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

THE SOUTH CAROLINA STATE
CONFERENCE OF THE NAACP, and

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

        Plaintiffs,

        v.

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

        Defendants.

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

THREE-JUDGE PANEL

**PLAINTIFFS' OPPOSITION
TO HOUSE AND SENATE
DEFENDANTS' *DAUBERT*
MOTION TO EXCLUDE
REPORTS, OPINIONS, AND
TESTIMONY OF
PLAINTIFFS' EXPERT DR.
MOON DUCHIN**

INTRODUCTION

Although House and Senate Defendants' ("Legislative Defendants") untimely *Daubert* motion seeks wholesale exclusion of Dr. Moon Duchin's testimony,[1] their arguments, in fact, only target a single portion of Dr. Duchin's testimony—her ensemble analyses. Notably, they do not challenge Dr. Duchin's qualifications, her non-ensemble-related analyses, or the other findings in her three reports. And their criticism of Dr. Duchin's ensemble-related analyses is premised on an inaccurate description of her purpose for conducting ensemble-related analyses. In doing so, Legislative Defendants selectively quote portions of her report and deposition testimony out-of-context in a misleading manner. But as discussed below, Dr. Duchin's ensemble analysis, as well as her other analysis and conclusions, are reliable and under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals., Inc.*, 509 U.S. 579 (1993).

Legislative Defendants also seek to exclude Dr. Duchin's ensemble-related testimony under *Backus v. South Carolina*, a case where the court *permitted* an expert to testify, considered his testimony, and ultimately dismissed the *Daubert* motions as moot. *See*, 857 F. Supp. 2d 553, 561, 570 (D.S.C.), *aff'd*, 568 U.S. 801 (2012). Nevertheless, they ask this Court to adopt an unsupported view of *Backus* that would lead to an insurmountable standard for expert testimony in redistricting cases—one not followed in *Backus*, other courts in the Fourth Circuit, or any other court in the country. And even if this Court agreed with Legislative Defendants' misinterpretation

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[1] Legislative Defendants' challenge is a *Daubert* motion focused on Dr. Duchin's methodology in reaching her ensemble-related opinions and seeks wholesale exclusion, rather than an *in limine* motion aimed at limiting the scope of her testimony. Under the Third Amended Scheduling Order, it was required to be filed by August 19, 2022. ECF 210. ("All motions other than (a) those relating to the admissibility of evidence at trial . . . shall be filed no later than August 19, 2022"). Merely using the phrase "*in limine*" twice on the first page of their brief cannot camouflage the Legislative Defendants' failure to comply with the scheduling order. *See Bryant v. Trexler Trucking, Inc.*, No. 4:11-CV-02254-RBH, 2013 WL 643768, at *4 (D.S.C. Feb. 21, 2013). Legislative Defendants' motion should be denied on that basis alone.

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of *Backus*, that court still permitted plaintiffs' expert to testify, and the court's observations concerned the weight given to that expert's testimony and not the admissibility of the expert's testimony following trial. *Backus* provides no basis to exclude Dr. Duchin's ensemble-related testimony.

Because none of Legislative Defendants' arguments are a proper basis to exclude any of Dr. Duchin's reports, opinions, and testimony, this Court should deny their motion.

ARGUMENT

I.   Legal Standard.

Federal Rule of Evidence 702 permits opinion testimony from a witness who is "an expert by knowledge, skill, experience, training, or education" if it "will help the trier of fact to understand the evidence or to determine a fact in issue," "the testimony is based on sufficient facts or data," "the testimony is the product of reliable principles and methods," and "the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702. In evaluating proposed expert testimony, a court must assess whether it is reliable and relevant. *See Wickersham v. Ford Motor Co.*, No. 9:13-CV-1192-DCN, 2016 WL 5349093, at *2 (D.S.C. Sept. 26, 2016).

