

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARCUS CASTER, et al.,

Plaintiffs,

v.

JOHN H. MERRILL, in his official capacity
as Alabama Secretary of State,

Defendant.

Case No.: 2:21-cv-1536-AMM

SECOND DECLARATION OF DR. BRIDGETT KING

Pursuant to 28 U.S.C. § 1746, I, Bridgett King, make the following declaration:

1. This second declaration responds to assertions made in two reports submitted by the Defendant in this case. Section I addresses Tom Bryan's assertion of how "Black" should be defined for purposes of measuring the Black population of a political subdivision. Section II addresses Dr. M.V. Hood III's assertion that white support of minority Republican candidates suggests racial considerations do not influence their voting behavior, as well as his discussion of a recent Alabama State House race.

2. In responding to these assertions, I draw on my research and writing as a political/social scientist and my in-depth understanding of voting rights in a historical and contemporary context, along with understanding gained from academic and applied experience.

I. Definition of "Black"

3. In Mr. Bryan's report, he discusses the need to "define and document the true 'Black' population" of congressional districts.¹ Mr. Bryan notes that in the last two Censuses,

¹ Bryan Rep. at 9.

respondents had the option of selecting more than one race.² He states: “A ‘Black’ in Alabama therefore can be Black alone, or perhaps in combination with other races or possibly even also Hispanic.”³ He goes on to assert that “[i]n this matter precise definitions matter,” and claims that counting only those Alabamians who identify as Black and no other race (“Black alone,” “single race Black,” or “SR Black”) as Black when analyzing the Black population of a congressional district “has been most defensible from a political science / Gingles 2 voting behavior perspective,” as opposed to counting all Alabamians who identify as Black, regardless of whether they also identify with another race (“any part Black” or “AP Black”).⁴

4. Mr. Bryan is not a political scientist, and Mr. Bryan does not offer any explanation, evidence, or citation to support his assertion that counting only those who identify as “Black alone” as Black for purposes of measuring population has been “most defensible” from a “political science” perspective.

5. Drawing on my own scholarship and those of other political scientists and historians, it is my opinion that Mr. Bryan’s assertion has it exactly backwards. From a political science and historical perspective, the more defensible position is that, when determining the Black population of a political subdivision, *all* individuals who identify as Black—whether in combination with other races (and/or Hispanic heritage) or not—should be counted as Black.

6. The AP Black definition is superior to the Black alone definition from a political science and historical perspective because it better comports with how individuals racially self-identify. Racial self-identification is the result of historical, cultural, and social environments.

7. From the historical perspective, how individuals racially self-identify must take

² *Id.*

³ *Id.*

⁴ *Id.* at 10.

account of how society and the State of Alabama has defined the Black race. In Alabama, that understanding must begin with the “one drop rule.” For centuries, states in the American South, including Alabama, defined Black by using the one drop rule, also known as the “one black ancestor rule,” or in anthropology as “the hypo-descent rule.” Stated simply, the rule asserts that a single drop of Black blood makes a person Black. Racially mixed persons were thus considered Black and assigned the status of the subordinate group.⁵ As one scholar explains: “Any person who has some ‘negro blood’ has been or still is regarded as ‘colored,’ or ‘African,’ or ‘Negro,’ or ‘Black,’ or ‘Afro American,’ or ‘African American.’”⁶

8. The rule did not apply to people whose heritage was some combination of Caucasian, Hispanic, Asian, or Native. In both the historical and contemporary contextual understanding, the one drop rule applied only to Americans of African descent—in other words it only applies to Black Americans.⁷

9. The one drop rule became entrenched across the American South in the 1910s and 1920s, but it first appeared in legal codes in the 1800s. The rule evolved out of racist notions of white racial purity.⁸ While state statutes often explicitly defined who was considered Black, social customs also played a large role in defining the racial line, which used the one drop rule to suppress political, economic, and social access and mobility. As early as the 1700s, those who were mixed race Black and white (“mulattos,” “quadroons,” “octoroons,” etc.) were subject to the same legal disabilities as Blacks and thus were enslaved. Keeping “mulattos” and other part-Black persons

⁵ Davis, F. J. (1991). Who is Black? One nation’s definition. Penn State University Press: University Park, Pennsylvania; Hickman, C. B. (1997). The Devil and the One Drop Rule: Racial Categories, African Americans, and the U.S. Census. *Michigan Law Review*, 95(5), 1161–1265.

⁶ Jordan, W. D. (2014). Historical Origins of the One-Drop Racial Rule in the United States. *Journal of Critical Mixed Race Studies*, 1(1), 98-132.

⁷ Davis, *supra* n.5; Jordan, *supra* n.6.

⁸ Hickman, *supra* n.5.

enslaved served an economic purpose: the offspring of children with Black mothers and white fathers increased a plantation's inventory.

10. Though the citizenship status of Black Americans changed after the Civil War, Black people with significant white ancestry continued to be considered Black if they also had a Black ancestor.

11. An understanding of Blackness that is inclusive of all Black individuals, both SR Black and AP black, was also adopted by the US Bureau of the Census.

12. By the Fourteenth Census in 1920, when the color line had hardened, the Census Bureau stopped counting "mulattoes" and formally adopted the one drop rule:

The term "white" as used in the census report refers to persons understood to be pure-blooded whites. A person of mixed blood is classified according to the nonwhite racial strain. . . . [t]hus a person of mixed white . . . and Negro . . . is classified as . . . a Negro . . . regardless of the amount of white blood⁹

13. This formal adoption of the one drop rule appeared in legislative definitions as well. For example, in 1924, a Virginia Act for "Preservation of Racial Integrity" defined a White person as someone with "no trace whatsoever of any blood other than Caucasian."¹⁰ By 1930, Virginia defined as colored anyone "in whom there is ascertainable any negro blood."¹¹

14. As time has progressed, our understanding of who is Black, and who is not, has not deviated; to the contrary, it has been further entrenched in our society. Historian Paul Spickard argues:

The "one drop" rule is so ingrained in the American psyche that Blacks and Whites do not think twice about it. For example, part-Black people of all hues joined Blacks

⁹ Bureau of the Census, U.S. Dept. of Commerce, Fourteenth Census of the United States: 1920, at 10 (1923); Hickman, *supra* n.5.

¹⁰ 1924 VA. Acts ch. 371, § 5.

¹¹ 1930 VA. Acts ch. 85, § 67.

in embracing the “Black is Beautiful” slogan advanced in the late 1960s, finally taking pride in their skin color, their hair and other aspects of their black ancestry.¹²

15. For all persons with Black lineage, barriers to full opportunity and participation are formidable, and a person who is fractionally Black cannot escape these obstacles.¹³ Asserting one’s racial identity is thus a political exercise, a conscious decision to connect to the heritage of that racial identity.¹⁴ It is a choice to connect to the politics and organized interests of that racial identity, but one also accepts the socio-political and anthropological struggles of that group.

16. Individuals who assert their identity as Black, in total or in part, are making a conscious decision to identify with the history and legacy of Black identity in the United States, an identity that includes the trans-Atlantic slave trade, the legacy of Jim Crow, segregation, the relief brought by the 1964 Civil Rights Act and 1965 Voting Right Act, and the contemporary political, economic, and social realities experienced by Black Americans. Excluding such individuals from the definition of Black cannot be supported from a political science perspective.

II. Republican Voting Patterns

A. Support for Black Candidates Among White Republican Voters

17. I respond to two assertions made in Dr. Hood’s report. First, Dr. Hood asserts that “ideology trumps race in the case of white Republicans and their support for GOP minority candidates,” citing specifically an article Dr. Hood published with Seth C. McKee.¹⁵

¹² Spickard, P.R. (1992). The Illogic of American Racial Categories in *Racially mixed people in America*, (in Root, M.P.P. Root ed.), p. 12-23. Sage Publishing: Thousand Oaks, California. This observation is cited in Hickman, *supra* n.5.

¹³ Davis, *supra* n.5.

¹⁴ Martin, B. L. (1991). From Negro to Black to African American: The Power of Names and Naming. *Political Science Quarterly*, 106(1), 83–107.

¹⁵ Hood Rep. at 15 (citing Hood, M. V., & McKee, S. C. (2015). True Colors: White Conservative Support for Minority Republican Candidates. *The Public Opinion Quarterly*, 79(1), 28–52).

18. In the cited article, while the authors conclude that conservative whites will vote for conservative minority candidates, they provide no explicit discussion of white Republican willingness to vote for Black candidates, the heart of the issue. Nor does the study consider any elections conducted in the state of Alabama.

19. In the analysis, Hood and McKee collapse all the non-white candidates who ran for Congress or Governor in the elections studied—elections in Delaware, Florida, Hawaii, Maryland, Nevada, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Vermont into the category of “minority” candidate. This category includes 4 African Americans, 3 Asians, and 4 Hispanics. The level of support among conservative voters for these minority candidates was compared against conservative voters’ support for white candidates using the 2006, 2010, and 2012 Cooperative Election Study (formerly known as the Cooperative Congressional Election Study). They provide no discussion of the conditions under which support for a minority candidate will occur.

20. Perhaps more importantly, the mere fact that white Republicans support a minority candidate tells us quite little about whether any of those voters are motivated by racial considerations. As political scientists Hakeem Jefferson and Michael Tesler recently explained, white Republican voters who harbor prejudiced views will still support a Black candidate so long as that candidate takes particular positions on issues relating specifically to race.¹⁶ Specifically, racially prejudiced white voters will support a Black candidate so long as the candidate’s positions “don’t threaten the racial hierarchy” and give no reason to “worry that the[] candidate[] will

¹⁶ Jefferson, H. & Tesler, M. (2021). Why White Voters With Racist Views Often Still Support Black Republicans, *FiveThirtyEight*, <https://fivethirtyeight.com/features/why-racist-white-voters-often-favor-black-republicans/>.

represent the interest of Black Americans.”¹⁷ In other words, white voters who harbor racial prejudice will support a Black candidate who successfully demonstrates he or she is “not in the business of carrying water for their own racial group.”¹⁸ By contrast, they will oppose any Black candidate whom they believe “will fight for ‘those people [Black Americans]’ and not ‘people like us [white Americans].’”¹⁹ Put simply, racially prejudiced white voters “are not hostile to Blackness, per se. They are hostile to a particular manifestation of Blackness – one that reflects a commitment to racial justice and the advancement of [Black Americans’] collective goals.”²⁰

21. Moreover, Jefferson and Tesler also explain that voting for Black Republicans may be appealing to racially prejudiced whites because “it assuages concerns of being seen as racist by enabling them to say, ‘I can’t be racist! I voted for the Black candidate!’”²¹

22. The 2016 Republican primary provides a helpful example. During that race, support for candidate Ben Carson, a Black man, was “positively correlated with the belief that Black Americans have too much influence on U.S. politics.”²² Carson also received much more favorable evaluations among Republicans harboring the “overtly prejudiced [view] that ‘most African Americans are more violent than most whites’” as compared to white candidate Jeb Bush.²³

23. When considering partisanship, we know that Democrats and Republicans differ greatly across a wide range of issues. While some of these issues do not pertain to race, many of them do. For example, recent surveys have found the following:

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

- a. 49 percent of Democrats/Democratic Leaners believe that white people benefit a great deal from advantages in society that Black people do not have, compared to 7 percent of Republicans/Republican Leaners, a 42 percent difference.²⁴
- b. 67 percent of Democrats/Democrat Leaners believe that when it comes to giving Black people rights the country has not gone far enough, compared to 15 percent of Republicans/Republican Leaners, a 52 difference.²⁵
- c. 71 percent of Republicans/Republican Leaners believe that a lot of progress has been made when it comes to ensuring equal rights for all Americans regardless of their race/ethnicity, compared to 29 percent of Democrats/Democratic Leaners, a 42 percent difference.²⁶
- d. 85 percent of Democrats/Democrat Leaners support the Black Lives Matter movement, whereas 78% of Republicans/Republican Leaners say they oppose it.²⁷
- e. 81 percent of Democrats support removing confederate monuments from public spaces, compared to 17 percent of Republicans, a 62 percent difference.²⁸

²⁴ In a Politically Polarized Era, Sharp Divides in Both Partisan Coalitions. *Pew Research Center*. <https://www.pewresearch.org/politics/2019/12/17/in-a-politically-polarized-era-sharp-divides-in-both-partisan-coalitions/>.

²⁵ *Id.*

²⁶ Deep Division in Americans' View of Nation's Racial History – and How to Address It, *Pew Research Center*, <https://www.pewresearch.org/politics/2021/08/12/deep-divisions-in-americans-views-of-nations-racial-history-and-how-to-address-it/>.

²⁷ Menasce Horowitz, J. (2021, Sept. 27). Support for Black Lives Matter Declined After George Floyd Protests, but Has Remained Unchanged Since, *Pew Research Center*, <https://www.pewresearch.org/fact-tank/2021/09/27/support-for-black-lives-matter-declined-after-george-floyd-protests-but-has-remained-unchanged-since/>.

²⁸ Kelley, A. (2020, July 17). A Majority of Americans Support Removal of Confederate Monuments: Poll. *Washington Post*, <https://thehill.com/changing-america/respect/diversity-inclusion/507788-a-majority-of-americans-support-removal-of>.

24. These results demonstrate the deep divisions among the two major political parties on issues of race.

B. The 2021 Alabama House District 73 Election

25. The second of Dr. Hood's assertions to which I respond is his identification of the election of Kenneth Paschal, a Black Republican, to the Alabama House of Representatives in 2021, as evidence that ideology is more important than race in determining white Republican voting behavior.

26. For the reasons just explained, Mr. Paschal's election tells us very little about whether his supporters harbor racially prejudiced views. And for purposes of political science methodology, when put into context, this single election in one Alabama State House District with less than 4,000 total votes cast provides almost no insight into anything about white voters in Alabama.

27. Additionally, Paschal's election tells us nothing about polarization between Black and white voters.

28. Paschal is the first Black Republican elected to the Alabama Legislature in 140 years, since the end of Reconstruction. This speaks to the significant historical and contemporary challenges that Black Alabamians, including Black Republicans, face when endeavoring to engage in Alabama politics.

29. Moreover, Paschal's win is an outlier in the field of Black Republicans who have recently run for office but lost in the primary election.²⁹ Below I list Black Republicans who

²⁹ See Cason, M. (2018, Sept. 9). Alabama Republican Chair Terry Lathan Says Party Can Do More to Recruit African-Americans, *AL.com*, https://www.al.com/news/2018/09/alabama_republican_chair_terry.html.

recently ran in contested Republican primary elections.³⁰ Candidates in bold advanced to the general election.³¹

Candidate Name	Election Year	Election Type	Office	Votes Received	% of Vote Received
Pamela Blackmore Jenkins	2014	Republican Primary	AL House Seat 46	389	4.90
Philip Brown	2014	Republican Primary	Public Service Commission Position 2	43,097	12.58
Sam Rowlin	2014	Republican Primary	Autauga County Sheriff	1,610	18.74
William McCollum	2014	Republican Primary	Fayette County Sheriff	841	34.58
B.J. Major	2014	Republican Primary	Cherokee County Board of Education Seat 5	466	18.64
Tijuanna Adetunji	2014	Republican Primary	Montgomery City Council District 2	1410	13.79
Ron Wilson	2014	Republican Primary	House District 85	555	34.22
Sharica S. Long	2018	Republican Primary	Colbert County Circuit Clerk	1,097	19.9
Phillip	2018	Republican Primary	Jefferson County Executive Committee, Dis 1 Pt. 2	797	46.2

³⁰ There are other candidates who are listed by the Republican party as qualifying for elections in 2014 and 2018. The results of some of these primary elections, however, are not provided in the official certification on the Alabama Secretary of State website. Although most counties do not have election websites that provide archived results, where possible, I checked county election websites. I also used the website Ballotpedia to verify the returns in primary and general elections for Black Republicans who ran in 2014 and 2018, but I did not use that website as a primary source of information. This list represents the most comprehensive set of information available in light of these data limitations.

³¹ I obtained the certified elections results from the Alabama Secretary of State's public website.

Brown³²					
Derrick Williams	2016	Republican Primary	District Judge Mobile County P. 4	4371	12.3
John H. Moore	2018	Republican Primary	Morgan County Sheriff	319	1.8
Lewis Brooks³³	2018	Republican Primary	Shelby County School Superintendent	12626	50.7
Randy Turner	2018	Republican Primary	Morgan County Commissioner	4907	31.9
Allen Hendrickson	2018	Republican Primary	Houston County Commission Seat 2	700	19.2
Jayla McElrath	2018	Republican Primary	Cherokee County Board of Elections Place 4	1217	25.9

30. Finally, if we consider the vote returns from Paschal's performance in both the Republican Primary and Republican Primary runoff as a proxy for white Republican Party support of his candidacy, it is not overwhelming by any means. In the March 30, 2021 House District 73 Special Republican Primary, Paschal received just 27% of votes cast, and the remaining votes went to other candidates. Leigh Hulsey, a white candidate whom Paschal faced in the runoff, received 30.7% of votes cast in the initial primary election.³⁴ In the April 27 primary runoff election, Husley received 1,414 votes (48.91% of votes cast) and Paschal received 1,477 votes (51.09 % of votes

³² There is no record of a runoff for this seat in the 2018 returns on the SOS website. 2018 election results are not archived on the Jefferson County Elections website (<https://www.jccal.org/Default.asp?ID=1480&pg=Elections+Results>). Brown, however, proceeded to the 2018 General Election, and is in bold for this reason.

³³ This election is not in the 2018 returns on the SOS website and the Shelby County Probate Office does not have an election results archive. There was no Democratic Party challenger in the general election. The information about the race is from Dawkins, S. (2018, June 5). Brooks Wins Tightly Contested Race for Superintendent of Shelby County Schools. *Shelby County Reporter*. <https://www.shelbycountyreporter.com/2018/06/05/brooks-wins-tightly-contested-race-for-superintendent-of-shelby-county-schools/>.

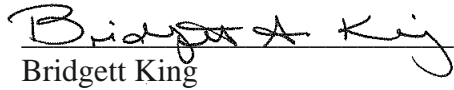
³⁴ Alabama Secretary of State: <https://www.sos.alabama.gov/sites/default/files/election-2021/Certification%20of%20Primary%20Results.pdf>.

cast), a difference of just 63 votes.³⁵ Both the overall number of ballots cast in these elections and the margins between Paschal and Hulseby are small. Using this example to extrapolate any conclusion about white voting behavior in Alabama would be scientifically unsound.

#

I declare under penalty of perjury that the foregoing is true and correct. I reserve the right to supplement my report in light of additional facts, testimony, and/or materials that may come to light.

Executed on: December 20, 2021


Bridgett King

³⁵ Alabama Secretary of State: https://www.sos.alabama.gov/sites/default/files/election-2021/HD73_Republican_Party-Certification_of_Results-Special_Primary_Runoff_Election.pdf.

Exhibit 1

1 REAPPORTIONMENT COMMITTEE REDISTRICTING GUIDELINES

2 May 5, 2021

3 I. POPULATION

4 The total Alabama state population, and the population of defined subunits
5 thereof, as reported by the 2020 Census, shall be the permissible data base used
6 for the development, evaluation, and analysis of proposed redistricting plans. It is
7 the intention of this provision to exclude from use any census data, for the purpose
8 of determining compliance with the one person, one vote requirement, other than
9 that provided by the United States Census Bureau.

10 II. CRITERIA FOR REDISTRICTING

11 a. Districts shall comply with the United States Constitution, including the
12 requirement that they equalize total population.

13 b. Congressional districts shall have minimal population deviation.

14 c. Legislative and state board of education districts shall be drawn to achieve
15 substantial equality of population among the districts and shall not exceed an
16 overall population deviation range of $\pm 5\%$.

17 d. A redistricting plan considered by the Reapportionment Committee shall
18 comply with the one person, one vote principle of the Equal Protection Clause of
19 the 14th Amendment of the United States Constitution.

20 e. The Reapportionment Committee shall not approve a redistricting plan that
21 does not comply with these population requirements.

22 f. Districts shall be drawn in compliance with the Voting Rights Act of 1965, as
23 amended. A redistricting plan shall have neither the purpose nor the effect of
24 diluting minority voting strength, and shall comply with Section 2 of the Voting
25 Rights Act and the United States Constitution.

26 g. No district will be drawn in a manner that subordinates race-neutral
27 districting criteria to considerations of race, color, or membership in a language-
28 minority group, except that race, color, or membership in a language-minority
29 group may predominate over race-neutral districting criteria to comply with
30 Section 2 of the Voting Rights Act, provided there is a strong basis in evidence in
31 support of such a race-based choice. A strong basis in evidence exists when there
32 is good reason to believe that race must be used in order to satisfy the Voting Rights
33 Act.

1 h. Districts will be composed of contiguous and reasonably compact
2 geography.

3 i. The following requirements of the Alabama Constitution shall be complied
4 with:

5 (i) Sovereignty resides in the people of Alabama, and all districts should be
6 drawn to reflect the democratic will of all the people concerning how their
7 governments should be restructured.

8 (ii) Districts shall be drawn on the basis of total population, except that voting
9 age population may be considered, as necessary to comply with Section 2 of the
10 Voting Rights Act or other federal or state law.

11 (iii) The number of Alabama Senate districts is set by statute at 35 and, under
12 the Alabama Constitution, may not exceed 35.

13 (iv) The number of Alabama Senate districts shall be not less than one-fourth or
14 more than one-third of the number of House districts.

15 (v) The number of Alabama House districts is set by statute at 105 and, under
16 the Alabama Constitution, may not exceed 106.

17 (vi) The number of Alabama House districts shall not be less than 67.

18 (vii) All districts will be single-member districts.

19 (viii) Every part of every district shall be contiguous with every other part of the
20 district.

21 j. The following redistricting policies are embedded in the political values,
22 traditions, customs, and usages of the State of Alabama and shall be observed to
23 the extent that they do not violate or subordinate the foregoing policies prescribed
24 by the Constitution and laws of the United States and of the State of Alabama:

25 (i) Contests between incumbents will be avoided whenever possible.

26 (ii) Contiguity by water is allowed, but point-to-point contiguity and long-lasso
27 contiguity is not.

28 (iii) Districts shall respect communities of interest, neighborhoods, and political
29 subdivisions to the extent practicable and in compliance with paragraphs a
30 through i. A community of interest is defined as an area with recognized
31 similarities of interests, including but not limited to ethnic, racial, economic, tribal,
32 social, geographic, or historical identities. The term communities of interest may,
33 in certain circumstances, include political subdivisions such as counties, voting

precincts, municipalities, tribal lands and reservations, or school districts. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people.

(iv) The Legislature shall try to minimize the number of counties in each district.

(v) The Legislature shall try to preserve the cores of existing districts.

(vi) In establishing legislative districts, the Reapportionment Committee shall give due consideration to all the criteria herein. However, priority is to be given to the compelling State interests requiring equality of population among districts and compliance with the Voting Rights Act of 1965, as amended, should the requirements of those criteria conflict with any other criteria.

g. The criteria identified in paragraphs j(i)-(vi) are not listed in order of precedence, and in each instance where they conflict, the Legislature shall at its discretion determine which takes priority.

III. PLANS PRODUCED BY LEGISLATORS

1. The confidentiality of any Legislator developing plans or portions thereof will be respected. The Reapportionment Office staff will not release any information on any Legislator's work without written permission of the Legislator developing the plan, subject to paragraph two below.

2. A proposed redistricting plan will become public information upon its introduction as a bill in the legislative process, or upon presentation for consideration by the Reapportionment Committee.

3. Access to the Legislative Reapportionment Office Computer System, census population data, and redistricting work maps will be available to all members of the Legislature upon request. Reapportionment Office staff will provide technical assistance to all Legislators who wish to develop proposals.

4. In accordance with Rule 23 of the Joint Rules of the Alabama Legislature "[a]ll amendments or revisions to redistricting plans, following introduction as a bill, shall be drafted by the Reapportionment Office." Amendments or revisions must be part of a whole plan. Partial plans are not allowed.

5. In accordance with Rule 24 of the Joint Rules of the Alabama Legislature, "[d]rafts of all redistricting plans which are for introduction at any session of the Legislature, and which are not prepared by the Reapportionment Office, shall be presented to the Reapportionment Office for review of proper form and for entry into the Legislative Data System at least ten (10) days prior to introduction."

1 IV. REAPPORTIONMENT COMMITTEE MEETINGS AND PUBLIC
2 HEARINGS

3 1. All meetings of the Reapportionment Committee and its sub-committees
4 will be open to the public and all plans presented at committee meetings will be
5 made available to the public.

6 2. Minutes of all Reapportionment Committee meetings shall be taken and
7 maintained as part of the public record. Copies of all minutes shall be made
8 available to the public.

9 3. Transcripts of any public hearings shall be made and maintained as part of
10 the public record, and shall be available to the public.

11 4. All interested persons are encouraged to appear before the
12 Reapportionment Committee and to give their comments and input regarding
13 legislative redistricting. Reasonable opportunity will be given to such persons,
14 consistent with the criteria herein established, to present plans or amendments
15 redistricting plans to the Reapportionment Committee, if desired, unless such
16 plans or amendments fail to meet the minimal criteria herein established.

17 5. Notice of all Reapportionment Committee meetings will be posted on
18 monitors throughout the Alabama State House, the Reapportionment Committee's
19 website, and on the Secretary of State's website. Individual notice of
20 Reapportionment Committee meetings will be sent by email to any citizen or
21 organization who requests individual notice and provides the necessary
22 information to the Reapportionment Committee staff. Persons or organizations
23 who want to receive this information should contact the Reapportionment Office.

24 V. PUBLIC ACCESS

25 1. The Reapportionment Committee seeks active and informed public
26 participation in all activities of the Committee and the widest range of public
27 information and citizen input into its deliberations. Public access to the
28 Reapportionment Office computer system is available every Friday from 8:30 a.m.
29 to 4:30 p.m. Please contact the Reapportionment Office to schedule an
30 appointment.

31 2. A redistricting plan may be presented to the Reapportionment Committee
32 by any individual citizen or organization by written presentation at a public
33 meeting or by submission in writing to the Committee. All plans submitted to the
34 Reapportionment Committee will be made part of the public record and made
35 available in the same manner as other public records of the Committee.

3. Any proposed redistricting plan drafted into legislation must be offered by a member of the Legislature for introduction into the legislative process.

4. A redistricting plan developed outside the Legislature or a redistricting plan developed without Reapportionment Office assistance which is to be presented for consideration by the Reapportionment Committee must:

a. Be clearly depicted on maps which follow 2020 Census geographic boundaries;

b. Be accompanied by a statistical sheet listing total population for each district and listing the census geography making up each proposed district;

c. Stand as a complete statewide plan for redistricting.

d. Comply with the guidelines adopted by the Reapportionment Committee.

5. Electronic Submissions

a. Electronic submissions of redistricting plans will be accepted by the Reapportionment Committee.

b. Plans submitted electronically must also be accompanied by the paper materials referenced in this section.

c. See the Appendix for the technical documentation for the electronic submission of redistricting plans.

6. Census Data and Redistricting Materials

a. Census population data and census maps will be made available through the Reapportionment Office at a cost determined by the Permanent Legislative Committee on Reapportionment.

b. Summary population data at the precinct level and a statewide work maps will be made available to the public through the Reapportionment Office at a cost determined by the Permanent Legislative Committee on Reapportionment.

c. All such fees shall be deposited in the state treasury to the credit of the general fund and shall be used to cover the expenses of the Legislature.

Appendix.

ELECTRONIC SUBMISSION OF REDISTRICTING PLANS

REAPPORTIONMENT COMMITTEE - STATE OF ALABAMA

1

2 The Legislative Reapportionment Computer System supports the electronic
3 submission of redistricting plans. The electronic submission of these plans must
4 be via email or a flash drive. The software used by the Reapportionment Office is
5 Maptitude.

6 The electronic file should be in DOJ format (Block, district # or district #,
7 Block). This should be a two column, comma delimited file containing the FIPS
8 code for each block, and the district number. Maptitude has an automated plan
9 import that creates a new plan from the block/district assignment list.

10 Web services that can be accessed directly with a URL and ArcView
11 Shapefiles can be viewed as overlays. A new plan would have to be built using this
12 overlay as a guide to assign units into a blank Maptitude plan. In order to analyze
13 the plans with our attribute data, edit, and report on, a new plan will have to be
14 built in Maptitude.

15 In order for plans to be analyzed with our attribute data, to be able to edit,
16 report on, and produce maps in the most efficient, accurate and time saving
17 procedure, electronic submissions are REQUIRED to be in DOJ format.

18 Example: (DOJ FORMAT BLOCK, DISTRICT #)

19 SSCCCTTTTTTBBBBDDDD

20 SS is the 2 digit state FIPS code

21 CCC is the 3 digit county FIPS code

22 TTTTTT is the 6 digit census tract code

23 BBBB is the 4 digit census block code

24 DDDD is the district number, right adjusted

25 Contact Information:

26 Legislative Reapportionment Office

27 Room 317, State House

28 11 South Union Street

29 Montgomery, Alabama 36130

30 (334) 261-0706

1 For questions relating to reapportionment and redistricting, please contact:

2 Donna Overton Loftin, Supervisor

3 Legislative Reapportionment Office

4 donna.overton@alsenate.gov

5 Please Note: The above e-mail address is to be used only for the purposes of
6 obtaining information regarding redistricting. Political messages, including those
7 relative to specific legislation or other political matters, cannot be answered or
8 disseminated via this email to members of the Legislature. Members of the
9 Permanent Legislative Committee on Reapportionment may be contacted through
10 information contained on their Member pages of the Official Website of the
11 Alabama Legislature, legislature.state.al.us/aliswww/default.aspx.

Exhibit 2

United States District Court
for the Northern District of Alabama

Chestnut v. Merrill,

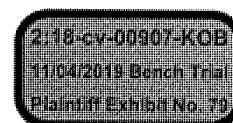
No. 2:18-cv-907-KOB

March 8, 2018

Expert Report of Maxwell Palmer, Ph.D.



Maxwell Palmer



Statement of Inquiry

1. I have been asked to evaluate the extent to which voting is racially polarized in southern Alabama, including the 1st, 2nd, 3rd, and 7th Congressional Districts under the redistricting plan enacted by the Alabama State Legislature in 2011.

Summary of Analysis and Findings

2. I find strong evidence of racially polarized voting in the 1st, 2nd, 3rd, and 7th Congressional Districts (the Focus Area). African American and white voters consistently support different candidates. Across every election I analyzed, the African American-preferred candidate on average won 94% of the African American vote and only 17% of the white vote in the focus area.
3. African American-preferred candidates are largely unable to win elections in the focus region. Across an analysis of 18 statewide elections, the African American-preferred candidate was able to win only two. In analyses of the 2018 elections at the precinct-level, African American-preferred candidates were only able to win elections in the 7th Congressional District.

Qualifications

4. I am currently an Assistant Professor of Political Science at Boston University. I joined the faculty at Boston University in 2014, after completing my Ph.D. in Political Science at Harvard University. In 2017 I was also appointed a Junior Faculty Fellow at the Hariri Institute for Computing at Boston University. I teach and conduct research on American politics and political methodology.
5. I have published academic work in leading peer-reviewed academic journals, including the *American Political Science Review*, *Journal of Politics*, *Journal of Empirical Legal Studies*, and *Perspectives on Politics*. I have published work on redistricting in the *Ohio State University Law Review* and the *Journal of Politics*. My curriculum vitae is attached to this report. My published research uses a variety of analytical approaches, including statistics, geographic analysis, and simulations.
6. I have served as an expert witness or litigation consultant on numerous cases involving the Voting Rights Act, including redistricting, voter identification, and early voting. I testified as an expert in redistricting and data analysis as it pertains to redistricting before the U.S. District Court for the Eastern District of Virginia in *Bethune Hill v. Virginia* (3:14-cv-00852-REP-AWA-BMK) and before the U.S. District Court for the Southern District of Mississippi in *Thomas v. Bryant* (3:18-CV-441-CWR-FKB). I worked as a data analyst assisting testifying experts in multiple cases concerning congressional and state legislative districting, including: *Perez v. Perry*, in the U.S. District Court for the Western District of Texas (No. 5:11-cv-00360); *LULAC v. Edwards Aquifer Authority* in the U.S. District Court for the Western District of Texas, San Antonio Division (No. 5:12cv620-OLG,); *Harris v. McCrory* in the U. S. District Court

for the Middle District of North Carolina (No. 1:2013cv00949); *Guy v. Miller* in the U.S. District Court for Nevada (No. 11-OC-00042-1B); *In re Senate Joint Resolution of Legislative Apportionment* in the Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490); and *Romo v. Detzner* in the Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412).

7. I am being compensated at a rate of \$350/hour for my work in this case.

Geographic Area and Elections Analyzed

8. For the purpose of my analysis, I examined elections in the 1st, 2nd, 3rd, and 7th Congressional Districts.
- The 1st District includes Baldwin, Escambia, Mobile, Monroe, and Washington counties, and parts of Clarke County.
 - The 2nd District includes Autauga, Barbour, Bullock, Butler, Coffee, Conecuh, Covington, Crenshaw, Dale, Elmore, Geneva, Henry, Houston, and Pike counties, and parts of Montgomery County.
 - The 3rd District includes Calhoun, Chambers, Clay, Cleburne, Lee, Macon, Randolph, Russell, St. Clair, Talladega, and Tallapoosa counties, and parts of Cherokee and Montgomery counties.
 - The 7th District includes Choctaw, Dallas, Greene, Hale, Lowndes, Marengo, Perry, Pickens, Sumter, and Wilcox counties, and parts of Clarke, Jefferson, Montgomery, and Tuscaloosa counties.
 - I refer to the combined areas of these four congressional districts, along with the remainder of any county that is partially in these districts and other congressional districts, as the “focus area” for my analysis.¹
9. Figure 1 maps the focus area. The shaded portions of Figure 1 show the counties and congressional districts included in my analysis, and the solid black line marks the full boundary of each congressional district.
10. To analyze racially polarized voting in the focus area, I examined election results from the 2012, 2014, 2016, and 2018 general elections, and the 2017 special election for U.S. Senate. I included elections for U.S. Congress (endogenous elections), and statewide elections (exogenous).²

¹ Jefferson County is split between the 6th and 7th districts, Tuscaloosa County is split between the 4th and 7th districts, and Cherokee County is split between the 3rd and 4th districts. The full counties are included in the focus area, but not in analyses of the individual districts alone.

