 his testimony. You can answer.

12 THE WITNESS: What I've said is that I have
13 not attempted to determine who won and lost other
14 elections for sheriff or tax collector or state
15 representative or Congress person. It's for the judge
16 to decide what's relevant, not me.

17 BY MS. WEEKS:

18 Q. Okay.

19 A. What I have said is that the endogenous election
20 for town council to me, as a political scientist, is the
21 one that I put the most attention on in this case, and
22 so I have determined that no minority-preferred
23 candidate has ever been elected to town council, and the
24 rest of my analysis is basically just showing who people
25 vote for.

1 Q. Okay. In -- in your analysis, you didn't. In
2 many instances, you didn't indicate who won. Am I to
3 take from that that your view was that it did not matter
4 for purposes of your analysis?

5 A. I would say two things: Number one, it's a
6 question that's not answerable. Joe Biden or Donald
7 Trump did not, quote, win anything in Newburgh. The
8 only person who could, quote, win is the person who is
9 on a ballot in a local election, can receive more votes,
10 and then get enrolled as that position.

11 So the exogenous elections -- many of the
12 exogenous elections, there's no winner because it
13 requires the rest of the state or the rest of the county
14 to also vote for that person. What I have attempted to
15 do is in the local elections where there could be a
16 potential winner, put an asterisk next to the name of
17 the person who did get elected where only these local
18 folks are determining that race to show which person is
19 not only preferred but perhaps gaining office.

20 But my testimony is that the town council is the
21 single most important election that we need to know
22 who's winning and losing on, and the other elections
23 might be informative. I don't disagree that they could
24 be informative, but it's up to the judge to determine
25 how much weight to put on whether or not the town votes

1 for a Democrat for president.

2 Q. Well, if you -- if you didn't believe they were
3 informative then you wouldn't have included them in the
4 tables in your analysis in your report; no?

5 A. That's completely incorrect.

6 Q. Okay. But -- then what was the purpose of
7 including results that you felt were not going to be
8 informative to this analysis?

9 A. Who won and who lost is less informative. How
10 people voted is the entire point of this table. That's
11 why I attempt to get not just town council elections,
12 which I think are the most informative, but other
13 elections to see is this part of a general pattern. And
14 so typically in the cases I've been involved in, local
15 elections or the elections closest to what is endogenous
16 are considered the most informative and the most
17 probative, but that the other elections also have some
18 amount of -- of weight in helping us understand voting
19 patterns. What I said is not relevant is whether or not
20 the town decides to vote Democrat or Republican for
21 governor, U.S. Senate or president. The minority
22 plaintiffs in this case, they don't really care who wins
23 those races. Their claim is that they cannot get
24 elected to the town council. So that's really the only
25 election that is informative in terms of winners and

1 losers, but the voting patterns themselves are quite
2 informative that tell us a larger story.

3 Q. Dr. Barreto, does it matter whether these races
4 are competitive as between the Democratic or Republican
5 even if a Republican candidate ultimately prevails?

6 A. Does it matter to what end?

7 Q. To -- to any -- to your analysis, would it matter
8 if the races are competitive versus whether a Democrat
9 prevails?

10 A. I would say it's completely irrelevant. The only
11 thing that matters is who wins and who loses a local
12 election. In fact, probably the most egregious local
13 elections I've seen are ones in which minorities are
14 allowed to get close, but could never ever, ever win.
15 That's probably the worst feeling if you're a minority
16 voter.

17 Q. And -- and your view is that despite the fact
18 that it was competitive that they could never ever win?

19 MR. IMAMURA: Objection. Mischaracterizes
20 his testimony. You can answer.

21 THE WITNESS: I would say that so far,
22 empirically, minority-preferred candidates have never
23 won a local election for town council in Newburgh.

24 FEMALE SPEAKER: Agreed.

25 BY MS. WEEKS:

1 Q. And is it your view that even if they were
2 competitive, I think you said that's completely
3 irrelevant?

4 A. I don't know what I said. What I believe is that
5 the competitiveness does not weigh into whether or not
6 there's, A, racially polarized voting. There is
7 racially polarized voting. And B, the competitiveness
8 does not weigh into whether or not you actually won or
9 lost the election. So far, minorities have always lost
10 the elections. So the fact that they have maybe
11 sometimes been close does not provide them any comfort.
12 They have lost the election, and that's what I mean by
13 the competitiveness. Like saying, Oh, you did really
14 good. You got 48 percent. Good for you. Well, you
15 know what you get for 48 percent? No seats on the
16 council.

17 So to me, that doesn't help, and to me, I'm
18 concerned about whether or not --

19 FEMALE SPEAKER: Egregious.

20 THE WITNESS: -- the current electoral
21 system is, in fact, electing minority-preferred
22 candidates or not.

23 BY MS. WEEKS:

24 Q. So it is your view that minority-preferred
25 candidates do not have a reasonable chance to win in the

1 Town of Newburgh?

2 A. Based on the data I have seen, my current
3 position is that they have never won. I have not been
4 asked to forecast future elections, so I don't know.

5 Q. Yeah, but I'm not asking whether or not they've
6 ever won. I'm asking if it is your view based on all
7 the data that you have reviewed in this case and your
8 opinions whether there's a reasonable chance that a
9 minority-preferred candidate could win in the Town of
10 Newburgh?

11 A. You're asking about a future election. Because
12 they haven't won one in the past, so you must be asking
13 me about a future election.

14 Q. Right.

15 A. Okay. So I have not put together a forecasting
16 model to determine whether or not if things stay the
17 same, they'll keep losing by 10 or 5 points or they
18 might ultimately win. We don't know that. And I don't
19 believe Mr. Lockerbie put together a forecasting model
20 either. But what I know is that so far, they have never
21 won an election.

22 MS. WEEKS: Okay. I think we should take
23 about a -- a five-minute break. So if we can go off the
24 record.

25 THE VIDEOGRAPHER: We're going off the

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1 record. The time is 11:37 a.m. This marks the end of
2 media unit number 2.

3 (Recess taken from 11:37 a.m. to 11:45 a.m.)

4 THE VIDEOGRAPHER: We are back on the
5 record. The time is 11:45 a.m., and this marks the
6 beginning of media unit number 3.

7 BY MS. WEEKS:

8 Q. So Mr. Barreto, I want to ask you about the
9 census data, the -- the Bayesian Improved Surname
10 Geocoding, BISG. If I call it BISG, you'll know to what
11 I'm referring?

12 A. Yes.

13 Q. Okay. So in your report, you state that you
14 relied on official election results and voter file data
15 provided by the Orange County Board of Elections that --
16 taken out from paragraph 18; is that correct?

17 A. That sounds exactly right. Let me look at
18 paragraph 19. Yes, correct.

19 Q. What type of data is included in a voter file
20 data?

21 A. Well, it varies from state to state on like
22 what's required to be in there, but very generally, it
23 usually has the voter's full name, their date of birth,
24 their address at which they're registered, and then it
25 might also include some of their vote history, like if

1 they actually voted in a specific election, what
2 district they live in, what precinct they're assigned
3 to. So as much that the state or county collects about
4 the voter is usually included in the voter file.

5 Q. And how did you rely on this data?

6 A. Do you mean for purposes of the BISG analysis?

7 Q. Correct.

8 A. So the voter file is fed into the BISG analysis
9 and there's two components of it.

10 I presume you want me to sort of explain what we
11 did?

12 Q. Right.

13 A. So there's two things that the BISG analysis is
14 interested in with respect to the voters. The first is
15 their names, and it compares their names against a
16 census, a list of names and what race or ethnicity
17 people have marked when they fill out the census. So
18 that's part one.

19 The second thing is that it is concerned with
20 your address, where you live, and it wants to understand
21 what is the racial and ethnic demographics of the
22 population of the neighborhood in which you live. And
23 so the BISG program will determine both of those pieces
24 of information based on the voter file and then it will
25 assign a probability of every single voter of their

1 probability of being black, white, Latino, Asian or
2 other.

3 Q. And this is the methodology that you used to
4 estimate racial voting patterns?

5 A. This is the methodology that I use to estimate
6 the race and ethnicity of voters in the precincts. So
7 that's one -- that ultimately becomes what we call our
8 input variable into the model. To estimate the actual
9 voting patterns, we use a software package called
10 eiCompare. That's what gave us the iterative EI and the
11 RxC that we were talking about earlier.

12 So BISG is only used to classify the race and
13 ethnicity of voter by precinct, not to determine their
14 voting patterns.

15 Q. And is it correct that BISG required you to
16 estimate race because you don't know their self-reported
17 race in an election?

18 A. We don't know that in the state of New York. We
19 do -- we do know that in some other states. But in the
20 state of New York, the race or ethnicity of the voter is
21 not listed on the voter file, and so political
22 scientists have been using a variety of different
23 methods over the years to determine the race and
24 ethnicity of precincts so that they could correlate that
25 with votes, and I would say that BISG is currently

1 considered the most accurate method.

2 Q. So in your report, you cite two cases where the
3 court found BISG to be reliable. I believe that's
4 NAACP v. E. Ramapo --

5 A. Ramapo, uh-huh.

6 Q. -- Central School District and Clerveaux v.
7 E. Ramapo Central School District, correct?

8 A. I think there has probably been about ten now but
9 I agree that those are two footnotes that you read.

10 Q. You haven't included any other in this report?

11 A. I don't know if I have or haven't. I would have
12 to reread the sections.

13 Q. But are these the two that you've used to support
14 for this footnote?

15 A. Let me just read this paragraph 20.

16 Yes, in paragraph 20 those are the two in the
17 footnote.

18 Q. Do you know of any other case -- do you know of
19 any cases where BISG has been found not to be a reliable
20 methodology?

21 A. No. I have been involved in other cases where it
22 has been used and where it has been found to be reliable
23 methodology and challenge by the defense; but in every
24 case that I have been involved in and seeing it used, it
25 has been found to be a reliable methodology.

1 Q. Have independent researchers concluded that the
2 BISG is a reliable methodology?

3 A. I would say yes. It depends on who the
4 researchers are. But there are peer-reviewed academic
5 publications that conclude that it's a reliable
6 methodology.

7 Q. Are you aware of any independent researchers that
8 have concluded that it is not a reliable methodology?

9 A. I am aware of some researchers. I would not call
10 them independent; but I am aware of some researchers who
11 have raised questions about it, yes.

12 Q. Is there a high rate of error for the BISG
13 methodology?

14 A. High rate or error of what specifically?

15 Q. The overall error rate for BISG.

16 A. I would say that when it comes to the proper use,
17 which is aggregating the probabilities to precincts, it
18 is extremely, extremely accurate when compared to
19 self-reported data.

20 Q. And you've mentioned Dr. Lockerbie's rebuttal.
21 You've read it. You're familiar with it. He reports
22 that the overall rate of error is 13.20 percent for
23 BISG. Do you disagree?

24 A. I disagree with virtually every word he wrote
25 about BISG. I believe he does not understand it at all.

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1 I believe he testified he's never even attempted to run
2 it. And I would be extremely happy to have a discussion
3 with him about it.