Exclusion of expert testimony "is the exception rather than the rule." *Id.* at *2 (citing Fed. R. Evid. 702 Advisory Committee's Note to 2000 Amendments). While district courts retain a gatekeeping role, "the trial court's role as gatekeeper is not intended to serve as a replacement for the adversary system." *Id.* (citing Fed. R. Evid. 702 Advisory Committee's Note to 2000 Amendments); *See Daubert*, 509 U.S. at 596 (1993) ("Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence."). Indeed, as long as the expert's opinion is supported by some facts in the record, any dispute about those facts (or even the presence

of contradictory facts) is not a ground for exclusion. *Sprint Nextel Corp. v. Simple Cell, Inc.*, No.

CCB-13-617, 2016 WL 524279, at *3 n.1 (D. Md. Feb. 10, 2016) ("a dispute of facts is not a

reason to exclude expert testimony"). Courts "will exclude evidence on a motion in limine only if

the evidence is 'clearly inadmissible for any purpose.'" *Wickersham*, 2016 WL 5349093, at *1

(quoting *Hall v. Sterling Park Dist.*, No. 08 C 50116, 2012 WL 1050302, at *2 (N.D. Ill. Mar. 28,

2012)). Because otherwise, the opposing party must test the expert's opinion at trial. *See United

States v. Crisp*, 324 F.3d 261, 269–70 (4th Cir. 2003).

Further, the Court's gatekeeping function is "relaxed" in the context of a bench trial. *See

United States v. Wood*, 741 F.3d 417, 425 (4th Cir. 2013) ("Finally, because the district court was

also the trier of facts, the district court's evidentiary gatekeeping function was relaxed, and the

district court was in the best position to decide the proper weight to give the expert opinions.");

see also Bishop of Charleston v. Century Indem. Co., 225 F. Supp. 3d 554, 567 (D.S.C. 2016)

("[t]he gatekeeper doctrine was designed to protect juries and is largely irrelevant in the context

of a bench trial, because [t]here is less need for the gatekeeper to keep the gate when the gatekeeper

is keeping the gate only for himself.") (internal citations and quotations omitted). In such

circumstances, "courts will often conditionally admit expert testimony subject to later exclusion if

the expert's testimony does not satisfy Rule 702." *City of Huntington v. AmerisourceBergen Drug

Corp.*, No. CV 3:17-01362, 2021 WL 1596355, at *2 (S.D.W. Va. Apr. 22, 2021) (collecting

cases).[2]

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[2] *See also Jackson v. United States*, No. 16-CV-03219, 2017 WL 11537970, at *1 (D.S.C. Oct. 26, 2017); *Sunland Const. Co. v. City of Myrtle Beach*, No. 4:05-CV-1227-RBH, 2007 WL 2822509, at *3 (D.S.C. Sept. 26, 2007); *Wood*, 741 F.3d at 425; *In re Infinity Bus. Grp., Inc.*, No. AP 12-80208-JW, 2018 WL 1234649, at *1 (Bankr. D.S.C. Feb. 8, 2018).

II.   Legislative Defendants Do Not Challenge Dr. Duchin's Qualifications Nor Most of Her Analyses.

Tellingly, Legislative Defendants do not dispute that Dr. Duchin is qualified. Nor could they. She is a Professor of Mathematics and a Senior Fellow in the Jonathan M. Tisch College of Civic Life at Tufts University. At Tisch College, she leads an interdisciplinary research lab focused on redistricting. Her areas of research and teaching include the structure of census data, the history of the U.S. Census, the design and implementation of randomized algorithms for generating districting plans, and the analysis of redistricting more broadly. Her research is funded by the National Science Foundation, and she has published more than a dozen peer-reviewed articles in publications, including the Election Law Journal, Political Analysis, Foundations of Data Science, the Notices of the American Mathematical Society, Statistics and Public Policy, the Virginia Policy Review, the Harvard Data Science Review, Foundations of Responsible Computing, and the Yale Law Journal Forum. *See* Duchin Rep. at 2, 40–47 (Ex. A). Dr. Duchin has served as an expert in redistricting litigation in Pennsylvania, North Carolina, Wisconsin, and Alabama. Courts have accepted and credited her testimony in all these cases. *See*, *e.g.*, *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *22 (N.D. Ala. Jan. 24, 2022), *cert. granted before judgment sub nom. Merrill v. Milligan*, 142 S. Ct. 879 (2022) ("[W]e find Dr. Duchin's testimony highly credible.").[3]