² The statewide elections analyzed include elections for U.S. President, U.S. Senate, Governor, Lieutenant Governor, Secretary of State, Attorney General, State Auditor, Treasurer, Commissioner of Agriculture and

11. In analyzing racially polarized voting in each election, I used a statistical procedure, ecological inference (EI), that estimates group-level preferences based on aggregate data. While the primary focus of this analysis is on racially polarized voting between African American and white voters, I also added a third group, "other", which includes Hispanics, Asians, Native Americans, and voters who did not identify their race when registering to vote, in the analysis.³ I excluded third party and write-in candidates, and analyzed votes for the two major-party candidates in each contested election. The results of this analysis are estimates of the percentage of each group (African Americans, whites, and others) that voted for each candidate in each election. The results include both a mean estimate (the most likely vote share), and a 95% confidence interval.⁴
12. I used ecological inference analysis on two different datasets. First, I used county-level election results and data on voter registration by race to analyze racially polarized voting at the county level for the 2012, 2014, 2016, and 2018 general elections, as well as the special election for U.S. Senate in 2017. Second, I used precinct-level data to estimate racially polarized voting at the precinct level for the 2018 general elections. Due to data constraints, I was only able to use precinct-level data for 2018. This analysis offers increased precision in my estimates of racially polarized voting because there is more information about racial voting patterns at the precinct level than at the county level.

County-Level Analysis

13. To analyze racially polarized voting at the county level, I relied on election results and county-level voter registration data from 2012 to 2018 from the Alabama Secretary of State.⁵ The voter registration data includes voter race, based on voters' self-identified race when registering to vote.⁶

Industries, Chief Justice of the State Supreme Court, and Associate Justice of the State Supreme Court. I excluded elections for state legislature, as these districts partially overlap with the congressional district boundaries and include different subsets of voters in the area relevant to this case.

³ Combining the "other" group with whites does not substantively impact the results of the analysis or alter my conclusions.

⁴ The 95% confidence interval is a measure of uncertainty in the estimates from the model. For example, the model might estimate that 94% of the members of a group voted for a particular candidate, with a 95% confidence interval of 91-96%. This means that based on the data and the model assumptions, we can be 95% confident that the true level of support is in the range of 91-96%, with 94% being the most likely value. Larger confidence intervals reflect a higher degree of uncertainty in the estimates, while smaller confidence intervals reflect less uncertainty.

⁵ <https://www.sos.alabama.gov/alabama-votes/voter/election-data>

⁶ For 2018 only, the Secretary of State's website also included voter turnout by race. While I use voter registration by race in my analysis here to maintain consistency over the different election years, using turnout by race produces substantively similar results and supports the same conclusions.

14. In all of the analyses below, I analyzed racially polarized voting using three demographic groups: African Americans, whites, and other. The “other” group included self-identified Hispanics, Asians, Native Americans, voters of other races, and voters whose race is unknown.⁷
15. For the county-level ecological inference analysis, I examined all of the counties in the focus area as whole, as there are not enough counties in each congressional district to analyze them separately. Consequently, I was only able to analyze the exogenous, statewide elections. For each election, I ran the ecological inference algorithm and then analyze the results.
16. Interpreting the results of the ecological inference models proceeded in two general stages. First, I examined the support for each candidate by each demographic group to determine if members of the group vote cohesively in support of a single candidate. When a significant majority of the group supports a single candidate, I can then identify that candidate as the group’s “candidate of choice.” If the group’s support is roughly evenly divided between the two candidates, then the group does not cohesively support a single candidate and there is not an identifiable candidate of choice. Second, after identifying the candidate of choice for each group (or the lack of such a candidate), I then compared the preferences of African American and white voters. When African American and white voters share the same candidate of choice, or when one or both groups do not have an identifiable candidate of choice, then voting is not polarized. Evidence of racially polarized voting is found when African American and white candidates have different candidates of choice.
17. Figure 2 presents the results of the county-level ecological inference analyses.⁸ For each contest examined, the text on the left identifies the candidate of choice for each demographic group.
18. In every election examined in the focus area, both African American and white voters have clearly identifiable candidates of choice, and in all cases African American and white voters cohesively support opposing candidates.
19. The plot to the right in each figure displays the level of support by each group for the African American candidate of choice. The estimated level of support by African American voters is depicted with a black circle, and by white voters with a white circle. The vertical lines to either side of each circle mark the bounds of the 95% confidence intervals, which reflect uncertainty in the estimate.
20. In all cases, African American voters strongly support their candidate of choice, with an average estimated vote share of 94.1%. White voters strongly oppose these candidates, with an average estimated vote share of only 16.7%.

⁷ In 2018, voters in the “other” group made up 3.3% of registered voters statewide and 3.1% of registered voters in the focus area.

⁸ Table 1 presents the numerical estimated displayed in Figure 2.

21. These results demonstrate high levels of racially polarized voting in the focus area.
22. Having identified the African American candidate of choice in each contest, I now turn to their ability to win elections in these districts. Table 2 presents the results of each election in the forty-five counties constituting the focus area. For each election, I calculate the vote share obtained by the African American and white-preferred candidates.
23. Across all 23 statewide contests analyzed, the African American-preferred candidate won only twice. In all other cases, the white-preferred candidate won the majority of the vote.
24. The African American-preferred candidate won the majority of the vote in the focus area in only two contests: the 2012 election for Chief Justice of the Alabama Supreme Court, and the 2017 special election for U.S. Senate. In both cases, the white-preferred candidate was Roy Moore, a former Chief Justice of the Alabama Supreme Court. Moore is a uniquely controversial figure in Alabama politics, having been removed from his position on the Supreme Court in 2003, and later suspended from his position on the Supreme Court in 2016 following his 2012 election. In the 2017 U.S. Senate election, Moore was also accused of sexual assault and misconduct by several women.⁹ Moore's unique unpopularity is highlighted by a recent statement of the National Republican Senate Committee on the 2020 Senate race: "'The NRSC's official stance is ABRM: anyone but Roy Moore,' said Kevin McLaughlin, the committee's executive director. 'The only thing Doug Jones and I agree on is that his only prayer for electoral success in 2020 is a rematch with Roy Moore.'"¹⁰

Precinct-Level Analysis

25. The previous analysis at the county level provides strong evidence of racial polarization and the inability of African American-preferred candidates to win in most elections due to white bloc voting. I supplement that analysis here with a precinct-level analysis of the 2018 general election. Precinct-level analysis offers two advantages. First, I am able to analyze the endogenous elections for U.S. House in each district. Second, due to the larger number of data points at the precinct level, I am able to measure racially polarized voting in each congressional district separately, as well as in the focus area as a whole.
26. To analyze racially polarized voting at the precinct level, I relied primarily on two data sources:

⁹ Notwithstanding these potentially distinguishing features of Mr. Moore's candidacy, 70.9% of white voters voted for Moore in 2012 and 66.3% of white voters voted for Moore in 2017. *See* Table 1.

¹⁰ <https://www.politico.com/newsletters/playbook-pm/2019/02/28/netanyahu-indicted-pelosi-attempts-to-wrangle-dems-and-says-noko-won-the-summit-401605?tab=most-read>

- Precinct-level elections results for the 2018 general election from the Alabama Secretary of State.¹¹
- A snapshot of the Alabama voter file following the 2018 general election, provided by the Alabama Secretary of State, dated January 3, 2019. This file lists every individual voter in Alabama as of January 3, their self-identified race, county, voting precinct, and whether they voted in the 2018 general election. This file is used to estimate the percentage of registered voters by race in each precinct for the 2018 election.¹²

27. There are several challenges in combining the voter file snapshot and the precinct election returns into a cohesive dataset for analyzing racially polarized voting. First, I use the voter file to estimate the number of registered voters, by race, in each election precinct. The available voter file is dated two months after the election. This is necessary because, due to how the statewide voter file is administered in Alabama, there is a lag between the date of the election and when counties report voter participation for each voter.¹³ The state identified the January 3, 2019 voter file as the snapshot closest to the election with the appropriate voter history data. Such a lag means that voters who died or moved out of state (or otherwise became non-voters) after the election may not be included. Voters who moved and re-registered to vote after the election may now be assigned a different precinct.

28. While this time difference may introduce some small inaccuracies to the count of voters by race in each precinct, these differences are not substantively meaningful. To test for changes in registered voters by race, I compared the percentage of African American and white registered voters in each county, from November 2018 to January 2019, based on registration reports from the Alabama Secretary of State. In every county in the focus area, the demographics of registered voters are essentially the same; the largest change of any racial group in any county was less than 0.25 percentage points.

29. The second challenge in assembling precinct-level data is matching the precincts in the voter file to the precincts in the election returns. For some counties this is a

¹¹ <https://www.sos.alabama.gov/alabama-votes/voter/election-data>

¹² This file, along with voter snapshot files for the 2012, 2014, and 2016 elections, were provided to me on February 15, 2019. As described below, working with these files and matching the voter registration precincts to the precinct-level election returns is a slow and time-consuming process. Additionally, the file matching precincts in the voter file to precincts in the election returns in some counties, *see supra* n.14, was provided to me on February 19, 2019, and then, too, only for 2018 elections. Consequently, I was only able to assemble data for the 2018 election.

¹³ Source: Email from Jim Davis (Alabama Attorney General's Office) to counsel, Feb. 11, 2019: "The voter registration database contains fields for the elections in which a voter has cast a ballot, but that information is not uploaded instantaneously. Local election officials update that information for each election, and it takes several weeks for that to happen. That means that a copy of the database saved the day after the election would not contain the information you requested; we have to go several weeks after the election to be confident that local officials have had enough time to update the voter records."

straightforward task, as the precincts in both data sources use the same names. In other cases names are spelled differently, different abbreviations are used, or precincts are identified using a mix of precinct names and numbers, such that the two data sets must be carefully matched together, one precinct at a time.¹⁴ However, some counties could not be matched because the voter file included only precinct numbers, the election returns included only precinct names, and I did not have a way to match these together.¹⁵ Additionally, there were 20 precincts in the voter file across the other counties that could not be matched because there was not a correspondingly named precinct in the election returns. Finally, I removed an additional 18 precincts from the dataset where the number of voters in the voter file was less than 75% of the number of votes cast for that precinct in the election returns.

30. Overall, I was able to match voter file precincts to election return precincts for more than 90% of the 2018 general election voters from the voter file, and for more than 90% of the ballots cast from the precinct-level election returns. The unmatched areas are demographically similar to those that are matched. 90.4% of Black voters and 90.4% of white voters were matched to their election precinct. Consequently, the unmatched precincts should not bias the results of the ecological inference analysis.
31. Absentee and provisional ballots are recorded at the county level rather than the precinct level. I assigned absentee and provision votes for each candidate to individual precincts based on the precinct's share of the total in-precinct votes cast for that candidate in each county.¹⁶
32. Figures 3–7 present the results of the precinct-level ecological inference analyses.¹⁷ The first four figures present ecological inference estimates for each congressional district area separately. Figure 7 examines the entire focus area (statewide races only). For each contest examined, the text on the left identifies the candidate of choice for each demographic group.
33. In every election examined, in each congressional district and in the focus area as a whole, both African American and white voters have clearly identifiable candidates of choice, and in all cases African American and white voters cohesively support opposing candidates.

¹⁴ Some of the matching was facilitated using a file provided by the defendant that provided precinct names and numbers for some counties.

¹⁵ The following counties could not be matched and are excluded from the precinct-level analysis: Calhoun, Cherokee, Covington, Hale, Henry, Macon, Perry, Russell, Sumter, and Wilcox. Wilcox is excluded because there were a large number of precinct names that did not match between the two files.

¹⁶ Assigning absentee and provisional ballots to precincts has little impact on the ecological inference results; excluding these ballots does not substantively alter my results or conclusions.

¹⁷ Footnote: Tables 3–7 present the numerical estimated displayed in Figures 3–7.

34. The plot to the right in each figure displays the level of support by each group for the African American candidate of choice. The estimated level of support by African American voters is depicted with a black circle, and by white voters with a white circle. The vertical lines to either side of each circle mark the bounds of the 95% confidence intervals, which reflect uncertainty in the estimate.
35. In all cases, African American voters strongly support their candidate of choice, with an average estimated vote share in the focus area of 98.3%. White voters strongly oppose these candidates, with an average estimated vote share in the focus area of only 17.4%.
36. These results demonstrate high levels of racially polarized voting in the focus area and each congressional district individually. The average difference in support for the African American candidate of choice in each district was 78.7 percentage points in CD 1, 85.7 percentage points in CD 2, 81.9 percentage points in CD 3, 77.9 percentage points in CD 7, and 80.9 percentage points in the focus area.
37. Having identified the African American candidate of choice in each contest, I now turn to their ability to win elections in these districts. Table 8 presents the actual results of each election in each of the four congressional districts. For each election, I calculate the vote share obtained by the African American and white-preferred candidates.
38. In the 1st, 2nd, and 3rd Congressional Districts, the African American-preferred candidates lose the elections for U.S. House, as well as all seven statewide contests. In the 7th Congressional District alone, the African-American preferred candidate is able to win each election by large margins.¹⁸
39. The precinct-level analysis is fully consistent with the results of the county-level analysis. When comparing the racial polarization estimates for the focus area, the two analyses produce similar results and both analyses support the same conclusion: there is a high level of racially polarized voting in the focus area.

¹⁸ The African American candidates of choice won at least 70% of the vote in District 7 in every contest analyzed.

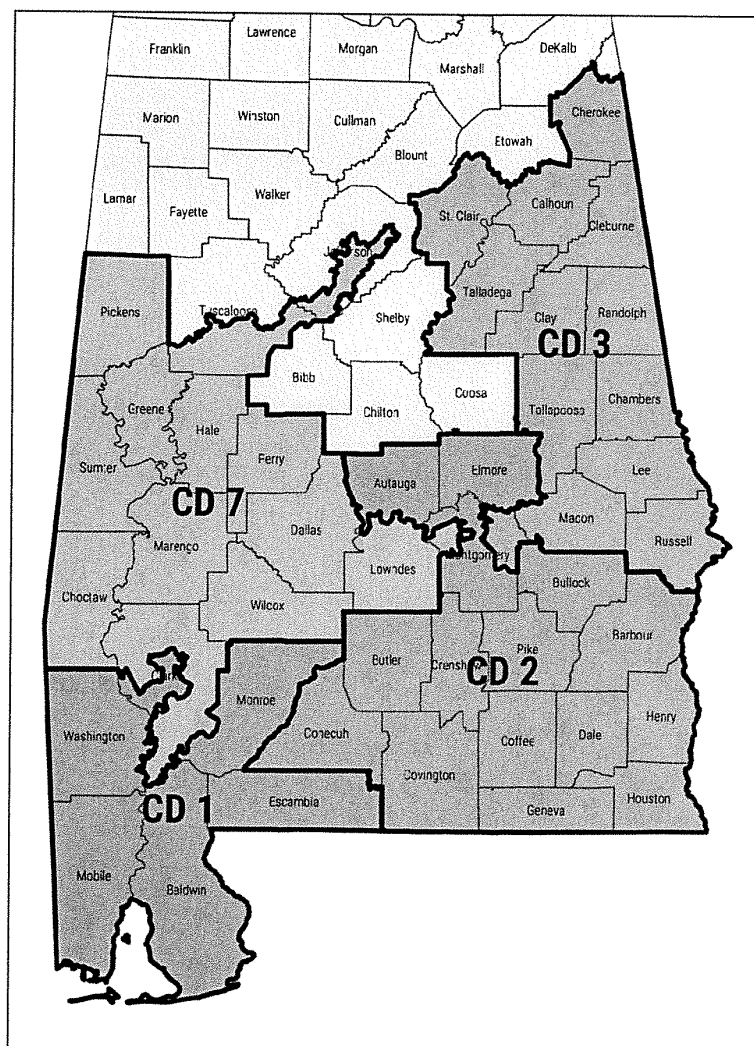


Figure 1: Map of Focus Area

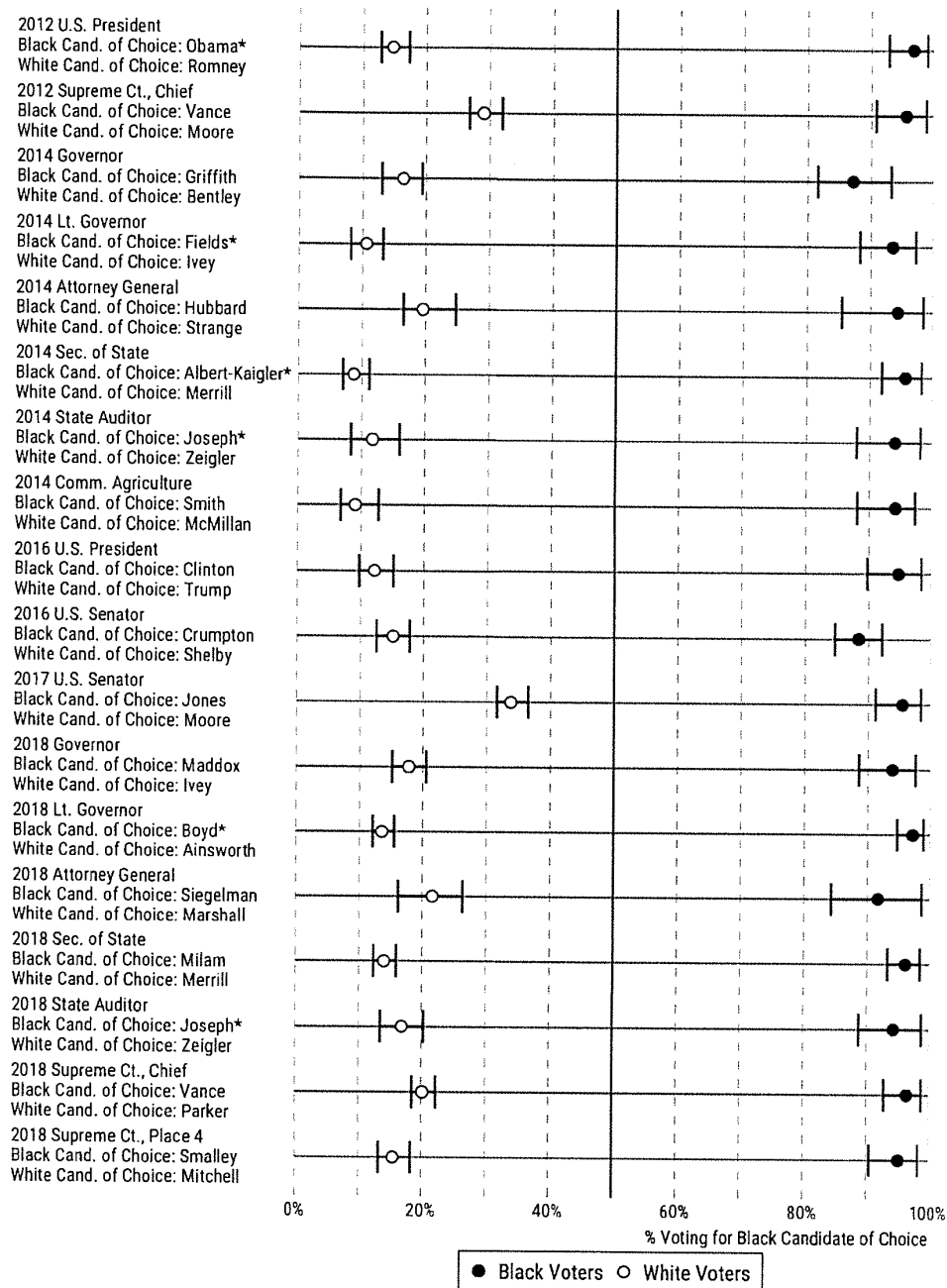


Figure 2: County-Level Ecological Inference Results

* indicates African American candidates.

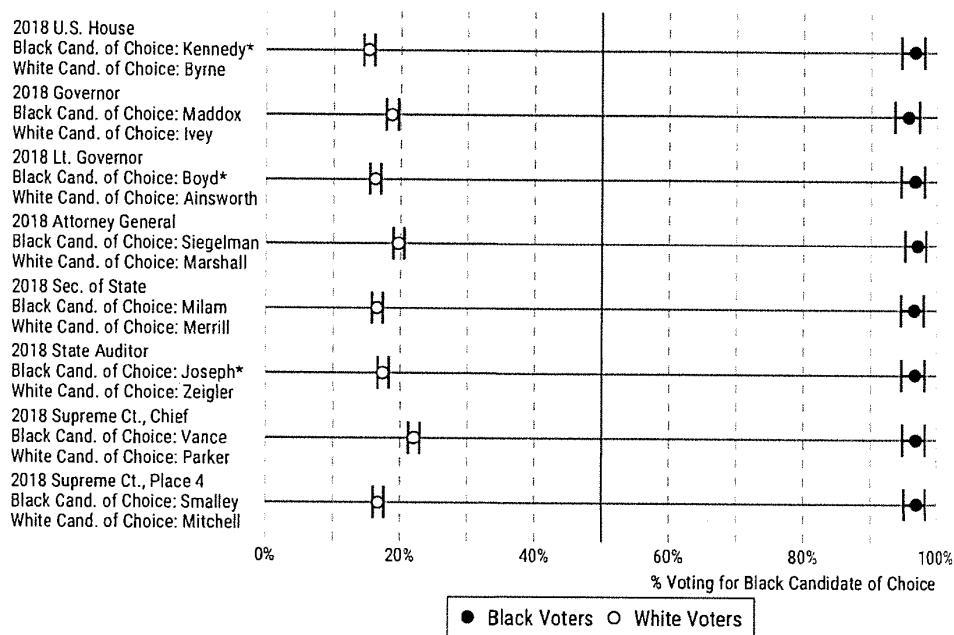


Figure 3: 2018 Precinct-Level Ecological Inference Results - CD 1

* indicates African American candidates.

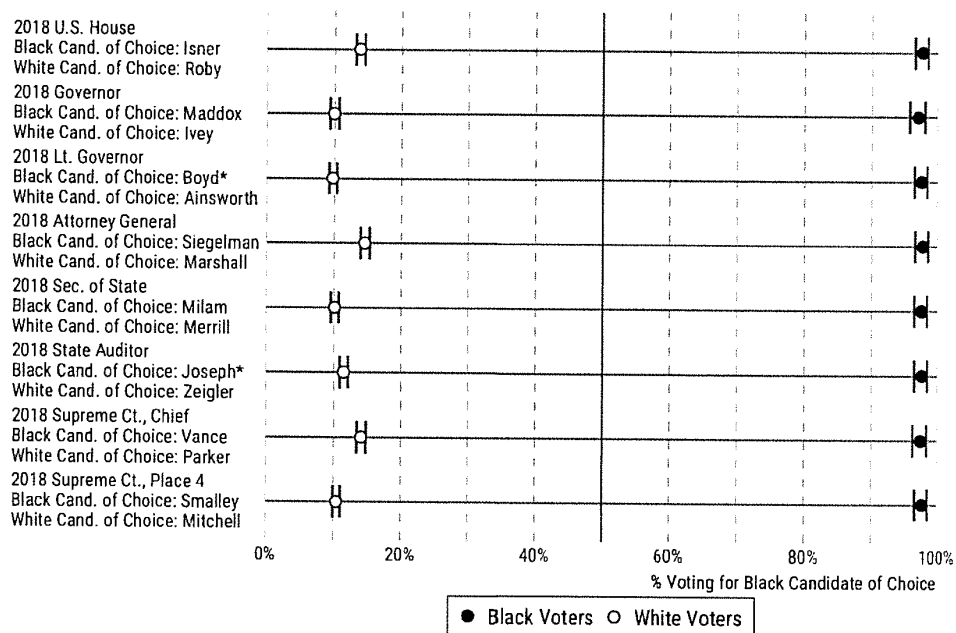


Figure 4: 2018 Precinct-Level Ecological Inference Results - CD 2

* indicates African American candidates.

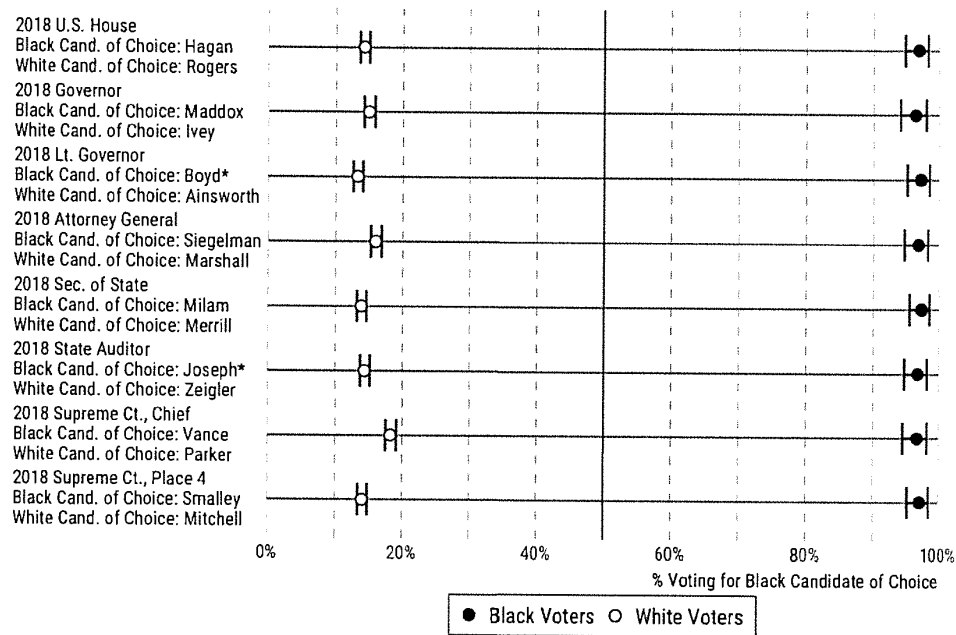


Figure 5: 2018 Precinct-Level Ecological Inference Results - CD 3

* indicates African American candidates.

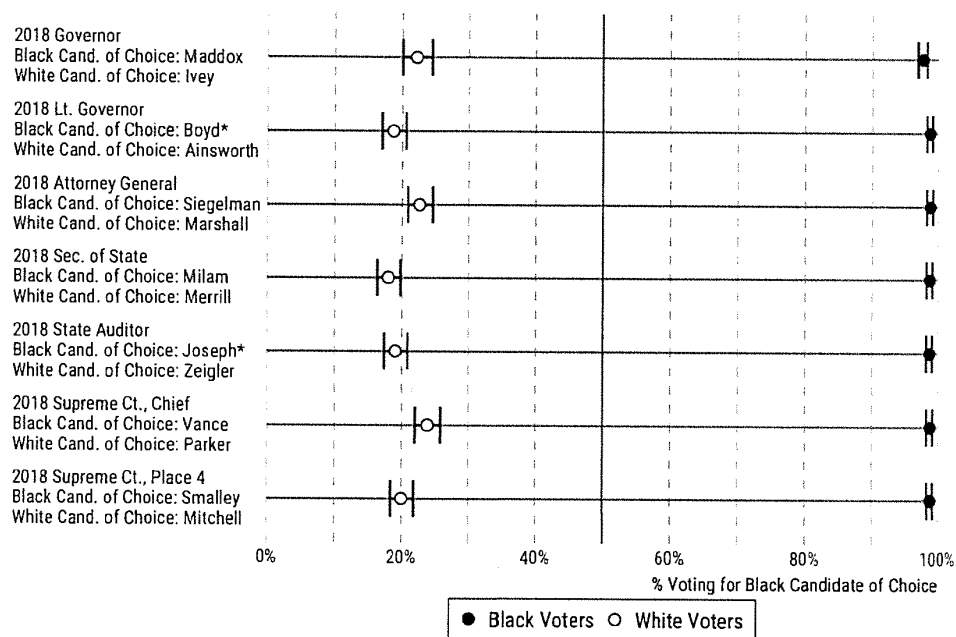


Figure 6: 2018 Precinct-Level Ecological Inference Results - CD 7

* indicates African American candidates.

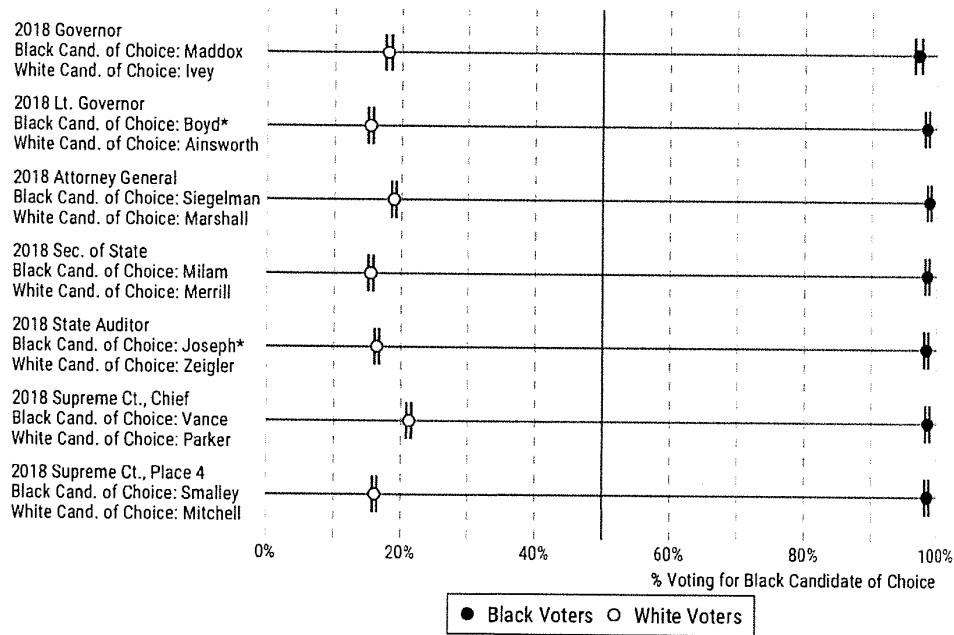


Figure 7: 2018 Precinct-Level Ecological Inference Results - Focus Area

* indicates African American candidates.