4 Q. Have you ever heard of the fBISG methodology?

5 A. Yes, I am familiar with the article that he cites
6 by Kosuke Imai.

7 Q. Can you explain the difference between the BISG
8 and fBISG methodologies?

9 A. Well, generally in that article, Kosuke Imai, who
10 is the author of the "Who Are You" package and the first
11 version of political science BISG is offering ways, in
12 his words, to improve what is already a very successful
13 model. And in this article, he's identifying two areas
14 that could possibly improve estimates. One is using an
15 expanded census list of both first names and an expanded
16 surname list. And the second is to adjust for the
17 occurrence of zero-count minority census blocks which
18 could in some cases give too low of an estimate of
19 minority voters, according to him. So in that paper he
20 develops a new theory for using what he calls -- I
21 believe the "F" might stand for fully error corrected --
22 I don't remember off the top of my head -- BISG that
23 takes into account an expanded census list and takes
24 into account zero-count minority census blocks.

25 Q. So why did you choose to use BISG as opposed to

1 employing the fBISG methodology?

2 A. I guess there's three reasons. The first is that
3 the fBISG methodology is not publicly available. It is
4 not on the grand. And it doesn't -- they are working on
5 it. I asked Kosuke many times when it's going to be
6 available, and they're working on it. But it is not
7 publicly available on the grand to implement. Mostly
8 because of the zero-count census blocks, I believe it's
9 quite difficult.

10 Second is that we did incorporate the expanded
11 census first and surnames. So that portion that he's
12 asking for, we did that. It is very clearly outlined in
13 our code, and that is a practice that I always do.

14 The third is that there are almost no zero-count
15 minority census blocks in Newburgh. I think out of all
16 of the census blocks in Newburgh, less than 3 percent
17 had zero minorities. So that second part about the
18 zero-count census blocks does not even really apply to
19 somewhere like Newburgh where there is a dispersion of
20 minorities in almost every neighborhood and corner. So
21 it wouldn't even really -- it would make no difference.

22 Q. Did you perform any test to confirm the accuracy
23 of your estimations under the BISG method?

24 A. Do you mean of the -- have I performed any -- is
25 your question have I performed any validations of my

1 application of BISG to confirm that my race estimates
2 are accurate?

3 Q. Correct.

4 A. Yes. I have done that extensively in data in
5 numerous cases and checked it against the self-reported
6 data.

7 Q. Okay. And you said numerous cases. You meant in
8 numerous cases with respect to your analysis here that's
9 reflected in this report?

10 A. Well, you asked me if I've ever checked my work
11 on BISG.

12 Q. Pardon me.

13 A. Yes. The answer is absolutely yes. In
14 California we have self-reported voter data on the file.
15 We run the exact same BISG model as we used in Newburgh,
16 and we have checked it against the self-reported answers
17 that people give. When we aggregate those down to
18 voting precincts of the self-reported versus the BISG
19 predicted, they correlated either .98 or .99. So 98 or
20 99 percent accurate.

21 I've also done the same in a paper I published on
22 Georgia recently, where -- races on the voter file using
23 the exact same BISG methodology predicting people's race
24 and ethnicity in the precinct and then comparing it to
25 the self-reported race they wrote down. Same thing,

1 you're getting in the 97, 98, 99 percent accurate
2 predictions.

3 Newburgh does not have a self-reported race. So
4 the entire point of BISG is to train your model,
5 fine-tune your model, calibrate your model, and check it
6 in states where you do have race on the voter file.
7 Once you know that it's working well, you can then
8 deploy it in other places.

9 Q. Okay. So if I am understanding you correctly,
10 you did not perform any test to confirm the accuracy of
11 your estimations under the BISG method with respect to
12 the data for the Town of Newburgh.

13 A. Well, self-reported race is not on the voter file
14 in Newburgh; but I have performed numerous tests of BISG
15 validations to demonstrate its accuracy.

16 Q. You didn't do it in Newburgh because it couldn't
17 be done. Am I understanding that correctly?

18 A. It's not -- race is not on the voter file in
19 Newburgh. So the only options that someone would have
20 to analyze voting patterns in Newburgh are three:

21 One, they could just do a surname match. That
22 would really only be highly accurate for Hispanics;

23 Two, they could just only use census data; or

24 Three, they could use both, surname analysis and
25 census data.

1 We've chose to do Option No. 3. None of the
2 other options, 1 or 2, would be able to be independently
3 verified against the voter file in Newburgh because the
4 voter file does not contain race on file. But those are
5 the three options that the court would have to choose
6 from: Surname analysis only, census analysis only, or
7 both surname and census analysis. And that's what BISG
8 does; it takes both of them.

9 Q. Okay. And just so that I am understanding, you
10 said those were the only options for confirming the
11 accuracy of the estimations; or those are the only
12 options for the conducting the BISG analysis in the
13 first instance?

14 A. Those are the only options for conducting
15 ecological inference analysis to determine voting
16 patterns by race and ethnicity. You could either use a
17 pure surname match, you could either use only census
18 data, or you could use surname and census data, which is
19 what we did.

20 Q. Okay. And just -- I don't know that you've
21 answered my question. I want to make sure I understand.

22 Unlike in other states where you were able to
23 validate or confirm the accuracy of your estimations
24 under the BISG method, you were not able to do that in
25 the Town of Newburgh?

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1 A. Newburgh does not have race on the voter file.
2 So there is nothing to compare the BISG estimate to. We
3 have validated the exact, identical model in every state
4 that does have race on the voter file; and in those
5 places, it's 97, 98, 99 percent match.

6 Q. So you would agree with me, then, that you did
7 not do it in the Town of Newburgh because that data was
8 not available and you could not run the test to confirm
9 it?

10 MR. IMAMURA: Objection, vague.

11 You can answer.

12 A. I would agree that race on the voter file does
13 not exist in Newburgh.

14 BY MS. WEEKS:

15 Q. And you did not run a test to confirm the
16 accuracy --

17 A. I --

18 Q. -- of the estimations?

19 A. I am going to fundamentally disagree with you.
20 And we can talk about this for another hour if you would
21 like.

22 I did run a test of the accuracy. This is how
23 political science works. I ran a test of the accuracy
24 in California and Georgia and I applied the learnings of
25 that in the accurate model to Newburgh. So I am

1 confident and will swear under oath in front of a judge
2 that I have validated my model of BISG and I am
3 confident that it works in Newburgh. The reason I know
4 that is that it validates at 98 percent accurate in
5 California and Georgia, and I am applying the exact same
6 model.

7 I also agree with you that race does not exist on
8 the voter file in Newburgh. That's why we're using
9 BISG. But when you ask me if I did a test, the answer
10 is yes.

11 Q. Dr. Barreto, are there any diagnostics that
12 should be run on EI prior to relying on its results?

13 A. What do you mean by diagnostics prior to it being
14 run?

15 Q. Are there any diagnostics that are supposed to be
16 run -- when you said you're loading the data file into
17 the BISG, are there any diagnostics that are supposed to
18 be performed in connection with that process?

19 A. I don't really understand your question.

20 Q. Okay. Walk me again through the process of how
21 you use the BISG methodology.

22 A. So BISG is just giving us the input variable for
23 our EI model later. BISG is taking the voter file. It
24 geocodes the voter file so that it knows what census
25 block your address is in. It takes your name, your

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1 first name and your last name, compares that against the
2 expanded census name list, and ultimately it gives a
3 probability for you, for anyone on the voter file, of
4 you being white, black, Latino, or Asian or other based
5 on your name and the census block that you live in. And
6 what we do is then aggregate those probabilities.

7 So if I have one person that has a 75 percent
8 probability of being white and a second person 6 rows
9 down that has only a 25 percent probability of being
10 white, between the 2 of those, I'm fairly confident that
11 there's at least one, 75 plus 25. So I did that for
12 everyone in the precinct. I aggregated all the way
13 down. And then we get a total count for the expected
14 number of white, black, Latino, or other voters in every
15 single precinct. That is what the BISG process does for
16 us.

17 We then take that information for all the various
18 precincts, voting precincts, in Newburgh; and we feed
19 that into the ecological inference analysis software
20 that we call eiCompare, a publicly available software
21 program that's on a website that everyone can use and
22 download for free.

23 Once you get that race estimate of every precinct
24 into your eiCompare software, then you're statistically
25 correlating that or regressing that against the vote

1 choice, which just come from the voter results from
2 Orange County. That ultimately produces those
3 red-and-green colored tables that we looked at a little
4 while ago.

5 Q. Okay. Thank you for that.

6 So backing up to my prior question, at the point
7 in which you take the information, the aggregated -- at
8 the point in which you feed into the eiCompare software
9 the information that came out of the BISG methodology,
10 are there any diagnostics that need to be run on the ei
11 software?

12 A. Your question doesn't make any sense to me. I
13 wrote the eiCompare software with Loren Collingwood and
14 have run it probably 700 times. So I am certain that I
15 am doing it correctly. If you want to ask me a very
16 specific question, then I can answer it. But are there,
17 quote, diagnostics does not make sense.

18 Q. Okay. What, if anything, do you need to do --
19 walk me through when you're turning on -- when you're
20 using the eiCompare software and you're feeding the
21 information from BISG methodology into it, what do you
22 need to do, if anything?

23 MR. IMAMURA: Objection, asked and answered.

24 You can answer.

25 A. Well, there's two pieces of information that the

1 EI software relies on: Race estimates of the voters in
2 the precinct, and that can come from race on the voter
3 file if you're in Georgia. It can just come from census
4 only estimates, it can just come from surname only
5 estimates, or it can come from BISG, but you have to
6 have an estimate of the race and ethnicity of the
7 voters. That's one piece of information you need.

8 The second piece of information you need is the
9 election results. How many votes did Smith get, how
10 many did Jones get in every single precinct, and how
11 many total votes were cast. Those pieces of information
12 are tied together, they're merged together at unit of
13 the BTD or precinct. Once both of those pieces of
14 information are in, it will then run the ecological
15 inference models. In our software, eiCompare, it runs
16 two models. It runs iterative EI, which if there are
17 two candidates and three racial groups, it will run
18 whites for each candidate, blacks for each candidate,
19 Latinos for each candidate.

20 The second type of EI it will run is called
21 EI:RxC, and in that case, it would just run one model,
22 and it will simultaneously estimate white, black and
23 Latino support for the two candidates.

24 BY MS. WEEKS:

25 Q. With respect to the -- the two models that you

1 just described, is one inherently better than the other?

2 A. No. The entire point of eiCompare and of the 3
3 or, I don't know, 4 academic articles that
4 Dr. Collingwood and I have published is that they're
5 quite similar, and that some experts have argued that
6 one or the other is better; and what Dr. Collingwood and
7 I have demonstrated empirically is that they're quite
8 similar. They often lead the expert to give the same
9 conclusion, and in most of the cases that I do, and I
10 believe -- I can't speak for Dr. Collingwood, but I'm
11 familiar with some of his cases -- we use the software
12 package called eiCompare and it runs both. It runs
13 iterative EI and EI:RxC, and that way the court has all
14 the data before them, they can see the general patterns,
15 and they can draw a conclusion.

16 Q. Have you ever seen the results between the two
17 vastly differ?

18 A. I would say it's rare that they would vastly
19 differ.

20 Q. Okay. Have you ever seen them differ?

21 A. Well, no two models will ever give you the exact
22 same to the decimal result. So that's what they're
23 supposed to do is they're estimates, but sometimes they
24 differ, but I would generally they lead to the same
25 conclusion; that is, if the court is asking are

1 minorities cohesive and do they vote in the opposite
2 direction of whites or are all racial groups cohesive
3 and vote together? Whether you use iterative EI or RxC,
4 my experience is that you will usually land on the exact
5 same answer, that it is model agnostic, we would say.