Nor do Legislative Defendants specifically challenge most of Dr. Duchin's analysis, conclusions, or findings. Legislative Defendants, for example, do not challenge Dr. Duchin's:

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[3] *See also Harper v. Hall*, 385, 868 S.E.2d 499, 548, *cert. granted sub nom. Moore v. Harper*, 142 S. Ct. 2901 (2022)*; Carter v. Chapman*, 270 A.3d 444, 469 (Pa. 2022); *Johnson v. Wis. Elections Comm'n*, 971 N.W.2d 402, 417, *cert. granted, opinion rev'd sub nom. Wis. Legislature v. Wis. Elections' Comm'n*, 142 S. Ct. 1245 (2022).

- demographic and metric comparisons of the various proposed congressional plans, Duchin Rep. at 5–6, 9–13 (Ex. A),

- review of the House and Senate Guidelines, *id.* at 7–8 (Ex. A),

- analysis of the performance of the plans for minority voters' candidates of choice, *id.* at 25 (Ex. A),

- analysis of whether traditional redistricting principles can explain the boundaries of challenged districts, *id.* at 14–21 (Ex. A),

- criticisms of Mr. Trende's justifications as both post-hoc and factually inaccurate, Duchin Rebuttal Rep. at 1–5 (Ex. B),

- analysis of the non-public NRRT Jessamine Plan, Duchin Supp. Rep. at 1–6 (Ex. C).[4]

In these analyses, among other findings, Dr. Duchin finds "racial factors predominated over not only traditional principles, but even over partisan ones." Duchin Rep. at 27 (Ex. A).

III.   Dr. Duchin's Ensemble-Related Analysis is Reliable.

Dr. Duchin presents ensemble analyses to help evaluate whether excessive race-conscious line-drawing may have occurred, particularly when traditional redistricting principles have been undermined in a manner resulting in cracking communities. Duchin Rep. at 2 (Ex. A). Her analysis is a tool that allows one to compare a proposed map to a large volume of algorithm-drawn maps that are typically programmed to adhere to typical traditional redistricting criteria. *Id.* at 22. This ensemble methodology has been the subject of extensive, peer-reviewed academic literature and

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[4] Defendants unsuccessfully moved to strike Dr. Duchin's supplemental report ECF 335. Their motion was denied the same day that Legislative Defendants filed this motion in limine. *Id*.

can be replicated.[5] And such types of analyses have been widely accepted by federal courts, *see*, *e.g.*, *Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *22.

IV. Legislative Defendants' Objections to Dr. Duchin's Analysis Are Without Merit.

Legislative Defendants focus their arguments on Dr. Duchin's ensemble method, ECF 343 ("MIL") at 2–4, 8–12, which analyzes how proposed plans, including the Senate Bill 865 map (S. 865), compare to a large sample of 100,000 randomly generated race-neutral plans. Legislative Defendants specifically object to Dr. Duchin's ensemble method for failing to consider *all* traditional districting principles. MIL at 6. In so doing, Defendants misunderstand the purpose of the ensembles, Dr. Duchin's ensemble process, and misread the law.