Table 1: County-Level Ecological Inference Results

Year	Election	Black Cand. of Choice	White Cand. of Choice	% Voting for Black Candidate of Choice		
				Black	White	Other
2012	U.S. President	Obama*	Romney	96.7 (92.8, 99.0)	14.7 (12.8, 17.3)	62.7 (30.6, 91.8)
	Supreme Ct., Chief	Vance	Moore	95.5 (90.8, 98.9)	29.1 (26.8, 31.9)	55.6 (25.3, 85.1)
2014	Governor	Griffith	Bentley	87.1 (81.6, 93.1)	16.4 (13.1, 19.4)	53.4 (20.8, 84.4)
	Lt. Governor	Fields*	Ivey	93.5 (88.3, 97.1)	10.6 (8.2, 13.3)	55.8 (12.6, 87.1)
	Attorney General	Hubbard	Strange	94.3 (85.5, 98.4)	19.6 (16.5, 24.8)	52.8 (19.4, 85.4)
	Sec. of State	Albert-Kaigler*	Merrill	95.6 (91.8, 98.2)	8.8 (7.1, 11.2)	60.5 (24.6, 86.2)
2016	State Auditor	Joseph*	Zeigler	94.0 (88.0, 98.1)	11.8 (8.4, 16.0)	55.1 (22.6, 87.1)
	Comm. Agriculture	Smith	McMillan	94.1 (88.1, 97.3)	9.1 (6.8, 12.8)	57.9 (21.7, 85.6)
	U.S. President	Clinton	Trump	94.6 (89.7, 98.3)	12.2 (9.8, 15.2)	57.1 (25.8, 82.3)
	U.S. Senator	Crumpton	Shelby	88.4 (84.7, 92.2)	15.2 (12.6, 17.8)	68.8 (34.9, 90.5)
2017	U.S. Senator	Jones	Moore	95.4 (91.1, 98.4)	33.7 (31.5, 36.4)	57.4 (25.3, 86.9)
2018	Governor	Maddox	Ivey	93.9 (88.5, 97.5)	17.8 (15.2, 20.5)	65.1 (28.8, 93.7)
	Lt. Governor	Boyd*	Ainsworth	97.1 (94.7, 98.9)	13.6 (12.1, 15.5)	71.1 (35.7, 92.8)
	Attorney General	Siegelman	Marshall	91.7 (84.3, 98.7)	21.6 (16.2, 26.4)	63.0 (31.0, 88.2)
	Sec. of State	Milam	Merrill	96.0 (93.2, 98.4)	14.0 (12.3, 15.9)	74.4 (44.7, 93.2)
Supreme Ct., Chief	State Auditor	Joseph*	Zeigler	94.2 (88.7, 98.8)	16.9 (13.5, 20.3)	65.3 (34.0, 90.4)
	Supreme Ct., Place 4	Vance	Parker	96.3 (92.8, 98.8)	20.2 (18.5, 22.3)	67.8 (37.7, 90.2)
		Smalley	Mitchell	95.1 (90.5, 98.2)	15.5 (13.2, 18.3)	71.4 (43.3, 91.7)

Table 2: Actual Election Results

* indicates African American candidates

Contest	Black Preferred Cand.		White Preferred Cand.	
	Name	Vote Share	Name	Vote Share
2012 U.S. President	Obama*	43.9	Romney	56.1
2012 Supreme Ct., Chief	Vance	52.5	Moore	47.5
2014 Governor	Griffith	41.8	Bentley	58.2
2014 Lt. Governor	Fields*	40.9	Ivey	59.1
2014 Attorney General	Hubbard	46.8	Strange	53.2
2014 Sec. of State	Albert-Kaigler*	40.5	Merrill	59.5
2014 State Auditor	Joseph*	41.6	Zeigler	58.4
2014 Comm. Agriculture	Smith	40.1	McMillan	59.9
2016 U.S. President	Clinton	41.4	Trump	58.6
2016 U.S. Senator	Crumpton	41.0	Shelby	59.0
2017 U.S. Senator	Jones	56.0	Moore	44.0
2018 Governor	Maddox	45.4	Ivey	54.6
2018 Lt. Governor	Boyd*	44.0	Ainsworth	56.0
2018 Attorney General	Siegelman	46.4	Marshall	53.6
2018 Sec. of State	Milam	44.2	Merrill	55.8
2018 State Auditor	Joseph*	44.7	Zeigler	55.3
2018 Supreme Ct., Chief	Vance	47.8	Parker	52.2
2018 Supreme Ct., Place 4	Smalley	44.5	Mitchell	55.5

Table 3: 2018 Precinct-Level Ecological Inference Results - CD 1

* indicates African American candidates

Election	Black Cand. of Choice	White Cand. of Choice	% Voting for Black Candidate of Choice	Black	White	Other
U.S. House	Kennedy*	Byrne	96.5 (94.5, 97.9)	15.2 (14.4, 16.0)	70.8 (51.8, 86.6)	
Governor	Maddox	Ivey	95.6 (93.5, 97.2)	18.7 (17.8, 19.7)	73.2 (50.3, 89.3)	
Lt. Governor	Boyd*	Ainsworth	96.6 (94.5, 98.0)	16.2 (15.4, 17.1)	71.6 (49.3, 89.4)	
Attorney General	Siegelman	Marshall	96.9 (95.1, 98.2)	19.7 (19.0, 20.5)	77.3 (59.5, 90.3)	
Sec. of State	Milam	Merrill	96.4 (94.5, 97.9)	16.5 (15.8, 17.4)	74.8 (53.6, 89.2)	
State Auditor	Joseph*	Zeigler	96.6 (94.6, 98.0)	17.4 (16.6, 18.3)	73.3 (52.9, 88.3)	
Supreme Ct., Chief	Vance	Parker	96.7 (94.7, 98.1)	22.0 (21.3, 22.9)	77.1 (59.4, 91.6)	
Supreme Ct., Place 4	Smalley	Mitchell	96.9 (95.0, 98.2)	16.7 (16.0, 17.6)	74.8 (53.0, 89.2)	

Table 4: 2018 Precinct-Level Ecological Inference Results - CD 2

* indicates African American candidates

Election	Black Cand. of Choice	White Cand. of Choice	% Voting for Black Candidate of Choice			
			Black	White	Other	
U.S. House	Isner	Roby	97.5 (96.4, 98.4)	13.8 (13.2, 14.5)		79.2 (62.9, 90.4)
Governor	Maddox	Ivey	96.9 (95.6, 97.9)	10.0 (9.3, 10.7)		80.0 (62.1, 91.8)
Lt. Governor	Boyd*	Ainsworth	97.5 (96.4, 98.3)	9.8 (9.2, 10.4)		86.3 (71.0, 94.9)
Attorney General	Siegelman	Marshall	97.6 (96.5, 98.5)	14.6 (13.9, 15.3)		78.4 (60.3, 90.0)
Sec. of State	Milam	Merrill	97.5 (96.4, 98.3)	10.1 (9.6, 10.8)		83.3 (68.9, 92.7)
State Auditor	Joseph*	Zeigler	97.5 (96.4, 98.3)	11.5 (10.9, 12.1)		83.4 (70.6, 92.1)
Supreme Ct., Chief	Vance	Parker	97.4 (96.1, 98.3)	14.1 (13.5, 14.8)		81.8 (66.6, 92.2)
Supreme Ct., Place 4	Smalley	Mitchell	97.6 (96.5, 98.4)	10.4 (9.9, 11.0)		86.0 (73.4, 93.8)

Table 5: 2018 Precinct-Level Ecological Inference Results - CD 3

* indicates African American candidates.

Election	Black Cand. of Choice	White Cand. of Choice	% Voting for Black Candidate of Choice	Black	White	Other
U.S. House	Hagan	Rogers	96.7 (94.7, 98.1)	14.2 (13.6, 15.0)	82.5 (64.4, 93.4)	
Governor	Maddox	Ivey	96.3 (94.0, 97.9)	14.9 (14.2, 15.8)	76.8 (55.3, 91.0)	
Lt. Governor	Boyd*	Ainsworth	97.1 (95.0, 98.4)	13.3 (12.7, 14.0)	83.2 (65.9, 93.7)	
Attorney General	Siegelman	Marshall	96.7 (94.6, 98.2)	16.0 (15.3, 16.9)	79.0 (55.9, 92.8)	
Sec. of State	Milam	Merrill	97.2 (95.4, 98.5)	13.9 (13.2, 14.6)	80.7 (62.1, 93.0)	
State Auditor	Joseph*	Zeigler	96.6 (94.7, 98.1)	14.4 (13.7, 15.2)	80.1 (60.4, 92.2)	
Supreme Ct., Chief	Vance	Parker	96.6 (94.4, 98.1)	18.3 (17.5, 19.2)	77.7 (54.9, 92.0)	
Supreme Ct., Place 4	Smalley	Mitchell	97.1 (95.2, 98.4)	14.1 (13.4, 14.9)	81.4 (61.3, 93.6)	

Table 6: 2018 Precinct-Level Ecological Inference Results - CD 7

* indicates African American candidates.

Election	Black Cand. of Choice		White Cand. of Choice		% Voting for Black Candidate of Choice	
					Black	White
Governor	Maddox	Ivey			97.5 (96.8, 98.2)	22.2 (20.0, 24.5)
Lt. Governor	Boyd*	Ainsworth			98.7 (98.1, 99.1)	18.7 (17.0, 20.6)
Attorney General	Siegelman	Marshall			98.7 (98.1, 99.1)	22.6 (20.9, 24.6)
Sec. of State	Milam	Merrill			98.7 (98.1, 99.1)	18.0 (16.3, 19.8)
State Auditor	Joseph*	Zeigler			98.6 (98.1, 99.0)	19.0 (17.4, 20.9)
Supreme Ct., Chief	Vance	Parker			98.7 (98.2, 99.1)	23.8 (22.0, 25.8)
Supreme Ct., Place 4	Smalley	Mitchell			98.7 (98.2, 99.1)	20.0 (18.4, 21.8)
						49.5 (31.5, 70.7)
						70.4 (59.1, 82.0)
						74.7 (64.2, 85.0)
						70.8 (58.9, 83.1)
						69.0 (58.0, 80.0)
						80.1 (69.9, 90.1)
						75.9 (66.3, 85.0)

Table 7: 2018 Precinct-Level Ecological Inference Results - Focus Area

* indicates African American candidates.

Election	Black Cand. White Cand.		% Voting for Black Candidate of Choice		
	of Choice	of Choice	Black	White	Other
Governor	Maddox	Ivey	97.0 (96.4, 97.5)	18.0 (17.6, 18.4)	88.3 (80.3, 93.4)
Lt. Governor	Boyd*	Ainsworth	98.4 (98.0, 98.7)	15.4 (15.0, 15.7)	87.1 (80.1, 91.9)
Attorney General	Siegelman	Marshall	98.8 (98.4, 99.1)	18.9 (18.5, 19.2)	88.0 (81.7, 93.0)
Sec. of State	Milam	Merrill	98.4 (98.1, 98.8)	15.5 (15.1, 15.8)	86.9 (80.8, 92.1)
State Auditor	Joseph*	Zeigler	98.3 (97.9, 98.7)	16.4 (16.1, 16.8)	87.9 (82.3, 92.4)
Supreme Ct., Chief	Vance	Parker	98.5 (98.1, 98.9)	21.2 (20.8, 21.6)	89.5 (84.6, 93.3)
Supreme Ct., Place 4	Smalley	Mitchell	98.5 (98.1, 98.8)	16.1 (15.8, 16.5)	89.4 (84.5, 93.2)

Table 8: 2018 Election Results by Congressional District

Contest	Black Pref. Cand.	White Pref. Cand.	CD 1		CD 2		CD 3		CD 7	
			Black	White	Black	White	Black	White	Black	White
U.S. House, Dist. 1	Kennedy*	Byrne	36.8	63.2						
U.S. House, Dist. 2	Isner	Roby			37.6	62.4				
U.S. House, Dist. 3	Hagan	Rogers					35.9	64.1		
Governor	Maddox	Ivey	39.3	60.7	34.9	65.1	36.2	63.8	71.8	28.2
Lt. Governor	Boyd*	Ainsworth	37.6	62.4	34.9	65.1	35.4	64.6	71.4	28.6
Attorney General	Siegelman	Marshall	40.2	59.8	38.1	61.9	37.2	62.8	72.7	27.3
Sec. of State	Milam	Merrill	37.8	62.2	35.1	64.9	35.6	64.4	71.2	28.8
State Auditor	Joseph*	Zeigler	38.5	61.5	35.9	64.1	35.9	64.1	71.5	28.5
Supreme Ct., Chief	Vance	Parker	41.8	58.2	37.5	62.5	38.7	61.3	73.3	26.7
Supreme Ct., Place 4	Smalley	Mitchell	38.0	62.0	35.3	64.7	35.8	64.2	71.9	28.1

This table lists the vote shares received by the Black- and white-preferred candidates in each 2018 election contest by congressional district. The second and third columns identify the preferred candidates of each group, which are the same in each congressional district. The following columns list the vote shares received by the black- and white-preferred candidates in each district. Precincts split between multiple congressional districts are excluded. All of Cherokee County is included in CD 3. * indicates African American candidates.

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REFEREED PUBLICATIONS Palmer, Maxwell and Benjamin Schneer. Forthcoming. “Post-Political Careers: How Politicians Capitalize on Public Office.” *Journal of Politics*.

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- BOOK
MANUSCRIPT *Neighborhood Defenders: Participatory Politics and America's Housing Crisis* (with Katherine Levine Einstein and David M. Glick). Under Contract, Cambridge University Press.
- OTHER
PUBLICATIONS Ansolabehere, Stephen and Maxwell Palmer. 2016. "A Two Hundred-Year Statistical History of the Gerrymander." *Ohio State Law Journal* 77(4): 741–762.
- Ansolabehere, Stephen, Maxwell Palmer, and Benjamin Schneer. 2016. "What Has Congress Done?" in *Governing in a Polarized Age: Elections, Parties, and Political Representation in America*, eds. Alan Gerber and Eric Schickler. New York, NY: Cambridge University Press.
- POLICY
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- WORKING
PAPERS "Rainmakers: Former Politicians as Lobbyists" (with Pamela Ban and Benjamin Schneer). Invited to Revise and Resubmit, *Legislative Studies Quarterly*.
- "Racial Disparities in Housing Politics: Evidence from Administrative Data" (with Katherine Levine Einstein and David M. Glick). *Under Review*.
- "The Gender Pay Gap in Congressional Offices" (with Joshua McCrain).
- "Descended from Immigrants and Revolutionists: How Immigrant Experience Shapes Congressional Decision-making on Immigration Votes" (with James Feigenbaum and Benjamin Schneer).
- "Reexamining the Gender Gap in Support of War" (with Katherine Krimmel and Douglas Kriner).
- "Corporate Political Activity as a Bundle of Goods" (with Daniel Moskowitz and Benjamin Schneer).
- GRANTS
AND AWARDS The Rockefeller Foundation, "Menino Survey of Mayors" (Co-principal investigator). 2017. \$325,000.
- Hariri Institute for Computing, Boston University. Junior Faculty Fellow. 2017.

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The Rockefeller Foundation, “2017 Menino Survey of Mayors” (Co-principal investigator). 2017. \$100,000.

The Center for Finance, Law, and Policy, Boston University, Research Grant for “From the Capitol to the Boardroom: The Returns to Office from Corporate Board Directorships,” 2015.

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The Center for American Political Studies, Dissertation Research Fellowship on the Study of the American Republic, 2013–2014.

The Tobin Project, Democracy and Markets Graduate Student Fellowship, 2013–2014.

The Dirksen Congressional Center, Congressional Research Award, 2013.

The Institute for Quantitative Social Science, Conference Travel Grant, 2014.

The Center for American Political Studies, Graduate Seed Grant for “Capitol Gains: The Returns to Elected Office from Corporate Board Directorships,” 2014.

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"Corporate Political Activity as a Bundle of Goods," Annual Meeting of the American Political Science Association, Philadelphia, PA, 2016.

"Congressional Gridlock," American Studies Summer Institute, John F. Kennedy Presidential Library and Museum, 2016.

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"The Corporate Boardroom's Revolving Door," Annual Meeting of the American Political Science Association, San Francisco, CA, 2015.

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"A Two Hundred-Year Statistical History of the Gerrymander," Congress and History Conference, Vanderbilt University, 2015.

"A New (Old) Standard for Geographic Gerrymandering," Harvard Ash Center Workshop: How Data is Helping Us Understand Voting Rights After Shelby County, 2015.

"Capitol Gains: The Returns to Elected Office from Corporate Board Directorships," Boston University Center for Finance, Law, and Policy, 2015.

"Does the Chief Justice Make Partisan Appointments to Special Courts and Panels?" Annual Meeting of the American Political Science Association, Washington, DC, 2014.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LAKEISHA CHESTNUT, an individual; *
MARLENE MARTIN, an individual; * 2:18-cv-00907-KOB
BOBBY DUBOSE, an individual; * November 4, 2019
RODNEY LOVE, an individual; KAREN * Birmingham, Alabama
JONES, an individual; JANICE * 9:00 a.m.
WILLIAMS, an individual; RODERICK *
CLARK, an individual; JOHN HARRIS, *
an individual, *
Plaintiffs, *
vs. *
JOHN H. MERRILL, in his official *
capacity as Alabama Secretary of *
State, *
Defendant. *

TRANSCRIPT OF BENCH TRIAL
VOLUME I
BEFORE THE HONORABLE KARON O. BOWDRE
CHIEF UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(In open court.)

THE COURT: You may be seated.

As I stated informally this morning, I think I'm fairly familiar with the issues in the case based upon the excellent briefs that were submitted for pretrial, so we can dispense with any preliminary opening statements. So plaintiff may call your first witness.

MR. SPIVA: Thank you, Your Honor.

I wanted to introduce to the Court my colleagues here. I think you might have met most of them, but beside me is my partner Abha Khanna; my colleague, Lalitha Madduri; Dan Osher also my colleague; and our -- I know you of course know Richard Rouco, our co-counsel.

THE COURT: Yes. Yes.

MR. SPIVA: We call as our first witness, Your Honor, Bill Cooper, William Cooper.

THE COURT: Okay.

MR. SPIVA: Your Honor, just FYI, we have put some exhibit books up on your -- up at the podium -- not the podium, forgetting the word, but, yeah.

THE COURT: Those big ones over there with a few little exhibits?

MR. SPIVA: A few little. But I think we're mainly going to be in Volume 1. And we will also put them up on the

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1 screen when we're discussing them. So if Your Honor is fine
2 with that...

3 THE COURT: I certainly am. I do like to have my own
4 copy so that I can highlight them and mark them as -- to make
09:14:56 5 it easier to go back and find what I may be looking for.

6 MR. SPIVA: Sure. Sure. I totally understand. So I
7 think we'll be mainly in the Volume 1 of the paper copy this
8 morning.

9 THE COURT: Okay. All right. Good.
09:15:11 10 All right.

11 WILLIAM COOPER,
12 having been first duly sworn by the courtroom deputy clerk, was
13 examined and testified as follows:

14 THE COURTROOM DEPUTY CLERK: Will you please state
09:15:27 15 your name in the microphone for the record?

16 THE WITNESS: My name is William S. Cooper.

17 DIRECT EXAMINATION

18 BY MR. SPIVA:

19 Q Good morning, Mr. Cooper. I won't ask you to state your
09:15:38 20 full name for the record because you just did that.

21 You have been retained as an expert for the plaintiffs in
22 this case; is that right?

23 A That is correct.

24 Q And have you prepared a declaration or declarations in
09:15:53 25 connection with your retention as an expert?

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1 A I have.

2 Q Let me turn your attention to Plaintiffs' Exhibit 1. And
3 if we can pull that up on the screen. And if you can take a
4 look in your notebook, Mr. Cooper.

09:16:11 5 Is that the first declaration that you prepared in this
6 case?

7 A Yes.

8 Q And let me ask you to turn to page 3 --

9 MR. WALKER: May I interrupt you for a second? We're
09:16:31 10 not getting -- oh, okay. I'm sorry.

11 MR. SPIVA: Technical difficulties.

12 THE COURT: A little small delay there. It's normal.

13 BY MR. SPIVA:

14 Q And, actually, you know what? I kind of jumped the gun, I
09:16:45 15 think, on the screen anyhow because I want to ask you a couple
16 more general questions before we actually turn to the report.

17 Let's start with a little bit about your background. What
18 is your profession, Mr. Cooper?

19 A I provide -- I'm a private consultant. And I provide
09:17:00 20 technical assistance to various organizations here and there
21 around the country focusing primarily on computer mapping and
22 analysis, socioeconomic data, both spatially and tabular data.

23 So a lot of my work is related to redistricting, but I
24 have also provided assistance to other projects. For example,
09:17:26 25 every year I work on a nationwide project with the Food

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1 Research and Action Center to identify areas with high
2 percentages of children who live in poverty who would qualify
3 for the summer food program or child care food program
4 sponsored by the U.S. Department of Agriculture. So that's
09:17:44 5 sort of a nationwide project.

6 Q Okay. And, Mr. Cooper, just -- I'll just ask you if you
7 can slow down just a little bit because the court reporter is
8 trying to get everything down. And I know you have a tendency
9 sometimes to start speaking a little bit quickly. So you're
09:17:58 10 doing fine, but just to remember that.

11 Would you say that you are a Geographic Information
12 Systems consultant, Mr. Cooper?

13 A Yes, in terms of the application of the GIS software. I
14 don't design or develop the underlying code.

09:18:16 15 Q And how long have you been doing that?

16 A Basically since the mid '80s, late '80s, really, was about
17 the time that the first kinds of GIS software were available to
18 run off a personal computer, which is what I use.

19 Q And what is the area of expertise that you applied in this
09:18:43 20 case?

21 A I was specifically asked to determine whether or not it
22 would be possible to draw a congressional redistricting plan in
23 Alabama that would allow for two majority black congressional
24 districts out of seven, while at the same time adhering to what
09:19:05 25 are known as traditional redistricting principles.

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1 Q And in doing that, did you apply your expertise in
2 redistricting and census data?

3 A Yes.

4 Q Have you served as an expert witness in cases involving
09:19:20 5 redistricting before?

6 A I have. I've testified probably in close to 40 cases in
7 person, and primarily in Section 2 cases. There have been a
8 handful of cases that were not strictly Section 2 cases where
9 I've testified that involved voting districts. And probably in
09:19:44 10 another 40 I've submitted declarations, but in those cases for
11 one reason or another the case did not advance to a
12 full-fledged trial.

13 Q And have you served as an expert in Alabama previously?

14 A I have. I was the plaintiffs' expert in the Alabama
09:20:03 15 Legislative Black Caucus case that was finally decided in terms
16 of remedial plans in 2017. I first began working on that case
17 I think in the summer of 2012. I've -- and I testified in that
18 particular case.

19 I also testified here in this very courtroom in 2016 in a
09:20:29 20 school de-annexation case involving Jefferson County and the
21 proposed new school system that would have been in Gardendale.
22 And I was working with the legal defense fund as the
23 plaintiffs' expert in that case, which was a school
24 desegregation case going back 50 years actually.

09:20:49 25 Q And have you -- did you also testify in the *Alabama State*

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1 Conference of the NAACP vs. Alabama, which I think oftentimes
2 is referred to as the "Judges Case"?

3 A Yes. I testified in that case in Montgomery, Alabama,
4 exactly one year ago today. This first part of November was
09:21:07 5 when that trial was held last year.

6 Q And what did that case involve? What did your testimony
7 in that case involve?

8 A Again, I was a GIS expert. So I prepared a set of
9 illustrative plans for the plaintiffs for the State Supreme
09:21:24 10 Court, a nine-district configuration, and an eight-district
11 configuration, with one at-large chief judge would be elected
12 at large under those illustrative plans. And then also I
13 prepared several illustrative plans for the state appellate
14 courts divided into five districts, because I think there were
09:21:47 15 only five judges.

16 Q And forgive me if I missed it, but did you already mention
17 the City of Decatur and/or the Pleasant Grove cases?

18 A I did not mention them. I have not testified in those
19 cases, but I have filed declarations.

09:22:03 20 And the Pleasant Grove case has now been resolved. The
21 consent decree, I think, results in a cumulative voting plan
22 for the city of Pleasant Grove here in Jefferson County.

23 Q Is that --

24 A I prepared illustrative plans in that case as part of a
09:22:23 25 short declaration about a year ago.

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1 Q And that was a districting case?

2 A Yes. Section 2.

3 Q And what about the City of Decatur case?

4 A That one is a -- I'm actually working for the defendants
09:22:35 5 in that case. And I've not testified in court. It's still an
6 ongoing case. But I have filed a couple of declarations.

7 It involves obviously the city of Decatur and Morgan
8 County and whether or not the city can proceed to follow
9 through on a referendum vote from seven -- well, ten years ago,
09:23:00 10 I think, almost in 2010 which would change, if enacted or
11 adopted, the election system in Decatur from a five
12 single-member district plan to three single-member districts
13 and two at-large positions.

14 Q And you said that you are working on behalf of the
09:23:20 15 defendant in that case?

16 A Yes.

17 Q Have you, other than that case, the City of Decatur case,
18 have you ever worked on behalf of or testified on behalf of
19 defendants rather than plaintiffs?

09:23:30 20 A I was briefly engaged as a consultant to the city of
21 Calera in 2009 as they were attempting to get preclearance on a
22 voting plan. And I drew some illustrative plans suggesting to
23 them that it was not possible to draw a majority black district
24 in Calera given the population's changed since the '80s when
09:23:55 25 the initial plan was adopted, I think. And I suggested they

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1 should consider adopting a plan that would involve cumulative
2 voting as another alternative to a districting system, and
3 that's what they did.

4 Q Have you served as an expert in any of -- any lawsuits
09:24:12 5 that have resulted in changes to districting plans?

6 A In Alabama or --

7 Q Anywhere.

8 A Yes, I have. Many over the years.

9 Q And are those -- maybe I will refer you to Plaintiffs'
09:24:29 10 Exhibit 1, which is your first declaration, paragraphs 5 and 7,
11 which appear on pages 2 and 3 of that report.

12 Does that summarize the cases where you testified that
13 resulted in districting plans being adopted as a result of your
14 testimony?

09:24:53 15 A Yes, at least going back to 2011. Section 2 cases only.
16 I have been involved in some other cases.

17 Q Okay. And referring you to paragraph 2 of your report,
18 which spans from pages 1 to 2, were those statewide cases in
19 which you've testified?

09:25:26 20 A Yes. Over the years, I've been involved in several cases
21 that involved statewide legislative boundaries.

22 In the '90s, I was involved in a case in rural west
23 Tennessee that ultimately led to the creation of a new majority
24 black district in northwest Tennessee outside of the Memphis
09:25:50 25 metro area. That case was captioned *Rural West Tennessee*

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1 *African-American Affairs Council vs. McWhorter.*

2 I also was involved in a state legislative case in Montana
3 called *Old Person vs. Cooney* that spanned a couple of decades.
4 I think I worked on that one from like 1991 until sometime in
09:26:12 5 early 2002. Ultimately that led to the creation of a couple
6 new Indian majority districts in Montana that encompassed the
7 reservation areas in the state.

8 And the same thing with *Bone Shirt vs. Hazeltine*. That
9 was a lawsuit filed in the early 2000s in South Dakota, and it
09:26:34 10 created I think two new Indian majority House districts and one
11 new Indian majority Senate district. And in that case, the
12 Court ordered the plan that I had developed as a remedial plan
13 into place. It was a court-ordered plan.

14 Q And, of course, you have already testified about the
09:26:54 15 Alabama Legislative Black Caucus case?

16 A Right.

17 Q And then is it accurate to say that you've testified in
18 five cases since 2011 that have resulted in redistricting? I
19 think that's at paragraph 5. Does that summarize that -- I
09:27:16 20 don't need you to walk through each one of them, but I just
21 want to make sure I have got that right.

22 A Yes. Those are the five Section 2 cases, or at least
23 five cases that were decided on Section 2.

24 The one case that I spent a lot of time on was *Navajo*
09:27:36 25 *Nation v. San Juan County*. That was both a Section 2 case, but

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1 I think there were some constitutional issues. And ultimately
2 the judge determined that he did not need to rule on Section 2
3 because he had already ruled on the constitutional issues. And
4 we won the case. We -- the Navajo Nation -- obviously serving
09:27:51 5 as the Navajo Nation's expert in *Gingles 1*.

6 Q And I think you have already mentioned the consent decree
7 cases that are set forth in paragraph 6; is that right?

8 A Yes.

9 Q Okay. And if we could pull up Plaintiffs' Exhibit 2,
09:28:12 10 which I believe is Exhibit A to your first report.

11 Mr. Cooper, is your experience detailed more thoroughly in
12 Exhibit A to your expert report?

13 A Yes. This just basically reviews all the voting cases
14 I've been in since the late 1980s by state. And the case
09:28:40 15 caption along with a rough date as to when I was involved in
16 the case.

17 Q Okay. Have you testified in any of these cases regarding
18 socioeconomic conditions in the states that you were working
19 in?

09:28:57 20 A I would have in most of them, because most of these are
21 Section 2 cases. And almost always as part of my testimony I
22 did provide information about socioeconomic disparities as it
23 relates to the majority white population vis-a-vis the minority
24 group at issue.

09:29:17 25 Q And what type of data do you review in those cases

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1 regarding socioeconomic conditions?

2 A I think almost always it is Census Bureau produced data in
3 the '90s and '80s. And even most of the 2000s I relied on
4 information from the census long form, which was a sample of
09:29:45 5 all persons who participated in the decennial census.

6 And in the late 2000s, the Census Bureau shifted to
7 another approach and began to compile information from what is
8 known as the American Community Survey, and which is also
9 sample based, but it is issued on an annual basis to one out of
09:30:08 10 every 42 households.

11 So in this particular Section 2 case, as well as I think
12 almost all of the ones since 2010 I've relied on the American
13 Community Survey data set, because there was no long form
14 option with the 2010 census. So all socioeconomic data that is
09:30:29 15 highly detailed, anyway, would come from the American Community
16 Survey.

17 Q Okay. And I will probably have some more questions for
18 you about that when we get more into the opinions.

19 Have you ever been qualified as an expert in redistricting
09:30:42 20 and demographics in the cases that you have testified in?

21 A Yes. In most of the cases, going all the way back to the
22 '80s, I would have been qualified as an expert in redistricting
23 and demographics. It's possible there may have been some when
24 I was only qualified as an expert in redistricting for one
09:31:01 25 reason or another, particularly the ones that were not Section

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1 2 cases where I was not presenting socioeconomic data.

2 For example, I don't remember with the ALBC case. I don't
3 believe I presented any socioeconomic data. So I may have just
4 been -- sorry. So I may have just been qualified as an expert
09:31:18 5 in redistricting in that case.

6 Q Okay. Have you ever been -- has the Court ever found you
7 not qualified in either the areas of redistricting or
8 demographics?

9 A Not to my knowledge.

09:31:30 10 Q And when you serve as an expert in these types of cases,
11 what sorts of analysis do you with regards to redistricting?

12 A Well, I work with the census data that one would typically
13 use when drawing election plans, and that would be the Census
14 Bureau's P.L. 94-171 file that is released right after the
09:32:03 15 Census Bureau has compiled all of the census data nationwide.
16 So it's the first release out typically in the month of
17 February of the year after the decennial census.

18 So in 2011, the first -- the first few states were
19 released in the month of February, and then most were
09:32:22 20 completely released by the end of March. And I assume that
21 will be the same in 2021.

22 So that's the primary data set that I use, because when
23 producing election plans particularly for congressional and
24 state legislative redistricting, you have to rely on the 2010
09:32:41 25 census. So any plan I develop starts with that basic

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1 information.

2 I may have access to other data, like as in this case
3 where I was also able to rely on the American Community Survey
4 to get some estimates of the citizen voting age population and
09:33:00 5 the various plans I produced, as well as citizen voting age
6 population in the 2011 plan, for example, that I break out in
7 my report.

8 Q And we'll get to that in a minute.

9 A Yeah.

09:33:12 10 Q I guess my question really is more broad. I mean, do you,
11 in terms of redistricting, are you often called upon to create
12 illustrative plans in the cases that you have testified in?

13 A Oh, yes, almost always. Any redistrict case I am almost
14 always called on to develop an alternative plan.

09:33:33 15 Q And is there -- you've mentioned the census data. Is
16 there a type of GIS software that you typically use in those
17 cases?

18 A Yes. I use Maptitude for redistricting, which is a
19 well-known software application for redistricting analysis, as
09:33:54 20 well as other forms of socioeconomic analysis. So that is the
21 program I use. I've been using it since the late 1990s for
22 redistricting purposes.

23 Prior to that, I used another product from the same
24 company that was not Windows based. It was Microsoft-DOS
09:34:15 25 based. It was an older program. But it worked quite well.

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1 Q And in terms of -- you already testified that you have
2 done work with census data in terms of looking at disparities
3 between racial groups in other cases; is that right?

4 A Yes.

09:34:33 5 Q Okay.

6 MR. SPIVA: So, Your Honor, at this time, we'd just
7 ask that Mr. Cooper be qualified to testify as an expert in
8 redistricting and demographics.

9 THE COURT: Is there any objection?

09:34:44 10 MR. WALKER: No objection, Your Honor.

11 THE COURT: The Court recognizes Mr. Cooper as
12 qualified as an expert in this case.

13 MR. SPIVA: Thank you, Your Honor.

14 BY MR. SPIVA:

09:34:52 15 Q Can you tell the Court, Mr. Cooper, what you were asked to
16 do in this case?

17 A Well, at the outset, I was specifically asked to determine
18 whether the first *Gingles* precondition could be met while also
19 adhering to traditional redistricting principles.

09:35:13 20 In other words, the issue was whether a second majority
21 black district could be created in Alabama that would be
22 reasonably compact, contiguous, not dilute the minority vote,
23 respect communities of interest, and also keep incumbents in a
24 different district so there were no incumbent conflicts.

09:35:39 25 Q What was the second thing you were asked to do in this

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1 case?

2 A I was also just asked to review demographic data from
3 recent decades from the decennial census, and as we just
4 reviewed or discussed, analyze the socioeconomic data to
09:35:56 5 determine whether or not the black population and white
6 population have different socioeconomic profiles.

7 Q Okay. And you've already I think testified that
8 Plaintiffs' Exhibit 1 is your first declaration in this case.

9 If you could just turn for a minute to Plaintiffs'
09:36:19 10 Exhibit 59, and if you can confirm whether that is the second
11 declaration you prepared and provided in this case?

12 A Yes.

13 Q And have you made any changes to either the first or
14 second declaration since you've prepared them?

09:36:40 15 A Yes. I corrected some typos.

16 MR. SPIVA: Okay. And just for the record, by
17 agreement the correct versions are Plaintiffs' Exhibit 1 and
18 Plaintiffs' Exhibit 59.

19 Q Are the facts that are contained in these reports true and
09:37:00 20 accurate to the best of your knowledge and belief?

21 A Yes.

22 Q And are the conclusions that you reached regarding your
23 two tasks in this case contained in those reports?

24 A Yes.

09:37:08 25 Q Have your -- have any of your conclusions changed since

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1 submitting those reports?

2 A No.

3 Q Let me ask you first just for your high-level conclusions
4 based on the work you have done in the case. Did you reach any
09:37:28 5 conclusions regarding whether the African-American population
6 in Alabama is sufficiently large and geographically compact to
7 allow for the creation of a second majority-minority
8 congressional district in a seven-district plan?

9 A Yes. My conclusion is that the minority population is
09:37:47 10 sufficiently numerous and geographically compact to allow for
11 two single-member majority black districts while adhering to
12 traditional redistricting principles.

13 Q And did you prepare any illustrative plans demonstrating
14 how two majority black districts could be drawn in a
09:38:07 15 seven-district plan?

16 A Yes. I prepared four illustrative plans showing various
17 ways that one could draw two majority-minority districts in
18 Alabama based on the 2010 census.

19 Q And do those plans comply with traditional redistricting
09:38:21 20 principles?

21 A In my opinion they do.

22 Q Okay. Let me pull up Plaintiffs' Exhibit 1, page 23, and
23 kind of focus your attention on paragraphs 51 through 52 of
24 your first report. And let me ask you -- pardon me one minute
09:38:54 25 while I get there.

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1 Let me ask you: What were the traditional redistricting
2 principles that you adhered to as you were drawing these
3 illustrative plans?

4 A Well, as I think I mentioned maybe previously, the primary
09:39:21 5 principles would be respecting one person one vote. And it's
6 my understanding that in Section 2 litigation particularly,
7 it's now basically a requirement that one must draw plans that
8 are within plus or minus one person at least for congressional
9 plans of the ideal population size, which is the ideal
09:39:44 10 population size. Of course, it's nothing more than dividing a
11 statewide population by seven. So you have got to be within
12 one person of that figure, which I don't have in front of me
13 right now.