6 Q. This method, it doesn't provide any data on why
7 voters choose the particular candidates they vote for,
8 does it?

9 A. That is correct.

10 Q. Okay. Instead, it estimates which voters prefer
11 which candidates?

12 A. That is correct. It is only attempting to
13 estimate how racial groups vote; it is not attempting to
14 estimate why.

15 Q. Okay. You -- you mentioned that you developed
16 eiCompare. Do I have that correctly?

17 A. Yes. Myself and Dr. Collingwood, I would say,
18 were the primary authors. The original package is
19 coauthored with Dr. Kassra Oskooii, who's a professor at
20 the University of Delaware, and Dr. Sergio Garcia-Rios,
21 who is a professor at University of Texas.

22 Q. And this is the software that you employed for
23 your analysis?

24 A. For the ecological inference analysis, we rely on
25 eiCompare.

1 Q. Okay. And you mentioned that it runs both the EI
2 comparisons, both the iterative EI that you've mentioned
3 and then the R -- RB -- Rx -- or rows by columns?

4 A. Yes. We call it RxC, even though it has an X in
5 the middle, but...

6 Q. Okay. I -- I thought so, but it didn't -- it
7 didn't quite sound right.

8 Okay. Do -- do you know whether your software,
9 eiCompare, has been verified as reliable by independent
10 researchers?

11 A. I believe it has. Lots of people use it, and
12 it's been used in trials and courts have found it to be
13 reliable and other scholars have used it in their
14 academic publications.

15 Q. Do you -- could you estimate how many?

16 A. I don't know off the top of my head, but I think
17 Dr. Collingwood does. At some point he had a statistic
18 on how many downloads and uses it had off of our public
19 website, but I don't know.

20 Q. Does the analysis differ where there are more
21 than two candidates that are running for one seat?

22 A. What's your question? Does the analysis differ?

23 Q. Right. Does the -- did the EI, the -- the
24 comparison, does it differ where there are more than two
25 candidates running for one seat?

1 A. Well, the analysis is meant to be able to handle
2 multiple candidates in multiple racial groups. Both the
3 iterative and the RxC are meant to do that, and you can
4 just compare it by looking at some of the tables in the
5 report that, you know, the analysis where there are
6 multiple candidates are quite similar in the EI and the
7 RxC. They're off by a couple percentage points, but
8 they're extremely similar whether there is only two
9 candidates or four. And that's one of the nice things
10 about the program is that it's very flexible. It allows
11 you to -- to analyze multiple racial groups and multiple
12 candidates.

13 Q. So on page 15, just looking at the RxC Table 4
14 again, you have the town council race, and I believe
15 that has five individuals who participated in that race,
16 and one of them is McEntee. He ran -- do you understand
17 that he ran as an independent against Woolsey here who
18 was a Republican?

19 A. I trust you, but I did not understand that until
20 seven seconds ago.

21 Q. Okay. And if I represent that Woolsey, the
22 Republican candidate, won that election, do you consider
23 it appropriate to include such races where there was
24 more than one competitor -- or sorry, more than two
25 competitors?

1 A. Yes. We should consider every race.

2 MR. IMAMURA: I'm sorry. I --

3 THE WITNESS: No. Were you --

4 MR. IMAMURA: I'm sorry. My phone fell, so
5 apologies for the noise. Go ahead.

6 THE WITNESS: Oh, okay. No, no, no.

7 I think it's appropriate to include every
8 race that is endogenous, and it's common that there are
9 multiple candidates running for town council seats or
10 city council seats, as they're called in other cities,
11 and both iterative EI and RxC are well equipped to
12 handle those.

13 So our job as social scientists is to try to
14 give the court data and an answer to the question that
15 they are interested in how do people vote. So I think
16 it's very appropriate to analyze the election whether
17 there's two or ten people running.

18 BY MS. WEEKS:

19 Q. Have you observed any difference in the EI
20 analysis where there are even-numbered election cycle
21 years versus odd-numbered election cycle years?

22 A. What do you mean by "observed any difference"?
23 As I said already, every single election has slight
24 differences in the estimates. So tell me what you mean.

25 Q. Sure. I -- I guess my question is just whether

1 or not -- well, let's strike that. I may come back to
2 it.

3 So I want to move to the portion to discuss your
4 findings on racially polarized voting. Can you explain
5 to me, Dr. Barreto, the concept of racially polarized
6 voting?

7 A. Sure. I have some generic summaries, and then
8 I'll summarize them.

9 Q. You're free -- free to refer to them, but I -- I
10 obviously have reviewed your report. I was just
11 wondering what you would say, your testimony here today.

12 A. Yeah. Starting in paragraph 15 on page 4 and
13 continuing in paragraph 16 and 17, I have kind of like a
14 nice generic summary of racially polarized voting, and
15 generally, the concept one that derives in the sort of
16 political science legal jargon terminology coming from
17 the Voting Rights Act, and especially the Thornburg v.
18 Gingles case, of whether or not voting patterns are
19 correlated with the race and ethnicity of the voters and
20 whether or not they're polarized, meaning if they're on
21 opposite polls of a spectrum, and so at its simplest
22 terms it just means are whites and minorities voting for
23 the same or different candidates.

24 Q. And what were your find- -- what were your key
25 findings regarding racially polarized voting in the Town

1 of Newburgh?

2 A. Well, I think my findings are consistent with
3 what Dr. Lockerbie said two days ago, which is that
4 there is racially polarized voting, that whites and
5 minorities vote for different candidates, that it's
6 consistent across an 11-year span, across different
7 types of elections, that they are voting in opposite
8 directions when given a choice between candidates. So
9 there is clear evidence of racially polarized voting
10 here in this jurisdiction.

11 Q. Okay. And am I correct that your analysis was
12 conducted by taking, as you've mentioned today,
13 exogenous races -- or strike that.

14 Am I correct that your analysis was conducted by
15 taking exogenous races, that would include the governor,
16 the attorney general and others that are included in
17 these tables, in determining how a typical Democrat or
18 Republican candidate would perform in any given
19 election?

20 MR. IMAMURA: Objection. Mischaracterizes
21 his testimony. You can answer.

22 THE WITNESS: My answer is no.

23 BY MS. WEEKS:

24 Q. Okay. Tell me why that's wrong.

25 A. Well, first, my analysis has said that the

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1 endogenous local elections are my starting point, are my
2 most informative pieces of data, and that beyond that, I
3 like to get other types of elections to see if this is
4 part of a larger pattern. And so that's where I bring
5 in other both local exogenous as well as state exogenous
6 elections, and I think we've have both been extremely
7 clear about this. I did not consider partisanship at
8 all in running my analysis, and so that had nothing to
9 do with my analysis or the data or the results.

10 And I don't remember the last part. You said
11 something about performance, but...

12 Q. Dr. Barreto, with respect to -- and we can refer
13 to Table 2 for this, although it would be applicable
14 across the tables, you have data from 2011 through 2022.
15 We've discussed that there are a few years missing.

16 Do you know whether or not you've captured
17 between 2011 and 2022 all of the Newburgh town council
18 races?

19 A. I think -- I think I have. I said I think there
20 may not have been a contested race in '15, but I think
21 I've captured all of the endogenous town council
22 elections.

23 Q. Did you analyze any elections that are not
24 reflected in this report?

25 A. No.

1 Q. So I want to go to paragraph 30 of your opinion,
2 and there it states, In the 2020 town council special
3 election, only two candidates ran for one seat. This
4 demonstrated the most dramatic patterns of differential
5 vote preference between minority and white voters.
6 Latino and black voters showed overwhelming support for
7 Steger over LoBiondo by margins of 3 to 1 in the RxC
8 models and over 90 percent in the EI models. In
9 contrast, white voters largely preferred LoBiondo, who
10 ultimately won the election.

11 Did I read that correctly?

12 A. Paragraph 30, yes.

13 Q. Okay.

14 MS. WEEKS: I want to introduce another
15 exhibit. Okay. That should be available as Defendants'
16 Exhibit 2.

17 (Exhibit No. 2 was marked for identification.)

18 MR. IMAMURA: And Professor, you need to
19 refresh the page.

20 THE WITNESS: I see it. Yep. Exhibit DEX2
21 Town of Newburgh Brad Lockerbie Response.

22 Want me to open that?

23 BY MS. WEEKS:

24 Q. Yes, please.

25 A. Got it. Okay.

1 Q. And have you seen this document before,
2 Mr. Barreto?

3 A. Yes.

4 Q. What is it?

5 A. This appears to be the rebuttal report that
6 Professor Lockerbie wrote in this matter, in this
7 lawsuit.

8 Q. Okay. Now, if you could turn to...

9 MS. WEEKS: Well, I know that we have spoken
10 about taking a -- a break for lunch, and this might be a
11 good starting point before taking any testimony with
12 respect to this exhibit. So...

13 MR. IMAMURA: Okay. Either way.

14 MS. WEEKS: Should we go off the record and
15 reconvene in 30 minutes?

16 MR. IMAMURA: We -- we consent.

17 THE WITNESS: Sounds good.

18 MR. IMAMURA: Okay. So 3:56 Eastern.

19 MS. WEEKS: That works.

20 MR. IMAMURA: Okay.

21 THE VIDEOGRAPHER: Okay. We're going off
22 the record. The time is 12:26 p.m.

23 (Recess taken from 12:26 p.m. to 1:04 p.m.)

24 THE VIDEOGRAPHER: We're back on the record.

25 The time is 1:04 p.m.

1 BY MS. WEEKS:

2 Q. Dr. Barreto, I think we had just pulled up
3 Exhibit 2, which is Dr. Lockerbie's report, but before
4 get into that, I wanted to go back into my last
5 question. That was in reference to Defendants'
6 Exhibit 1 which was your report, Dr. Barreto. So
7 we've -- okay?

8 A. Okay.

9 Q. I had read to you paragraph 30, and you had
10 confirmed for the record that my restatement of it was
11 accurate.

12 I want to focus on the last few lines of that
13 paragraph where it says, Latino and black voters showed
14 overwhelming support for Steger over LoBiondo by margins
15 of 3 to 1 in RxC models and over 90 percent in the EI
16 models. In contrast, white voters largely preferred
17 LoBiondo, who ultimately won the election.

18 Did I read that correctly?

19 A. Yes.

20 Q. And I believe you said here today that no elected
21 town council member, to your knowledge, has ever been a
22 Democrat; is that correct?

23 A. I said it's never been minority preferred. I
24 think I've been very clear that I have not done the
25 analysis on the partisanship but that you and your

1 expert have and I'm just trusting you.

2 Q. Okay. Do you understand that Steger was the
3 Democratic candidate?

4 A. I believe you.

5 Q. So is it fair to say that the 2020 town council
6 special election, that Latino and black voters showed
7 overwhelming support for Steger, the Democratic
8 candidate?

9 A. Yes, that was their candidate of choice in that
10 particular election.

11 Q. Thank you.

12 So now moving on to Dr. Lockerbie's report. I
13 would like to begin at paragraph 20. And I will say I
14 believe that's the first paragraph 20 I am referring to
15 beginning on page 3.

16 A. Got it.

17 Q. And I would like to scroll down to the 2020
18 election here.

19 A. This is the table on page 4?

20 Q. Correct.

21 A. Okay.

22 Q. Okay. Now, several of these races appear to be
23 very close as between the Democrat and Republican
24 candidate. Would you agree?

25 A. Some of the races are very close, and some of the

1 races are less close but...

2 Q. Okay. Looking specifically at the town council
3 Republican member who won, the differential is 49.57 to
4 50.43, with the Republican prevailing. Would you agree
5 that that is a close margin?