As described above, and contrary to Legislative Defendants' assertion, *id*. at 10–11, the ensemble method stems from numerous peer-reviewed articles detailing its application to redistricting. Additionally, Dr. Duchin explains that the purpose of the ensemble method is not to simulate the legislative process, as Legislative Defendants contend, *id.* at 13, but to provide a comparison for the characteristics of maps drawn without consciousness of race. Duchin Rep. at 22 (Ex. A). Indeed, using 100,000 randomly generated plans, her ensemble analysis holds constant various redistricting principles like compactness, avoidance of subdivision splits, and preserving some communities of interest. *Id*. In so doing, Dr. Duchin shows that S. 865 is an extreme statistical outlier in its dilutive effect on Black voters, far more so than any harm the plan imparts on partisan interests in the state. Duchin Rep. at 27 (Ex. A). Her analysis supports other evidence Plaintiffs will introduce at trial to show that S.865 is the product of racial predomination and intentional

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[5] Amariah Becker, Moon Duchin, Dara Gold & Sam Hirsch, *Computational Redistricting and the Voting Rights Act*, 20 Election L.J. 407 (2021); Daryl DeFord, Moon Duchin & Justin Solomon, *Recombination: A family of Markov chains for redistricting*, Harv. Data Sci. Rev., 3(1) (Winter 2021); Gregory Herschlag et al., *Quantifying Gerrymandering in North Carolina*. Stat. & Pub. Pol'y, 7(1), 30–38 (2020); *see also* Duchin Tr. at 129:1-2 (Ex. D).

discrimination based on relevant legal standards. *Id*. Thus, contrary to Legislative Defendants' contention, Dr. Duchin is not seeking to model or replicate the Legislature's process with her ensemble comparisons. Duchin Rep. at 22 (Ex. A).

Legislative Defendants also misrepresent the inputs that Dr. Duchin's ensembles account for and her reasons for doing so. Legislative Defendants, for example, claim that Dr. Duchin failed to "consider population balance" in accordance with the guidelines by programming an algorithm that permitted population deviations up to one percent. MIL at 8–9. Not so. In her original report and deposition testimony, Dr. Duchin explains that a one-percent deviation is necessary to generate a large comparison ensemble of up to 100,000 potential maps without splitting precincts. Duchin Tr. at 126:2–127:12 (Ex. D); Duchin Rep. at 29 (Ex. A). This is consistent with the goals of ensemble analysis to provide comparison benchmarks for analysis of the enacted plan, not to simulate the legislative process or provide an alternative map for adoption. Duchin Rep. at 22 (Ex. A). As she explains, converting plans with a one-percent deviation to a one-person deviation does not change the measurable features or key characteristics of her ensembles. Duchin Rep. at 29 (Ex. A); DeFord, Duchin & Solomon, *supra,* at 14. In all of her ensembles, she performs tuning experiments, both through an auto-tuning algorithm and by hand, to "boost [her] confidence that one-percent maps can quickly be tuned to one-person without breaking any of their metric properties." Duchin Tr. at 126:2–127:12 (Ex. D). Because the key statistics of the plans are unchanged between the one-percent and one-person level, these ensembles serve their purpose in providing benchmark comparisons even without perfectly equalizing district populations. *Id*.; DeFord, Duchin & Solomon, *supra,* at 33.

Similarly, Legislative Defendants are simply wrong when they assert Dr. Duchin's ensemble method analysis fails to account for compactness and certain communities of interest.

Duchin Tr. (Ex. D) at 129:1-23, 131:24–133:11; Duchin Rep. at 22 (Ex. A). Legislative Defendants

also complain that Dr. Duchin use of "three mathematical measures to assess" compactness among

congressional plans runs afoul of the House's guidelines that forbid any "mathematical, statistical,

or formula-based calculation or determination." MIL at 9. But as Legislative Defendants concede,

the Senate's guidelines did not include any such prohibition. Roberts Tr. at 119:25–120:22 (Ex.