14 And also the plan should be reasonably compact at a
09:39:58 15 reasonable shape. The districts need to be contiguous.

16 One should take into account various communities of
17 interest around the state.

18 Q What about -- sorry to interrupt. But what about
19 political boundaries? Is that a consideration?

09:40:12 20 A Yes. Yes. That is sort of blended in, with respect for
21 communities of interest, as well as in a sense compactness.

22 So I took into account county boundaries specifically
23 because I in all four plans split -- at least in two of the
24 plans, I split the same number of counties as the 2011 plan.
09:40:37 25 And in two of the plans, I split one fewer, just six counties.

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1 So I respected the county boundaries, as well as the existing
2 plan.

3 Q Okay. And I think I interrupted. You had said
4 compactness and contiguity, and I think you were getting ready
09:40:51 5 to go on to something else.

6 A The non dilution of minority vetting strength. That's the
7 other primary traditional restricting principle.

8 Q And what about incumbents? Did you have any consideration
9 for where incumbents lived or where they would be paired?

09:41:07 10 A Yes. Originally I did not have information about the home
11 addresses for five of the seven incumbents, and unfortunately
12 in drawing the plan -- because I just knew that Representative
13 Sewell lived somewhere in Jefferson County -- my initial
14 attempts at Illustrative Plans 1, 2, and 3 had to be revised to
09:41:31 15 bring her into District 7. She was just outside of District 7
16 under Illustrative Plan 1, 2, and 3.

17 So I made minor changes in Jefferson County. And Those
18 plans are now known as Revised Plan 1, Revised Plan 2, and
19 Revised Plan 3. And those would be the operative plans in this
09:41:47 20 case, even though in a zoomed-out statewide map you really
21 could not tell the difference between the original Illustrative
22 Plan 1, for example, and Revised Plan 1, because I just shifted
23 three or four precincts in each instance.

24 Illustrative Plan 4 --

09:42:02 25 Q Sorry to interrupt, but Revised Plans 1, 2, and 3, are

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1 those attached to your second declaration?

2 A Yes.

3 Q Okay.

4 A Yes. And Illustrative Plan 4, which was in my original
09:42:14 5 declaration, fortunately had Representative Sewell already in
6 District 7, so there was no need to revise that plan.

7 Q Okay. And then let me ask you: Were you at some point
8 asked to reach a conclusion regarding whether the
9 African-American population in Alabama is sufficiently large
09:42:36 10 and geographically compact to allow for the creation of a
11 second majority-minority congressional district in a
12 hypothetical six-district plan following the 2020 census?

13 A Yes. And I was able to conclude that there's a reasonable
14 likelihood that two out of seven -- two out of six districts in
09:42:59 15 a plan after the 2020 census is released could be majority
16 black citizen voting age population. Majority.

17 Q And that hypothetical plan, is that attached to your
18 second declaration?

19 A Yes.

09:43:15 20 Q Okay. And does that plan, the six-district plan comply
21 with the same traditional districting principles as the
22 seven-district illustrative and revised plans?

23 A I believe so. It expands the size of the districts both
24 geographically and based on population. But I think it would
09:43:39 25 comply with traditionally redistributing principles. But it

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1 hasn't been fine-tuned. I did not spend a lot of time trying
2 to perfect it. So there obviously could possibly be other
3 configurations, but we will only know in the fullness of time.

4 Q And shifting to the demographic data you looked at, did
09:43:59 5 you reach any conclusions regarding whether there are
6 disparities between African-Americans and whites in Alabama
7 across indicators of socioeconomic well-being?

8 A Yes.

9 Q What were the conclusions?

09:44:11 10 A There are sharp contrasts across almost all levels of
11 comparison for socioeconomic well-being, whether it be income,
12 education, housing, access to vehicles, that sort of thing. In
13 almost every instance, whites outpaced blacks.

14 Q Okay. Let me pull up Plaintiffs' Exhibit 3, Mr. Cooper,
09:44:39 15 which is Exhibit B to your first declaration. It's a document
16 that has at the top titled Exhibit B Methodology and Sources.
17 Does this detail the methodology and sources that you used to
18 prepare your report?

19 A Yes. It basically just reviews and highlights some of the
09:45:02 20 things I just discussed a few minutes ago about the source of
21 the data that I used to begin working on the illustrative
22 plans.

23 I do make note of the fact that I was also using not just
24 data files like the P.L. 94-171 file from the Census Bureau, I
09:45:18 25 was also using their geographic files that show boundaries for

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1 counties and cities and precincts and municipalities, and also
2 information for sub-county designations by the Census Bureau,
3 such as census tracts and census block groups. And also the
4 most detailed population unit in the census geography is a
09:45:47 5 census block. So I was using the state census block file, as
6 well.

7 Q And did you use population and geographic data from the
8 1990 to 2010 decennial censuses?

9 A I did at a higher geographic level. I don't think I used
09:46:07 10 2000 block data to do any of my analysis, but I did look at the
11 state and county and maybe even municipal comparisons between
12 1990, 2000, and 2010. That shows up in my report in the very
13 beginning comparing those three decades.

14 Q Did you use 2017 and 2018 U.S. Census Bureau population
09:46:33 15 estimates?

16 A I did use population estimates from the Census Bureau for
17 2017 initially, and then also updated it a bit with 2018
18 estimates. Those estimates are only available at the state
19 county level by race and only at the state based on voting age
09:46:58 20 by race. And for cities and towns and other places -- some of
21 them even may not be incorporated -- there is no information
22 about post-2010 population by race. There's just a total
23 population estimate.

24 Q You've made reference a couple of times to something
09:47:19 25 called the P.L. 94-171 data file; is that right?

1 A Right.

2 Q What is that?

3 A Well, that is the file that states and localities use to
4 develop new voting plans that would come into compliance with
09:47:37 5 one person one vote specifically based on a new decennial
6 census. So that's the file I used. And it has over 200
7 different fields indicating race and ethnicity for all ages and
8 over 18. And the racial categories are broken out by single
9 race, as well as multi-race categories. So it's a big file
09:48:08 10 that can be parsed in different ways.

11 Q So is it correct to say that that's -- when people say,
12 well, the census is going to be released in 2011, or the census
13 is going to be released in 2021, is that the file they are
14 talking about?

09:48:22 15 A That's the first one that is released. After that, there
16 are some additional releases that would have more information
17 about housing and more detailed age information, breaking out
18 information about, you know, the number of persons between 15
19 and 17, for example, or some other category. So the later
09:48:44 20 releases are much more detailed, but they would typically not
21 be used for the redistricting work.

22 Q So that's the file -- the P.L. 94-171 file, that's the
23 file that states use to do their redistricting?

24 A Exactly, yeah. Even at this late date.

09:49:00 25 I just finished a plan in Grand County, Utah, and we were

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1 using the 2010 data.

2 Q You referenced earlier the American Community Survey data
3 or ACS data. Can you explain what that is and at a broad level
4 what use you made of that, in terms of the one year versus the
09:49:21 5 five-year ACS data?

6 A Well, the one year data is exactly what it says. It just
7 comes from one sample survey a year. And that is the sample
8 that is sent out to one out of 42 households nationwide.

9 So because it's just one out of 42, it's acceptable from
09:49:48 10 the standpoint of statistical methodology to use it for large
11 geographies, such as a nation, state, and congressional
12 district.

13 Below that level, when you're looking at legislative
14 districts or cities that have less than 60,000 persons, the
09:50:11 15 margin of error would be too high from just one sample a year.
16 So we use another Census Bureau product called the five-year
17 sample survey. And the most recent one available right now is
18 the 2013-2017 ACS, which was released in December of 2018. So
19 there will be a new release out in about six weeks.

09:50:38 20 Q Okay. And I think you already testified that you used
21 Maptitude to draw the maps?

22 A Yes.

23 Q Okay. Let me pull up in Plaintiffs' Exhibit 1, Figure 3,
24 which is on page 9 of your first declaration.

09:51:02 25 And, Mr. Cooper, can you describe at a high level the

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1 population growth patterns from a racial standpoint in Alabama
2 between 1990 and today?

3 A Yes.

4 Well, in 1990, you can see that the population of the
09:51:31 5 state was just over 4 million -- 4 million 40,000 roughly. And
6 of that number, the non-Hispanic white population, which is the
7 second category was nearly three quarters, 73.26 percent. And
8 the African-American population was 25.26 percent, single-race
9 African-American. Because in the 1990 census, there was no way
09:51:57 10 to calculate the any-part black category from the P.L. 94-171
11 file.

12 The file released by the Census Bureau in that time period
13 at the time of the 1990 census had fewer categories by race.
14 There was just simply a separate category of others. Others
09:52:19 15 being a category that would have included people who were
16 multi-race -- black and white or black and American Indian. So
17 I do not have a figure for the any-part black population in
18 1990.

19 In 2000, the population statewide had grown to 4.47
09:52:39 20 million. And at that time you can see that the non-Hispanic
21 white population had dropped to about three points to
22 70.29 percent. And the single-race black population stood at
23 25.99 percent. But after factoring in persons who were black
24 and one other race -- in other words, any-part black -- it had
09:53:00 25 climbed to 26.29 percent. So, again, up about a percentage

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1 point compared to 1990.

2 Then by 2000, the state's population continued to grow, so
3 it was almost --

4 Q You said 2000 or --

09:53:14 5 A 2010. Excuse me. It was 4.78 million. And the white
6 population had dropped to just 67 percent, down by nearly six
7 percentage points since 1990. And the black population
8 continued to grow, reaching 26.8 percent any-part in 2010.

9 The key reason that explains why the non-Hispanic white
09:53:44 10 population dropped so significantly versus less of a change in
11 the African-American percentage is that between 1990 and 2010 a
12 large population change occurred in the other minority
13 categories, particularly as it relates to Latinos who comprised
14 just 24,629 of the population in 1990.

09:54:19 15 By 2010, it had gone up by a factor of seven or so to
16 185,602. So that explains the drop in the percentage of
17 non-Hispanic whites in the state.

18 Latinos may be of any race. And so some reported white.
19 Others would have reported some other race as a category, or
09:54:45 20 one of the other clear categories, such as American Indian or
21 African-American.

22 Q Okay. And I think this is kind of implicit in what you
23 said before, but I just want to make sure it's clear. What is
24 the difference between single-race black and any-part black, in
09:55:04 25 terms of these figures?

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1 A Single-race black is anyone who checked on the census form
2 that they were black, including persons who would have been
3 maybe black and Hispanic.

4 Q So is that single race or any-part black?

09:55:20 5 A That's single race.

6 Q Okay. Thank you.

7 A And the any-part black would be any person who was some
8 part black. In other words, everyone who is single-race black,
9 single-race black and Hispanic, as well as all other persons
09:55:33 10 who checked black and another race, such as black and white, or
11 even black and white and American Indian -- multi-race
12 categories.

13 Q And which figure do you use any-part black or single-race
14 black in your analysis when determining whether the
09:55:54 15 African-American population is sufficiently large and
16 geographically compact?

17 A Nowadays, I tend to use the any-part black definition,
18 which was accepted and relied upon in the Supreme Court case
19 involving Georgia legislative districts in 2003 -- *Georgia v.*
09:56:12 20 *Ashcroft*. So that is the definition that I would typically
21 use.

22 I produce information and data about the single-race
23 category, as well. That's part of the data set that I have
24 from the P.L. 94-171 file. So I'm basically aware of it. But
09:56:32 25 in the final analysis, in determining whether a district is

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1 majority black, the ultimate decider would be the any-part
2 black definition or possibly the citizen voting age population
3 definition.

4 Q Okay.

09:56:50 5 THE COURT: The citizen voting age definition, what do
6 you mean by that?

7 THE WITNESS: That is obtained through the American
8 Community Survey. And it's not part of the P.L. 94-171 file.

9 But each year, the Census Bureau releases this special
09:57:08 10 tabulation of the American Community Survey for use by the
11 Department of Justice in voting cases and language cases
12 involving voting. And so I rely on that data set, which only
13 goes down to the block group level, so it's more than just a
14 census block, but smaller than a census tract, and apply that
09:57:29 15 to the districts to develop an estimate for the citizen voting
16 age population by race in that district.

17 THE COURT: Okay. Well, what do you mean by "citizen
18 voting age definition"? What is that definition?

19 THE WITNESS: Well, if a district is not over
09:57:45 20 50 percent black citizen voting age population, then it
21 would -- I assume that it would not meet *Gingles 1* as being a
22 majority black district.

23 THE COURT: Thank you.

24 BY MR. SPIVA:

09:58:01 25 Q Mr. Cooper, I may -- I think the Judge may be asking just

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1 literally what -- what goes into citizen voting age population?
2 I don't know if I understood -- if I got that right, Your
3 Honor, but I think she may be asking a more specific question
4 about that.

09:58:15 5 A Well, the ACS survey would have a question as to whether
6 or not you are a citizen on it. So if you report that you are
7 non-Hispanic black and also that you are a citizen then -- and
8 you're over 18, then you would be part of the citizen voting
9 age population.

09:58:38 10 And in Alabama there's not that great of a distinction
11 between all persons who are black and over 18 and all persons
12 who are black and citizens over 18. But in some states, like,
13 say, Florida, or New York, or even Georgia, where there's a
14 much more significant Latino population who is black, there may
09:59:01 15 be wider differences between the VAP and the citizen voting age
16 population.

17 Q Let me -- and just for the record, because I don't know if
18 you've said this before -- when you refer to voting age
19 population, either black voting age population, or non-Hispanic
09:59:21 20 white voting age population, what are you referring to?

21 A Persons who are 18 and over as of the 2010 census.

22 Q Okay.

23 A And that -- I should have pointed out, there is another
24 issue to discuss regarding citizen voting age population,
09:59:34 25 because each year the Census Bureau comes out with a new data

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1 set. So I'm using the most recent data set in this case, which
2 would reflect persons who reported that they were citizens on
3 an ACS survey between the years 2013 and 2017. So that would
4 be a mid-decade estimate; whereas the 2010 census data that
09:59:58 5 reflects voting age population is from the year 2010. So it's
6 five years down the road, but still not current. Even though
7 there's a 2017 handle in that five-year survey, the mid-decade
8 would be the midpoint of the survey; in other words, July 2015.
9 So it's still four years behind time at this point.

10:00:21 10 Q And is that standard in your field to rely on those
11 five-year surveys and to use the midpoint of the five-year
12 survey in doing the types of analysis that you've done?

13 A It's becoming standard. It's been a long-term standard in
14 Latino voting rights cases in particular in other states. And
10:00:46 15 it's also a metric that I have been reporting in some of the
16 Section 2 cases I've been involved in since 2010.

17 Q Okay. Let's take a look at your second report, which is
18 Plaintiffs' Exhibit 59, and in particular page 3. And I think
19 we're going to focus in on footnote 1.

10:01:13 20 Have any courts in Section 2 cases where you have recently
21 served as an expert used the any-part black definition to make
22 that determination of whether a district or districts are
23 sufficiently large and reasonably compact?

24 A Yes. I've listed them in a footnote.

10:01:39 25 That definition was reported, and the Court reviewed it in

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1 *Georgia State Conference of the NAACP v. Fayette County Board*
2 *of Commissioners*, also in *Missouri State Conference NAACP v.*
3 *Ferguson Florissant School District*, also in *Terrebonne Parrish*
4 *NAACP v. Jindal*. That is still at the appellate level. It was
10:02:04 5 decided in favor of the plaintiffs in 2017. But it's still on
6 appeal.

7 *Navajo Nation v. San Juan County*. In that instance, I
8 reported the any-part definition, and the Court relied on that
9 for county-level stats. The districts that were drawn were
10:02:29 10 over 60 percent single-race Native American in that particular
11 case. So it was not maybe a major focus of the Court at the
12 district level, but it did become an issue in determining
13 whether or not San Juan County was majority Native American.
14 It was just under 50 percent using single race, but over
10:02:53 15 50 percent using the any-part definition.

16 And then finally, the partisan gerrymandering case I was
17 involved in, in Ohio, *A. Philip Randolph v. Householder*. That
18 definition also became a bone of contention in that case. And
19 I think the Court accepted that the any-part definition was
10:03:15 20 appropriate to use when trying to determine specifically
21 whether or not African-American voters had been packed into
22 Congressional District 11, which involved Cuyahoga County and
23 Akron County in Ohio.

24 Q If you could take a look -- and we don't need to pull this
10:03:45 25 up on the screen, but if you can take a look back at Figure 5

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1 of Plaintiffs' Exhibit 1, your first report, which was on page
2 12. I guess we could pull it up on the screen. I just want to
3 make sure -- well, I'm sorry. Yeah, let's pull it up on the
4 screen. Figure 5, which is on page 12 of Plaintiffs' Exhibit
10:04:11 5 1, your first report.

6 In 2010, what were the black and white voting age
7 population percentages in Alabama?

8 A Well, the non-Hispanic white voting age population was
9 69.39 percent, which is a little higher than the all-ages
10:04:33 10 percentage that we just looked at, which was a little bit over
11 67 percent. And that is because the white population is just
12 an older population. So numbers are boosted when you look at
13 the VAP.

14 And the single-race black population was 24.86 percent.
10:04:54 15 And the any-part definition was 25.16 percent. And that is a
16 little bit lower than the all ages, because the black
17 population is a younger population. So that explains that
18 difference.

19 Q And then let's pull up -- if you can look to Figure 6 in
10:05:12 20 your first report, which is on the next page, page 13 of
21 Plaintiffs' Exhibit 1. What were the black and white -- and
22 I'll now refer to voting age population as VAP or V-A-P.

23 So what were the black and white VAP percentages in 2017
24 in Alabama?

10:05:34 25 A The black VAP, according to the most recent Census Bureau

1 estimates, was 26.4 percent. And the white VAP was --
2 non-Hispanic white VAP was 67.8 percent. So it's showing a
3 drop of about a point and a half compared to the 2010 voting
4 age population for non-Hispanic whites, and an increase of
10:06:03 5 about a percentage point in terms of the black voting age
6 population since the 2010 census.

7 Q And in the 2017 estimates -- first of all, why are they
8 called estimates?

9 A Well, they're estimates because the Census Bureau produces
10:06:24 10 a report each year based on an analysis of population change at
11 various levels of geography, states, as I mentioned, and
12 counties primarily based on race. And that -- that is done by
13 looking at births and deaths at the county level. And it also
14 includes things like housing starts, in migration, out
10:06:56 15 migration. So it's a sophisticated attempt to arrive at an
16 estimate of what the population is today, or at least in the
17 summer of 2017, as opposed to 2010.

18 Q And does that come from the ACS data you were talking
19 about?

10:07:10 20 A No. It's independent of the ACS. It's not really a
21 sample survey. So it's a different approach altogether.

22 Q Okay. But it's something that is done by and put out by
23 the Census Bureau?

24 A Yes. I mean, every year the estimates come out. And just
10:07:25 25 about every year all major newspapers will report the change

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1 since the last year and identify the fastest growing counties,
2 and that sort of thing. I know I've seen that in the Alabama
3 newspapers. Right around March is when the first data set
4 comes out. And then by June you get county-level estimates by
10:07:46 5 race.

6 Q Okay. And then what are --

7 THE COURT: Excuse me. Mr. Spiva, could I see you and
8 one person from the defense for just a second, please?

9 MR. SPIVA: Sure.

10 (Bench conference:)

11 THE COURT: I can't figure out why we're going into
12 2017 stuff when aren't we focusing on what happened in 2011?

13 MR. SPIVA: Yes. But it's typical in these types of
14 cases to show what the population growth has been. It's also
15 partly in relation to the 2020 argument, you know, that there
16 will be like a six-district plan. So it's partly related to
17 that. But it's the methodology for showing, you know, in part,
18 you know, where the population is now.

19 THE COURT: But --

20 MR. WALKER: We don't think it's germane, Your Honor,
21 to the -- I mean, speaking for the defendants, we don't think
22 it's germane to the decision you have to make about whether in
23 2011 the legislature could have drawn any of the plans proposed
24 by Mr. Cooper.

10:09:02 25 MR. SPIVA: Yeah. I mean, his maps are drawn with the

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1 2011 data. But it's partly just to show the progression.

2 Also, they have raised the issue of the fact that the 2021
3 census may cause Alabama to lose a district. And so he's put
4 forth a six-district plan.

10:09:24 5 MR. WALKER: I'm unsure about how germane that is
6 since there's no longer going to be an injunctive relief
7 decision before Your Honor, that's whether or not an Alabama
8 Legislature could have drawn one of these proposed plans.

9 THE COURT: In 2011?

10:09:38 10 MR. WALKER: Yes, ma'am.

11 MR. SPIVA: It may also go to the mootness issue, Your
12 Honor, because one of the arguments for mootness is that
13 Alabama is going to lose a seat, and, therefore, any decision
14 Your Honor -- I'm a making the defendant's argument, of course.
10:09:49 15 It's not my position -- but that any declaratory judgment Your
16 Honor might provide, that it would --

17 THE COURT: Provide --

18 MR. SPIVA: Wouldn't be instructive, yeah.

19 And so part of the reason for providing the hypothetical
10:10:07 20 plan is to show that it would still -- it would still, A, it
21 would still be possible, but that it would still be
22 instructive.

23 MR. WALKER: I think -- I think my colleague is
24 stretching, Your Honor. The point of the mootness argument was
10:10:21 25 that in the cases they relied on Section 5 was still in effect.

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1 Whereas, our point is it's no longer in effect; and, therefore,
2 there's no longer a benchmark we have to refer to. Whether or
3 not we can draw six district plans is really not before Your
4 Honor.

10:10:37 5 THE COURT: That's what I think, as well.

6 MR. SPIVA: Okay.

7 THE COURT: So --

8 MR. SPIVA: I can kind of move it along, Your Honor.

9 THE COURT: Yeah, because I don't really see how 2017
10:10:46 10 data is relevant.

11 MR. SPIVA: Okay.

12 THE COURT: All right. Thank you.

13 MR. SPIVA: Thank you.

14 MR. WALKER: Thank you, Your Honor.

10:10:51 15 (End of bench conference.)

16 BY MR. SPIVA:

17 Q Let me turn your attention to Figure 4 in your first
18 report, which is on page 11. And let's now discuss the
19 geographic distribution of the African-American population in
10:11:52 20 Alabama.

21 Is the majority of the African-American population in
22 Alabama contained in certain areas of the state, Mr. Cooper?

23 A Yes. From this map you can see that the majority black
24 counties, which are shaded pink and a deeper pink, are all in
10:12:15 25 the historical Black Belt of Alabama running east to west

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1 really from Macon County over to Sumter County. All those
2 counties are majority black.

3 Montgomery is not. It's an urban county, and it's part of
4 the historical Black Belt, as well.

10:12:43 5 Q And about how much of Alabama's black population is
6 concentrated in the urban counties of Jefferson, Madison,
7 Montgomery, and Mobile?

8 A About half of the population is in those three counties.
9 Of course, Madison is in the north. But Montgomery and Mobile
10:13:06 10 are in areas in the central and south Alabama area and can be
11 drawn into one of two majority black districts.

12 Q In the rural Black Belt counties excluding --

13 THE COURT: Wait a minute. I'm not sure I understood
14 that question or that answer.

10:13:27 15 In looking at your map, I don't see where the majority of
16 the black population is in those counties.

17 MR. SPIVA: I can pull up the paragraph where it's the
18 actual percentages are reported, Your Honor.

19 I just wanted to give you a rough sense. But you can --
10:13:49 20 and you can see it visually. But the paragraph that follows it
21 I think actually -- well, correct me if I'm wrong, Mr. Cooper,
22 but I believe that the paragraph that follows it reports that.

23 THE WITNESS: Yes. You would refer to Exhibit D,
24 which has the breakout by county, by race, and ethnicity
10:14:10 25 according to the 2010 census, if that would help.

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1 MR. SPIVA: Well, actually -- I mean, we could do
2 that, but I think Your Honor is asking -- if I understand your
3 question, Your Honor, you're saying Figure 4 doesn't show you
4 where the half of the black population is in the counties I
10:14:27 5 mentioned, but I think --

6 THE COURT: Right. Right. Because those are shaded
7 much lighter than the counties in the Black Belt.

8 MR. SPIVA: Yeah. And they just don't give you the
9 figures. I think the figures are in paragraph 26 of
10:14:43 10 Mr. Cooper's report. I mean, he can confirm obviously, and we
11 can pull that up. Can we actually pull up paragraph 26?

12 Is it all right if I ask him --

13 THE COURT: Okay. All right. So there may be a
14 majority of African-Americans in what counties were you talking
10:15:02 15 about? Jefferson? Madison?

16 MR. SPIVA: Montgomery and Mobile, yes.

17 THE COURT: Is Madison one of them?

18 MR. SPIVA: Yes. That was -- if you -- Jefferson,
19 Madison, Montgomery, and Mobile, Your Honor. Those were the
10:15:17 20 urban counties in which --

21 THE COURT: Right. And certainly that's where the
22 highest population of all citizens in Alabama live. But in
23 looking at the map, which is Figure 4 on page 11 of Exhibit 1,
24 for example, Madison County, according to your shading, looks
10:15:45 25 like it may be 20 percent black.

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1 THE WITNESS: That's true. I mean, I'm looking at
2 aggregate population counts.

3 THE COURT: Okay.

4 THE WITNESS: So while 50 percent of the
10:15:54 5 African-American population lives in those urban counties,
6 those urban counties are majority white counties.

7 THE COURT: Okay.

8 THE WITNESS: Although I need to check Montgomery. I
9 think it's very close to being a 50/50 county, isn't it?

10:16:12 10 THE COURT: It's in the 40 percent to 60 percent. But
11 I think it's very close to 50 percent. And Jefferson may also
12 be closer to 50 percent.

13 THE WITNESS: Yeah. Montgomery is 50.71 percent
14 single-race black and 55 percent any-part black, 55.45 percent
10:16:34 15 any-part black. Jefferson is in the mid 40s.

16 THE COURT: Okay. All right. But, you know, just
17 looking at this map, that map does not tell me that the
18 majority black population are in those counties.

19 MR. SPIVA: No. The map alone, Your Honor -- you're
10:16:54 20 absolutely correct, Your Honor. Those are reported both in
21 paragraph 26 and also in, I believe -- which exhibit was it,
22 Mr. Cooper?

23 THE WITNESS: Exhibit D.

24 MR. SPIVA: To your first report, which is -- let me
10:17:10 25 get you the Plaintiffs' Exhibit Number, Your Honor. I believe

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1 that is Plaintiffs' Exhibit 10. And that is Exhibit D to
2 Mr. Cooper's initial report.

3 So that gives -- well, let me ask -- I guess I shouldn't
4 testify.

10:17:34 5 THE COURT: No, no, no. It would be better that you
6 don't.

7 BY MR. SPIVA:

8 Q But, again, Mr. Cooper, does Exhibit D to your first
9 report, which is Plaintiffs' Exhibit 10, does that show a
10:17:44 10 county-by-county racial breakdown according to the 2010 census
11 in Alabama?

12 A Yes.

13 Q Okay.

14 A And in paragraph 26, I do note that 12 percent of
10:17:59 15 statewide black population lives in the historical Black Belt
16 counties. And by 12 percent, I am only counting the rural part
17 of the Black Belt. And I've excluded Montgomery County, which
18 I put in with the urban counties.

19 THE COURT: But it is part of the Black Belt.

10:18:17 20 THE WITNESS: It is part of the Black Belt, right.
21 But I'm not double counting. The 12 percent just includes
22 those ten counties that are more rural in nature.

23 BY MR. SPIVA:

24 Q And what about the counties -- I think this is also
10:18:33 25 reported -- well, let me just ask you -- yeah, this is reported

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1 in paragraph 26.

2 But what about the counties of Lee and Tuscaloosa? How do
3 they -- what is the percentage of the statewide black
4 population that lives in those counties?

10:18:53 5 A About seven percent. Those are university counties, so I
6 have broken that out as another category.

7 Q And taken together, the urban counties, the rural Black
8 Belt counties, and the university -- what you have called the
9 university counties, how much of the statewide black population
10:19:15 10 is contained within those counties?

11 A About 70 percent.

12 Q Okay. And which counties do you consider to be part of
13 the Black Belt, Mr. Cooper?

14 A Well, those would be Sumter going west to east -- east --

10:19:33 15 THE COURT: Wait a minute. If the university counties
16 have about seven percent of the statewide black population, why
17 are you lumping them in with the urban counties?

18 THE WITNESS: Well, I'm just --

19 THE COURT: I don't understand that combination.

10:19:55 20 THE WITNESS: I'm just simply pointing out where most
21 of the African-American population lives in Alabama, and that
22 would be the two university counties, as well as the urban
23 counties of Jefferson, Madison, Montgomery, and Mobile with the
24 remainder in the historical Black Belt. But noting that the
10:20:18 25 historical Black Belt now really only accounts for 12 percent

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1 of the statewide black population. So most of the black
2 population by far lives outside of the historical rural Black
3 Belt.

4 BY MR. SPIVA:

10:20:32 5 Q That's --

6 THE COURT: Okay. But 12 percent of them are in the
7 Black Belt, and only 7 percent in Lee and Tuscaloosa, so --

8 THE WITNESS: Right.

9 THE COURT: -- I guess I just don't understand why Lee
10:20:44 10 and Tuscaloosa would be lumped in with the urban counties as
11 opposed to the Black Belt being -- but, anyway, that's fine.
12 Move on.

13 THE WITNESS: Yeah. I'm just trying to show where
14 most of the black -- where most of the black population in the
10:21:03 15 state, in other words, close to three-fourths lives, and it is
16 in that set of counties. But I'm not -- not going beyond that.
17 I'm just identifying those counties.

18 BY MR. SPIVA:

19 Q And when you say that that set, you mean the urban
10:21:23 20 counties, the Black Belt counties, the rural Black Belt
21 counties excluding Montgomery and Lee and Tuscaloosa. Is that
22 what you mean?

23 A That is correct.

24 Q And --

10:21:35 25 A And, actually, in the illustrative plans that I have

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1 developed, the area that I draw from to create this two
2 majority black districts is basically the area that is
3 discussed in paragraph 26 with the exception of Madison County,
4 which, of course, is too far north to be put into a majority
10:21:55 5 black district. And actually Lee County, which does have a
6 fairly significant black population is also not included in the
7 majority black district under the illustrative plans I've
8 drawn.

9 Q Okay.

10:22:10 10 MR. SPIVA: Let's -- Your Honor, did that -- have all
11 your questions been answered?

12 THE COURT: Just need to move on.

13 MR. SPIVA: Okay. Will do.

14 BY MR. SPIVA:

10:22:19 15 Q Let's pull up Plaintiffs' Exhibit 12, please. And this is
16 Exhibit F-1 to your first report, Mr. Cooper. And if we could
17 also pull up Plaintiffs' Exhibit 1, Figure 8, which is on page
18 15 of your first report on the screen.

19 Is this the 2001 congressional plan that was in place for
10:22:52 20 congressional elections held between 2002 and 2010?

21 A Yes.

22 Q And what was the BVAP of CD 7 in this plan?

23 A According to the 2010 census, it was 60.11 percent.

24 Q And in which districts was most of the -- I'm sorry. Yes.

10:23:16 25 Which districts outside of CD 7 was most of the rest of

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1 Alabama's African-American population in the 2001 plan
2 according to the 2010 census?

3 A It was distributed more or less evenly between districts
4 1, 2, and 3. I believe I have the figures in paragraph 34;

10:23:40 5 26 percent roughly of the black population in central and south
6 Alabama. It was not part of District 7.

7 CD 1 was 26.16 percent. CD 2 was 29.63 percent black
8 voting age. And CD 3 was 30.73 percent BVAP.

9 Q Okay.

10:23:59 10 A You see 1, 2, and 3. 1 and 2 were basically in central
11 and south Alabama. District 3 started in Montgomery but
12 extended all the way up to Cherokee County and Appalachian,
13 Alabama.

14 Q Okay. And taken together, and according to the 2010
10:24:16 15 census, how large was the BVAP populations in those three
16 districts?

17 A Well, I just said those.

18 Q What was that?

19 A Maybe I didn't make that clear.

10:24:28 20 Q Not individually, but taken together.

21 A Oh, taken together. Over 600,000; 629,000 total black
22 population, and the BVAP would have been 448,000. But that
23 629,000 figure indicates that in those three districts alone,
24 just looking at the black population, you had enough to create
10:24:50 25 an entire congressional district -- 92 percent of an entire

1 congressional district.

2 Q So let's pull up or go to your Figure 9 of your initial
3 report on page 16 of Plaintiffs' Exhibit 1.

4 What does the map in Figure 9 show?

10:25:13 5 A Well, the map again overlays the black population
6 percentage by county. The black lines show the current 2011
7 plan District 7. And the red lines show where District 7 was
8 located under the 2001 plan.

9 So in much of the 2011 plan, the old 2001 lines are
10:25:43 10 followed. For example, right along the Black Belt, some of
11 those counties were followed exactly. But because the District
12 7 lost population or did not grow as rapidly as the rest of the
13 state, by 2011 it was underpopulated by -- if you go back to
14 Figure 8 -- by almost 80,000 people.

10:26:08 15 So District 7, as drawn in the 2001 plan, had to expand
16 and pick up more geography and more population in order to meet
17 one person one vote requirements in the 2010 census and post
18 2011 redistricting cycle.

19 Q And where did it pick up that population?

10:26:27 20 A In this case, District 7 was expanded into Lowndes County
21 and part of Montgomery County, as well as a little bit of --
22 more of Marengo County was included in District 7. And all of
23 Pickens County was included in 7. Previously Pickens had been
24 split.

10:27:00 25 Q Okay. And then if we can pull up Plaintiffs' Exhibit 10,

1 which is -- that was the Exhibit D to your first report that we
2 were just looking at, Mr. Cooper.