6 A. Just assuming these numbers from Dr. Lockerbie
7 are correct, which I have not tallied myself; but, yes,
8 that would be, looks like, less than one percentage
9 point. That is close.

10 Q. You have no reason to believe that this data is
11 incorrect?

12 A. I have no idea where he got it. So I have no
13 reason to believe anything. I am going with you right
14 now that this is accurate.

15 Q. Okay. And does he cite here the various election
16 results in the footnote to indicate where he got this
17 information from?

18 A. Yeah. I think he got it off of Orange County
19 election results website.

20 Q. Okay. And would you have any reason to dispute
21 the Orange County election results website, assuming
22 that he's transcribed them appropriately?

23 A. Yeah. No. Assuming he's transcribed them
24 appropriately, I'm -- sure. I'm just saying I haven't
25 gone and verified anything so...

1 Q. Okay. So in this 2020 election, if we look at
2 U.S. president -- which I believe in 2020, as we
3 previously discussed, it was President Biden in that
4 election. Here it appears that President Biden, the
5 Democratic candidate, prevailed 53.89 percent over 46.11
6 for the Republican candidate. Did I read that
7 correctly?

8 A. You did. The one thing I would say is that I
9 believe there were other candidates in that race and
10 he's got the Biden/Trump number adding up to 100, which
11 is false. So I just wanted to point that out for the
12 record.

13 Q. Did President Biden prevail in the 2020 election?

14 A. Nationally, for sure.

15 Q. Okay. And, again, you have no reason to question
16 these numbers based on the Orange County records?

17 A. Well, I think I just tried to explain; and maybe
18 I wasn't clear. I would wager a reasonable amount of
19 money that if we go on the Orange County website we do
20 not see 53.89 because these two candidates add up to 100
21 and I am almost certain that there were more candidates
22 on the ballot for U.S. president than 2. So some data
23 are missing here, is my point.

24 So I don't know that Joe Biden got 53.89. He
25 might have gotten 50.1 and a third-party libertarian or

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1 a green candidate might have gotten some additional
2 votes.

3 That's my point is that my recollection of
4 Lockerbie was that he excluded everybody who wasn't a
5 Democrat or a Republican. So he is discarding some
6 data.

7 Q. Was President Biden the preferred candidate of
8 minority voters in this election?

9 A. Yes.

10 Q. Okay. And is it fair to say that Democrats
11 virtually swept this election? They won everything
12 except for the Newburgh town council and county judge
13 race; is that correct?

14 A. I don't know what other elections there were.
15 There might have been other elections. These are the
16 ones that are in Dr. Lockerbie's table. So what would
17 be fair for me to say is that in -- one, two, three,
18 four -- five elections, the way he has cataloged it,
19 Democrats are over 50 percent and that in two of the
20 elections, Democrats are under 50 percent.

21 But as I said, he appears to be discarding votes
22 of third-party and other candidates. So we would have
23 to go to the Orange County website and see if, in fact,
24 these are the correct numbers.

25 Q. Okay, Dr. Barreto. Do you know whether the

1 Congressional Representative Maloney was the preferred
2 candidate of minority voters?

3 A. I don't know sitting here because I have
4 Dr. Lockerbie's report up. I would have to go back and
5 look at my table. I'm pretty sure I analyzed the
6 congressional election.

7 Q. Okay. We can turn back to your exhibit. Do you
8 have that available?

9 A. Yeah. Let me just -- I'm going to have to close
10 this one and then open up Exhibit 1.

11 Said that was 2020?

12 All right. 2020. Yes. I found a race Maloney
13 versus Farley and Maloney was preferred by minorities,
14 and Farley was preferred by whites.

15 Q. Was State Assemblyman Jacobson the preferred
16 candidate of minority voters?

17 A. Also in 2020, state assembly was Jacobson versus
18 Gouza. And Jacobson was preferred by minorities, and
19 Gouza, the opponent, was preferred by whites.

20 Q. So based on this data, is it fair to say that
21 minority preferred candidates have a fair opportunity to
22 win an -- win rather than lose an election?

23 A. I don't think, no, not for town council. Because
24 Assembly District 104 and House District 18 is much
25 larger than just the 30,000 people in Newburgh. It

1 encompasses lots and lots of other territory.

2 Q. Okay. Well, let's exclude town council for a
3 moment. Is it fair to say that the minority preferred
4 candidates have a fair opportunity to win, excluding
5 town council?

6 A. Well, what I am saying is that the people of
7 Newburgh, they are only electing people to their local
8 offices. And so like even if they get the majority of
9 their votes, which is not clear to me if it was over
10 50 percent, but if they gave more of their votes to
11 Maloney or Biden, it doesn't elect them to anything and
12 it doesn't mean they're going to win because they are
13 part of a larger district. So when you consolidate it
14 to just down to that district, then those voters might
15 have voted differently. So these numbers are telling
16 for me in terms of just the overall voting patterns; but
17 it's hard to know if you had a race for town council
18 between for Jacobson and Gouza, how it would go because
19 that district extends well beyond Newburgh town.

20 Q. Do the minority preferred candidates have a fair
21 opportunity to cast their ballot in favor of their
22 preferred candidate?

23 A. My answer is no, they do not; and in that large
24 election system, no.

25 Q. And, yet, in these examples, five out of seven of

1 the minority preferred candidates prevailed?

2 A. Well, I think you're use the word "prevailed"
3 incorrectly because they were not running for anything
4 in Newburgh town. That's not how we as political
5 scientists would think of it. Joe Biden could not be
6 elected mayor of Newburgh town. I guess he could move
7 there and run, but that's not what he was running for.
8 So you're asking an incorrect question. In my position
9 as a political science professor, the question would be
10 did they get more votes.

11 Q. And did they get more votes?

12 A. According to what Dr. Lockerbie has put together
13 which, as I said, has discarded some data for
14 third-party candidates, it would appear that those
15 Democrats did receive more votes.

16 Q. Did it appear that the minority candidates in
17 this race in 2020 had a substantial likelihood of
18 winning?

19 A. No.

20 Q. Why not?

21 A. It's not substantial.

22 Q. What word would you use?

23 A. I would say that assuming Lockerbie's data is
24 accurate, that he has found some elections in 2020 --
25 and we don't even know what the universe of elections

1 is. There could be seven more elections in which they
2 lost. We only know the ones that he has given us to put
3 on the screen. But he has found some elections that
4 were close in which Democrats for higher-level office --
5 not local office but higher-level office -- got more
6 votes than Republicans. They didn't win anything in
7 Newburgh. The ones who were trying to win something in
8 Newburgh lost.

9 Q. Now, just looking back at your report, your
10 tables you have for 2020, you've recorded the
11 congressional representative, House 18 that -- that
12 obviously is also reflected in Dr. Lockerbie's report,
13 right?

14 A. In 2022? I think we've talked about the State
15 Assembly 104, Jacobson/Gouza (phonetic).

16 Q. Oh, sorry. We're talking about 2020. I'm just
17 comparing. You said in the races that he chose to
18 include. And I was just looking at the races you chose
19 to include, Dr. Barreto, versus those races that
20 Dr. Lockerbie has reflected in his report and was trying
21 to understand if there is some reason to believe --

22 A. I am just saying that -- you seem to be wanting
23 to undertake a different analysis which is what is the
24 probability that a Democrat would win office in an
25 even-numbered year in Newburgh. And to do that -- which

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1 is not what I was attempting to do, and it does not
2 appear what Dr. Lockerbie was attempting to do. If that
3 is the question, which is the question you're asking me,
4 you would get every single election that was run, every
5 single one, from dogcatcher to U.S. President. You
6 would look at all of them. It could be that there was
7 only seven. I don't know because I was not asked to
8 undertake that question.

9 So if we want to know the answer to your
10 question, we need to first know what we would call what
11 is the universe of all elections that took place on the
12 ballot in 2020 and then we would look at the results of
13 every single one of them.

14 Q. If we were to assume that this was the
15 universe --

16 A. I am not going to do that. If it is the
17 universe, we can take a break and look it up and find
18 out, but I am not going to assume anything.

19 Q. Hypothetically --

20 A. Not how political science work.

21 Q. Hypothetically, if there was seven races and five
22 of them were won by Democratic preferred candidates,
23 could you conclude that they have a fair opportunity to
24 win?

25 MR. IMAMURA: Objection, calls for

1 speculation.

2 You can answer.

3 A. I don't know. I said I don't know.

4 MS. WEEKS: And, David, I am trying to be
5 fairly lenient about it; but I am fairly certain that we
6 shouldn't be using spoken objections.

7 MR. IMAMURA: In New York, this is what you
8 do.

9 MS. WEEKS: Okay. Well, to the extent it
10 borders coaching the witness, I would --

11 MR. IMAMURA: No.

12 MS. WEEKS: -- take note.

13 BY MS. WEEKS:

14 Q. In an even-numbered year, is it true that the
15 minority-preferred candidates have a likelihood of
16 winning the entire town board?

17 A. Are you talking about a future election?

18 Q. Correct. Based on what we know of prior data
19 that you have analyzed.

20 A. Based on prior election results, I believe a
21 minority-preferred candidate -- or I believe that town
22 council elections have only happened once in a special
23 election in '20 and the minority-preferred candidate
24 lost. And so from the only actual data point we have,
25 the answer is they have lost. I have not attempted to

1 compile a dataset to do a predictive forecast of what
2 at-large elections will look like for town council. So
3 I don't know the answer to that. I just know that right
4 now they have lost every time they have run -- even
5 year, odd year, special election, regular election.

6 Q. Okay. Let's move to the 2016 election results.

7 A. You're on the Lockerbie exhibit still?

8 Q. Correct, on the Lockerbie exhibit.

9 A. Yeah, let me go back. Hold on.

10 Okay. I think this is on page 5 I see 2016.

11 Q. And, again, these elections encompass all of the
12 elections that you looked at in your analysis and more.

13 Do you see here again it looks as though several
14 of the elected positions were won by Democrats in wide
15 margins? Do you see that?

16 A. I see six elections. I see three where according
17 to Lockerbie Democrats got more votes than Republican,
18 and three where, according to Lockerbie, Republicans got
19 more votes than Democrats.

20 Q. And more specifically, the Assembly 104C, that
21 received 75.23 percent of the vote?

22 A. I see that. That's what we would call an extreme
23 outlier because it is -- appears to be inconsistent with
24 any of the other election results. I don't know who the
25 opponent was or if they had a scandal or something, but

1 it would be worth looking into.

2 Q. The U.S. Senate Democrat received 61.25 percent
3 of the vote; and according to your records, that was
4 Chuck Schumer who was vying for that seat in 2016?

5 A. That sounds right.

6 Q. Okay.

7 A. I don't believe the 61 percent is correct,
8 though. I believe that he has once again truncated it
9 to only two candidates and there was probably a
10 libertarian or third-party candidate that might have
11 been in that race. So the two candidates themselves
12 should not add up to 100. That is why I am hesitant to
13 pin anything on these percentage points, because my
14 guess -- and both me and you can look this up on the
15 next break -- is that these are not the percentage
16 points on the Orange County website, in which case it
17 would not be a reproduction or whatever you called it
18 earlier.

19 I don't disagree that Democrats maybe got more
20 votes, but I am fairly certain that these percentage
21 points are incorrect.