E). As Dr. Duchin explained, the compactness measurements she relied upon are "routinely used

in redistricting analysis and litigation." Duchin Rep. at 8 (Ex. A). Still, Dr. Duchin also relies on

qualitative compactness assessments in her report, including the geography or shape

considerations. Duchin Tr. at 61:7–17 (Ex. D); Duchin Rep. at 14–21 (Ex. A). And Legislative

Defendants also take issue with how Dr. Duchin incorporated public comments about COIs as not

being "subjected to peer review." MIL at 10–11. Far from Legislative Defendants' "cherry-

picking" allegations, Dr. Duchin reviewed the publicly available data regarding extensive public

comments about communities of interest ("COI"). This record includes more than 1,000 pages of

comments and transcripts that included more than 20 hearings held by the House and Senate

combined. Duchin Rep. at 31–38 (Ex. A); Duchin Tr. at 79:23-89:14 (Ex. D). She identified some

key COIs that were repeatedly raised during the proceeding. And she employed her ensemble

analysis to account for them (turning them on and off to be able to assess their significance).

Duchin Report at 22 (Ex. A).[6]

Legislative Defendants are also wrong when they argue that Dr. Duchin did not include

avoidance of VTD splits as a redistricting principle for her ensembles. MIL at 7. As Dr. Duchin

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[6] Dr. Duchin also testifies that there are various other ways to incorporate COIs, and that if South Carolina had adopted a way to quantify COIs systematically into maps, that would be preferrable. Duchin Tr. at 83:2-84:14 (Ex. D).

explained at her deposition, the ensemble plans do not split any VTDs. Duchin Tr. at 135:17-21

(Ex. D).

Related to their inaccurate criticisms of Dr. Moon's methodology, the Legislative

Defendants also erroneously contend that her ensemble analysis is not relevant. They attempt to

support this claim by arguing that Dr. Duchin's ensembled-related analyses purportedly do not

account for all facially neutral factors, MIL at 6–8, relying on a misrepresentation of *Backus*.

Defendants misconstrue *Backus* as posing a gatekeeping bar on Dr. Duchin's ensemble-related

testimony. Same as here, *Backus* defendants moved to exclude an expert for failure "to consider .

. . racially neutral factors." *See*, *e.g.*, Mot. in Limine at 2, *Backus v. South Carolina*, No. 3:11-cv-

03120, Dkt. No. 109-1 (D.S.C. Feb. 13, 2012). At a pretrial conference, the court explained it

would not rule on defendants' motions, indicating it was "more than likely that [Dr. Michael

McDonald] [would] testify . . . , and any deficiency will be taken up with cross-examination."

Conf. Tr. at 5, *Backus v. South Carolina*, Dkt. No. 181 (D.S.C. Feb. 28, 2012). During trial, the

court reiterated that defendants' concerns should be addressed via cross-examination and allowed

Dr. McDonald to testify. Trial Tr. at 4, 107–08., *Backus v. South Carolina*, Dkt. No. 208 (D.S.C.

Mar. 1, 2012). This Court should allow Dr. Duchin to do the same.

Although Defendants seem to argue that *Backus* sets forth a principle that every expert in

a redistricting case must cover the waterfront of traditional redistricting criteria or else be excluded,

the court in *Backus* did no such thing. In fact, the court never granted the defendants' applications

to exclude Dr. McDonald's testimony, dismissing the motions instead as moot. *Backus*, 857 F.

Supp. 2d at 570 (dismissing all pending motions as moot); *see* Post-Trial Mem. of Def. Harrell at

12, *Backus v. South Carolina*, Dkt. No. 210 (D.S.C. Mar. 5, 2012) (reminding the court that

Daubert motion against Dr. McDonald remains pending). The court ultimately considered Dr.

McDonald's testimony but gave it little weight, because his analysis omitted "important" "sources of information," including any consideration the State's guidelines containing "race-neutral principles for redistricting." *Backus*, 857 F. Supp. 2d at 562. Thus, *Backus* does not contain the sweeping exclusionary rule that Defendants advance.