3 A Yes.

4 Q And if we could actually leave up Figure 9 on page 16 of
10:27:26 5 Mr. Cooper's first report.

6 What is the demographic makeup of Lowndes County?

7 A Lowndes County, according to the 2010 census, is
8 73.55 percent single-race black and 73.91 percent any-part
9 black.

10:27:57 10 Q And what is the demographic makeup of Clarke County?

11 A Clarke is 43.88 percent single-race black and
12 44.29 percent any-part black.

13 Q And what is the demographic makeup of Pickens County?

14 A Pickens is, I believe, actually majority white, is it not?
10:28:25 15 It's -- well, yeah. It's 41.58 percent single-race black and
16 42.17 any part.

17 Q Okay. Let's pull up Plaintiffs' Exhibit 17. Is that
18 Exhibit G-4 to your first report, Mr. Cooper?

19 A Yes.

10:28:49 20 Q And what is this map?

21 A This map zooms in on Montgomery County under the 2011
22 plan. And it shows some of the other counties that are
23 adjacent -- part of Lowndes, part of Bullock, Autauga, and
24 Elmore, Macon.

10:29:08 25 Q And was Montgomery County or city split in the 2011 plan?

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1 A Yes. It was divided into three congressional districts.
2 Part of Montgomery County went into District 7. Part of it
3 went in District 2 extending through the center of the county
4 north to south, and the other part went into District 3.

10:29:28 5 Q And had Montgomery County been split in the 2001 plan?

6 A No. In the 2001 plan, it was entirely in District 3.

7 Q Was there a small part of Montgomery County in the 2001
8 plan that was in District 2?

9 A I'm sorry. I stand corrected. There was a small part
10:29:49 10 that was in another district.

11 Q Okay. And how were Montgomery County and -- how was
12 Montgomery County split in the 2011 plan, in terms of race?

13 A Most of the black population in Montgomery County was
14 placed in District 7. And then the remainder of the black
10:30:19 15 population would have been subdivided between Districts 2 and
16 3.

17 I think most of the areas in District 2 are majority white
18 in that component of Montgomery County, as well as the western
19 part of Montgomery County is predominantly white, as well, and
10:30:35 20 it went into District 3.

21 Q Okay. So let's pull up both Figure 10 of Plaintiffs'
22 Exhibit 1 on page 17 of Mr. Cooper's first report. And if we
23 could look at that along side of Figure 11 of the first report,
24 Plaintiffs' Exhibit 1, and paragraph 41 of the first report,
10:31:05 25 all of those latters all appear on page 18 of his first report.

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1 So this is the -- what we have got up in terms of the map
2 is the current 2011 plan?

3 A Yes.

4 Q And about how much of Alabama's African-American
10:31:34 5 population is in CD 7 under this plan?

6 A About one-third.

7 Q Okay. And in which districts was the rest of most of
8 Alabama's African-American population?

9 A Districts 1, 2, and 3.

10:31:48 10 Q And according to --

11 MR. SPIVA: Pardon me one second, Your Honor.

12 BY MR. SPIVA:

13 Q And do you report in your report in paragraph 41 the BVAP
14 of CD 7 in the 2011 plan?

10:32:26 15 A Yes. The BVAP CD 7 is 60.91 percent.

16 Q And what were the BVAPs of each of CDs 1, 2, and 3 in the
17 2011 plan?

18 A 26.11 percent for CD 1; 28.26 for CD 2; and 24.34 percent
19 for CD 3. So the BVAP in those three districts actually
10:32:59 20 dropped compared to the BVAP in CD 1, 2, and 3 under the 2001
21 plan by a small amount. But it's a little bit smaller than was
22 the case in the earlier plan.

23 More importantly, this is just a clear example, in my
24 opinion, of what is known as cracking in redistricting
10:33:22 25 terminology where the black population is just sort of

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1 distributed into different districts when it's in an area that
2 is sufficiently compact to allow for a stronger district to be
3 created.

4 Q And what happened, in terms of the -- you gave the number,
10:33:42 5 but in terms of whether it was an increase or decrease in the
6 BVAP in CD 7 as between the 2001 plan and the 2011 plan, what
7 happened with that?

8 A It went up a little bit from I think 60.11 -- I'm not
9 looking at it -- but it seems like I remember that -- to
10:34:00 10 60.91 --

11 Q Okay.

12 A -- percent.

13 Q And I think you said that taken together the BVAP in 1, 2,
14 and 3 in the 2011 plan is nearly enough to form an entire
10:34:12 15 congressional district?

16 A Yes. 84.3 percent.

17 Q Okay. So let me turn to the illustrative plans that you
18 drew.

19 And can you describe what you looked at to determine
10:34:32 20 whether the black population in Alabama is sufficiently large
21 and geographically compact to allow for the creation of the
22 second majority-minority district?

23 A Well, one reference point was the plan that the state
24 legislature adopted for the state board of education.

10:34:52 25 Q Can you pull up -- while you're talking about that, can we

1 pull up Figure 1 on page 5 of Mr. Cooper's first report,
2 Plaintiffs' Exhibit 1?

3 A So this is the state board of education plan, which
4 creates majority black District 4 that includes part of
10:35:13 5 Jefferson County and a couple of the western Black Belt
6 counties, as well as part of Bibb and Tuscaloosa.

7 And then there's a majority black district in the south
8 that includes the city of Mobile and most of the rest of the
9 historic Black Belt, including almost all of Montgomery County,
10:35:35 10 except for a little tiny piece in the -- in the north that is
11 part of District 3 along the Elmore County line. So...

12 Q You're referring to Board of Education District 5?

13 A Yes. Yes. Both of those districts are majority black
14 voting age. Board of Education District 4 is 51.4 percent
10:35:58 15 BVAP, and District 5 is 57.5 percent.

16 So from that, it was clear to me that one could draw, in
17 all likelihood, a second majority black district in a
18 seven-district plan that would adhere to the original
19 redistricting principles and would be consistent with what the
10:36:22 20 state legislature did with the state board of education plan,
21 in terms of the counties that would have been included in that
22 district -- in those districts for a seven-congressional
23 district plan.

24 THE COURT: And when was that plan drawn?

10:36:34 25 THE WITNESS: In, I believe, May of 2011. I think

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1 that's when it was adopted. I could be wrong about the month,
2 but I think that's when.

3 THE COURT: Thank you.

4 THE WITNESS: Although the previous state board --

10:36:47 5 THE COURT: No. That was all of my question.

6 THE WITNESS: Okay. Okay.

7 BY MR. SPIVA:

8 Q That is the 2011 plan?

9 A Yeah.

10:36:52 10 Q The BOE plan?

11 A Right.

12 Q So let's just take a look at Figure 2 on the next page,
13 page 6 of your first report, Plaintiffs' Exhibit 1.

14 Can you describe what that shows?

10:37:06 15 A This simply overlays Board of Education Districts 4 and 5
16 onto a map showing the percent black by county. Similar to the
17 plan -- to the map that I produced showing how District 7
18 changed between 2001 and 2011, similar kind of overlay. But
19 this is just for this single point in time for the 2011
10:37:32 20 redistricting plan.

21 Q In terms of -- you mentioned that District 5 of the BOE
22 plan encompassed part of Mobile County. Does it encompass all
23 of Mobile County?

24 A No.

10:37:47 25 Q Can you describe the area of Mobile County that it

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1 includes?

2 A It includes most of the city of Mobile, as well as some of
3 the rural precincts extending north into Washington County.

4 Q And does the 2011 state board of election plan combine
10:38:10 5 part of Mobile County and Montgomery County?

6 A Yes.

7 Q Do you know, Mr. Cooper, how long State Board of Election
8 Districts 4 and 5 have been African-American majority
9 districts?

10:38:25 10 A In the 1990s, there was litigation involving the state
11 board of education plan that I am aware of. I think I have a
12 footnote going to the state board of education plan for 2000
13 preclearance letter. And in that letter there is a note about
14 what the BVAP was in the two districts in the 1990s, as well as
10:38:57 15 the BVAP.

16 THE COURT: I think we have an objection.

17 MR. WALKER: The question that Mr. Cooper is answering
18 I think is beyond the scope of his report.

19 MR. SPIVA: I think he was referencing a footnote in
10:39:11 20 his --

21 THE COURT: Well, if he's referencing a footnote, if
22 you will please point out what footnote he's referring to.

23 BY MR. SPIVA:

24 Q Mr. Cooper, are you able to point out the footnote that
10:39:22 25 you are referring to?

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1 A Yes. It's footnote 13 on page 20, referenced in paragraph
2 45 where I have the percentage statistics for the court-ordered
3 1996 plan according to the 2000 census. And then the new plan
4 that was adopted I think in 2001 --

10:39:54 5 THE COURT: Excuse me. I'm not sure that that answers
6 the question that was specifically asked.

7 BY MR. SPIVA:

8 Q Yeah. Why don't -- can I withdraw the --

9 THE COURT: I would ask, Mr. Cooper, if you would
10:40:06 10 please listen to the question and only answer the specific
11 question that's asked, okay?

12 THE WITNESS: Okay.

13 BY MR. SPIVA:

14 Q Do you know how long, Mr. Cooper, SBOE Districts 4 and 5
10:40:25 15 have been African-American majority districts?

16 A Well, I believe that the first time that 4 and 5 were
17 drawn to be both majority black would have been in May of 2011,
18 but I don't know exactly when 4 or 5 might have -- I guess
19 District 4 might have turned African-American at some point in
10:40:55 20 the 2000s. I don't know.

21 Q Okay. And if you know, do you know how long SBO Districts
22 4 and 5 have an African-American opportunity districts?

23 First of all, if I say opportunity districts, what do you
24 understand me to be asking you?

10:41:11 25 A A district where an African-American would have an

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1 opportunity to be elected.

2 Q But necessarily majority district?

3 A Not necessarily majority.

4 Q And do you know how long SBO Districts 4 and 5 have been
10:41:22 5 African-American opportunity districts?

6 A Since sometime in the 1990s.

7 Q And is that reflected in paragraph 45 that -- what you
8 just said reflected in paragraph 45 of your first report?

9 A Yes.

10:41:49 10 MR. SPIVA: Your Honor, may have just a minute to
11 consult with my colleague on something?

12 THE COURT: Yes. It's probably a good time to take a
13 break, anyway. I don't want to wear out Ms. Christina's
14 fingers.

10:42:00 15 MR. SPIVA: Thank you, Your Honor.

16 THE COURT: We will come back at 11:00 o'clock.

17 (Recess.)

18 THE COURT: One thing I should have mentioned when we
19 started this morning -- and I apologize -- I have a sentencing
11:00:30 20 today at 1:00 that I have to take, so we're going to take a
21 little longer -- a little later break for lunch, so you will
22 kind of have an idea of where we're going. I should have told
23 you first. I apologize.

24 MR. SPIVA: No problem, Your Honor. Sounds like you
11:00:42 25 won't get as much of a break, though.

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1 THE COURT: Oh, I don't ever get a break, but that's
2 okay.

3 You may proceed, Mr. Spiva.

4 MR. SPIVA: Thank you, Your Honor.

11:00:53 5 BY MR. SPIVA:

6 Q Mr. Cooper, did you use the 2011 SBOE plan as a point of
7 departure when you were creating your illustrative map?

8 A Yes. In conjunction with the 2011 plan.

9 Q In conjunction with the 2011 congressional plan?

11:01:23 10 A Yes.

11 Q And what does your review of the SBOE, the 2011 SBOE map
12 tell you about the possibility of making two majority-minority
13 congressional districts in Alabama?

14 A It suggests to me that it is -- or it suggested to me that
11:01:44 15 it was highly likely that I could draw two out of seven
16 majority black districts.

17 Q And let me just draw your attention to paragraph 17 of
18 your initial report, Plaintiffs' Exhibit 1. What about it --
19 I'm sorry. Did I say -- I meant to say paragraph 17. I don't
11:02:19 20 know if I said page 17.

21 THE COURT: Paragraph 17 on page 7.

22 MR. SPIVA: Thank you, Your Honor.

23 BY MR. SPIVA:

24 Q What about it suggested to you the possibility of -- to
11:02:30 25 potentially having two congressional districts?

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1 A Well, we know that if you could draw two out of seven, as
2 opposed to two out of six districts, the size of the
3 congressional -- I'm sorry -- as opposed to two out of eight
4 districts as in the BOE plan, it's obvious that the population
11:02:53 5 size of the congressional districts has to be larger.

6 So the districts as drawn in the state board of education
7 plan, Districts 4 and 5, that area would have to expand
8 slightly. And so I was aware that there were other counties
9 that were not in District 4 and 5 with significant black
11:03:14 10 populations. Namely --

11 MR. SPIVA: Could we put up Figure 2 side by side with
12 that, please?

13 BY MR. SPIVA:

14 Q Go ahead. I'm sorry to interrupt.

11:03:25 15 A Well, mainly, Conecuh, Butler, Barbour, and Russell.

16 THE COURT: Excuse me. That's Conecuh.

17 THE WITNESS: I'm sorry. I learned how to say that,
18 and I've been saying Conecuh every time.

19 MR. SPIVA: I can testify to that, Your Honor. He
11:03:38 20 actually has been saying that.

21 THE WITNESS: How am I doing on Mobile?

22 THE COURT: Mobile you're doing okay. We'll wait
23 until you get to some of the other Native American derived
24 counties, so we'll see.

11:03:51 25 MR. SPIVA: We're just going to stay away from those.

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1 THE WITNESS: Etowah, that's correct, isn't it?

2 THE COURT: Yeah. You're doing well on that one.

3 BY MR. SPIVA:

4 Q So can you explain -- you were mentioning that there were
11:04:03 5 counties outside of the Board of Education District 5 including
6 Conecuh that might be included in a second majority-minority
7 congressional district?

8 A Right. The four counties -- maybe I didn't list them all
9 due to my mispronunciation of Conecuh.

11:04:20 10 THE COURT: I'm sorry. That was my problem.

11 THE WITNESS: No. I'm glad you corrected me.

12 Well, Conecuh, Butler, Barbour, and Russell all are
13 counties that according to the 2010 census had black
14 populations over 40 percent, and they are not in Districts 4
11:04:35 15 and 5.

16 BY MR. SPIVA:

17 Q Okay.

18 A So that would be one area where those two districts could
19 be expanded in a fashion that would allow for two out of seven
11:04:45 20 majority black districts, as opposed to two out of eight as in
21 the board of education plans.

22 Q Can we pull up Figure 12 on page 22 of Mr. Cooper's first
23 report, Plaintiffs' Exhibit 1? And once we get there,
24 Mr. Cooper, if you can explain what the significance of this
11:05:11 25 map?

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1 A Well, this is sort of just jumping ahead in the sense that
2 this particular figure outlines the area of the state that I
3 have included in one or more of the majority black districts.

4 So you can see that I did include Butler and Conecuh and
11:05:42 5 Barbour. I did not include Russell in any majority black
6 districts.

7 Q And so I want to just focus this a little bit. When you
8 said you did include, do you mean that in one of the
9 illustrative or revised plans that you prepared, that in each
11:06:00 10 of those plans they fell somewhere within this area?

11 A Yes.

12 Q But not that each plan includes the entire area, I take
13 it?

14 A That's true. In some cases, a county would have been
11:06:13 15 dropped.

16 Q Uh-huh. And what is the population of the area that's
17 outlined here in Figure 12, and is that reported in paragraph
18 49 on page 22?

19 A Yes. There are roughly 1.79 million people living in that
11:06:36 20 area, which would constitute two-and-a-half congressional
21 districts in a seven-district plan according to the 2010
22 census. So there's more than enough population there to create
23 two majority black districts with over 340,000 people left
24 over.

11:06:56 25 Q And is there more than enough area -- more than enough

1 population there to draw them in different ways?

2 A Yes. Exactly. That's what I did. And that's why that
3 area is so much larger than two congressional districts because
4 I did different configurations under the illustrative plans.

11:07:15 5 Q Mr. Cooper, when you assessed whether the African-American
6 population is sufficiently large and geographically compact to
7 constitute a majority voting age population in a given
8 district, is it necessary to consider race to some degree?

9 A Because this is a *Gingles 1* case, Section 2 case, and you
11:07:39 10 have to meet the *Gingles 1* precondition, race is in the
11 background, but it does not predominate.

12 Q Are there other considerations that you take into account
13 as well when you are attempting to draw illustrative plans?

14 A Well, in this particular instance, I prioritize avoiding
11:07:59 15 county splits. So right at the outset, I wanted to split no
16 more than seven counties in any plan, which is the same number
17 of counties that the state split in the 2011 plan. And I
18 accomplished that objective. In fact, in two of the
19 illustrative plans, I split just six counties.

11:08:23 20 Q And what about in terms of precincts are also called
21 voting tabulation districts; is that right?

22 A Yes.

23 Q Was there -- was that -- avoiding VTD splits, was that a
24 consideration you -- a consideration in the drawing of your
11:08:56 25 illustrative plans?

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1 A Well, that was also a top priority. So my objective was
2 not to split any more precincts than the numbers split in the
3 2011 plan, and I also achieved that objective.

4 One plan -- I believe it may be Illustrative Plan 3 or
11:09:12 5 4 -- splits the same number, 16. All the other split fewer.
6 And so that, too, was prioritized.

7 And by precinct splits, I'm only calling a split if there
8 is population involved. Because some precincts or VTDs will
9 extend, say, beyond municipal boundary to include a commercial
11:09:36 10 split -- a commercial strip. And if you are going to follow a
11 municipal boundary, in fact, you may end up splitting that
12 precinct, zero population is involved.

13 So in my tables, I've just broken out the populated
14 splits, which are the most meaningful.

11:09:55 15 Q And are there instances when a voting tabulation district
16 must be split?

17 A In a zero deviation plan, which I understand is necessary
18 in a Section 2 lawsuit nowadays, precincts have to be split.
19 It would be just an amazing coincidence if you could combine
11:10:19 20 precincts and magically come up with a zero deviation district.

21 THE COURT: What do you mean by a zero deviation
22 district or plan?

23 THE WITNESS: Plus or minus one person.

24 BY MR. SPIVA:

11:10:33 25 Q Does that mean --

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1 A From the ideal district size.

2 Q And does that mean that all districts in the plan would
3 have equal population?

4 A Plus or minus, right.

11:10:44 5 Q Plus or minus one?

6 A Yes.

7 Q So there might be one district that had one more person in
8 it than another district?

9 A Or even two more.

11:10:51 10 Q Okay.

11 A Because one would be plus one and one would be minus one,
12 so, yes.

13 THE COURT: So you're talking about plus or minus
14 one person, as opposed to plus or minus one percent of
11:11:03 15 population?

16 THE WITNESS: Yes.

17 In the state legislative plan, the range was plus or minus
18 one percent, I believe, in the Alabama Legislative Black Caucus
19 case. So you had more population to work with.

11:11:17 20 But in a case like this, and in most of the congressional
21 plans even drawn by state legislatures following the 2010
22 census, it was plus or minus one person.

23 BY MR. SPIVA:

24 Q When you are forced to split a precinct, what is your
11:11:33 25 approach?

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1 A Basically, when you get to that point, and if it's to zero
2 out the population, you just have to sort of experiment until
3 you get it right. I mean, you move 24 people here, 36 people
4 here, and eventually you can get it down to zero, as opposed to
11:11:54 5 plus or minus five persons.

6 Q What I am asking, though, is are there certain techniques,
7 in terms of visible features that you try to follow when you
8 have to split a VTD?

9 A Yes. I would try to follow names, streets, or municipal
11:12:07 10 boundaries, which may not be visible boundaries, or a water
11 body or something so that there, you know, is a clear rationale
12 for the split.

13 Q In drawing your illustrative plans, did you consider
14 geographical compactness?

11:12:22 15 A Yes. Both visually, and then I also did compactness tests
16 to compare and contrast an illustrative plan with the 2011
17 plan, as well as other state plans, state legislative plans,
18 House and Senate, as well as the board of education plan.

19 Q We'll get there in a minute. I just want to make sure I
11:12:44 20 understand what you considered.

21 Did you consider contiguity in drawing your illustrative
22 plans?

23 A Yes. I considered contiguity. And the Maptitude
24 redistricting software actually has a menu check. You just hit
11:12:56 25 the menu button, and it will tell you whether or not the

1 district is contiguous.

2 Q Are the illustrative plans that you drew contiguous?

3 A Yes.

4 Q Did you consider the non-dilution of minority voting
11:13:09 5 strength in drawing the illustrative plans?

6 A I believe I did.

7 Q And what does, in the redistricting context, what does
8 non-dilution of minority voting strength mean?

9 A It means essentially that based on analyses performed by
11:13:27 10 experts other than myself -- because I am not a political
11 scientist -- a determination has been made that a district
12 would perform as an opportunity district; in other words, a
13 black candidate could win, wouldn't ensure a victory, but it
14 would be within the realm of possibility in spite of
11:13:52 15 racially-polarized voting.

16 Q Let me ask you: Did you consider communities of interest
17 in drawing your plans?

18 A I did. I was aware of the historical Black Belt and tried
19 to keep that together in one or more of the majority black
11:14:07 20 districts to the extent possible.

21 I think that counties represent communities of interest,
22 so I wanted to make sure that I did not unnecessarily split
23 counties. And as I've indicated, I matched the state's number
24 of splits in that regard and actually did a little better
11:14:29 25 overall for -- when comparing to all four illustrative plans.

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1 Q Let me pull up paragraph 19 of Plaintiff' Exhibit 1 on
2 page 7 of your first report. And let me ask you about the
3 quote here. You have in here a quote I believe from the
4 reapportionment committee guidelines for congressional
11:15:04 5 legislative and board of education redistricting.

6 What is that, and why did you include it?

7 A Because it's a very concise, clear, general statement
8 about the concept of community of interest. It's a broad
9 concept. And I believe that Mr. Dorman Walker actually
11:15:26 10 authored that paragraph.

11 Q Well, we won't speculate on that. But mainly I just
12 wanted to know whether this was something you considered in
13 terms of -- and that was intended as a compliment.

14 A Right.

11:15:41 15 Q But the main question is did you consider this in drawing
16 your illustrative plans?

17 A Yes. I consider it to be a very well-written paragraph.
18 And I tried to abide by that paragraph to the best of my
19 ability.

11:15:54 20 Q And what were the communities of interest that were set
21 forth in the reapportionment committee guidelines?

22 A Well, I will just repeat them. Areas with recognized
23 similarities of interests, including but not limited to racial,
24 ethnic, geographic, governmental, regional, social, cultural,
11:16:15 25 partisan, or historic interests; county, municipal, or voting

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1 precinct boundaries, and commonality of communications.

2 Q Okay. And does this definition comport with your
3 understanding of what communities of interests are?

4 A Yes. But Mr. Walker has stated it in a much more eloquent
11:16:40 5 fashion than I might have.

6 Q Okay. And do the illustrative plans that you prepared
7 respect communities of interest?

8 A I believe so. I understand there would be difference of
9 opinion, but I think that I do meet that standard here.

11:16:54 10 Q Okay. And do each of the illustrative plans -- and here
11 I'm including Revised Plan 1, Revised Plan 2, Revised Plan 3,
12 and Illustrative Plan 4. Do each of those --

13 THE COURT: Just a minute, Mr. Spiva. Aren't we only
14 looking at the revised plans? Aren't those the operative ones
11:17:19 15 that we're considering?

16 MR. SPIVA: That is correct, Your Honor. I just
17 wanted to make sure that was clear.

18 THE COURT: I'm clear with that, and we can just go on
19 directly to those.

11:17:25 20 MR. SPIVA: I won't repeat it. Sometimes I fall into
21 illustrative plan, and I just want to make sure it's clear.

22 With the exception, Your Honor, that Illustrative Plan 4
23 is the same.

24 THE COURT: Was not modified, right?

11:17:35 25 MR. SPIVA: Yeah. Not modified.

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1 THE COURT: I got it.

2 MR. SPIVA: Okay.

3 BY MR. SPIVA:

4 Q And I think I understand that you did not pair incumbents
11:17:41 5 in those plans, correct?

6 A Correct.

7 Q Okay. Was any one of the factors we just discussed the
8 predominant factor in preparing those illustrative plans?

9 A No.

11:17:59 10 Q Okay. Did you look predominantly at race in your
11 development of your illustrative plans?

12 A I was aware of race as a background factor. This is a
13 *Gingles 1* analysis, and this is a Section 2 case, so obviously
14 race is a factor.

11:18:21 15 But as I've indicated, I was also thinking about other
16 items, like county boundaries, preserving cultural ties, for
17 example, in the Black Belt area. So I was looking at other --
18 other factors, not race as a predominant factor.

19 Q Why did you draw four different plans? And I'm again
11:18:44 20 putting aside the original illustrative plans. Why did you
21 draw four plans?

22 A Well, I just thought it was important to demonstrate that
23 there were various ways to draw two majority black districts
24 that could look quite different, in terms of the counties
11:19:00 25 included in each one of the two majority black districts. It's

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1 different configurations.

2 Q Okay. Let's pull up Plaintiffs' Exhibit 61, which is
3 Exhibit A-2 to your second report, your second declaration,
4 or -- and let me ask you to verify once we get there,

11:19:27 5 Mr. Cooper, if that is, in fact -- pardon me one minute -- if
6 Plaintiffs' Exhibit 61 is, in fact, Exhibit A-2 to your second
7 report.

8 A Yes, it is.

9 THE COURT: And just for the record, and to be clear,
11:19:58 10 the witness' second report is which exhibit?

11 MR. SPIVA: Thank you, Your Honor. The witness'
12 second report is Plaintiffs' Exhibit 59.

13 THE COURT: Thank you. I just want to make sure we
14 got the trail.

11:20:08 15 MR. SPIVA: Yes. Thank you. It's hard for me to --
16 I'm trying to trace them through, but sometimes you lose your
17 place.

18 BY MR. SPIVA:

19 Q So this Plaintiffs' Exhibit 61, is that the -- well,
11:20:26 20 Revised Plan 1 that you did, Mr. Cooper?

21 A Yes.

22 Q And I'm displaying Revised Plan 1 kind of as a visual aid,
23 but I'd like to -- before we dive into the specifics of each
24 one, I'd like to get you to describe the features that the
11:20:48 25 illustrative plans share.

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1 And let's actually pull up -- sorry. Let's actually pull
2 up paragraph 53. We can keep this maybe to the side -- in your
3 first report, Plaintiffs' Exhibit 1, and it appears on pages 23
4 and 24 of your first report.

11:21:45 5 Does this section of your report, Mr. Cooper, describe the
6 common characteristics of each of the illustrative plans that
7 you drew?

8 A Yes.

9 Q And this remained true even after you did the revised
11:22:04 10 versions, right? These remained as common features?

11 A Right.

12 Q Okay. Or common characteristics.

13 And where is the CD 7 roughly located in the illustrative
14 plans?

11:22:20 15 A Well, CD 7 in the illustrative plans, of course, is always
16 partly in Jefferson County. But then in the various plans that
17 I produced, the other counties varied to a certain extent.

18 So Tuscaloosa, I believe, is in all of the District 7
19 plans. But in two of them, Tuscaloosa is divided between
11:22:52 20 District 7 and District 4 just as it is in the 2011 plan. But
21 in two of the plans, Tuscaloosa County is entirely in District
22 7.

23 Q Okay. What about CD 2, the new majority-minority
24 district? Where is that roughly located in the various
11:23:14 25 illustrative plans that you created?

1 A Okay. Well, one key commonality is that in all of the
2 illustrative plans, District 2 includes part of Mobile County
3 and all of Montgomery County.

4 And in the existing 2011 plan, part of Montgomery County
11:23:38 5 is in District 7 with the remainder put into white majority
6 districts. And all of Mobile County is in white majority
7 District 1.

8 Q Okay.

9 A So that's a key contrast there.

11:23:50 10 But, again, depending on the illustrative plan, there are
11 various configurations of the counties between those areas
12 shared by both District 2 and 7 depending on the plan.

13 Q Okay. And we'll dive into each of them in just a minute.

14 In terms of commonalities, are the black voting age
11:24:10 15 populations of CDs 2 and 7 in each of the illustrative plans
16 that you did greater than 50 percent?

17 A Yes.

18 Q Okay. And what is the black-to-white voting age margin
19 for CDs 2 and 7 in the various illustrative plans? In other
11:24:37 20 words, what's the range of margins between black voting age
21 population and white voting age population in each of the
22 illustrative plans that you drew?

23 A Well, the range for the black voting age population and
24 the non-Hispanic voting age population is roughly 4.7

11:24:56 25 percentage points to 8 percentage points. So these are strong

1 districts.

2 There's a big differential there between the white
3 population in Districts 2 and 7 under the four illustrative
4 plans. They are not 50/50 districts.

11:25:12 5 Q And I think you already said this, but is Montgomery
6 County kept whole in each of the illustrative plans that you
7 drew?

8 A Yes.

9 Q And did you examine the county in VTD splits in the
11:25:27 10 illustrative plans as compared to those in the 2011 plan?

11 A Yes.

12 Q Let's pull up Plaintiffs' Exhibit 59, which is your second
13 declaration, and in particular, Figure 12 on page 29.

14 And what does Figure 12 show?

11:26:11 15 A This just compares in the first column the total number of
16 county splits or split counties in the 2011 plan versus the
17 four illustrative plans.

18 And as I mentioned earlier, in two I managed to split just
19 six counties, one less than the current 2011 plan that has
11:26:33 20 seven splits.

21 The second column shows what I've termed as discrete
22 splits. In other words, if a county is split two ways, then
23 there would be two districts in that county or two unique
24 county district numbers.

11:26:52 25 So in the 2011 plan, because Montgomery County is split

1 three ways, there are 15 unique county district numbers or
2 discrete splits, which is one more than in Revised Plan 2 and
3 Revised Plan 3, and three more than in Revised Plan 1 and
4 Revised Plan 4.

11:27:21 5 So whether you look at just a number of counties that are
6 split or the actual number of splits within those counties, our
7 plans are superior.

8 Q And you also have a column for 2010 VTD splits populated.
9 What does that show?

11:27:45 10 A That just shows the number of VTDs or precincts that are
11 split in the whole plan.

12 In the 2011 plan, there are 16 populated VTDs that are
13 split. And in the revised plans, Revised Plan 1 splits just 12
14 populated VTDs; 2 and 3 split 13 and 16 respectively; and
11:28:10 15 Illustrative Plan 4 splits just 10.

16 THE COURT: By the populated VTD splits, is that what
17 you were talking about earlier where sometimes it included a
18 commercial district or something or another that had no
19 population?

11:28:23 20 THE WITNESS: Right.

21 THE COURT: Okay. Thank you.

22 BY MR. SPIVA:

23 Q And I noticed that there are two figures under that column
24 2010 VTD splits that are in red. Was that because there were
11:28:37 25 corrections made there?

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1 A Yes. Compared to the original illustrative plans as I was
2 shifting a few precincts around to get Representative Sewell
3 into the majority black District 7.

4 Q And I think you mentioned a minute ago that generally it's
11:29:00 5 sometimes necessary to split VTDs to reach a zero population
6 deviation. In these plans, when you had to split VTDs, how did
7 you decide where to place the splits?

8 A I tried to follow named streets, primary roads.

9 I mean, I guess we will get to this point later on, but in
11:29:23 10 Mobile County, in order to ensure that Mobile and Baldwin
11 counties were connected by land, there are three or four
12 precinct splits that basically just follow I-10 just to the
13 west of the bay. And those splits were unrelated to trying to
14 achieve one person one vote. They were related to trying to
11:29:47 15 make sure that there was land contiguity between Baldwin and
16 Mobile County for District 1.

17 Q Okay. And let me ask if we can pull up the same exhibit,
18 Plaintiffs' Exhibit 59. It's actually Figure 11 on the
19 previous page, 28 -- page 28.

11:30:19 20 And does this show the relative compactness scores of the
21 illustrative plans to various other plans?

22 A Yes.

23 Q And let me first ask you: I take it that this chart
24 includes the compactness scores of the 2011 plan; is that
11:30:45 25 correct?

1 A Yes. The first row shows the mean average for all
2 districts for the 2011 plan. And then I break out CD 7 --

3 Q Okay.

4 A -- showing the compactness scores under the Reock test and
11:31:00 5 the Polsby-Popper test.

6 Q Before we get to the particulars of that, I just want
7 to -- it also compares the compactness scores for the board of
8 education plan, the 2017 state Senate plan, the 2017 state
9 House plan, and then your various illustrative plans; is that
11:31:17 10 correct?

11 A That's correct.

12 Q And can you explain to the Court what these scores are?
13 What is a Reock score? What is a Polsby-Popper score?

14 A Well, put simply, since I have a simple mind, the Reock
11:31:34 15 score is simply a ratio of the area of a circle over the area
16 of the district it encompasses. And a higher score means it's
17 more compact and more like a circle.

18 So a circle has a 1.0 score. And if you draw a really
19 crazy looking district, then you go down to something probably
11:32:01 20 into the single digits.

21 Q And why a circle? You know, what is it about a circle
22 that is relevant to the measure of compactness?

23 A It's just one way to look at these -- at whether or not a
24 district is reasonably compact. It's one --

11:32:24 25 Q Would a circle be the most compact district you could

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1 physically create?

2 A Yes. However, one could look at a square and say that's
3 not bad either, but it would perhaps not score a one. So
4 that's another issue, I suppose. But it's area based.

11:32:42 5 And then the Polsby-Popper score, which I guess you're
6 getting to -- I will wait for the question, I suppose.

7 Q Just one more thing, though, because there is no
8 obviously -- it's an obvious question, but there is no such
9 thing as a circular district in the United States that you are
11:32:56 10 aware of, right?

11 A Not -- not that I am aware of. There are some --

12 Q I should have known better to ask that question.

13 A There are some municipalities that are circles. Like, I
14 have seen some in Georgia like that. So, you know, maybe they
11:33:12 15 comprise a single district in a county or something. I can't
16 say.