22 Q. Senator Schumer won that race, you would agree?

23 A. He won the New York statewide race. I don't
24 think he got elected to anything in Newburgh; but yes, I
25 agree he won.

1 Q. And even the races here where Republicans
2 prevailed, would you agree that they are fairly close in
3 terms of percentage?

4 A. Some are close for sure, yeah. Some are less
5 close, but -- the U.S. President race in 2016 was what I
6 would consider close. It was within 3 or 4 percentage
7 points, three and half.

8 Q. Would it be fair to say that those races or at
9 least that race that you just mentioned was competitive?

10 A. I don't think -- no, it was not competitive in
11 New York. The way competitiveness works is the
12 understanding of the jurisdiction in which you're
13 running. Competitiveness is classified by the amount of
14 dollars you spend and the amount of staff you hire. My
15 guess is that he did -- both candidates did zero
16 advertising in New York and had virtually zero staff. I
17 would describe the race as being within three points.
18 But competitiveness, especially as Jacobson defines it
19 in the article that Lockerbie quoted about congressional
20 races, is not just about the closeness of the race.
21 Competitiveness as a political science term also means
22 the amount of resources that candidates put in, the
23 amount of staff they have, the amount of commercials
24 they buy. So I do not believe that the New York
25 presidential race in '16 was competitive.

1 Q. Based on the numbers we just reviewed, is it fair
2 to say that in 2016 there was a fair opportunity for
3 minority voters to elect their candidate of choice?

4 A. To town council? No. To any Newburgh town
5 election? Doesn't look that way.

6 Q. Excluding the town council, is it fair to say
7 that in 2016 there was a fair opportunity for minority
8 voters to elect their candidate of choice?

9 A. No.

10 Q. Why not?

11 A. Because none of these people are running for
12 anything to represent minority voters in Newburgh. So
13 the only election that you can ask and answer that
14 question about is an election for something in Newburgh.
15 These folks are not running for Newburgh office. They
16 are running for different types of office. So there
17 does not appear, in the data I am familiar with, to be
18 any suggestion that minority-preferred candidates are
19 able to prevail and represent minority communities in
20 Newburgh.

21 Q. The minority-preferred candidates that ran, three
22 of them here in 2016 prevailed, correct?

23 A. They --

24 MR. IMAMURA: Counsel, asked and answered
25 here. I feel like we've asked this multiple times,

1 right?

2 You know, I mean, you can answer, Professor;
3 but I'm just saying.

4 A. According to Lockerbie, they appear to have
5 gotten more votes. As I explained earlier, I would not
6 use the word won or prevailed because they did not run
7 for anything in Newburgh. They did not prevail for
8 anything in Newburgh. They were running for statewide
9 or nationwide contests. We don't know what it would
10 have looked like if they had thrown their hat in the
11 ring for just a Newburgh election.

12 BY MS. WEEKS:

13 Q. Is it fair to say that minority-preferred
14 candidates have a substantial likelihood of winning
15 elections?

16 MR. IMAMURA: Again, objection, asked and
17 answered.

18 You can answer, Professor.

19 A. Of winning elections in Newburgh, you mean, or
20 just winning election in general? I don't understand
21 the question.

22 BY MS. WEEKS:

23 Q. With respect to the 2016 election, based on what
24 we -- the data that we have reviewed, is it fair to say
25 that minority candidates have a substantial likelihood

1 of winning?

2 MR. IMAMURA: Again, asked and answered.

3 You can answer.

4 A. But you mean winning in Newburgh. I am trying to
5 ask you to specify the geography.

6 BY MS. WEEKS:

7 Q. No, not winning in Newburgh. Winning in the six
8 elections that we just reviewed here, do they have --

9 A. Statewide? Yes. Statewide in New York with all
10 voters? That's why I am asking you to specify the
11 geography.

12 Q. Statewide.

13 A. Well, I think more than just the people in
14 Newburgh would be voting. So I would need to go get all
15 the data from all the other towns, boroughs, counties in
16 all of New York to know whether these people have an
17 opportunity.

18 That's why I'm asking you to specify the
19 geography. Do you -- are you asking me -- are they
20 trying to get elected to some position in Newburgh?
21 Which is what I think the court is interested in.

22 And to that degree, my answer is no. There's no
23 evidence that anyone has a, quote, substantial
24 opportunity, especially here if there's six elections
25 and you're claiming that they won three and they lost

1 three. That's 50/50.

2 Q. Dr. Barreto, I'm still confused if all that the
3 court is interested in is the town council election in
4 Newburgh, then why have you included all of the
5 information with respect to the various -- the various
6 races that are not Newburgh specific?

7 MR. IMAMURA: Objection, asked and answered.

8 You can answer.

9 A. I think you asked me that exact question three
10 times already, but I am happy to give you the same
11 answer, which is that I am most interested in the
12 results of the election and the voting patterns in the
13 endogenous elections. After that, I am interested in
14 the voting patterns. I am not interested in who won and
15 lost. I am interested in the voting patterns because
16 these people are not running for anything in Newburgh.
17 But the voting patterns still tell us whether or not
18 there is a general, consistent pattern of racially
19 polarized voting. So, yes, we still learn something.
20 When we look at a congressional race or when we look at
21 a tax assessor race or when we look at a superior court
22 judge race, we still learn something about the voting
23 patterns of whites and minorities. Which side are you
24 on?

25 But I have been very clear. I have never

1 attempted to say was Joe Biden going to get elected or
2 prevail in anything in Newburgh. That's, in my opinion,
3 not relevant to the inquiry.

4 Q. Let's look at 2012, the 2012 elections. Again,
5 there are several elected positions that fell to
6 Democrats. Would you agree?

7 A. I would not agree.

8 Q. Okay. What do you disagree with?

9 A. None of these people were in for a position in
10 Newburgh, so they didn't get elected to anything in
11 Newburgh.

12 Q. Were they elected to the races that they ran?

13 A. Well, one person on the list ran for something
14 nationwide. That was Barack Obama. Yes, he beat his
15 opponent in 2012. Another person on the list ran for
16 U.S. Senate. I don't remember who that was in '12, but
17 they won. That was all of New York had to vote for them
18 in order to win. The people in Newburgh were not voting
19 for them for something specific. Then you've got three
20 district offices there. It looks like you have a house
21 race, a state Senate race, and a state assembly race.
22 Again, Newburgh's only got about 30,000 people. So
23 presumably, all three of those offices in order to,
24 quote, win, you have to win a majority in the entire
25 district.

1 So that's what I'm saying is that you can't say
2 that this person won or lost anything in Newburgh
3 because the district is way bigger than that.

4 Q. So for the 2012 election based on these figures,
5 is it -- am I reading it correctly that the Democratic
6 president received 52.37 percent of the votes of those
7 in Newburgh that cast their ballots?

8 A. I'm going to say this again. Almost certainly
9 that percentage number is incorrect, and both you and I
10 know it. There was other people running for president
11 in 2012 besides Barack Obama and Mitt Romney. So the
12 two Obama and Romney numbers cannot add up to 100
13 percent by themselves. So my guess, because I don't
14 have the data in front of me, is that it is incorrect
15 that Obama got 52.3 percent of the vote in Newburgh.

16 Once you factor in the third-party candidates and
17 others, he must have gotten 49.9 or 50.06. I'm not
18 disputing that Mr. Lockerbie is saying that he got more
19 than the Republican, but that percentage number I'm
20 almost certain is not accurate.

21 Q. Would it be fair to say that in 2012, there was a
22 fair opportunity for minority voters to elect their
23 candidate of choice?

24 MR. IMAMURA: Objection. Asked and
25 answered. You can --

1 MS. WEEKS: No, David, it isn't asked and
2 answered. I did not ask it specific to 2012.

3 MR. IMAMURA: But if we want to go through
4 every election till the dawn of time -- till the dawn of
5 the Republic, Mary, we can do that. Okay. We can --

6 MS. WEEKS: This is my right time and
7 my deposition.

8 MR. IMAMURA: And Professor Barreto doesn't
9 even address 2012 in his report, okay. Right. So if
10 you want to do this, you can.

11 MS. WEEKS: Right. I did -- we did note
12 that Dr. Barreto omitted 2012.

13 MR. IMAMURA: Yes, right.

14 MS. WEEKS: But this is my deposition. I'll
15 ask the questions.

16 THE WITNESS: Repeat the question.

17 MR. IMAMURA: You can answer.

18 BY MS. WEEKS:

19 Q. Dr. Barreto, is it fair to say that in 2012,
20 there was a fair opportunity for minority voters to
21 elect their candidate of choice?

22 A. To what position?

23 Q. To the positions that are addressed here and that
24 we just looked at on page 5 of Dr. Lockerbie's report.

25 A. So for all reasons I've already stated, none of

1 these are people running for anything in Newburgh. So
2 my answer is no, there's no evidence that
3 minority-preferred candidates had a chance to win any
4 Newburgh elections.

5 Q. Okay. So is it also your view that in 2012,
6 minority-preferred candidates did not have a substantial
7 likelihood of winning their elections?

8 MR. IMAMURA: Same objection. You can
9 answer.

10 THE WITNESS: That's my position. There's
11 no evidence that they had a substantial likelihood of
12 winning any Newburgh elections, which is the question
13 we're all here interested in.

14 BY MS. WEEKS:

15 Q. Let's move to the -- well, with respect to 2012,
16 is it your view that the minority-preferred candidates
17 were not more unlikely to win than loyals?

18 MR. IMAMURA: Objection. Foundation, and
19 same objection. It's already been asked and answered.
20 You can answer, Professor.

21 THE WITNESS: My position is that there was
22 no town council elections, and I don't see any other
23 offices up. So if the question is were people able to
24 win Newburgh seats, the answer is no, not in 2012.

25 BY MS. WEEKS:

1 Q. For those that ran in the Senate election, for
2 instance, were they able to win?

3 MR. IMAMURA: Objection. Foundation, and
4 same objection already being asked and answered. You
5 can answer, Professor.

6 THE WITNESS: The answer is no. I mean, I
7 think you just have a fundamental misunderstanding of
8 how we use the word "win" in prevailing political
9 science. The person running for state Senate was not
10 running for anything in Newburgh. If the person had won
11 100 percent of the vote in Newburgh, they could still
12 have, quote, lost because they lost everywhere else.

13 So no political scientist would interpret
14 this table and say, Oh, this person could, quote, win,
15 because they're running for anything in Newburgh town.

16 If you ask me the question of did those
17 Lockerbie claim that the Democrat got more votes in
18 Newburgh than the Republican, I'm not going to dispute
19 that, but they are not winning and they are not
20 prevailing. The only elections we can know the answer
21 to that on are town council or town supervisor.

22 BY MS. WEEKS:

23 Q. Okay. And just to be clear. I just want to be
24 clear I'm understanding your testimony. You don't think
25 that there's a fair opportunity for minority voters in

1 Newburgh to elect their candidate of choice in these
2 particular elections. So, for instance, their candidate
3 of choice for U.S. Senate, they're being asked to cast
4 their vote, is your view that they do not have a fair
5 opportunity to cast their vote in favor of their
6 Democratic-preferred candidate?