Indeed, *Backus* and other caselaw confirm that Legislative Defendants' objections to Dr. Duchin's testimony go to the weight the Court should assign it, not its admissibility. Fourth Circuit precedent is clear that an "expert's causation conclusion should not be excluded because he or she has failed to rule out every possible alternative cause." *See, e.g.*, *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 265 (4th Cir. 1999) (holding that "alternative causes suggested by a defendant affect the weight that the jury should give the expert's testimony and not the admissibility of that testimony"). Furthermore, the district court's "gatekeeping function" is "relaxed" in the context of a bench trial. *United States v. Wood*, 741 F.3d 417, 425 (4th Cir. 2013); *see also Ohio Org. Collaborative v. Husted*, No. 2:15-CV-1802, 2016 WL 8201848, at *4 (S.D. Ohio May 24, 2016) (holding that elections expert's "failure to account for various controls in his case studies . . . implicates the accuracy and credibility of those studies . . . but not their reliability"). Accordingly, the *Backus* court properly considered Dr. McDonald's testimony and weighed it against other evidence, despite concerns that he failed to assess race-neutral factors. *See Backus*, 857 F. Supp. 2d at 562–63.

Even if *Backus* could somehow be construed as adopting an exclusionary rule, Legislative Defendants' motion should be denied because Dr. Duchin's testimony does not suffer from the same flaws that the court saw in Dr. McDonald's. Dr. McDonald's opinion was based on a relatively simple assumption that any change to district maps that increased or maintained the Black voting-age population was attributable to race. *Id.* at 561. Critically, Dr. McDonald admitted

during cross-examination "that he failed to consider the guidelines and criteria that the General

Assembly devised for the redistricting process, which . . . contained guiding race-neutral

principles." 857 F. Supp. 2d at 562.

None of that is true of Dr. Duchin's analysis, which deployed sophisticated statistical

methods to provide race-neutral baselines to allow the court to see whether the dilutive effects of

the enacted plan were simply a product of geography or of excessive race-consciousness. Duchin

Rep. at 27 (Ex. A). As explained repeatedly throughout her report and deposition, Dr. Duchin's

ensembles adhered to criteria obtained directly from the House and Senate guidelines. Duchin Rep.

at 7–8 (Ex. A); Duchin Tr. at 40:12-41:1 (Ex. D). Even though Legislative Defendants' post-hoc

partisan and core-retention explanations would not be reflected in the criteria Dr. Duchin

reviewed,[7] she still demonstrates that both justifications can be implemented without the dilutive

effect of S. 865 has on Black voters. Duchin Rep. at 27 (Ex. A); Duchin Rebuttal Rep. at 2–3 (Ex.

B). Dr. Duchin's analysis is therefore both comprehensive and reliable; it should not be excluded.[8]

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[7] Pending before the Court are several motions in limine by Plaintiffs charging that Defendant should be precluded from asserting partisan affiliation as a justification for its line drawing because it is a post-hac, non-contemporaneous justification for S. 865. See, "*Plaintiffs' Motion in Limine to Preclude Defendants from Introducing Evidence or Argument Supporting Rationales for Congressional Map that are not in Legislative Record*," ECF 348; "*Plaintiffs' Motion in Limine to Preclude Defendants from Introducing Evidence or Argument Regarding Post Hoc Rationales for Congressional Map*," ECF 351.