17 Q I guess what I am getting at is there are either no or
18 very few districts that could score a perfect one, for
19 instance, on the Reock test?

11:33:26 20 A Right.

21 Q Okay. And then what is the Polsby-Popper test?

22 A It's also based on placing a circle over the district, but
23 it's based on the perimeter of the district.

24 And, again, one would be a perfect score, but the
11:33:43 25 Polsby-Popper scores are always significantly -- or at least

1 always almost significantly lower than Reock.

2 Q And similar to Reock, the lower the Polsby-Popper score,
3 does that mean the less compact the district is?

4 A Yes.

11:33:57 5 Q Okay. And so can you describe how your illustrative plans
6 measure up compared to the compactness in the 2011 plan or the
7 board of education plan?

8 A They're basically on par. There's a slight difference in
9 the Reock score.

11:34:20 10 For example, the 2011 plan has a Reock score for all
11 districts of .38, and CD 7 is .38. Revised Plan 1 has District
12 2 at .35 and District 7 at .38.

13 And I guess you can see the tables for the rest of the
14 districts are slightly lower, but nothing out of the norm, in
11:34:42 15 my opinion. I've seen congressional districts in place today
16 in other states that have significantly lower scores than the
17 2011 plan and the revised plans and the Illustrative Plan 4.

18 Q Just in terms of kind of -- well, first of all, I think I
19 forgot to ask you: Reock and Polsby-Popper, are those scores
11:35:04 20 that are commonly used in these types of cases to evaluate the
21 compactness of districts?

22 A Yes. They seem to be the two primary measures.

23 Q And is there -- in your experience, is there a
24 significant -- what is the difference, say, between .38 in the
11:35:24 25 2011 plan and, say, .31 for District 7 in your Revised Plan 2?

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1 A I would consider that insignificant.

2 Q Are there plans -- you mentioned that there were plans in
3 other states that have significantly lower scores. Can you
4 give, you know, one or two examples of that?

11:35:51 5 A Louisiana Congressional District 2, which is majority
6 black district running from New Orleans to Baton Rouge, scores
7 .06 on the Polsby-Popper score. I don't recall what the Reock
8 score is.

9 Q Okay. And how do the illustrative districts compare to
11:36:26 10 the other Alabama statewide plans on the chart, in terms of
11 compactness?

12 A Well, the board of education plan is a little more compact
13 overall on the Reock score in District 4 and District
14 5 score -- .4 and .37; whereas the illustrative plans, other
11:36:49 15 than District 7, the Revised Plan 1 all score in the lower 30s
16 or mid 20s, with respect to District 2, at least, and District
17 4 -- Revised Plan 2 and Illustrative Plan 4.

18 Q And how do the Polsby-Popper scores for your -- for the
19 revised plans and Illustrative Plan 4 compare to the 2011 plan?

11:37:24 20 A Here, the Polsby-Popper score for Revised Plan 1, both
21 District 2 and District 7 are higher than CD 7, which scores
22 .13. And, in fact, the same holds true for Revised Plan 2.
23 It's higher. District 2 is .14, whereas CD 7 is .13, not much
24 different really, but it did score higher.

11:37:57 25 And in District 2, in Revised Plan 3 is .18, but District

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1 7 scores .13. So the same.

2 And in Illustrative Plan 4, District 2 is .13, the same.

3 District 7 is significantly higher than CD 7.

4 So on Polsby-Popper measured against CD 7, the

11:38:14 5 illustrative plans are on par or better.

6 Q Okay. And I noticed that you also have columns next to
7 both the Reock and the Polsby-Popper scores where you say low
8 and high. What are those kind of sub columns referring to?

9 A That just refers to the lowest score of a district in any
11:38:32 10 given plan.

11 So you can see that in the 2011, the lowest scoring
12 district was CD 7 under the Polsby-Popper test. And the
13 highest was .28, one of the other districts.

14 For Reock, the lowest score was .22, which was not CD 7.
11:38:51 15 It was one of the other districts.

16 Q You don't recall which other district it was?

17 A No. I actually did prepare an exhibit that has
18 compactness scores for all of the illustrative plans, as well
19 as the 2011 plan. That's not the revised plan. I don't think
11:39:10 20 I ran off an exhibit for the revised plans. But those scores
21 were almost the same anyway.

22 So I would have to refer back to my declaration as to
23 where that exhibit is.

24 Q That's fine.

11:39:20 25 A But it does exist. It shows every district plan by plan

1 with Polsby-Popper and Reock scores.

2 Q We may get to that. I don't have it right handy, so we'll
3 keep going.

4 So does the chart show that the lowest scoring Reock score
11:39:43 5 for the 2011 congressional plan, the lowest scoring district is
6 lower than the Reock score for Districts 2 and 7 in your
7 various illustrative plans?

8 A Yes.

9 Q And in terms of compactness, are there natural geographic
11:40:09 10 features of political bodies, like states, counties, cities,
11 that can affect the compactness of a district?

12 A Yes. I mean, I think I cited Jefferson County as an
13 example of a place that has very odd-shaped municipality
14 boundaries, which also begins to impact the shape of the voting
11:40:30 15 districts. And so that does make a difference.

16 You could draw more compact areas in Jefferson County
17 easily but for the fact that you also want to follow the
18 precincts. So it creates some relatively odd shapes for sure
19 in Jefferson County because you're following precincts.

11:40:52 20 Q So if you split more counties, cities, VTDs, you could
21 draw a more compact district?

22 A For sure in Jefferson County.

23 Q Okay. Let's turn to Revised Plan 1. And let's look at
24 Plaintiffs' Exhibit 60, which is Exhibit A-1 to your second
11:41:14 25 report.

1 And tell me, Mr. Cooper, what is the chart in exhibit --
2 Plaintiffs' Exhibit 60?

3 A This just shows a little more detail on the demographics
4 of each of the districts according to the 2010 census for all
11:41:45 5 of the columns except the very last two, which show citizen
6 voting age population for the non-Hispanic black percentage.

7 Q Can I just interrupt for one second? Because I don't
8 know -- these are population statistics for Revised Plan 1; is
9 that right?

11:42:01 10 A Right.

11 Q Okay. Go ahead.

12 Well, actually, let me ask you a more direct question:
13 What is the BVAP of CD 2 in this plan? In the Revised Plan 1
14 according to this chart.

11:42:14 15 A 51.32 percent.

16 Q And where is that found? What column and row?

17 A Sort of in the middle.

18 Q If you can give the label of the column and the --

19 A Someone just highlighted it.

11:42:29 20 Q Oh. So it's the column that says percent 18 plus AP
21 black; is that right?

22 A Right.

23 Q Is that correct?

24 A Right.

11:42:38 25 Q Okay. And that obviously is, of course, percent 18 plus

1 all-part black, right?

2 A Yes.

3 Q Okay. And what is the BVAP of CD 7 in this plan?

4 A 50.65.

11:42:53 5 Q Let's pull up Plaintiffs' Exhibit 67. And what is this,
6 Mr. Cooper?

7 A This is Revised Plan 2.

8 Q And how does Revised Plan 2 differ from Revised Plan 1?

9 A Well, with respect to District 7, Revised Plan 2 would
11:43:37 10 eliminate the split in Tuscaloosa County. So Tuscaloosa is
11 entirely in District 7, and the district itself extends further
12 south to include Washington and Clarke counties.

13 District 2 in this configuration also expands in the sense
14 that it picks up one more county in east Alabama -- Barbour
11:44:01 15 County -- along the Georgia line, which is part of the historic
16 Black Belt. So this really is the only plan that would include
17 Barbour County in a majority black district.

18 And then the other counties from Mobile to Montgomery
19 there are included in the majority black district is -- would
11:44:24 20 be a little part of Baldwin, as well as all of Monroe, Conecuh,
21 Butler, Crenshaw, Pike. You know, the rest of the Black Belt
22 counties, plus Montgomery.

23 Q Okay. Let's take a look at Plaintiffs' Exhibit 66, which
24 is Exhibit B-1 to your second report.

11:44:47 25 And is that the population and summary report for Revised

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1 Plan 2?

2 A Yes.

3 Q Okay. And what is the BVAP of CD 2 in this plan? In
4 Revised Plan 2?

11:45:00 5 A 51.37 percent.

6 Q And what is the BVAP of CD 7 in this plan?

7 A 51.95 percent.

8 Q Okay. Let's pull up Plaintiffs' Exhibit 73. Can you
9 describe the configuration of CD 7 in this -- well, first of
11:45:42 10 all, let me ask you: What is Plaintiffs' Exhibit 73?

11 A This is Revised Plan 3.

12 Q And can you describe the configuration of CD 7 in this
13 plan?

14 A Yes. In this plan, as always, Jefferson County is partly
11:46:02 15 in District 7. And in this instance, Tuscaloosa remains split
16 between Districts 6 and 7.

17 Q I'm sorry to interrupt. When you say remains split,
18 Tuscaloosa is split under the 2011 plan?

19 A Right.

11:46:16 20 Q The current plan?

21 A Right.

22 Q All right. Go ahead.

23 A And then it picks up a couple of counties with significant
24 black population; namely, Talladega and Coosa that have roughly
11:46:29 25 30 to 35 percent black population according to the 2010 census.

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1 So I've included those two counties in District 7. They are
2 not included in any of the other illustrative plans.

3 And so that results in a District 7 -- well, I don't have
4 the percentage in front of me, but it's majority black --

11:46:49 5 Q Okay.

6 A -- and then --

7 Q What about --

8 A -- District 2 would extend a little bit further to pick up
9 Choctaw County. It's not always including Choctaw County in
10 some of the plans.

11 Q And any other differences or unique features of CD 2 in
12 this Revised Plan 3?

13 A Well, I do not think that Autauga County is in District 2
14 in any of the other plans. In this plan, it is shared with
11:47:20 15 District 3.

16 Q And let's pull up Plaintiffs' Exhibit 72. And I'll ask
17 you if that is C-1 to your second report, if that's the
18 population summary report for Revised Plan 3?

19 A Yes.

11:47:38 20 Q And what is the BVAP of CD 2 in this plan?

21 A 50.99 percent.

22 Q And what is the BVAP of CD 7 in this plan?

23 A 50.34 percent.

24 Q Okay. And if we can now pull up Plaintiffs' Exhibit 40,
11:48:02 25 which is Exhibit K-2 to your second report?

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1 A Actually that's first report.

2 Q Yes. I'm sorry. That's Exhibit K-2 to your first report;
3 is that right?

4 A Right.

11:48:21 5 Q And let's now discuss the unique details of Illustrative
6 Plan 4. How does Illustrative Plan 4 differ from the Revised
7 Plans 1, 2, and 3?

8 A First, in Illustrative Plan 4 as in Illustrative Plan 2,
9 Tuscaloosa is entirely in District 7.

11:48:45 10 The other primary difference in Illustrative Plan 4 is
11 that Mobile County is divided so that the western-most boundary
12 of District 2 is actually the Mississippi state line and the
13 southern-most is the Gulf. And then the eastern boundary --
14 for much of the eastern boundary follows Mobile Bay. So that
11:49:13 15 that allows for a way to drive directly into Mobile County from
16 Baldwin County via I-65.

17 So the northwest or northeast quadrant of Mobile County
18 now is completely connected to Baldwin via I-65.

19 Q And in the other plans -- I think you've said this, but I
11:49:49 20 just want to make sure it's clear in the record -- there's a
21 land route between Baldwin and Mobile County; is that correct?

22 A Yes. According to the guidelines of the state
23 legislature, water contiguity is acceptable. But I don't know
24 if they really meant Mobile Bay or not. So for that reason, I
11:50:12 25 decided to split three precincts facing Mobile Bay so that one

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1 could drive from Baldwin into Mobile and still be in District
2 1.

3 Q Okay.

4 MR. SPIVA: Your Honor, can I have just one second to
11:50:24 5 confer with my colleague?

6 Thank you.

7 BY MR. SPIVA:

8 Q And let's if we can pull up Plaintiffs' Exhibit 39.

9 And is that -- Mr. Cooper, is that the population summary
11:51:00 10 report for your Illustrative Plan 4? For your reference, this
11 is Exhibit K-1 to your first declaration.

12 A Yes.

13 Q And what is the BVAP of CD 2 in this plan?

14 A 50.33 percent.

11:51:16 15 Q Is that CD 2 or CD 7?

16 A That's CD 2.

17 Q Oh, okay. I'm sorry. My notes were mixed up.

18 And what is the BVAP of CD 7 of this plan?

19 A 50.74.

11:51:29 20 Q I am going to turn, Mr. Cooper, to some of the criticisms
21 of your report in Dr. Johnson's report.

22 First of all, have you reviewed Dr. Johnson's report?

23 A Yes.

24 Q The first issue that Dr. Johnson raises is your use of
11:52:02 25 any-part black in determining whether the illustrative

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1 districts have BVAPs over 50 percent. Did you see that in his
2 report?

3 A I did.

4 Q Okay. I'm not actually directing you to a particular part
11:52:15 5 of his report --

6 A Right.

7 Q -- I just -- we've already discussed why you chose to use
8 any-part black figures, so I won't repeat that.

9 But what measure does Dr. Johnson say you should use?

11:52:30 10 A Dr. Johnson --

11 Q I don't know if it will help to look at Plaintiffs'
12 Exhibit 59, which is your second report, paragraph 8.

13 A Well, Dr. Johnson suggests that I should have used
14 non-Hispanic black VAP as opposed to single-race black VAP,
11:52:51 15 which is what the state legislature used.

16 Q And if we can take a look at page 5 of your second report,
17 Plaintiffs' Exhibit 59, you report here on citizen voting age
18 population in this table, do you not?

19 A I do. Of course, that's citizen voting age population
11:53:50 20 under the 2008-2012 American Community Survey, which would be
21 roughly coincident with the 2010 census, because the survey
22 midpoint would have been July of 2010.

23 Q Okay.

24 A And so that shows citizen voting age population in the
11:54:07 25 2011 plan along with the illustrative plans.

1 And one can see that in all four illustrative plans,
2 Districts 2 and 7 are more than 50 percent non-Hispanic black
3 citizen voting age population based on the 2008-2012 ACS.

4 And advancing five years to mid decade, the districts are
11:54:33 5 even stronger across the board, the illustrative plans.

6 Q Let me stop you there, Mr. Cooper, because I think based
7 on a ruling from Your Honor earlier, we probably don't need to
8 go to that data.

9 But let me -- let's take this down and just ask you the
11:54:54 10 question: Are any of your districts -- are any of the
11 districts in the illustrative plans that you drew over
12 50 percent BVAP even using the single-race black definition
13 that Dr. Johnson says you should use?

14 A Yes. Illustrative Plans 1 and 2 would have districts that
11:55:19 15 are over 50 percent non-Hispanic black single race. So, yes.

16 Q And that's based on the 2010 census numbers?

17 A Right. Right.

18 Q Okay.

19 A That is a more narrow definition than that used by the
11:55:37 20 state legislature.

21 Q Correct.

22 THE COURT: Do you have a chart or anything that shows
23 that?

24 THE WITNESS: I don't think I broke out the
11:55:42 25 non-Hispanic black VAP in a chart.

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1 BY MR. SPIVA:

2 Q Let me see if I can get that.

3 A I did not break that out in a chart.

4 Q Is it elsewhere reported in your second declaration,
11:56:08 5 though?

6 A Well, the statement I make here is that Dr. Johnson
7 acknowledges that District 2 and District 7 in Illustrative
8 Plans 1 and 2 contain non-Hispanic black voting age population
9 majorities.

11:56:23 10 Q Where are you referring to?

11 A Paragraph 8 on page 3 of my declaration.

12 So I believe that Dr. Johnson has a table or a paragraph
13 that addresses that.

14 Q Okay.

11:56:34 15 A But I disagree with Dr. Johnson on the need to use that
16 narrow definition for voting age population.

17 Q And why is that?

18 A Because it's not a necessary distinction in a state like
19 Alabama, where Latinos comprise a population that is, in terms
11:56:51 20 of voting age, just in the low single digits. It's just a
21 meaningless term.

22 Q And just to be clear, using the all-part black definition
23 that you use and that we've seen in the various tables we've
24 looked at, all of the Districts 2 and 7 in each of your
11:57:16 25 illustrative plans are over 50 percent black?

1 A Yes.

2 Q And using the narrower definition that Dr. Johnson says
3 that you should use, based on one of his tables, two of your
4 districts in the illustrative plans are also over 50 percent
11:57:37 5 black; is that correct?

6 A That is correct.

7 Q And are you able to identify those -- I know this
8 shouldn't be a memory test. So, you know, at a break or
9 something I can get the actual table from his report. But if
11:57:48 10 you know it from memory, if you can --

11 A I do not recall.

12 Q Okay. That's fine.

13 THE COURT: May I ask a question?

14 MR. SPIVA: Sure.

11:57:57 15 THE COURT: Mr. Cooper, where did you get the data
16 that went into the any-part black numbers?

17 THE WITNESS: From the P.L. 94-171 file.

18 There's not an absolute column showing any-part black.
19 What you do is you add up the various multi-racial categories,
11:58:19 20 and then you have that number. And it is included in the
21 redistricting data sets that are available from the Caliper
22 Corporation that produces Maptitude for redistricting. So at
23 least --

24 THE COURT: Okay. So you got it from the Census
11:58:35 25 Bureau data?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Thank you.

3 BY MR. SPIVA:

4 Q And then, Mr. Cooper, Dr. Johnson also criticizes your
11:58:48 5 adherence to what he says are traditional districting
6 principles. And he touches on a number of topics, so let me
7 just ask you about them one by one.

8 Regarding compactness, Dr. Johnson questions the
9 compactness of the illustrative districts you've drawn. How do
11:59:03 10 you respond to that?

11 A Well, we'll just have to agree to disagree, because I
12 think visually these plans are acceptable when compared with
13 congressional districts across the land. And the compactness
14 scores provide an objective measure which show that there's
11:59:17 15 nothing unusual about the four illustrative plans as compared
16 to the 2011 plan.

17 Q And are his criticisms based on compactness scores?

18 A No. I think he just made the comment without really going
19 deeper into the compactness scores.

11:59:34 20 Q Did he include compactness scores in his report?

21 A No.

22 Q Is there any kind of a break line standard for when a
23 district is -- among redistricting experts for when a district
24 is considered compact or not compact?

11:59:50 25 A I don't believe so. I don't think any court has ever

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1 ruled that you have to have a certain Reock score or a certain
2 Polsby-Popper score to be acceptable.

3 Q Okay.

4 A There are so many other factors at work like county lines
12:00:04 5 and the shape of states. It does mean that you -- it's very
6 difficult to even conjure up a concept of how that would be
7 done to be applied across any congressional district anywhere
8 in the country.

9 Q Okay.

12:00:21 10 MR. SPIVA: Your Honor, I didn't know what time you
11 wanted to break for lunch.

12 THE COURT: Like I said, I have got a 1:00 o'clock, so
13 closer to 1:00 o'clock if y'all's stomachs aren't growling too
14 much. But if anybody needs a break at any time, all you have
12:00:34 15 to do is let me know.

16 MR. SPIVA: Okay. Thank you, Your Honor.

17 BY MR. SPIVA:

18 Q So let's look at Plaintiffs' Exhibit 63. And that is
19 Exhibit A-4 to your second declaration.

12:00:55 20 And what is this, Mr. Cooper?

21 A This is Revised Plan 1 zooming in on the Mobile Bay area.
22 And if you look closely, you can see that crossing I-10 from
23 Baldwin into Mobile you hit a pink area. And from there, you
24 can track down to roughly the area where State Route 163 veers
12:01:27 25 south and continues in District 1.

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1 So it's contiguous by land. But if I had used water
2 contiguity, at least three of the precincts splits in Mobile
3 County could have been eliminated.

4 Q And did Dr. Johnson criticize your maps because of a
12:01:51 5 claimed lack of contiguity in Mobile County?

6 A Did he say it was not -- I'm not sure if he actually
7 stated that or not. Did he?

8 Q Yes. I mean, he criticizes your maps for lacking
9 contiguity in Mobile County. And what is your response to
12:02:10 10 that?

11 A Well, he's wrong. He's wrong. Incorrect.

12 Q And why is that?

13 A Because, as you can see in all three of these maps Revised
14 Plans 1, 2, and 3, Baldwin County is contiguous by land via
12:02:29 15 I-10 and U.S. 98 into downtown Mobile with plenty of space to
16 the east that is in District 2 and then further District 1.
17 And then further south, you're entirely in District 1.

18 So it is clearly contiguous.

19 Q Did you consider using Mobile Bay for contiguity?

12:02:48 20 A I did. And there is a stipulation in the guidelines of
21 the state redistricting commission, the legislature commission
22 indicating that water contiguity is acceptable.

23 But what I don't know and still don't to this day really
24 know is did they mean Mobile Bay, or just the Tennessee River,
12:03:09 25 or the Alabama River or something.

1 So I just wanted to make sure that there could be no
2 argument that I had drawn a district, i.e. District 1, that was
3 not contiguous because it crossed Mobile Bay.

4 Q Does the 2011 board of education plan join two districts
12:03:29 5 using Mobile Bay for contiguity?

6 A Yes.

7 Q And if Mobile Bay could be used for contiguity in your
8 revised and illustrative plans, how could those plans be
9 modified?

12:03:51 10 A Well, three or four precinct splits along I-10 facing into
11 Mobile Bay would be eliminated. In other words, the number of
12 precinct splits in all -- in Revised Plans 1, 2, and 3 would be
13 cut by about three precincts. Illustrative Plan 4, which has a
14 different configuration that we reviewed earlier --

12:04:15 15 Q Why don't we actually go to that? Let's pull up
16 Plaintiffs' Exhibit 42, which is I believe is Exhibit K-4 to
17 your first report, and ask you to explain -- I think where you
18 were going, but explain what this is.

19 A Right. And so in Illustrative Plan 4, as you can see, the
12:04:38 20 connector between I-10 -- I mean, between Baldwin County and
21 Mobile County for District 1, the primary connector would be
22 I-65. And there -- I mean, there's no question it's
23 contiguous. You don't even need to zoom in on downtown Mobile
24 and I-10.

12:04:54 25 So that solves it. That revolves it. I mean, if there's

1 any question about it, here you go.

2 Q Now, and what's the primary road that connects Mobile and
3 Baldwin in Revised Plan 4?

4 A Well, it's I-65.

12:05:18 5 Q Okay. And Dr. Johnson notes that more persons are shifted
6 into different congressional districts under the illustrative
7 plans than under the 2000 plan, as compared to the 2001 plan.
8 Can you explain why that is the case?

9 A Well, anytime one creates a new majority-minority
12:05:51 10 district, more often than not a lot of people are going to have
11 to be moved, particularly when the black population has been,
12 in my opinion, cracked between three different districts -- CD
13 1, CD 2, and CD 3. So to make a new district in that area,
14 you've got to take a lot of people from both CD 1, CD 2, and CD
12:06:13 15 3 in the present plan -- or in the old 2001 plan -- and put
16 them into a new district. So the fact that the illustrative
17 plans move roughly one-third of the population in a
18 seven-district plan is not at all unusual.

19 I do, in a footnote, cite a county of Georgia, Emanuel
12:06:37 20 County, a small rural county that has seven districts, and
21 originally just had one board of education district that was
22 majority black. A lawsuit was filed, and a consent decree was
23 signed in 2016 accepting the plan that I drew that created a
24 new majority black local board of education district. And to
12:06:59 25 create that district, I had to move 31 percent of the

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1 population in the county into a new plan that had two majority
2 black districts.

3 Q And just since you referenced it, do you happen to know
4 where that footnote is that you mentioned?

12:07:15 5 A It's footnote 6 on page 8.

6 Q Of your second report?

7 A Yeah.

8 Q Okay.

9 A The paragraph 21 references footnote 6.

12:07:22 10 Q Okay. And that's --

11 THE COURT: Which is exhibit?

12 MR. SPIVA: Plaintiffs' Exhibit 59, Your Honor.

13 THE COURT: Thank you.

14 BY MR. SPIVA:

12:07:27 15 Q And we don't need to actually pull it up, but I just
16 wanted the reference to be clear.

17 And then, in your opinion, would it be unusual to move
18 one-third of the population of a state to create a new
19 majority-minority district?

12:07:47 20 A Not at all. Not at all. It would be quite common,
21 probably.

22 Q In developing the illustrative plans, did you consider the
23 2001 plan or the 2011 plan?

24 A Well, I was aware of the 2001 plan. So I had lines on my
12:08:08 25 map showing the configuration of both the 2001 plan and 2011

1 plan, as well as the board of education plan. But I mainly was
2 paying attention to the 2011 plan and the board of education
3 plan since they were drawn based on the 2010 census.

4 Q Now, Dr. Johnson also criticizes your report on the basis
12:08:38 5 that Alabama's likely to lose a district in 2020. And so I'd
6 like to discuss -- shift focus and discuss the possibility of
7 creating a six-district plan with two majority-minority
8 districts.

9 MR. WALKER: Your Honor, if I may. I thought we were
12:08:59 10 not going into this.

11 THE COURT: If it's part of your expert's criticism,
12 should we? I don't --

13 MR. WALKER: My understanding from our conversation
14 earlier was that the 2020 plan is not being considered by the
12:09:17 15 Court, given that the purpose of this hearing is for the Court
16 to determine whether the legislature in 2011 could have drawn
17 any of the illustrative plans proposed by Mr. Cooper, of which
18 the 2020 plan with six districts is not one.

19 THE COURT: Right.

12:09:33 20 MR. SPIVA: But in their expert reports, which there
21 is this criticism of the fact that Alabama's likely to lose a
22 seat, and I think in their pretrial brief actually they raise
23 that as one of their defenses. So this was just a response to
24 that.

12:09:48 25 MR. WALKER: If that's irrelevant, Your Honor, it's

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1 irrelevant in the report and in our brief.

2 MR. SPIVA: As long as their defense on that regard is
3 irrelevant, then I'm happy to skip this.

4 THE COURT: Seems like it's irrelevant to me, because
12:10:00 5 I really believe we need to be focusing on what the legislature
6 could have done in 2011.

7 MR. SPIVA: And we actually agree for the record, Your
8 Honor. I just want to make sure it is clearly conceded that
9 they are not going to argue that as a defense that we -- it's
12:10:17 10 no longer proper to have a declaration because of the potential
11 loss for a district.

12 THE COURT: Okay. So when Dr. Johnson testifies, he
13 will not be allowed to criticize any of the reports because of
14 any impact that 2020 may have.

12:10:37 15 MR. WALKER: Dr. Johnson's criticisms of the 2020
16 plan, my understanding is that --

17 THE COURT: I don't think we have a 2020 plan yet, do
18 we?

19 MR. WALKER: Mr. Cooper has prepared a hypothetical
12:10:55 20 2020 plan with six districts.

21 THE COURT: Right. I don't think we need to get there
22 either with Mr. Cooper or with Dr. Johnson.

23 MR. WALKER: And that is all I was saying. I think
24 both his testimony and his drawing of the plan is irrelevant,
12:11:12 25 as is the criticism of it or any argument about it.

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1 THE COURT: Right. So we're not going to get into it
2 with Dr. Johnson if we don't get it into it with Mr. Cooper
3 today. Right?

4 MR. WALKER: We are not going to get into that. I
12:11:24 5 mean, we --

6 THE COURT: Okay.

7 MR. WALKER: Should that issue somehow become
8 relevant, we stand by what we've said.

9 THE COURT: Certainly. Certainly.

10 MR. WALKER: Thank you, Your Honor.
12:11:31

11 THE COURT: Okay.

12 MR. SPIVA: Thank you, Your Honor.

13 BY MR. SPIVA:

14 Q So, Mr. Cooper, we're going to switch gears and actually
12:11:47 15 talk about the demographic census data that you reviewed
16 regarding socioeconomic disparities between blacks and whites.

17 And let's take a look at your first report, Plaintiffs'
18 Exhibit 1 at pages 41 to 42. And, Dr. Cooper, you did an
19 analysis of the disparities between African-Americans and
12:12:39 20 whites in Alabama; is that right?

21 A I did, using the 27 ACS statewide, and also for four of
22 the congressional districts that would be impacted by the
23 illustrative plan districts.

24 Q And what were your conclusions regarding the socioeconomic
12:12:58 25 disparities between African-Americans and white Alabamians?

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1 A Well, there's a big difference in socioeconomic well-being
2 for African --

3 THE COURT: Wait a minute. Just a minute. Are you
4 using 2017 information?

12:13:12 5 THE WITNESS: From the American Community Survey,
6 right.

7 THE COURT: Okay. So how was that relevant to 2011
8 situation and what the legislature could have done then?

9 MR. SPIVA: This is different, Your Honor, because
12:13:26 10 this goes to the Senate factors. So that really does look to
11 the disparities between blacks and whites, or, in this case,
12 blacks and whites and whether that interacts with, you know,
13 whatever is being -- whatever voting mechanism or districting
14 that is in place to create less opportunity for
12:13:50 15 African-Americans to participate. And it's a result --

16 THE COURT: Right. And I understand that that
17 information is relevant. But why are we looking at 2017
18 information instead of 2011 information to get that data for
19 the Senate factors?

12:14:11 20 MR. SPIVA: Because it's a results test, Your Honor.
21 And so the Senate factor really looks to what is now. And so
22 that's the more appropriate data, I think, under the case law.
23 I don't have at my fingertips. I could get it for Your Honor.

24 But you're looking at what is the results of what was --
12:14:34 25 what was passed and how that interacts with the socioeconomic

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1 factors.

2 THE COURT: So wait a minute. You're saying that
3 these factors in 2017 are a result of the 2011 --

4 MR. SPIVA: No.

12:14:47 5 THE COURT: -- drawing of the district?

6 MR. SPIVA: No. The question is the way the districts
7 were drawn, do they interact with these various Senate factors,
8 some of which are socioeconomic. Some are involving things
9 like racial appeals and the like and polarized voting to
10 deprive African-Americans of the full participation, political
11 participation. It's not a -- it doesn't look at intent. So it
12 doesn't matter what was in the minds of the legislators at the
13 time, what the conditions were at the time.

14 The question is just does the map that was drawn deprive
12:15:27 15 African-Americans of full political participation as compared
16 to whites? And many of the factors that go into that are these
17 socioeconomic factors.

18 THE COURT: I understand that. But I don't understand
19 why we're looking at 2017 instead of 2011.

12:15:45 20 Is there an issue with that, Mr. Walker? Or am I seeing
21 an issue that may not necessarily be there?

22 MR. WALKER: Your Honor, there's a little cognitive
23 dissonance in it, I suppose. But I believe that on this issue
24 they are entitled to present evidence of current circumstances.

12:16:05 25 THE COURT: Okay. Thank you.

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1 MR. WALKER: Yes, ma'am.

2 THE COURT: I don't think there's that much difference
3 from 2011 to 2019, in terms of these disparities. I think
4 they're pretty well recognized in a lot of data from a lot of
12:16:22 5 years and a lot of places.

6 MR. SPIVA: Yeah. Unfortunately so, Your Honor. And
7 actually documented.

8 THE COURT: Very unfortunately so, right. You may
9 proceed, then.

12:16:32 10 MR. SPIVA: Thank you, Your Honor.

11 BY MR. SPIVA:

12 Q So was there any measure that you looked at that is set
13 forth in your first report on pages 41 and 42 where
14 African-Americans outpaced whites in these various measures?

12:16:58 15 A I don't believe so.

16 Q And let's pull up Plaintiffs' Exhibit 49. And maybe if we
17 can keep those two pages we had up at the same time, if that's
18 possible, which was pages 41 and 42 of the first report.

19 And this Plaintiffs' Exhibit 49, which runs for several
12:17:49 20 pages, I take it that that is N-1 -- Exhibit N-1 to your first
21 report, Mr. Cooper; is that right?

22 A Yes. N-1 has bar charts illustrating the disparities.
23 And then the original census document that has the same
24 percentages presented is N-2.

12:18:13 25 Q Okay. And let's turn -- let's maybe highlight page 22 of

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1 the first report or blow it up a little bit.

2 THE COURT: You're not asking much of the poor person
3 who's driving your --

4 MR. SPIVA: She's a magician, Your Honor.

12:18:32 5 THE COURT: -- exhibits here. Yeah. I think you've
6 now mentioned maybe four pages that you want up on the same
7 screen, and I'm not sure that's going to be very helpful
8 anyway.

9 MR. SPIVA: I'm sorry. Did I say page 22? Pardon me.
12:18:47 10 I'm sorry. Page 22 of N-1, I believe.

11 THE COURT: Of N-1, which is 49?

12 MR. SPIVA: Yes, Your Honor.

13 THE COURT: Okay. For the record, it's going to be
14 much easier if you identify it by the exhibit number that's in
12:19:02 15 evidence.

16 MR. SPIVA: Absolutely. I will do that from here on
17 out.

18 BY MR. SPIVA:

19 Q And can you tell us what the poverty rate for
12:19:13 20 African-Americans was -- is in Alabama?

21 A 27.4 percent.

22 Q And how does that compare to non-Hispanic whites?

23 A Non-Hispanic whites poverty rate of 11.6 percent.

24 Q I think actually -- you know, and Your Honor makes a good
12:19:42 25 point. I'm not sure we need the non bar charts. But after we

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1 take them down, Mr. Cooper, let me know if you need to
2 reference them, or you've got it, I think, in your book in
3 front of you, the pages from your report. We can probably just
4 go with the charts.

12:19:58 5 A Yeah.

6 Q And what is the child poverty rate for African-Americans
7 in Alabama?

8 A It's much higher than the overall rate. It's 40.4 percent
9 for African-American children versus 14.3 percent for white
12:20:17 10 children.