7 MR. IMAMURA: Objection. Foundation, and
8 same objection, asked and answered. You can answer,
9 Professor.

10 THE WITNESS: I don't know of any specific
11 vote denial or vote suppression efforts in Newburgh
12 town. As far as I know, everyone has a fair opportunity
13 to cast their vote. The at-large system in Newburgh
14 town council elections has produced zero
15 minority-preferred candidates ever elected to the
16 Newburgh town council. That is a point that neither
17 myself nor Dr. Lockerbie dispute. That's my testimony.
18 No one has ever been elected, including in one of your
19 hypotheticals in which Joe Biden got more votes yet the
20 minority-preferred candidate running for town council
21 lost. If anything, that proves my entire point, that
22 all these 53 percentages that you're showing me do not
23 mean that a minority-preferred candidate can win, just
24 means they don't lose as bad.

25 BY MS. WEEKS:

1 Q. And in an even-numbered year, based on what we've
2 just looked at the data from 2012, isn't it true that
3 minority-preferred candidates have a substantial
4 likelihood of winning entire town board?

5 MR. IMAMURA: Objection. Calls for
6 speculation. You can answer the question.

7 THE WITNESS: No. The answer is no.

8 BY MS. WEEKS:

9 Q. Why not?

10 A. Because the entire -- the, quote, the entire town
11 board was not up in 2012, and if it had been up, then
12 the election dynamics would have been different. There
13 would have been different campaigning. There would have
14 been different candidates. The only time we've ever
15 seen a town council election on the same ballot as a
16 presidential was '20, and in that year, even though a
17 Democrat appeared to have gotten more votes, the
18 Democrat running for town council lost. The only one
19 that's ever happened that way. So no, I don't think it
20 would happen in '12, and it didn't have in '12.

21 Q. Okay. So Dr. Barreto, we've discussed 2012, 2016
22 and 2020 election results. These are all even-yearred
23 elections, and Democrats were able to elect their
24 candidate of choice, correct?

25 MR. IMAMURA: Objection. Mischaracterizes

1 his testimony. You can answer.

2 THE WITNESS: Democrats -- I didn't do an
3 analysis of whether Democrats could elect their
4 candidates of choice or not.

5 BY MS. WEEKS:

6 Q. Apologize. The minority -- strike that.

7 MS. WEEKS: And to be clear, David, I am not
8 characterizing his testimony.

9 BY MS. WEEKS:

10 Q. So now we've discussed 2012, 2016 and 2020
11 election results. These are all even-yearred elections.
12 Would you agree?

13 A. That, I cannot dispute.

14 Q. Okay.

15 A. They're divisible by two.

16 Q. And were the minority-preferred candi- -- or
17 were -- was the minority electorate able to elect their
18 preferred candidate of choice for president?

19 MR. IMAMURA: Objection. You can answer.

20 THE WITNESS: Was the minority? I didn't do
21 an analysis of 2012. I did do an analysis of '16 and
22 '20 of voting patterns. And in '16, I would say the
23 answer is no. Trump was not the minority-preferred
24 candidate, and he won the presidential election. And in
25 '20, Biden was the preferred-minority candidate, and he

1 won in U.S. national presidential election. Neither of
2 them ran for any position in Newburgh town.

3 BY MS. WEEKS:

4 Q. Do you think that minority-preferred candidates
5 have a better probability of their preferred candidate
6 prevailing in an even-numbered year election?

7 MR. IMAMURA: Objection. Asked and
8 answered. You can answer.

9 THE WITNESS: I have not done a -- a
10 forecast of what future Newburgh town elections would
11 look like if they moved to even-numbered years. That is
12 something we could do, certainly. I haven't done that
13 yet, so I don't know the answer. The only answer I
14 could keep coming back to is the 2020 election was a
15 town council special election in an even-numbered year,
16 and the preferred candidate lost.

17 BY MS. WEEKS:

18 Q. But Dr. Barreto, I didn't ask whether they lost.
19 I said -- asked whether they had a fair probability of
20 winning?

21 A. Well, they have never won, and so to understand
22 if they have a fair probability of winning, we would
23 have to do some sort of forecasting model to the future,
24 and then we -- you and I would have to come to terms and
25 then agree on what do we mean by, quote, fair

1 probability of winning.

2 So I haven't done that analysis yet. I think
3 it's, you know, something that could be done, but I was
4 just looking at the elections that have taken place so
5 far, and so far, they have never won.

6 Q. Would you say that minority voters have a
7 reasonable opportunity to elect a candidate of their
8 choice in even-numbered year elections?

9 MR. IMAMURA: Objection. Calls for
10 speculation. You can answer.

11 THE WITNESS: Not so far in Newburgh. As I
12 said, I don't know if they have an opportunity in future
13 even-numbered years.

14 BY MS. WEEKS:

15 Q. You didn't undertake that analysis?

16 A. I did not.

17 Q. Dr. Barreto, are you aware of Assembly Bill
18 A4282B, Senate Bill S3505B, the law passed recently that
19 moved certain local elections to even-numbered years?

20 A. I am not.

21 Q. You mentioned -- or strike that.

22 I will apprise you that there such an assembly
23 bill, and the law passed recently moved certain local
24 elections to even-numbered years. How would you expect
25 that that will affect elections going forward for the

1 Town of Newburgh?

2 MR. IMAMURA: Objection. Calls for
3 speculation. You can answer.

4 THE WITNESS: I would have to put together a
5 model of voter turnout estimates and vote choice,
6 candidate vote choice estimates in even-numbered years
7 to look at that. It's something that we could build a
8 forecast model for. I haven't done it yet. As I keep
9 coming back to, there's only been one even-numbered year
10 town council election, and the minority-preferred
11 candidate did not prevail. So sitting here today, I
12 don't know what the outcome would be. I don't dispute
13 that there have been some close elections, but so far,
14 the minority-preferred candidates have never won.

15 BY MS. WEEKS:

16 Q. Would it be more likely -- in -- in general, is
17 it more likely that minority-favored candidates will --
18 would win in even-numbered years?

19 MR. IMAMURA: Objection. Calls for
20 speculation. You can answer.

21 BY MS. WEEKS:

22 Q. Based on your experience, Dr. Barreto.

23 A. I don't know. I think that based on what I've
24 seen, minority turnout is higher in even-numbered years.
25 I stated that earlier. But it would depend on the

1 candidates and, you know, how well they campaign in
2 those elections. But I haven't done that analysis, so I
3 don't want to, you know, offer an opinion on it because
4 I don't know how it would work in Newburgh town. But I
5 don't disagree with the premise that minority turnout
6 would be higher in a -- in a presidential year, for
7 example.

8 Q. In your analysis, while you were looking at the
9 Town of Newburgh and voting patterns, did you account
10 for or see any crossover or even significant crossover
11 voting in the Town of Newburgh?

12 A. I presume you mean white crossover voting for the
13 minority-preferred candidate?

14 Q. Yes. Understand that I mean white voters will
15 vote for minority-preferred candidates.

16 A. And so every election is different, as I said.
17 This is why I try to not cast overarching generalities.
18 In some of the elections, white voters only give perhaps
19 10 percent of their vote to the minority-preferred
20 candidate. In other elections, they might give as high
21 as 35 percent of their vote to a minority-preferred
22 candidate, but with still 65 percent to the
23 white-preferred candidate. So there is variation
24 depending on the candidate, candidate quality, the
25 incumbency of the candidate, how long they've been a

1 household name, and their reputation in the community.

2 The white vote does go back and forth. It'll
3 still say is majority and cohesive, but as you look
4 through my tables, you'll probably find some where the
5 white crossover vote is in the 30s and other times where
6 it's in the 20s or the teens.

7 Q. Do you think that crossover voting could make it
8 such that the minority-preferred candidates have a
9 reasonable chance of winning in even-numbered year
10 elections?

11 MR. IMAMURA: Objection. Calls for
12 speculation. You can answer.

13 THE WITNESS: I would say not in at-large
14 elections, no.

15 BY MS. WEEKS:

16 Q. And why?

17 A. Because they are still giving a clear majority of
18 their vote to white-preferred candidates and because
19 they still outnumber minority voters in the voting
20 booth. So whites are a clear majority of the voters and
21 they're giving a clear majority of their votes to
22 Republicans. That's why at-large election systems are
23 often diluting minority votes, because the group that's
24 the majority and votes majority cohesive gets to control
25 the entire at-large outcome. So even if there's a

1 little bit of defection in the crossover vote, it's not
2 enough to overcome.

3 MS. WEEKS: Okay. I think we'll take a
4 break and go off the record.

5 THE VIDEOGRAPHER: We're going off the
6 record. The time is 1:48 p.m., and this marks the end
7 of video 3.

8 (Recess taken from 1:48 p.m. to 2:01 p.m.)

9 THE VIDEOGRAPHER: We're back on the record.
10 The time is 2:01 p.m., and this marks the beginning of
11 media unit 4.

12 BY MS. WEEKS:

13 Q. Dr. Barreto, I just have a few more questions
14 before we conclude.

15 Can you explain to me your understanding of the
16 concept of exogenous races?

17 A. Are generally those that are not the jurisdiction
18 in question of the challenge.

19 Q. And what kind of uses do they have in your -- the
20 kinds of analyses that you engage in?

21 A. Well, it depends on the type of analysis. If
22 you're looking at racially polarized voting patterns or
23 just voting patterns in general, as I said, the
24 endogenous elections, those in question, tend to be the
25 most informative, and then I usually go in sort of

1 closeness to those. So typically, the next most
2 informative might be other similar exogenous. And so if
3 you have a county attorney or a city attorney and you're
4 suing a city, those other non-city council positions
5 might also be relevant, but they are technically
6 exogenous. And then you would go to other local or
7 state contests, and then you might go all the way up to
8 president of the United States.

9 The exogenous elections can help us understand
10 how groups of voters are generally voting in a
11 jurisdiction and it can demonstrate that a pattern is
12 more clear. If you see it -- you see the same pattern
13 election, after election, after election, after
14 election, it gives you more confidence as a social
15 scientist that the pattern is consistent.

16 Q. Do you know if exogenous election results are
17 ever used in gerrymandering cases?

18 A. I don't understand your question. Gerrymandering
19 cases, you mean statewide redistrictings?

20 Q. Correct.

21 A. Exogenous elections are often used in a lot of
22 cases as a piece of evidence in terms of understanding
23 minority and white voting patterns.

24 Q. Have you ever seen them in redistricting cases
25 used?

1 A. Used for racially polarized voting analysis
2 specifically? Is that what you mean?

3 Q. Yes, let's start with that.

4 A. Yes.

5 Q. Have you seen them used in VRA Section 2 cases?

6 A. As part of racially polarized voting analysis?

7 Q. Let's start with that.

8 A. Yes. They're often one of the pieces of
9 evidence. They're typically not considered the primary
10 evidence. It often depends on how many endogenous
11 elections there are. But exogenous elections are part
12 of understanding the voting patterns.

13 Q. We talked about 50 some -- 50-plus expert reports
14 you submitted in cases today.

15 Have you ever used exogenous races for those
16 purposes?

17 A. Well, I'm using them in this case, aren't I? So
18 I think you know the answer to that.

19 Q. So --

20 A. I almost always use them.

21 Q. Almost always. Okay.

22 And so you anticipated my next question, which is
23 do you use them in this report?

24 A. Yes. To understand voting patterns in a more
25 broad sense, yes.

1 Q. There's a town council -- I understand that
2 there's a town council position coming up in the
3 November 2024 upcoming election and that a Democrat is
4 running for that position. Should that candidate
5 prevail, would it change your position that you've
6 stated? Would your position that you've stated today,
7 you have made clear -- I don't want to characterize your
8 testimony. But you've focused on Town of Newburgh
9 council elections. If a Democrat prevails in the
10 upcoming election, would it change your view of whether
11 there's a fair opportunity for minority and for --
12 sorry, for minority-preferred -- for minorities to cast
13 their ballots for their preferred candidates?