[8] Legislative Defendants' interpretation of *Backus* is also impossible to implement in practice. As demonstrated by the contradictory testimony from legislators and staff, the redistricting criteria adopted by the House and Senate conflict, have differing relative importance across legislative actors, and, in practice, were subordinated to non-public considerations by mapmakers (at least by the Senate). *See, e.g.,* Roberts Tr. at 201–202 (Ex. E) (identifying multiple non-written private criteria designed to appease members of the Republican congressional delegation, such as minimizing change to CD 7, keeping Fort Jackson in CD 2, and keeping Beaufort County out of CD 2, that explained Senate line-drawing); John Tr. at 50–55 (Ex. F) (disclaiming that Senate map drawing was influenced by requests from the Republican congressional delegation). Requiring experts to use the exact principles and weighting as used by the General Assembly—at the admissibility stage, no less—would exclude any and all expert reports. It would also prevent the Court from analyzing the evidence in concert, contradicting Rule 401's caution that "no one piece

V. Dr. Duchin Did Not Base Her Analysis on a False Premise.

Legislative Defendants incorrectly argue that Dr. Duchin's analysis is based on a false assumption that race must predominate over traditional redistricting principles. MIL at 2, 11–12. As one example, they claim Dr. Duchin understood the "General Assembly was obligated to 'prioritize electoral opportunity' [for Black voters] even when the goal 'conflict[ed]' with traditional redistricting principles." MIL at 11. That is impossible to reconcile with Dr. Duchin deposition testimony in which she explicitly rejects that point: "I would shy away from the word 'maximize' which has a very specific meaning to me. I don't think that, again, *to quote*, if there is a conflict, the requirements that include minority electoral opportunity should be given priority." Duchin Tr. at 211:11–16 (Ex. D).

Dr. Duchin is not a lawyer and makes no legal conclusions in her report. *Id.* at 74:18–23. In Section 3 of her initial report, she summarizes the House and Senate Redistricting Guidelines, reading both sets of guidelines to place particular emphasis on "the safeguarding of minority opportunity to elect candidates of choice" in conjunction with compliance with other aspects of federal law and the constitution. Duchin Rep. at 7-8 (Ex. A). Dr. Duchin recognizes that, based on the Guidelines, compliance with federal law takes priority over other redistricting principles. *Id*; Duchin Tr. at 69:14–20 (Ex. D). At no point does she opine on the law or whether it requires Legislative Defendants to do anything. She merely provides evidence that support racial predomination and intentional discrimination based on her statistical and visual analysis. Duchin Rep. at 22, 27 (Ex. A); Duchin Tr. 33:8-15 (Ex. D). Her understanding is entirely consistent with Legislative Defendants' understanding. Campsen Tr. at 135:5–14 (Ex. G); Rankin Tr. at 149:5–13

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of evidence has to prove every element of the plaintiffs' case." *Adams v. Ameritech Servs., Inc.*, 231 F.3d 414, 425 (7th Cir. 2000).

(Ex. H); Fiffick Tr. at 119:18–120:11 (Ex. I); Terreni Tr. at 312:11–24 (Ex. J). Any argument by

Legislative Defendants' that Dr. Duchin's method relies on an improper assumption is erroneous.

CONCLUSION

For the reasons stated above, Legislative Defendants' motion in limine should be denied.

Dated: September 9, 2022

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* *Motion for admission Pro Hac Vice*
forthcoming
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<u>**CERTIFICATE OF SERVICE**</u>

I hereby certify that on September 9, 2022, a true and correct copy of the foregoing was served on all counsel of record by electronic mail.

/s/ *Santino Coleman*
Santino Coleman

General Information

Case Name	South Carolina State Conference of the NAACP, The et al v. Alexander et al
Court	U.S. District Court for the District of South Carolina
Date Filed	Tue Oct 12 00:00:00 EDT 2021
Judge(s)	JULIANNA MICHELLE CHILDS
Federal Nature of Suit	Other Statutes: State Reapportionment [400]
Docket Number	3:21-cv-03302
Parties	Linda McCall; Chris Murphy; NAACP Legal Defense and Educational Fund Inc; Frank Rainwater; Wallace H Jordan; American Civil Liberties Union Foundation; Luke A Rankin; Clifford J Elder; JoAnne Day; Henry D McMaster; John Wells; James H Lucas; Howard Knapp; South Carolina State Conference of the NAACP, The; Taiwan Scott; Thomas C Alexander; Scott Moseley