11 Q And what is the African-American -- let's turn to page 14
12 of this same exhibit of Plaintiffs' Exhibit 49.

13 And what is African-American median household income, and
14 how does that compare to white median household income?

12:20:41 15 A It's just a little bit over half of the white median
16 household income. Black median income is \$31,398 versus
17 \$56,138 for white household income.

18 Q And looking at page 17 of Plaintiffs' 49, what is the per
19 capita income for black Alabamians, and what is the -- how does
12:21:08 20 that compare to the per capita income for white Alabama?

21 A Another big gap. The black per capita income in Alabama
22 is \$18,229 versus \$30,697 for whites.

23 Q If we can turn to page 5 of Plaintiffs' Exhibit 49. Is
24 this a document which sets forth various measures of
12:21:46 25 educational attainment for the population 25 years and older in

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1 Alabama?

2 A Yes.

3 Q And of those persons 25 years of age and older, what
4 percentage of African-Americans have not finished high school?

12:21:58 5 A 16.7 percent.

6 Q And what is the percentage for whites over 25?

7 A 11.3.

8 Q Okay. And what about at the other end of the spectrum?

9 What percentage of African-Americans 25 and over have a
12:22:13 10 bachelor's degree or higher?

11 A 17.1 percent versus 28.6 percent for whites.

12 Q Okay. There seems to be an anomaly here. And I wonder if
13 you can explain it, Mr. Cooper.

14 The set of bars over the high school graduate, GED, or
12:22:35 15 alternative. It seems to show African-Americans -- I mean,
16 would appear that African-Americans -- that higher percentage
17 of African-Americans have a high school degree, or GED, or
18 alternative than non-Hispanic whites. Can you explain how
19 these various graphs work together, why that is?

12:22:56 20 A Well, the reason is that because there's a big difference
21 between the African-American and white percentages for a
22 bachelor's degree or higher, some of the other categories,
23 specifically high school graduate or some college, would show
24 that as a component, a higher percentage of African-Americans
12:23:24 25 are at that level.

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1 So in the case of high school graduates -- and that label
2 sort of obscures the African-American percentage which is right
3 around 33 percent -- to just compared to the same component of
4 whites, slightly more have a GED as their highest level of
12:23:47 5 attainment. And again, with some college, but not a
6 full-fledged bachelor's degree, 31.6 percent of
7 African-Americans have some college versus 29.8 percent of
8 whites.

9 Q Okay. So is it -- I don't know if another way of saying
12:24:07 10 it -- and tell me if this is not correct. But are these kind
11 of like cumulative such that it may be a little bit -- that
12 might explain kind of the anomaly with the two middle bars?

13 A Right. All these add -- each bar set -- the
14 African-American bars and the white bars would add up to 100
12:24:28 15 percent.

16 So the ones to key on are those who lack a high school
17 diploma really. That's a significant one there. And there
18 whites outperform blacks by a considerable margin, 11.3 percent
19 versus 16.7.

12:24:42 20 And then at the other end of the educational scale, whites
21 have an 11 percentage point advantage over African-Americans
22 28.6 to 17.1. That's bachelor's degree or higher. So some
23 advanced degrees would be included in that category, of course.

24 Q Okay. Let's turn to page 11 of Plaintiffs' Exhibit 49.

12:25:06 25 And what is the black unemployment rate as compared to the

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1 white unemployment rate?

2 A The black unemployment rate in 2017 was 9.1 percent
3 statewide compared to 4.6 percent for whites.

4 Q And then let's turn to page 13 of Plaintiffs' Exhibit 49.
12:25:30 5 Of those African-Americans who are employed, what portion are
6 in management or professional occupations?

7 A 24.5 percent of African-Americans are in management or
8 professional occupations compared to 39 percent of whites.

9 Q Okay. And let's turn to page 21. Do these same
12:25:54 10 disparities exist in housing?

11 A Yes. Only about half of the black population lives in an
12 owner-occupied dwelling versus three quarters, 76.7 percent of
13 the white population.

14 Q Okay. And let's turn to page 25 of Plaintiffs' Exhibit
12:26:17 15 49. For those African-Americans who do own their own homes,
16 what is the median value of those homes?

17 A \$92,200, which is well shy of the \$155,600 median value of
18 the white owner-occupied homes.

19 Q And if we can turn to page 23 of Plaintiffs' Exhibit 49.

12:26:45 20 In terms of vehicle ownership or availability by household,
21 what percentage of African-American households lack access to a
22 vehicle?

23 A 12 percent.

24 Q And what about white households? What percentage of white
12:27:03 25 households lack access to a vehicle?

1 A 3.6 percent.

2 MR. SPIVA: Your Honor, if I can just confer with my
3 colleagues for a minute, I think I may be done.

4 THE COURT: All right.

12:27:22 5 MR. SPIVA: Thank you, Your Honor. I have no further
6 questions of Mr. Cooper.

7 THE COURT: This may be a good time to take a break.
8 And I hope we will be able to reconvene about 1:30, but it kind
9 of depends upon what the lawyers throw at me that I might not
12:27:37 10 be expecting.

11 Okay.

12 MR. SPIVA: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (Recess.)

13:32:37 15 THE COURT: All right. Is the defense ready to
16 proceed with cross-examination?

17 MR. WALKER: Yes, ma'am. I'm sorry, Your Honor. I
18 didn't know you had come in.

19 THE COURT: No problem. You may do so.

13:32:59 20 CROSS-EXAMINATION

21 BY MR. WALKER:

22 Q Good morning -- or afternoon -- excuse me -- good
23 afternoon, Mr. Cooper.

24 A Good afternoon.

13:33:09 25 Q You said that the purpose of drawing your four plans was

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1 to demonstrate the possibility of drawing two majority black
2 congressional districts while at the same time respecting the
3 traditional redistricting criteria. Did I understand
4 correctly?

13:33:31 5 A Yes.

6 Q Okay. And I believe you said that you did that by using
7 Maptitude on your program?

8 A Well, Maptitude is --

9 Q Was the program?

13:33:47 10 A -- the redistricting software I used.

11 Q Okay. And is it fair to say that you were sitting at your
12 computer, and you had a map of Alabama or some part of Alabama
13 up, using the Maptitude program to look at whatever level of
14 geography you were looking at -- census tracts, or census
13:34:08 15 blocks, or VTDs, or whatever it was?

16 A Yes.

17 Q And you would have displayed on your computer as you
18 looked at -- I'm just going to say a census tract. You can
19 correct me if you need to.

13:34:23 20 As you looked at a census tract, for example, you would
21 have displayed on your computer information telling you how
22 many African-Americans lived in that unit, did you not?

23 A I would have access to that, but I did not use that
24 information at that level of detail. But if I wanted to know
13:34:46 25 how many African-Americans were in a particular precinct or

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1 census block, I could have queried it for that purpose.

2 MR. DAVIS: Excuse me. Your Honor, I forgot to get
3 the headphones that I use. May I walk up?

4 THE COURT: Certainly.

13:35:00 5 MR. DAVIS: Thank you.

6 THE COURT: Certainly.

7 MR. DAVIS: I'm so sorry.

8 BY MR. WALKER:

9 Q Do you remember when you were deposed, and I asked you
13:35:17 10 what PL data you had displayed?

11 A Not specifically, no.

12 Q Okay. Let's look at Page 45 of your deposition.

13 And I asked you: Let me ask the question this way:

14 Typically -- and I understand there may have been exceptions
13:35:53 15 when you wanted to bore down or something like that, but
16 typically, what PL data did you have displayed?

17 You said population, voting age population, minority
18 population, African-American single race, African-American any
19 part, by total population and voting age population, Latino
13:36:11 20 population, voting age and total population. So, you know,
21 maybe a dozen categories or so.

22 Now, I assume that as you were going about looking at
23 districts, you were looking for districts that had whatever
24 your criteria was -- enough African-Americans at that time to
13:36:34 25 put them into one of your majority black districts; is that

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1 right?

2 A Well, I was not looking for districts or blocks on an
3 individual level. What I was trying to do was work at the
4 county and VTD level. And I did have information about the
13:36:50 5 population in the districts as I was drawing them available if
6 I queried.

7 But oftentimes I would just have a map up there. And knew
8 that I had to add population to District X or District Y. And
9 so I was just adding the data and not even paying attention to
13:37:10 10 exactly what the percentage of African-Americans might have
11 been at each click of a mouse.

12 Q So your testimony is that you went about building two
13 African-American districts by not looking at the percentage of
14 African-Americans you were putting in those districts?

13:37:26 15 A Well, no. I looked at it on occasion, but I was not
16 constantly looking at it.

17 Q Okay. And when you found a district or -- excuse me -- a
18 VTD -- if that's the level you were looking at -- that had
19 enough African-Americans, you would put it into one of your two
13:37:42 20 proposed districts, did you not?

21 A No.

22 Q You did not?

23 A I was not -- I was not querying each VTD as I clicked it
24 in. And I did not have some sort of a numerical guideline that
13:37:59 25 would suggest to me that this precinct has to go into District

1 2 and that one cannot.

2 I was looking at other things like the VTD boundaries and
3 county boundaries and municipal boundaries and the overall
4 shape of the district.

13:38:15 5 Q Okay. We'll get back to that.

6 Before you started your work, or as you started, you read
7 the Alabama definition of communities of interest, didn't you?

8 A Yes, I did.

9 Q Okay. But you didn't talk to anybody about actual
13:38:39 10 communities of interest in Districts 1, 2, 3, or 7 before you
11 started drawing, did you?

12 A My assessment was that I prepared the illustrative plans,
13 and those plans were viewed by the plaintiffs. And --

14 THE COURT: Just a minute, Mr. Cooper. That was not
13:39:02 15 the question. If you would, please, listen to the question and
16 answer it as directly as you can, please, sir.

17 THE WITNESS: Right.

18 THE COURT: Did you talk to anybody about communities
19 of interest in those districts before you drew them I think was
13:39:16 20 the question.

21 BY MR. WALKER:

22 Q I'm sorry. Did you say no?

23 A Well, no, not to an individual voter anywhere, no.

24 Q You did not talk to anybody, did you?

13:39:24 25 A About this particular case and these particular

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1 illustrative plans, no. I have had other involvement in
2 Alabama in other cases.

3 Q Okay. Thank you.

4 And the need to find enough black persons to put into
13:39:43 5 District 2 and 7 or 2 explains why you split Mobile; is that
6 correct?

7 A There are a variety of ways to split Mobile. But because
8 more than 100,000 African-Americans live in the city of Mobile,
9 I do believe that Mobile County would have to be split to
13:40:04 10 create the second majority black district.

11 Q And in every one of your plans, you split Mobile to ensure
12 that 100,000 African-Americans that live in Mobile County were
13 put into District 2; is that correct?

14 A No.

13:40:17 15 Q That's not?

16 A No. I wanted to include the bulk of the African-American
17 population in or around Mobile city, but I was not shooting for
18 a numerical tabulation of that population. So I don't know
19 what the underlying totals are for the numbers of
13:40:41 20 African-Americans living in Mobile in District 2 in my plans
21 right off the top of my head.

22 Q Well, do you recall testifying that there was 100,000
23 people -- African-Americans -- in Mobile that you needed to put
24 into District 2?

13:40:55 25 A Well, I don't think I said I needed to. I just said

1 that's the number because I'm sure I didn't include them all.

2 Q Okay. And when you drew your plans, you didn't know, did
3 you, that Alabama has never split up Mobile in a congressional
4 plan?

13:41:20 5 A I knew it had not been split in the plans developed in the
6 '90s and 2000s, but I have not seen the plans going back
7 further in time. I have since seen some exhibits that you've
8 presented to the Court for this trial that go back to like the
9 1950s and before, and I don't think Mobile is split.

13:41:45 10 Q Is it your understanding that Alabama has at any time
11 split the county of Mobile in traditional -- in congressional
12 redistrictings?

13 A I don't know that for a fact.

14 Q And you didn't know that when you started drawing the
13:42:04 15 plan; isn't that correct?

16 A Didn't know what?

17 Q I'll show you page 56 of your deposition and ask you: Do
18 you know whether or not Alabama has traditionally considered
19 Mobile County to be a community of interest that it did not
13:42:21 20 split when drawing congressional districts?

21 MR. SPIVA: Sorry to interrupt, Your Honor. I have an
22 objection actually to this. There's no question or answer that
23 he could be --

24 THE COURT: I would sustain.

13:42:33 25 BY MR. WALKER:

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1 Q Let me ask the question again: Did you know when you
2 started drawing the districts that Alabama considered Mobile
3 County a community of interest that it has never split when
4 drawing congressional districts?

13:42:49 5 A Well, I said I do not know that, and I said I did not know
6 that today. I've seen some congressional maps, historical maps
7 where Mobile was not split. But when you say --

8 Q You've answered my question.

9 A Well, okay. Alabama can be defined in many different
13:43:07 10 ways.

11 THE COURT: You've answered the question. Thank you.

12 BY MR. WALKER:

13 Q And do you know whether or not Alabama has traditionally
14 kept Mobile and Baldwin County together in the same
13:43:32 15 congressional district since the 1970s?

16 A I am aware of that. Prior to '70s, sometimes Baldwin
17 County was in a separate district.

18 Q And what was the difference between before the '70s and
19 after the '70s? Do you know?

13:43:48 20 A No.

21 Q Well, isn't it true that before the '70s we had eight
22 congressional districts and after the '70s we had seven?

23 A I believe at one time you had nine. I don't know when the
24 change was made, though.

13:44:01 25 Q Okay. Do you know whether or not since 1970 Alabama has

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1 ever split Auburn County and Mobile County apart in different
2 congressional districts?

3 A As far as I know, Alabama Legislature has not split that
4 two-county region.

13:44:22 5 Q Okay. But for you, you split them because you needed to,
6 to create a second majority black district; is that correct?

7 A I believe that one would have to divide Mobile County in
8 order to create the second majority-minority district or second
9 majority black district.

13:44:50 10 Q Let me show you what is Revised Plan Number 1, and this is
11 from Exhibit 63. And I just want to say: What community of
12 interest is being kept whole here? You divide the city of
13 Mobile, do you not?

14 A I believe it is divided.

13:45:22 15 Q And you divide the County of Mobile, and you divide some
16 other cities, do you not? Do you divide Semmes, for example?

17 A Not sure right off the top of my head.

18 Q You don't know?

19 A I was following precinct boundaries, so possibly.

13:45:37 20 Q So the answer is you don't know?

21 A I don't know.

22 Q And this is Revised Plan Number 2.

23 THE COURT: What exhibit is that, Mr. Walker?

24 MR. WALKER: Ma'am?

13:45:57 25 THE COURT: What exhibit number?

1 MR. WALKER: I'm sorry. It's Exhibit 69. Plaintiffs'
2 Exhibit 69, Your Honor.

3 THE COURT: Thank you.

4 BY MR. WALKER:

13:46:04 5 Q And District 2 is which color?

6 A Yellow.

7 Q The yellow. Okay.

8 How did you decide where to go as you cut back and forth
9 between District 1 and District 2?

13:46:22 10 A Almost exclusively on precinct boundaries. Except, as
11 I've indicated, I did split three precincts right off of I-10
12 and U.S. 98 interchange there to ensure that District 1 in
13 Baldwin County was contiguous with District 1 in Mobile County.

14 Q Well, isn't it the fact that you put most of the blacks in
13:46:51 15 Mobile County inside District 2, and most of the whites in
16 Mobile County in District 1?

17 A Well, it varies from plan to plan, so I'd have to take a
18 look at the data.

19 Q Well, admitted that the percentages vary on every plan,
13:47:12 20 but in every plan your intention was to divide Mobile County so
21 that you could put the majority black population into District
22 2 and the majority white population into District 1; is that
23 correct?

24 A No. My objective was to unite the African-American
13:47:27 25 community in south Alabama into a single majority black

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1 district. So I was not just thinking about Mobile County.

2 Q Okay. And is it your testimony that the lines that I'm
3 showing you here, the division between District 1 and District
4 2, does not divide the county of Mobile along race?

13:47:49 5 A Not -- it depends on the precinct. I mean, there's
6 certainly majority white precincts in District 2.

7 Q No, no. I'm asking about -- I'm not asking about
8 precincts. Please pay attention to my question, sir.

9 Within Mobile County, where are the majority of
13:48:08 10 African-Americans on this map?

11 A Well, I think --

12 Q Are they in District 1 or are they in District 2?

13 A I think it's -- the majority -- I would need to go to the
14 data sheets. But most likely, there are more African-Americans
13:48:21 15 in District 2 and Mobile County than in District 1. But I'm
16 not --

17 Q Mr. Cooper, you testified this morning that Mobile was one
18 of the African-American population centers that you needed to
19 put into a majority black district, did you not?

13:48:38 20 A Well, that's right.

21 Q Okay. And that's exactly all -- my point simply is that's
22 exactly what you did in each one of your plans?

23 A But I don't have the numbers in front of me.

24 Q I didn't ask you the numbers.

13:48:49 25 A Well, okay. I don't know what you said then. Say it

1 again.

2 Q In each one of your plans in Mobile County, you put more
3 African-Americans in District 2 than you put in District 1; is
4 that correct?

13:49:03 5 A I think that is correct, yes.

6 Q You know it's correct, don't you? That was your job.

7 A No. It was not my job. My job was to draw a majority
8 black district in addition to the existing District 7. And it
9 was not focused solely on Mobile. It was to pay attention to a
13:49:22 10 community of interest that has historical significance linking
11 African-Americans in Mobile to other parts of south Alabama.

12 Q What do --

13 A But I will agree that I probably did. If we went to the
14 data sheet, I could tell you the percentages. And I probably
13:49:38 15 did put more African-Americans in Mobile County into District
16 2, but I also left out many thousands, as well, who remain in
17 District 1.

18 Q And you put the majority of whites in District 1, didn't
19 you?

13:49:54 20 A Probably.

21 Q Yeah. You know you did, don't you?

22 A Well, let me be clear. There's nothing wrong with doing
23 that in a Section 2 lawsuit. That's common.

24 Q I didn't say you did anything wrong. I just asked you a
13:50:11 25 question.

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1 A Well, I just want to clarify that.

2 Q Okay. So are we agreed you put the majority of blacks in
3 District 2 and the majority of whites in District 1 in Mobile
4 County in all four of your plans?

13:50:27 5 A Again, without looking at the data, I will agree. But I
6 would like to confirm that. But it's in the -- I think you've
7 got some tables that may sort of reflect that even though
8 you're using a different definition of African-American.

9 Q And what community of interest were you respecting in
13:50:47 10 Mobile County?

11 A In Mobile County, I was endeavoring to respect your
12 guidelines which say that a community of interest is defined as
13 an area with recognized similarities of interests, including
14 but not limited to racial, ethnic, geographic, governmental,
13:51:16 15 regional, social, cultural, partisan, or historic interest.

16 Therefore, I think including Mobile County and a
17 predominantly black part of Mobile County in a district that
18 extends into the Alabama Black Belt and on into Montgomery
19 County, which is part of the Black Belt, is appropriate because
13:51:35 20 it's following your guidelines.

21 Q So in order to draw a majority black district that linked
22 African-American communities separated around the state into
23 one district, you split up Mobile city and Mobile County; is
24 that correct?

13:51:52 25 A Well, I've already said -- I've already answered that

1 question. It is necessary -- if you're going to create a
2 second majority black district in Alabama, you have to include
3 the black population in the city of Mobile or in Mobile County
4 in general because part of the black community in Mobile County
13:52:09 5 actually doesn't live in the city of Mobile. It's outside.

6 Q I am going to take that as a yes, okay?

7 A Well, I've said that at the outset.

8 Q Okay.

9 A I said that in my deposition.

13:52:19 10 Q And is preserving the cores of existing districts also a
11 traditional districting criteria?

12 A I would say no.

13 Q You would say no?

14 A I would say no.

13:52:29 15 Q Okay. Is it your testimony that in order to draw a
16 majority black district you cannot preserve the cores of
17 Districts 1, 2, 3, and 7?

18 A Districts 1, 2, 3, and 7, as drawn in the 2000 plan and
19 the 2011 plan, in my opinion, cracked African-American voting
13:52:56 20 strength.

21 Q And let me --

22 A And for that reason --

23 THE COURT: Wait, wait, wait, Mr. Cooper. Please, if
24 you would, answer the question that's asked of you.

13:53:05 25 THE WITNESS: Okay, sorry.

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1 THE COURT: Mr. Spiva will have opportunity to
2 question you again. So if you would just answer the question
3 that's asked, we'll be able to move along much faster.

4 BY MR. WALKER:

13:53:18 5 Q Mr. Cooper, is it your testimony that there's no way to
6 preserve the cores of Districts 1, 2, and 3 as they existed at
7 the time the legislature was drawing the districts and also
8 create a second black majority district? You might want to
9 look at the answer you gave in your deposition.

13:53:38 10 A Well, I would say there's probably not a way to -- in a
11 numerical -- from a numerical perspective, but I would have
12 to -- let me refer to my deposition. Maybe I had a
13 different --

14 Q Well it's right there in front of you. You said, "That is
13:53:54 15 true, I believe. And I would also throw in District 3 partly
16 because it goes into Montgomery County," because I had only
17 asked you about 1, 2, and 7.

18 A Okay. Well, isn't that what I just said?

19 Q Thank you.

13:54:10 20 Let's talk about compactness for a second, please,
21 Mr. Cooper.

22 And you testified about Reock and Polsby-Popper scores as
23 a basis for demonstrating, I think, that the districts you drew
24 are compact in comparison to the districts the state of Alabama
13:54:42 25 drew. Did I understand your testimony correctly?

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1 A Yes.

2 Q And in your testimony you compared the state board of
3 education districts and the congressional districts, right?

4 A There are figures for the Reock scores that include both
13:54:59 5 the 2011 congressional plan, as well as the 2011 board of
6 education plan.

7 Q I think the answer is just yes, you did?

8 A Yes, I did.

9 Q And those are different jurisdictions, aren't they?

13:55:09 10 A They are different governing bodies, yeah. Alabama --

11 Q And they have a different number of members, don't they?

12 A One is eight; the other is seven.

13 Q And I don't see anywhere in your report where you opined
14 that the demands and expectations of a member of the state
13:55:28 15 board of education are any way congruent or similar to the
16 demands and expectations of a member of Congress. Am I correct
17 on that?

18 A I'm not a political scientist, so I wouldn't opine on
19 that.

13:55:40 20 Q And you are not offering an opinion on that?

21 A No.

22 Q Okay. Well, let's look at your Plaintiffs' Exhibit 45.
23 And I want to just ask you about District 1.

24 And under the 2011 plan, the Reock score for District 1 is
13:56:07 25 42. And your Reock scores in your illustrative plan, in

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1 Illustrative Plan 1, District 1 is 21; in illustrative plan 2,
2 District 1 is 21; in Illustrative Plan 3, District 1 is 20; in
3 Illustrative Plan 4, District 1 is 25.

4 So all of your District 1s are significantly less compact
13:56:29 5 than the existing District 1; is that correct?

6 A By about 15 percentage -- by about 15 hundredths of a
7 percentage point, right. Of a point, yeah.

8 Q And if we look at District 2, it's 49 in the 2011 plan; 35
9 in your Illustrative 1 Plan 1; 27 in your Illustrative Plan 2;
13:56:54 10 33 in your Illustrative Plan 3; and 24 in your Illustrative
11 Plan 4; is that correct?

12 A That is correct.

13 Q Okay. And if we look at 3, it's 36 in Illustrative Plan
14 11; it's 35 in illustrative plan -- excuse me. It's 36 in the
13:57:15 15 2011 plan. I'm sorry. It's 35 in Illustrative Plan 1; 46 in
16 Illustrative Plan 2; 26 in Illustrative Plan 3; and 34 in
17 Illustrative Plan 4; is that correct?

18 A Yes.

19 Q So the three districts of southern Alabama are all more
13:57:39 20 compact in the 2011 plan than they are in your plans?

21 A No, that's not true.

22 Q Okay.

23 A If we go back, we have to go back to the exhibit and point
24 out one district that is actually more compact in the
13:57:53 25 illustrative plans under the Reock score.

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1 Q One, yes.

2 A And it also has to be gauged on a statewide basis, but...

3 Q When you calculated your means, you were doing the -- you
4 were averaging all seven districts, weren't you?

13:58:10 5 A Right.

6 Q And you made very few changes to the districts of north
7 Alabama relative; is that correct?

8 A No, that's not correct. I kept District 5 in the extreme
9 north along the Tennessee River almost the same, but District 4
13:58:24 10 changes as --

11 Q Are you saying it changed as much as you changed the other
12 districts?

13 A Probably.

14 Q All right. Let's look at your Polsby-Popper scores.

13:58:47 15 THE COURT: Do you know what exhibit that is?

16 MR. WALKER: That is, Your Honor, still part of
17 Exhibit 45.

18 BY MR. WALKER:

19 Q And in the 2011 plan, the Polsby-Popper score is 16 or
13:59:00 20 .16. In your Illustrative Plan 1, it's .14. In your
21 Illustrative Plan 2, it's .13. In your Illustrative Plan 3,
22 it's .16. And in your Illustrative Plan 4, it's .13.

23 Now, that indicates that as Polsby-Popper calculates
24 compactness, the 2011 Plan 1 and your Illustrative Plan 3 Plan
13:59:32 25 1 are equally compact; is that correct?

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1 A That is correct by the Polsby-Popper score.

2 Q Okay. So I just want to say: Who would think that these
3 two plans are as compact if they were actually driving around,
4 or working, or trying to represent those districts?

13:59:55 5 A Well, you have a very odd intrusion into Clarke County.
6 So it might be hard to find your way around Clarke County. I
7 don't have an intrusion like that.

8 But the District 1, as drawn in Revised Plan 3, is based
9 on whole counties from Baldwin to Houston and Henry. There's
14:00:26 10 nothing unusual about it. It's easy to understand.

11 Q Well, you seem to think whole counties are important --

12 THE COURT: Wait, Mr. Walker.

13 MR. WALKER: I'm sorry.

14 THE COURT: For purposes of the record, I need to know
14:00:35 15 what exhibits these two are that you have placed on the screen.

16 MR. WALKER: I'm sorry. I put on the plaintiffs' map
17 of Revised Plan 3, which is Plaintiffs' Exhibit 73; and the
18 plaintiffs' map of the U.S. House 2011 plan, which is
19 Plaintiffs' Exhibit 15.

14:00:55 20 THE COURT: Okay. Thank you.

21 MR. WALKER: Yes, ma'am. Sorry.

22 BY MR. WALKER:

23 Q Do you remember testifying in your deposition that the
24 state of Montana probably had a perfect Reock score?

14:01:15 25 A I may have -- I may have said that sort of in jest I guess

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1 because it's more of a square instead of a circle. It's not --
2 it doesn't score quite as high.

3 Q But it's not a compact in any sense that a person
4 representing that district would recognize, is it? I mean, if
14:01:32 5 you were to drive across the state of Montana, or ride your
6 horse or walk across it, you wouldn't say, my, this is a
7 compact state?

8 A Well, the Reock score is more than just a score that takes
9 into account population density. It also takes into account
14:01:48 10 the shape of the district.

11 Q Right. I didn't ask you anything about population
12 density. But I guess my point is that the Reock score is
13 ultimately just a ratio; is that correct?

14 A Yes.

14:01:58 15 Q Yeah. And it doesn't tell us anything about how
16 serviceable a district is for the constituents or for the
17 representative, does it?

18 A I tend to agree with that. I think you need to look at
19 the map itself and make a visual assessment. I look at Revised
14:02:15 20 Plan 3 and see no problems at all.

21 Q And you have drawn in each one of your maps District 1
22 that stretches from Mobile County to Houston County. And I
23 understand from the fact that you've included that same basic
24 structure in each one of your maps to mean that you do not
14:02:33 25 believe there's any other way to draw two majority black

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1 districts without drawing District 1 to stretch from Mobile
2 County to Houston County?

3 A Well, that's -- that's not exactly the case because I
4 suspect that you could have put Pike and Crenshaw into District
14:02:58 5 1. I didn't try to do that, but I'm sure you could have.
6 Whether you could have still done that and -- I'm sure you
7 could have kept the counties whole. So I didn't try that
8 option.

9 This is just an illustrative *Gingles* 1 plan, not a
14:03:12 10 remedial plan. And I would certainly think the plaintiffs
11 would be open to reconfiguring Districts 1 and 3.

12 Q But you didn't present -- your purpose was to show the
13 Judge the possibility of drawing two majority black districts.
14 And in each one of your plans, all of your District 1s go from
14:03:27 15 Mobile to Houston County; is that correct?

16 A No. That's -- well, yes, that's true. That's true. But
17 I would -- I wish to point out that that may not be necessary.

18 Q Do you think that when you draw a district it's important
19 to consider how functional that district will be for the
14:03:55 20 representative, for the man or woman who's representing that
21 district, the ability that they have to get around and meet
22 their constituents?

23 A Yes. That's why I was very careful to follow precinct
24 lines and draw reasonably well-shaped compact districts.

14:04:13 25 Q And do you think it's important to draw a district where

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1 the constituents in the district can reasonably get to their
2 representative?

3 A To the extent possible, yes. Alabama is a big state.

4 Q Is it your testimony that the districts that you have
14:04:37 5 drawn for District 1 is a district that could function in any
6 real sense for an Alabama representative?

7 A Absolutely.

8 Q How would you get from Mobile to Houston County?

9 A You would either go via I-59 and then take state routes
14:05:01 10 into the Houston-Dothan area, or you could, say, from Fairhope
11 drive via I-10 and then up through the panhandle of Florida to
12 Dothan. Either trip would take about three hours by car.

13 Q And you -- what's your basis for saying three hours?

14 A I checked it on Google Maps.

14:05:21 15 Q That's funny. When I checked, Google said four.

16 A You may have checked early this morning. You checked
17 traffic at 9:00 a.m. during rush hour.

18 Q So --

19 THE COURT: Not in Escambia County.

14:05:33 20 THE WITNESS: Well, coming out of Mobile probably.
21 But I will concede there may be differences in the times. I
22 was doing it midday.

23 BY MR. WALKER:

24 Q So your testimony is that to get from Mobile you would
14:05:47 25 drive through Florida on Highway 10 to somewhere below Houston

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1 county and then cut up, I guess, on 231?

2 A Yes. It's a U.S. highway. I mean, I did it on Google
3 Maps.

4 Q Yeah.

14:06:02 5 A It's a little bit -- it's right at three hours.

6 Q And that's the best way for that representative to get
7 around in that district?

8 A That's one way. I think it might add 10 minutes or so if
9 you drive up to I-65 and then take another route to Houston. I
14:06:16 10 don't have all the map -- all the U.S. highways displayed on
11 the map.

12 But a three-hour trip is not out of the ordinary in
13 Revised Plan 3, nor is it out of the ordinary in existing 2011
14 plan involving other districts, of course. But certainly other
14:06:35 15 representatives in the state have to travel --

16 Q Sir, if you go from Mobile to Dothan and you wanted to --

17 THE COURT: Wait a minute. Wait a minute. I keep
18 hearing some mumbling over there about letting him answer the
19 question.

14:06:44 20 If he were answering the question, that would be one
21 thing. But he's not.

22 So again, Mr. Cooper, this is not a platform for you to
23 just run and say whatever you want to, especially on
24 cross-examination. You need to listen and answer the direct
14:07:06 25 question that's asked as directly as possible.

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1 THE WITNESS: Okay. I apologize.

2 THE COURT: I know it's hard.

3 THE WITNESS: He's trying to corner me into a
4 yes-or-no answer where there's ambiguity. That's the problem.
14:07:15 5 But I will try.

6 MR. SPIVA: Your Honor, I just want to be clear. We
7 weren't saying anything about letting him answer. I didn't
8 know if you thought we were saying that. I just wanted to be
9 clear.

14:07:23 10 THE COURT: Well, I just kept hearing something over
11 there being mumbled.

12 MR. SPIVA: Sorry. We were probably whispering to
13 each other. We weren't saying that. I didn't want you to
14 think we were being rude.

14:07:30 15 THE COURT: Okay. And also any objection needs to
16 come from Mr. Spiva, not from someone else.

17 MR. SPIVA: Of course, Your Honor.

18 THE COURT: Oh, okay. I'm sorry. It's Christina.
19 All I heard was a female voice, and I thought I saw some lips
14:07:49 20 moving there. I apologize.

21 But the point is very well taken by Ms. Christina. She
22 cannot get down any testimony when both the attorney and the
23 witness are speaking at the same time. So let's try to avoid
24 that as much as possible.

14:08:07 25 Okay. All right. We got the rules down now? Only one

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1 talk at a time, and answer the question that's asked, okay?

2 THE WITNESS: I will immediately stop when Mr. Walker
3 says something even if I'm in mid sentence.

4 THE COURT: Okay. That will be good.

14:08:23 5 MR. WALKER: Thank you, Your Honor.

6 BY MR. WALKER:

7 Q So you would agree with me that if a representative
8 travels to Mobile from Dothan via U.S. Interstate 10, she or he
9 is not going to be meeting with any of her constituents along
14:08:36 10 the way?

11 A I don't know that for a fact.

12 Q Well, they would have --

13 THE COURT: Would a congress person for District 1
14 have constituents in Florida?

14:08:52 15 THE WITNESS: They could be meeting halfway. I
16 just --

17 BY MR. WALKER:

18 Q So if a representative wanted to travel from Mobile to
19 Dothan, or vice versa, within her or his district, do you know
14:09:11 20 how they could do that on the existing roadway?

21 A From Mobile to Dothan?

22 Q Yeah.

23 A Yes.

24 Q Could you show the Court?

14:09:19 25 A Well, I mean, I could show my Google Maps.

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1 Q Okay.

2 MR. WALKER: Your Honor, may I approach?

3 THE COURT: You sure may. Is that an official Alabama
4 state map?

14:09:29 5 MR. WALKER: This is an official Alabama highway map
6 that I retrieved from the Department of Transportation last
7 week.