14 MR. IMAMURA: Objection to form. Calls for
15 speculation. You can answer.

16 THE WITNESS: I would have to take the
17 election results and see what crossover voting there
18 was, looking at what minority voting turnout was in this
19 election, and put it within the full spectrum of my
20 analysis to know how it would affect the future of
21 elections in Newburgh.

22 Typically in voting rights cases, in almost
23 every case I've been a part of, there has always been
24 like one successful minority that at one time got
25 elected, but then got voted off and has never been able

1 to come back on. And in the Gingles' decision itself,
2 there is a reference to usually defeat feet, not only
3 always defeat minority candidates of choice.

4 And so I would have to look at the election
5 results and see, you know, what -- what they mean and
6 what they mean within the history of the other election
7 results in Newburgh to properly know. But that would be
8 an additional piece of additional information that I
9 would want to consider.

10 BY MS. WEEKS:

11 Q. But Dr. Barreto, you've focused today repeatedly
12 on the fact that no Democrat has ever won in the town
13 council election and that that was a significant factor
14 that you considered. Would it change your analysis if
15 now a Democrat was, in fact, elected in the upcoming
16 election in November of 2024?

17 A. And are you saying that all future elections will
18 only take place? There won't be any in '25 or '27?
19 Because my understanding is that it will go back to
20 odd-numbered years in '25, and there's a different track
21 record there. That's what I'm saying is that we
22 wouldn't put -- we wouldn't overly weight one election
23 unless the outcome was that in moving forward, they can
24 only be held in presidential years. That would tell us
25 something interesting that we would need to consider.

1 Q. What would that tell us, Dr. Barreto?

2 A. Well, I don't have all of the data yet, and I
3 don't know the results, so I'm not going to speculate.
4 But what I'm telling you is that my understanding is
5 that there might still be local endogenous elections in
6 '25 and in '27, which are odd-numbered years and they
7 have low turnout.

8 So if somebody is able to prevail in a
9 presidential election year, we would want to know the
10 margins; we would want to know the turnout rates; we
11 would want to know the candidate characteristics and
12 candidate qualities before we could speculate as to what
13 that means for the future of all at-large elections in
14 Newburgh.

15 Q. I'm sorry. Maybe I misunderstood you. I thought
16 you were making a distinction between whether they --
17 Newburgh was going to go forward with even-numbered year
18 elections or odd-numbered year elections starting in
19 2025. Why would that matter?

20 A. My understanding is that they're going to
21 continue having some odd-numbered year elections. So
22 you're asking me if somebody was able to prevail in an
23 even-numbered year election, what would that tell me
24 about the probabilities of a fair chance. And I'm
25 saying that my understanding is that there's still going

1 to be some odd-numbered year elections on the horizon.
2 And so winning -- which hasn't even happened. If
3 somebody were to win in an even-numbered year election,
4 it doesn't tell us too much about what would happen in
5 the next year's odd-numbered year election.

6 Q. Why?

7 A. Why? Because --

8 Q. Why?

9 A. Because the odd-numbered year election has
10 different turnout dynamics than the even-numbered year
11 election.

12 Q. And what -- how is that significant?

13 A. Because different sets of voters are voting at
14 different rates.

15 Q. And do you -- have -- are you familiar with the
16 disparity and the way that they're voting on odd and
17 even years?

18 A. I believe we just had multiple reviewing the
19 charts that on odd-numbered year elections, no
20 minority-preferred candidate has ever prevailed for a
21 Newburgh town council election. So if we were trying to
22 draw inferences from that, it would seem that that is
23 not a path forward in at-large elections.

24 Q. When we spoke --

25 A. If those are still on the horizon, then that

1 would seem to be very problematic to have odd-numbered
2 year elections.

3 Q. When we spoke earlier, Dr. Barreto, I asked you
4 if you were familiar with the New York assembly bill,
5 and I believe you said that you were not familiar with
6 the bill that changed the elections going forward to
7 even-numbered years.

8 It sounds like now maybe you are aware of it?

9 MR. IMAMURA: Objection. Mischaracterizes
10 his testimony. You can answer.

11 THE WITNESS: I'm not aware of the bill
12 numbers that you talked about. My only understanding
13 from talking with counsel in recent weeks is that
14 elections are meant to stay in odd-numbered years in the
15 next few cycles. I don't know why. I just know that
16 that's something that is happening.

17 So my understanding and my whole point is
18 that you can't overly interpret one data point. Whether
19 it's good or bad, you can't overly interpret one data
20 point. We wouldn't do that. That's why we've gone back
21 to 2011, and that's why we've looked at lots of
22 elections.

23 BY MS. WEEKS:

24 Q. Okay. So it sounds like you're under -- your
25 understanding is that for '25 -- for the years 2025 and

1 2027, it will be odd-numbered elections. Is it your
2 understanding that going forward, based on current law,
3 that they will be moved to even numbers thereafter?

4 MR. IMAMURA: Objection. You can answer.

5 THE WITNESS: I don't know. I just know
6 that the elections are supposed to take place in '25 and
7 '27, in odd-numbered years. I know there's a special
8 election this year. I believe somebody passed away, and
9 the provisions allow for special elections to take place
10 in even-numbered years. I don't believe that -- I don't
11 know of any -- anything -- any pertinent changes. I
12 just know that -- I've been told that there will
13 continue to be elections in '25 and '27. Those aren't
14 even-numbered years. My point is we should not infer
15 what happens in November of '24 to what would happen in
16 November of '25 or November of '27.

17 BY MS. WEEKS:

18 Q. Do you have any knowledge of whether or not it's
19 anticipated that there would be an election held in
20 2029?

21 A. I have no idea.

22 Q. Okay. At the beginning of this deposition, I
23 asked whether you've spoken to plaintiffs' counsel in
24 connection with preparing for this deposition. You just
25 said that you spoke to them in the past few weeks. Was

1 that in connection with preparing for this deposition?

2 A. No. That was about your settlement talk.

3 MR. IMAMURA: Objection. Objection. We're
4 getting -- we're straying into work-product and
5 attorney-client privilege.

6 BY MS. WEEKS:

7 Q. Okay. But just to clarify. In preparation for
8 this deposition, you testified earlier that you only
9 spoke to counsel for ten minutes; is that correct?

10 A. Less than that.

11 Q. Okay. And that -- that is -- remains your --

12 A. Ten minutes before the call started this morning,
13 I talked to David and said are we still good, and he
14 said, Yeah, see you at 9.

15 Q. Okay. And prior to that, your discussions with
16 plaintiffs' counsel in last few weeks was not related to
17 preparing for this deposition. That's your testimony?

18 A. That's the truth.

19 MS. WEEKS: All right. I have no further
20 questions at this time. Thank you for your time.

21 MR. IMAMURA: All right. If it's -- I do
22 have redirect questions. If it's okay -- is everyone
23 okay not taking a break? Does anyone need to take a
24 break?

25 THE WITNESS: I'm good.

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1 MR. IMAMURA: I look to the court reporter
2 and the videographer. Are you guys good?

3 THE VIDEOGRAPHER: I'm good as well. I'm
4 okay.

5 MR. IMAMURA: Okay. Let me know if you're
6 good.

7 THE REPORTER: I'm good. Thank you.

8 MR. IMAMURA: Okay. Great.

9 CROSS-EXAMINATION

10 BY MR. IMAMURA:

11 Q. Professor Barreto, you understand you're still
12 under oath?

13 A. Yes.

14 (Exhibit B was marked for identification.)

15 Q. Okay. So I have several redirect questions I
16 would like to ask you. First, I would refer you to
17 Exhibit B of, you know, Professor Lockerbie's report.

18 A. Let me pull that up. Yes, I still have that on
19 the exhibit share.

20 Q. Okay. I would refer you to -- in his chart to
21 the 2016 election year, the chart of where he's listing
22 Democrat/Republican election results.

23 A. Yes. I see that. It's on Page 5.

24 Q. So Ms. Weeks pointed to the Assembly 104 and the
25 result there.

1 A. Yes, I remember that.

2 Q. Do you have any knowledge of whether Assembly
3 District 104 captures the entirety of the Town of
4 Newburgh or just part of the Town of Newburgh?

5 A. As I said, I believe all of these districts are
6 large and include lots of other portions of New York,
7 and I don't know how much of Assembly 104 is even in
8 Newburgh town.

9 Q. Understood. But isn't it -- is it possible that
10 only part of Assembly District 104 is in the Town of
11 Newburgh?

12 A. Yes.

13 Q. So of -- and is it possible that Professor
14 Lockerbie in reporting these results included only the
15 part of Assembly District 104 that is in the Town of
16 Newburgh?

17 A. That's quite possible.

18 Q. And so is it possible, then, that if only a
19 portion of Assembly District 104 is in the Town of
20 Newburgh that is not actually reflective of any election
21 results for the Town of Newburgh as a whole?

22 A. That would be correct.

23 Q. Okay. So I would like to then refer you to
24 Exhibit 1, Plaintiffs' Exhibit 1.

25 A. That's my report?

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1 Q. Yes, your report.

2 A. Okay. Let me toggle back over to that. Okay.

3 Q. So I'd like to refer you to paragraph 37,
4 Professor. So that is 37, 38 and 39.

5 A. Okay. Yes. That's -- it's on page 16?

6 Q. Yes. Page 16. And can you provide -- can you
7 describe your conclusions in these paragraphs?

8 A. Yes. After analyzing the voting patterns. I
9 looked at different electoral systems that might remedy
10 the lack of minority representation and summarized how
11 each of them work, what the general consensus in
12 political science is, and based on my review of voting
13 patterns in Newburgh town how a variety of different
14 electoral remedies could work.

15 Q. And in paragraph 39, you state, In my review of
16 Newburgh, it is possible to implement a single member
17 district plan to allow black and Latino voters to elect
18 their candidates of choice.

19 Is that an accurate -- description -- reading of
20 your -- of paragraph 39?

21 A. Yes, that's reading the conclusion to 39. I did
22 consider single member districts as an option and
23 conclude that they would be viable to provide
24 minority-preferred candidate.

25 Q. Can you describe the evidence that you have that

1 supports this conclusion?

2 A. Well, the time of my report, I reviewed I believe
3 four different types of electoral systems. Single
4 member districts was one of them, as I outline here in
5 there two paragraphs, 38 and 39. To do this, at the
6 time of the report, I reviewed the census and the data
7 to look at the dispersion of the population across town
8 and looked at where there were communities of interest.
9 I then looked at the election results for town council
10 elections and determined that if we only considered the
11 results in a certain part of the town, would they be
12 able to win; and the answer was yes.

13 And so I determined that it was viable that if
14 you created a districting scheme and just took, say,
15 one-fourth, one-fifth or one-sixth of the town, would
16 there be enough votes to elect the minority-preferred
17 candidate. This is often called performance analysis,
18 and I have detailed that more in an addendum.

19 Q. So prior to the addendum, can you describe -- and
20 I am -- I await the objection from Ms. Weeks. So --

21 MS. WEEKS: I'm going to object to
22 discussion, and David, while I will object to each
23 question, I'm happy to put a standing objection on the
24 record about the untimeliness of the addendum in our
25 view that it is not properly considered in this case or

1 evidence that should be part of the testimony of
2 Dr. Barreto.

3 MR. IMAMURA: Understood. And the standing
4 objection is noted.

5 BY MR. IMAMURA:

6 Q. So -- so -- but so prior to -- outside of your
7 work on the addendum, right, can you describe what you
8 did in terms of performance analysis prior to your work
9 on the addendum?

10 A. Yeah. I think in this entire section, Section 4
11 that starts on the -- page 16, as you said, paragraph 37
12 and it goes all the way through about paragraph 46, so
13 in those ten paragraphs, I did analysis to understand
14 different possible voting systems. Single member
15 districts being one of them, but I also looked at
16 other -- at other things such as ranked-choice voting,
17 cumulative voting, and proportional representation.

18 With respect to single member districts, as I
19 outlined in 38 and 39, I did review the both population
20 demographic data and how it is spread across town, and I
21 reviewed election results as it is spread across town,
22 and concluded, as I state in that sentence in
23 paragraph 39, In my review of Newburgh, it is possible
24 to implement a single member district scheme that would
25 allow minority communities to elect minority-preferred

1 candidates.

2 So that means taking the data, subsetting the
3 data to very specific parts of town and determining
4 whether or not the minority-preferred candidate could,
5 in fact, win more votes or be elected if it had just
6 been a single member district. And the answer was, as I
7 state clearly in this report -- this is my original
8 report -- that it is possible to implement a plan to
9 allow black and Latino voters to elect their candidate
10 of choice.

11 Q. Okay. And is there anything else regarding
12 districts that you did or you want to describe your
13 process further on?

14 A. Just that you -- you know, there's a number of
15 different districting software packages, most of which
16 are freely available to the public, in which you can
17 arrange districts and draw districts to determine
18 whether or not it's possible to draw communities of
19 interest and that would also elect minority candidates
20 of choice. That's something I've done in almost every
21 single case I've been involved in and as well as then
22 reviewing what we call performance analysis, reviewing
23 the districts to see if they, quote, perform. It
24 doesn't do any good to draw a district in which the
25 minority community will lose. So the district needs to

1 perform.

2 And in this case, it's clear that
3 minority-performing districts can be drawn within
4 Newburgh town.

5 Q. Okay. So Professor, I refer you now to
6 paragraph 41 of your report where at the end you say, In
7 my review of Newburgh, it is possible to implement a
8 ranked-choice voting plan to allow black and Latino
9 voters to elect their candidates of choice.

10 Now, how did you reach that conclusion? And this
11 was not -- you know, this was not addressed in the
12 addendum. So, you know, and what information do you
13 have in support of that conclusion?

14 A. Yeah. So ranked-choice voting is another system
15 of voting in which voters, they get to rank the order of
16 their candidates first, second, third, and then
17 candidates are -- are eliminated if they don't get
18 enough votes, and then they reassess the votes. And so
19 basically, it's a way for someone could be the
20 third-ranked candidate, but they ultimately finish
21 second because they're everyone's third choice and no
22 one's last choice.

23 And so, again, consistent with the literature --
24 in particular, there's literature by John and
25 Simmons that demonstrate that minority candidates,

1 unless they're ranked candidates, are able to win in
2 ranked-choice voting systems if the population is of a
3 certain size, and typically, that population threshold
4 is somewhere around 35 to 40 percent, which is what the
5 minority population in Newburgh is roughly in those
6 numbers. And so my conclusion is that that could also
7 be a possible viable option.

8 Q. Okay. Anything else you would like to touch on
9 with regards to ranked-choice voting in the Town of
10 Newburgh?

11 A. No, no. Just that, you know, looking at the
12 existing election data that you already have allows you
13 to understand how this might work. So that's all part
14 of the -- the data that's already in the report.

15 Q. Great. So I refer you now to paragraph 44.
16 Again, at the end you say, In my review of Newburgh it
17 is possible to implement the cumulative voting plan to
18 allow black and Latino voters to elect their candidates
19 of choice.

20 How -- what supports that conclusion?

21 A. So cumulative voting is another sort of
22 alternative voting system where you can put more votes
23 in a certain number of candidates. So instead of -- you
24 had three votes. Instead of casting three votes for
25 three different people, you could cast all your votes

1 for the same candidate in order to try to really show
2 your strongest preference for only one candidate. It
3 has been proven in places where there is racially
4 polarized voting that cumulative voting systems can help
5 black candidates gain office with minority voters.

6 So looking again at the way votes are dispersed
7 and spread across in Newburgh and looking at the
8 literature on cumulative voting systems, in 44 here I
9 say that, In my review of Newburgh it is possible to
10 implement a cumulative voting plan to allow black and
11 Latino voters to elect their candidates of choice.

12 Q. And so what -- what in your review of Newburgh
13 makes you think it is possible to do that?

14 A. Well, there's two things: The first is that
15 there's very strong cohesion among minorities, and so
16 that's one of the factors. Both black and Latino
17 communities are getting very strong support for like
18 candidates. So when you see that, that is a strong
19 point for cumulative voting. It suggests that voters
20 really do have strong interests behind one candidate.

21 And the second is the size of the population. As
22 I said, it's in that sweet spot where it's in that 35 to
23 40 percent range, meaning they would have enough votes.
24 You know, if you're down in the 5 to 10 percent range,
25 it's very difficult for any electoral system to gain you

1 representation, but it's clear that if you're in this
2 range, you have enough votes under a cumulative voting
3 system to get an election.

4 Q. And it falls within this range?

5 A. Yes, it does.

6 Q. Okay. So Professor, I now refer you to
7 paragraph 45 -- I'm sorry, 46 where, again at the end
8 you say, In my review of Newburgh, it is possible to
9 implement a proportional representation plan to allow
10 black and Latino voters to elect their candidates of
11 choice.

12 What data do you have to support that conclusion?

13 A. Well, I think the PR system, proportional
14 representation system, is one that is very clear could
15 be effective in Newburgh, and that is just, again,
16 depending on the size of the town council, if it was,
17 you know, five people who get to vote on town politics
18 or 6 or 7 or whatever the number ended up being, the
19 idea would be hold elections and then vote for parties
20 of candidates. And then based on the percentage of the
21 vote a candidate of its party gets if, you know, party A
22 gets 53 percent of the vote, they should get somewhere
23 close to 53 percent of the seats, and if party B gets
24 42 percent of the vote, they should get somewhere close
25 to 42 percent of the seats. So it's proportional.

1 Minorities tend to vote for parties and
2 candidates that are in the range that in a PR system
3 would gain them 1 or 2 seats, and so they are able to
4 vote in large enough numbers, but not large enough to
5 get 51 percent consistently. And so a PR system would
6 be a viable system if that was something that Newburgh
7 decided to go to.

8 Q. And so -- so, again, you just described to me why
9 Newburgh specifically falls into those categories that
10 you discussed for why this would work?

11 A. Yeah. Again, there's strong cohesion and --
12 among minorities and the population numbers are in that
13 range, and, you know, you're not talking about a
14 community that's only seeing their candidates come in
15 with 5 or 10 percent of the votes. 5 or 10 percent is
16 not going to be enough in a PR system unless you're
17 talking about hundreds of seats. Here where you're
18 talking about, you know, anywhere between 4 and 7 seats,
19 you definitely need to be in that 25 percent range and
20 certainly a minority community is.

21 Q. Okay. So --

22 MR. IMAMURA: Ms. Weeks, were you going to
23 say something or...

24 MS. WEEKS: I apologize for interrupting. I
25 just want to make the record clear that to the extent

1 that Dr. Barreto is testifying to anything outside of
2 the scope of his report, I would just object to the
3 testimony in full and move to strike anything outside of
4 the report as outside the scope of my direct
5 examination. And I just want that note for the record.

6 MR. IMAMURA: So noted.

7 All right. So I am going to fumble now with
8 the Veritext website to try to introduce an exhibit,
9 which I anticipate your objection, Ms. Weeks.

10 I'm going to put it -- should I put it as
11 Plaintiffs' Exhibit A? I'm looking at the court
12 reporter here. For redirect, Plaintiffs' Exhibit A? Is
13 that all right in terms of identification?

14 THE REPORTER: Sure.

15 MR. IMAMURA: No objection?

16 MS. WEEKS: Yeah, I'm fine with that mode of
17 identification. Obviously, we object in full to its
18 admission, and then I also would note that we -- I
19 object for it being outside of the scope of my direct
20 examination and improper.

21 MR. IMAMURA: Yes. Noted, Ms. Weeks.

22 BY MR. IMAMURA:

23 Q. All right. So Professor, I would refer to what
24 has been uploaded as Plaintiffs' Exhibit A.

25 Do you see it?

1 A. Yes, I do. I have it open.

2 Q. Okay. And could you open this, please,
3 Professor.

4 A. Got it.

5 Q. So what is this document?

6 A. So this is an Addendum Report that I filed on
7 September 3rd, 2024, in this case.

8 Q. Okay. And can you describe the findings of this
9 doc -- of your addendum?

10 A. Yes. This is, I think as we just discussed, a
11 direct followup to some of the paragraphs in my
12 Electoral Analysis section of my original report where I
13 did discuss single member districts as a viable option.

14 Here, I've just gone through a couple of
15 different hypothetical demonstrative plans of either a
16 four-district option or a five-district option to let
17 the court know what that would look like and show that
18 it is possible to draw districts in which
19 minority-preferred candidates can win elections.

20 Q. And, again, much of the work that you did
21 previously -- well, strike that. I'm sorry.

22 And, again, some of this work that was done --
23 was work that you had done prior, you know, as part of
24 your original report, correct?

25 MS. WEEKS: Objection.

1 THE WITNESS: Yes. Yes. It's a direct
2 followup I think to those paragraphs 38 and 39 where I
3 talk about single member districts.

4 BY MR. IMAMURA:

5 Q. And to your knowledge, Professor Lockerbie did
6 not respond to your assertions in regarding single
7 member districts, cumulative voting or proportional
8 representation?

9 MS. WEEKS: Objection.

10 THE WITNESS: He did not.

11 MR. IMAMURA: All right. I have no further
12 questions.

13 MS. WEEKS: I have no -- nothing further
14 from me as well.

15 MR. IMAMURA: Can we go off the record?

16 MS. WEEKS: Yes, we can go off the record.

17 THE VIDEOGRAPHER: We're off the record at
18 2:29 p.m., and this concludes today's testimony given by
19 Dr. Matt A. Barreto. The total number of media units
20 was 4, and will be retained by Veritext.

21 (Deposition concluded at 2:29 p.m.)

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CERTIFICATE OF DEPONENT

I have read the foregoing transcript of my deposition and except for any corrections or changes noted on the errata sheet, I hereby subscribe to the transcript as an accurate record of the statements made by me.

DR. MATT A. BARRETO

SUBSCRIBED AND SWORN before and to me
this ____ day of _____, 20__.

NOTARY PUBLIC

My Commission expires:

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C E R T I F I C A T E

I, Rachel McRoy, a Certified Shorthand Reporter for Oregon, do hereby certify that, pursuant to stipulation of counsel for the respective parties herein before set forth, DR. MATT BARRETO virtually before me at the time and place set forth in the caption hereof, that at said time and place I placed the witness under oath and all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting under my direction; and that the foregoing transcript, pages 1 to 170, both inclusive, constitutes a full, true and accurate record of all such testimony adduced and oral proceedings had, and of the whole thereof and that a review of the transcript was requested.

Witness my hand and CSR stamp at Portland, Oregon, this 14th day of September, 2024.



Rachel M. McRoy
Certified Shorthand Reporter
Certificate No. 22004207

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New York Code

Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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