8 THE COURT: Okay.

9 THE WITNESS: Whether I can show it on this map, I
14:09:38 10 don't know.

11 BY MR. WALKER:

12 Q Well, this is the highway road map for the state of
13 Alabama.

14 A Right.

14:09:47 15 Q So if you would please take this highlighter and trace the
16 route that your representative would travel from Mobile to
17 Dothan in the district that you designed for that person.

18 A Well, it's a three-hour trip according to Google Maps, and
19 I did not, you know, save that route. It would, I believe, go
14:10:12 20 up I-65 probably to --

21 Q Just trace it out with the highlighter I gave you, please,
22 sir.

23 A Okay. This may not be the Google Maps route. But I'm
24 nervous, so I'm shaking because I don't like to speak in
14:10:35 25 public.

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1 So here we are on I-65 up to roughly Evergreen. You get
2 on 84 and go to Andalusia, stay on 84. Go through Enterprise
3 maybe on a state route where you might stay on 84 and go to
4 Elba, and then through Daleville, and right into Dothan hitting
14:11:05 5 State Route 53, or maybe it's U.S. 231 on the north side of
6 Dothan -- Dothan.

7 I mean, that's just my guess. It's probably not the
8 optimal map as calculated by Google Maps. I see no trouble
9 with that. Congressional representatives all over the country
14:11:23 10 have to travel those distances.

11 Q We're concerned with Alabama.

12 And I will show you what I got from Google Maps, which
13 says that it takes 3 hours and 52 minutes.

14 A And when did you do that? I can't ask him that, right?

14:11:38 15 Q During the day.

16 A Yeah. Well, there are two different routes.

17 So we'll just have to agree to disagree on that.

18 Q Thank you, sir. Not much more.

19 Do any of your plans keep the entirety of the historical
14:12:34 20 Black Belt in the same district?

21 A They do not. Although Illustrative Plan 2 puts all of the
22 Black Belt in one or the other.

23 Q You testified earlier that there were enough

24 African-Americans in Congressional Districts 1, 2, or 3 to form
14:13:03 25 almost all of a congressional district by total population; is

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1 that correct?

2 A Yes.

3 Q But you also have to consider where that population lives
4 in order to draw a district that complies with historical --
14:13:17 5 with traditional districting criteria; is that correct?

6 A Yes.

7 Q Okay.

8 MR. WALKER: Your Honor, may I have just one moment?

9 THE COURT: You may.

14:14:00 10 BY MR. WALKER:

11 Q What community of interest, Mr. Cooper, are you observing
12 by connecting rural Mobile County and Houston County?

13 A It is including a predominantly rural area in Mobile
14 County with a predominantly rural area further east.

14:14:25 15 Q Any others?

16 A I think I could say that's probably the -- primary
17 community of interest, although part of Mobile County is
18 suburban. But that would be one key link there is that is a
19 part of Mobile County that is more rural.

14:15:09 20 MR. WALKER: Your Honor, I move for admission of
21 Defendant's Exhibit 303, which is the map that was marked by
22 Mr. Cooper.

23 MR. SPIVA: No objection, Your Honor.

24 THE COURT: It's received.

14:15:29 25 And just for the record, I want to make sure his route was

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1 marked with an orange highlighter; is that correct?

2 MR. WALKER: Orange highlighter, yes, ma'am.

3 THE COURT: Okay.

4 BY MR. WALKER:

14:15:49 5 Q Your Plans 1 through 4, could the legislature pass those
6 plans in 2020-2021?

7 A I have no idea.

8 Q Why not?

9 A Well, it's a speculative -- it's all speculative. I don't
14:16:09 10 know. I mean, I don't know what the politics would necessarily
11 be by this time next year.

12 But certainly if they did pass it, in my opinion it would
13 be considered a plan that was respecting traditional
14 redistricting principles. It may be different than the 2011
14:16:28 15 plan, but it respects traditional redistricting principles.

16 Q And you say that without knowing what the census data are
17 for 2020?

18 A If it's like one of the illustrative plans, it's possible
19 that there would be some need to expand the two majority black
14:16:45 20 districts to pick up additional population even in a
21 seven-district plan, but I don't know that for a fact.

22 Q Now, Dr. Cooper, you know that District 7 has lost
23 population over the last decade and is going to need tens of
24 thousands of people added to it, don't you?

14:16:59 25 A I do not know that.

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1 Q You don't?

2 A No, I don't. Because it also includes in at least two
3 plans Tuscaloosa County, which is a fast-growing county.

4 Q All right.

14:17:10 5 MR. WALKER: That's all I have. Thank you, Your
6 Honor.

7 THE COURT: Any redirect?

8 MR. SPIVA: Yes, Your Honor. Just a little bit.

9 REDIRECT EXAMINATION

14:17:17 10 BY MR. SPIVA:

11 Q Mr. Cooper, you recall the questioning on cross-ex about
12 not preserving cores of districts. Do you remember that?

13 A Yes. I remember that vague question.

14 Q Okay. Let me put up Plaintiffs' Exhibit 84, and
14:17:46 15 specifically page 4 of Plaintiffs' Exhibit 84.

16 And this is -- you recognize this, Mr. Cooper, as the
17 state reapportionment committee's guidelines on redistricting?

18 A Yes.

19 Q And do you remember we discussed on direct the communities
14:18:30 20 of interest definition I think you quoted in your report?

21 A Yes.

22 Q Does the report -- does the word "core retention" appear
23 anywhere in that guideline from the state reapportionment
24 committee? Preservation of cores? Anything like that?

14:18:47 25 A No. And --

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1 THE COURT: You're referring to page 4 of that
2 document; is that correct?

3 MR. SPIVA: That's right, Your Honor. Page 4 of
4 Exhibit 84. Plaintiffs' Exhibit 84. And maybe we could show
14:19:05 5 the first page of that, too, please, Heather.

6 THE COURT: You're referring to the criteria that
7 begins on page 2?

8 MR. SPIVA: Actually it begins there, Your Honor, and
9 it runs through to page 4, where it talks about the integrity
14:19:29 10 of communities of interest.

11 THE WITNESS: I don't see the word "core," but I may
12 be overlooking something.

13 BY MR. SPIVA:

14 Q Okay. And did you review the rest of the -- these
14:19:41 15 guidelines when you were doing your report?

16 A I think I did at some point. Some of them are obvious,
17 like equal population, avoiding incoming conflicts.

18 Q And do you recall whether you saw core preservation
19 anywhere in the 2011 Alabama Legislature reapportionment
14:20:04 20 committee guidelines?

21 A I don't recall seeing that, no.

22 Q And then you also recall on direct -- I'm sorry -- on
23 cross-examination, you were asked about your use of the board
24 of education plan as a reference point or point of departure.
14:20:23 25 Do you recall that?

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1 A Yes.

2 Q And I think the question was something to the extent of
3 the board of education plan is -- you know, represents a
4 totally different constituency or interest than the
14:20:34 5 congressional plan. Do you recall that?

6 A I do recall that question.

7 Q And if we can turn to page 2 of this document, Plaintiffs'
8 Exhibit 84, page 2. And if we can kind of cull out Roman
9 Numeral IV.

14:20:55 10 And would you agree with me, Mr. Cooper, that this says
11 that these are criteria for congressional, legislative, and
12 state board of education districts?

13 A Yes.

14 Q And was it your understanding that these redistricting
14:21:11 15 principles that you were attempting to apply applied to all
16 four of those -- rather, say, all three of those types of
17 bodies?

18 A Yes. Although I don't think the legislature state board
19 of education plans required zero deviation, but --

14:21:32 20 Q Okay. I'm sure you recall the map exercise and the
21 questions about CD 1 stretching from the west to the east, I
22 take it. Do you recall those questions in drawing the route?

23 A I recall that, and there's nothing at all unusual about a
24 congressional district extending that distance. You need only
14:21:56 25 to look to Congressional District 5 in Florida.

1 Q Well, let me also -- let me show you something in Alabama.

2 So can we pull up Plaintiffs' Exhibit 15?

3 That's the 2011 congressional plan, is it not?

4 A Yes.

14:22:13 5 Q And what length of the state does congressional --
6 existing Congressional District 5 span?

7 A It goes the entire length of the state along the Tennessee
8 line and cuts across the Tennessee River to pick up Morgan
9 County.

14:22:32 10 Q So it spans from the east to the west northern border of
11 Alabama?

12 A Yes.

13 Q And Congressional District 4, what's its span in the state
14 of Alabama?

14:22:41 15 A The distances there are longer. It extends east to west,
16 but also more northeast to southwest. I know to go from -- I
17 think it's Sulligent up to Dekalb County is another three-hour
18 trip by car.

19 Q From where to Dekalb?

14:23:07 20 A Sulligent, which is in Lamar county not far from the
21 Mississippi line. If you drive from that spot to the central
22 part of Dekalb County, it's a three-hour trip.

23 Q Okay.

24 A Essentially the same as driving from Mobile to Dothan,
14:23:24 25 because I'm in disagreement about the time involved. It's not

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1 four hours all the time. Put it that way. Maybe during rush
2 hour.

3 Q And you drive quite frequently, don't you, Mr. Cooper?
4 You drove from your home in Bristol, Virginia to Birmingham,
14:23:40 5 Alabama?

6 A I did. I drove right through Districts 4, 5, 6, and a
7 little piece of 3 in St. Clair.

8 MR. SPIVA: All right. I have no further questions.
9 Thank you.

14:23:54 10 THE COURT: Any recross?

11 MR. WALKER: No, ma'am, Your Honor. Thank you.

12 THE COURT: All right. Thank you, Mr. Cooper. You
13 may step down.

14 We haven't been going very long, but this might be a
14:24:09 15 logical place to take a quick little break. How about
16 10 minutes? And we will be back at 2:35. How about that?
17 It's 10 minutes. If you will have your witness in the stand,
18 please.

19 (Recess.)

14:35:47 20 THE COURT: Plaintiff will call your next witness.

21 MS. KHANNA: Thank you, Your Honor. Plaintiffs call
22 Dr. Maxwell Palmer to the stand.

23 MAXWELL PALMER,

24 having been first duly sworn by the courtroom deputy clerk, was
14:36:03 25 examined and testified as follows:

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1 THE COURTROOM DEPUTY CLERK: Please state your name
2 into the microphone for the record.

3 THE WITNESS: Maxwell Palmer.

4 DIRECT EXAMINATION

14:36:21 5 BY MS. KHANNA:

6 Q Good afternoon, Dr. Palmer.

7 A Good afternoon.

8 Q You have been retained as an expert by the plaintiffs in
9 this case; is that correct?

14:36:28 10 A Yes.

11 Q And you've prepared two reports in the course of this
12 case; is that right?

13 A Yes.

14 Q In the notebook in front of you, you'll see two documents
14:36:40 15 marked Plaintiffs' Exhibit 79 and Plaintiffs' Exhibit 80. Can
16 you please identify those exhibits for the Court?

17 A The first exhibit is my expert report in this case, and
18 the second exhibit is my rebuttal report in this case.

19 Q Thank you.

14:36:57 20 I just want to briefly ask some questions about your
21 background and expertise. Can I direct your attention to page
22 25 of Plaintiffs' Exhibit 79, which is your first expert
23 report?

24 What is this document?

14:37:15 25 A This is my CV.

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1 Q And is this a complete and accurate summary of your
2 educational background and professional experience to date?

3 A It's complete as of March when I submitted my report.

4 Q Okay. Has there been any significant changes since March?

14:37:28 5 A A few new publications.

6 Q Anything in particular?

7 A A book on local politics, and a new paper on political
8 careers.

9 Q Thank you.

14:37:38 10 Can you briefly summarize your educational background?

11 A I received a bachelor's degree in math and government and
12 legal studies from Bowdoin college in Maine, and a Ph.D. in
13 political science from Harvard University in 2014.

14 Q And where are you currently employed?

14:37:53 15 A I'm currently an assistant professor at Boston University.

16 Q What classes do you teach at Boston University?

17 A I mainly teach classes on American politics, including
18 introduction to American politics, and a course on Congress.

19 I also teach classes on political methodology and
14:38:10 20 analysis, including a research design class for graduate
21 students, formal and game theory, and a new data science class.

22 Q And what would you say are your principal areas of
23 research?

24 A My main areas of research are Congress and redistricting,
14:38:26 25 political careers, and local and urban politics.

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1 Q Dr. Palmer, have you been accepted as an expert witness in
2 a United States court before?

3 A Yes.

4 Q So the cases -- those cases, I believe, are listed in
14:38:41 5 paragraph 6 of your initial report on Plaintiffs' Exhibit 79;
6 is that right?

7 A Yes.

8 THE COURT: On which page, please?

9 MS. KHANNA: That would be page 2 of Plaintiffs'
14:38:56 10 Exhibit 79.

11 THE COURT: Thank you.

12 BY MS. KHANNA:

13 Q And listed here is the case of *Bethune Hill*. What kind of
14 analysis did you perform in *Bethune Hill*?

14:39:06 15 A I performed a racially polarized voting analyses, as well
16 as an analysis of the degree to which race predominated in the
17 drawing of House of delegates districts.

18 Q And do you know whether the Court credited your analysis
19 in that case?

14:39:19 20 A They did. The Court cited it extensively in their
21 opinion.

22 Q And what kind of analysis did you perform in the *Thomas v.*
23 *Bryant* case?

24 A Mainly racially polarized voting analyses.

14:39:32 25 THE COURT: Mainly racial what?

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1 THE WITNESS: Racially polarized voting.

2 THE COURT: Okay. You need to slow down just a little
3 bit so the court reporter can get all that down, please, okay?

4 BY MS. KHANNA:

14:39:43 5 Q And did the Court credit your analysis in that case?

6 A Yes.

7 MS. KHANNA: Your Honor, I would like to now proffer
8 Dr. Palmer as an expert in redistricting and data analysis for
9 the Court.

14:39:56 10 MR. DAVIS: No objection.

11 THE COURT: Okay. The Court recognizes Dr. Palmer as
12 an expert.

13 MS. KHANNA: Thank you, Your Honor.

14 BY MS. KHANNA:

14:40:06 15 Q Let's talk specifically about the work you performed in
16 this case. What were you initially asked to do?

17 A I was asked to evaluate the extent to which voting is
18 racially polarized in the first, second, third, and seventh
19 congressional districts under the map drawn in 2011.

14:40:22 20 Q And what is racially polarized voting, as you understand
21 it?

22 A As I understand it, racially polarized voting is when
23 members of different racial or ethnic groups -- when majorities
24 of those groups support different candidates.

14:40:40 25 For example, if a majority of black voters supports one

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1 candidate and a majority of white voters supports a different
2 opposing candidate.

3 Q Is it always the case that each racial group has a
4 preferred candidate?

14:40:53 5 A Not necessarily. It could be that a group is divided
6 among one or more -- two or more candidates.

7 Q And does racially polarized voting mean that each racial
8 group votes only for those candidates of the same racial group?

9 A No. There's no requirement or -- there's no requirement
14:41:14 10 that members of each group vote for members of their own group.

11 Q Were you able to draw any conclusions regarding the extent
12 to which voting is racially polarized in the areas that you
13 examined?

14 A Yes. I found strong evidence of racially polarized voting
14:41:33 15 in the first, second, third, and seventh districts, as well as
16 the -- those four districts altogether, which I call the focus
17 area in my report.

18 I find that African-American and white voters consistently
19 support different candidates. On average, the African-American
14:41:50 20 preferred candidates win about 94 percent of the
21 African-American vote, but only 17 percent of the white vote in
22 the area as a whole.

23 Q And across the elections that you examined, whose
24 preferred candidates generally prevailed?

14:42:02 25 A In the focus area as a whole, white preferred candidates

1 generally won across 18 statewide elections that I looked at.

2 The African-American preferred candidate only won twice.

3 Q And how about in congressional elections?

4 A In the first, second, and third districts, white preferred
14:42:21 5 candidates won in every election I looked at.

6 In the seventh district, African-American preferred
7 candidates won in every election.

8 Q Dr. Palmer, what was the geographic area that you
9 examined?

14:42:34 10 A The geographic area was the first, second, third, and
11 seventh congressional districts, which I referred to as a whole
12 as the focus area. I also include in the focus area a few
13 counties that are split between one of those four districts and
14 one of the other districts.

14:42:51 15 Q Okay. Can we please call up Plaintiffs' Exhibit 79,
16 Figure 1, which is on page 10.

17 Dr. Palmer, can you please explain to me what this figure
18 shows?

19 A This is just a map of the congressional districts as drawn
14:43:08 20 in 2011 highlighting the four districts of my analysis. And
21 then you can also see on this map some of the counties, such as
22 Jefferson County, that I include in the focus area as a whole,
23 because they're partially in one of these four districts.

24 Q Dr. Palmer, what elections did you examine in the course
14:43:29 25 of your analysis?

1 A I examined election results from the 2012, 2014, 2016, and
2 2018 general elections, as well as the 2017 special election
3 for U.S. Senate. This includes both elections for U.S.
4 Congress, which we would call endogenous selections in an
14:43:51 5 analysis like this about congressional districts, and statewide
6 elections are exogenous elections.

7 Q And what methodology did you use to use to analyze
8 racially polarized voting in the elections and areas that you
9 examined?

14:44:04 10 A I used a statistical procedure called ecological
11 inference, which is often referred to as EI.

12 Q And can you explain to us what EI is?

13 A Ecological inference is a procedure that estimates
14 group-level preferences; that is, what percentage of the voters
14:44:22 15 of each group are voting for each candidate based on aggregate
16 data -- based on the data we're actually able to observe about
17 elections.

18 Q So what kind of results does an ecological inference
19 analysis yield?

14:44:36 20 A The ultimate result of an ecological inference analysis is
21 an estimate for each racial group of their level of support for
22 each candidate.

23 An ecological inference is a procedure I run separately
24 for each election that I look at. So it's not one analysis,
14:44:55 25 but many different ecological inference analyses conducted

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1 here.

2 And besides the estimate, which is the mean or average

3 level estimated level of support for each group for each

4 candidate, it also includes a level of uncertainty. In this

14:45:09 5 case, a 95 percent confidence interval. And that tells us how
6 precise the estimate is.

7 Q And what racial groups did you analyze in the course of
8 your analysis here?

9 A I primarily focused on African-American and white voters,
14:45:23 10 but I also included a third category of other that includes
11 voters of all other groups.

12 Q What voters would belong in the "other" category?

13 A Hispanics, Asians, Native Americans, and the very small
14 percentage of voters who did not identify their race.

14:45:40 15 Q And how did you determine the racial category into which
16 each voter would belong?

17 A I relied on data from the Alabama Secretary of State
18 including reports about voter registration and when voters --
19 my understanding is that when voters registered to vote, they
14:45:56 20 identified their race on form.

21 Q And do you have any understanding about how they
22 identified their race in their voter registration form?

23 A They're instructed to check one of a few options,
24 including, black, white, Hispanic, Asian and Native American.

14:46:11 25 Q So the voter self-identifies their race; is that fair?

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1 A That's right.

2 Q And approximately how many voters qualified for that other
3 group that you mentioned?

4 A In the focus area as a whole, it's about 3 percent of
14:46:27 5 registered voters.

6 Q So what about the other 97 percent of registered voters?

7 A They're either black or white.

8 Q And, Dr. Palmer, you explain in your report that you did
9 two types of racially polarized voting analyses, a county-level
14:46:43 10 analysis and a precinct-level analysis. Why did you perform
11 two analyses to examine this question?

12 A Because of data availability. And so we have a lot more
13 data for more years at the county level and less data at the
14 precinct level. But it's useful to look at things both county
14:47:04 15 level and at the more granular precinct level. We just have
16 more information to work with.

17 Q Are they able to act as kind of a check on one another?

18 A Yes. I find essentially the same results in both sets of
19 analyses.

14:47:16 20 Q So let's first talk about your county-level analysis.
21 What data did you use for that analysis?

22 A So there's two main types of data used in the analysis.

23 The first is data on the registered voters, which for the
24 county level analysis comes from reports put out by the
14:47:34 25 Secretary of State at each election that report the number of

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1 registered voters by race in each county.

2 And then the second type of data is county-level election
3 results. That is the total number of votes received by each
4 candidate in each election in each county.

14:47:51 5 Q So for your county-level analysis, you examined only the
6 focus area as a whole and not each individual congressional
7 district; is that right?

8 A Yes.

9 Q And why is that?

14:48:02 10 A There aren't enough counties in the individual
11 congressional districts to do an analysis separately for each
12 one. We need to have enough data, enough different counties,
13 different observations in each analysis to get a good estimate.

14 Q So can you explain for us how you performed your
14:48:20 15 county-level analysis? How did it proceed?

16 A So after I put the data together, I run this algorithm
17 called ecological inference, which produces estimates of
18 support for each group, for each candidate. And then I analyze
19 it in two different steps.

14:48:41 20 And the first step is I just look at each group alone and
21 I say, is this group cohesively supporting one candidate, or
22 are they split across the two major candidates? And if they
23 were to be supporting one candidate, I can say they have a
24 candidate of choice in that election. But if they're split and
14:48:58 25 divided between two candidates, I can't come to that

1 conclusion.

2 And then second, I look at the two groups, mainly blacks
3 and whites together and say, do they have the same candidate of
4 choice or different candidates of choice?

14:49:09 5 Q So how do you determine from this analysis whether voting
6 in any particular election was racially polarized?

7 A I consider it racially polarized when each group has a
8 clear candidate of choice and they are opposing candidates.

9 Q Can we please put up Plaintiffs' Exhibit 79, Figure 2,
14:49:33 10 which is on page 11?

11 Can you explain to me what this figure shows?

12 A This figure reports the county-level ecological inference
13 results. And I'm going to go through it piece by piece because
14 it's a lot of different pieces here.

14:49:54 15 So on the left-hand side, the text lists each of the
16 different elections that I looked at. And each one is a
17 separate ecological inference run of the model.

18 Q So can we maybe just focus on the top, the first election
19 so you can walk us through what you looked at for each one?

14:50:10 20 A Sure. So the top election is the 2012 election for U.S.
21 President.

22 And what I first find looking at the results is that
23 African-Americans cohesively supported Barack Obama, and white
24 voters cohesively supported Mitt Romney. And so that each
14:50:24 25 group has a different candidate of choice.

1 And then on the right, the graph shows the percentage of
2 each group voting for the African-American candidate of choice.
3 So in this case, Obama. The black circle corresponds to black
4 voters, and the white circle to white voters.

14:50:40 5 And so what we see at the far right is that's the estimate
6 for black voters voting for the black candidate of choice, and
7 that's in the high 90s there. And then the vertical lines
8 around that dot are the confidence intervals. So that's our
9 measure of uncertainty from this estimate.

14:50:58 10 Then the white circle on the left is the percentage of
11 voters -- of white voters voting for the black candidate of
12 choice. So white voters voting for Obama. And that is less
13 than 20 percent. And those vertical lines around the circle
14 are also a confidence interval for that estimate.

14:51:14 15 Q Can you please explain what the competence intervals are
16 and what they show?

17 A It's a measure of uncertainty. And so the model produces
18 an estimate that we think is the best -- the best estimate of
19 support for each group and candidate, and that's represented by
14:51:32 20 the circle. But there is some uncertainty to it.

21 The model is run through simulations, and each simulation
22 produces a slightly different result. And so those lines show
23 the bounds in which 95 percent of the estimates fall between
24 those two lines.

14:51:44 25 Q So we can be confident with 95 percent certainty that the

1 actual vote share falls somewhere between those two lines?

2 A Given this model, yes.

3 Q And you mentioned, you know, the category here says "Black
4 candidate of choice." When you say "black candidate of
14:52:05 5 choice," do you mean the candidate who is black?

6 A No. I mean, the candidate preferred by African-American
7 voters.

8 Q And if we could zoom out from this one example to the
9 figure as a whole. I see at the bottom there's an asterisk,
14:52:18 10 and the asterisk is included in some elections. Can you
11 explain what the asterisk is?

12 A Is there a way for me to clear these circles?

13 Q I'm sure there is.

14 A So the asterisk here I just used to note which candidates
14:52:38 15 are, in fact, African-American and which ones are not.

16 Q Okay. Thanks. We can pull that back up.

17 So what does Figure 2 tell us?

18 A We see a consistent pattern across all 18 elections
19 ranging from 2012 to 2018. If we look at the far right side,
14:52:56 20 we see high levels of support by black voters for their
21 candidate of choice. They're highly cohesive in their voting
22 behavior across every election.

23 If we look at the white circles on the left, we see that
24 white candidates always have a candidate of choice, as well,
14:53:12 25 who is opposing the black candidate of choice. They're

1 cohesive voting against the black candidate of choice.

2 Q And is there a place in your report where we would find
3 the numerical values of the point estimates and confidence
4 intervals reflected on Figure 2?

14:53:28 5 A Yes. This is all in Table 1 on page 17.

6 Q Can we please pull up Table 1? That's Plaintiffs' Exhibit
7 79, page 17.

8 So can you please explain what the information on the
9 table provides?

14:53:46 10 A So these are the numbers that I used to produce the figure
11 that we just looked at.

12 And so if we look at that top row again, we see the U.S.
13 presidential election 2012. The next two columns identify the
14 black and white candidate of choice. And then the next set of
14:54:04 15 columns give us the numbers of the percent of that group voting
16 for the black candidate of choice.

17 So here we see the numbers used to make the figure.
18 96.7 percent of black voters supported Obama. That's our best
19 estimate. The confidence interval goes from 92.8 to 99.0.

14:54:25 20 For white voters, 14.7 percent supported Obama, with a
21 confidence interval of 12.8 to 17.3 percent.

22 Q And let's take a look at that other category, as well.

23 What does that other -- what do we learn from that other
24 category, with respect to the election you just mentioned?

14:54:39 25 A Our best estimate is that 62.7 percent of voters in the

1 other category supported Obama, but with a very, very large
2 confidence interval from 30.6 to 91.8 percent.

3 So we learned relatively a little bit about them from this
4 analysis. And that's because they are a very, very small
14:54:56 5 group, and they're scattered across this area as a whole.
6 They're not heavily concentrated in just a few places.

7 So it's hard to use ecological inference to learn very
8 much about their voting behavior.

9 Q How do the other category fit into your county-level
14:55:09 10 analysis of racially polarized voting, if at all?

11 A I'm focused on polarization between black and white
12 voters, who make up 97 percent of the registered voters in this
13 area. Including -- the other group doesn't have to be split
14 out as a third group. Another way of running EI is to include
14:55:30 15 them with the white group. So that would be black voters and
16 everybody else. Doing it that way makes no difference
17 whatsoever to my results or to the estimates.

18 Q So what is the average estimated vote share of
19 African-Americans for their candidates of choice, as reflected
14:55:44 20 in Table 1?

21 THE COURT: Table 1, that's what you are talking about
22 here?

23 BY MS. KHANNA:

24 Q So I guess what I'm asking --

14:56:01 25 THE COURT: I got the tables and the figures confused.

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1 BY MS. KHANNA:

2 Q Table 1 is up on the screen. And I'm asking what is the
3 average estimated vote share of African-Americans for their
4 preferred candidate?

14:56:11 5 A On average, African-American -- the African-American vote
6 share for their preferred candidate is 94.1 percent. And --

7 Q And actually just to clarify for the Court, as well,
8 Dr. Palmer, you got that average, I take it, from adding up the
9 number under the word "black," all the numbers there, and then
14:56:29 10 dividing by the total number of elections; is that right?

11 A Yes.

12 Q And I think that's reflected -- that 94.1 percent figure
13 is reflected on page 5, paragraph 20 in your report; is that
14 right?

14:56:40 15 A Yes.

16 Q Thank you. I just wanted to make sure to orient everyone.
17 And what is the average estimated vote share of whites for
18 the African-American preferred candidate based on the elections
19 in Table 1?

14:56:51 20 A 16.7 percent.

21 Q Dr. Palmer, based on this table, is it accurate to say
22 that the white vote share for the black preferred candidate was
23 lower when the candidate was African-American than when the
24 candidate was white?

14:57:11 25 A Yes. The difference is about 6 percent.

1 Q So what conclusions did you draw based on the estimates
2 depicted in Figure 2 and Table 1?

3 A This county-level analysis shows a very high level of
4 racially polarized voting in the focus area.

14:57:31 5 Q Okay. So what further analysis did you do of these 18
6 elections after you determined that they demonstrated a high
7 level of racially polarized voting?

8 A I then looked at the ability of African-American preferred
9 candidates to win elections in this focus area.

14:57:49 10 Q Okay. Let's please turn to Plaintiffs' Exhibit 79, Table
11 2, which is on page 18.

12 Dr. Palmer, what does this table show us?

13 A So this table shows us the same 18 elections that I used
14 for the ecological inference analysis. But I've just shown the
14:58:18 15 vote share of the black and white preferred candidates in the
16 focus area as a whole for each election.

17 So this is not the result of running a model. It's just
18 simply adding up all the votes in all the counties in the focus
19 area.

14:58:31 20 Q And just to be clear, when you mention the vote share in
21 the focus area, these are not the actual vote shares statewide
22 that the candidates received in these elections; is that right?

23 A That's right. It's just within the counties in the focus
24 area.

14:58:43 25 Q And so what does Table 2 tell us?

1 A Table 2 shows us that generally the black preferred
2 candidate is not able to win elections in the focus area.
3 Across these 18 elections, the black preferred candidate only
4 won twice.

14:59:01 5 Q And what can you tell us about those two elections in
6 which the black preferred candidate was able to win within the
7 focus area?

8 A The black preferred candidate was able to win in the 2012
9 Supreme Court Chief Justice contest and the 2017 election for
14:59:17 10 U.S. senator. In both of those elections, the white preferred
11 candidate was Roy Moore.

12 Q So the only time that a white preferred candidate lost an
13 election in the focus area to the black preferred candidate,
14 that candidate -- the white preferred candidate was Roy Moore?

14:59:34 15 A Yes.

16 Q And just to clarify, are you saying that Roy Moore lost
17 both of these elections in which he ran?

18 A No. He lost the election for U.S. Senate. But he did win
19 statewide the 2012 Supreme Court election.

14:59:49 20 Q But among the voters in the focus area, he lost?

21 A That's right.

22 Q What, if anything, do you know about Roy Moore?

23 A My understanding is he's a controversial figure in Alabama
24 politics. He was removed from his position on the Supreme
15:00:04 25 Court in the early 2000s, and I think again later on. And then

1 was a very controversial candidate for Senate in 2017.

2 Q So then did white voters in the focus area reject Roy
3 Moore?

4 A No. If we turn back to Table 1, we can see that in the
15:00:31 5 Supreme Court election a majority of about 70 percent of white
6 voters still voted for Roy Moore, and only 29 percent voted for
7 the black preferred candidate.

8 And in the U.S. Senate election, about 66 percent of white
9 voters voted for Roy Moore, and only about 33.7 percent voted
15:00:53 10 for his opponent.

11 THE COURT: I'm sorry. Where do you see that on Table
12 1, which is page 17 of Exhibit 79?

13 THE WITNESS: It's highlighted now on the screen. The
14 vote shares for white voters for the black preferred
15:01:09 15 candidate and then for Moore's -- for Moore's opponent in each
16 of these elections.

17 THE COURT: Okay. So you have to extrapolate from
18 that those numbers the numbers you just gave me?

19 THE WITNESS: It's just 100 minus those numbers.

15:01:22 20 THE COURT: Right.

21 THE WITNESS: They always have to add up to 100 there.

22 THE COURT: Right. I understand that. But I didn't
23 see the numbers that you gave on there. So now I've got it.

24 I appreciate it. Thank you.

15:01:30 25 BY MS. KHANNA:

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1 Q Okay, Dr. Palmer, I want to move on from your county-level
2 analysis to your precinct-level analysis.

3 What do you mean by a precinct-level analysis?

4 A So in the first analysis, our level of observation is the
15:01:44 5 county. We have -- for every election, we have county-level
6 data on voters and county-level data on election results.

7 Here we're zooming into the precinct-level instead, going
8 from 45 counties to about 1,100 precincts.

9 Q So what -- sorry.

15:02:01 10 A We have data on voters at the precinct level and data on
11 election results at the precinct level.

12 Q So why did you perform a precinct-level analysis? What
13 additional information does this analysis provide?

14 A There's two real advantages to it.

15:02:18 15 First, because we have far more observations than we had
16 before, we can now do analyses at the congressional district
17 level. So instead of just reporting one set of results for the
18 focus area, I can produce results at each congressional
19 district separately.

15:02:33 20 Second, because we can look at just a congressional
21 district alone, we can also look at elections for U.S. Congress
22 in those districts, which we could not do in the focus area
23 because it spanned all of these districts together.

24 Q And I think you mentioned that we have far more data
15:02:47 25 points available in the precinct-level analysis. Approximately

1 how many data points are we looking at?

2 A It's about 1,100 precincts across the full focus area.

3 Q And what data did you rely on for your precinct-level
4 analysis?

15:03:02 5 A Again, I need two different sets of data -- one on voters
6 and one on elections. And so for elections, I use
7 precinct-level election results for the 2018 elections from the
8 Secretary of State.

9 And then for voters, it's a little bit harder because we
15:03:19 10 don't have a simple count of voter -- registered voters by race
11 in each precinct. So instead I relied on a voter file also
12 provided by the Secretary of State to calculate the number of
13 actual voters in each precinct in the 2018 election by race.

14 Q And what information is included in the voter file
15:03:36 15 provided by the Secretary of State?

16 A The voter file has a lot of information. But what I
17 relied on was the voter's self-identified race, their county,
18 their voting precinct, and whether or not they voted in the
19 2018 election.

15:03:48 20 Q And did you encounter any difficulties in performing the
21 precinct-level analysis?

22 A Yes. This was a much more challenging data set to put
23 together.

24 First, we had to use a voter file from January 3rd, 2019,
15:04:06 25 instead of a report from election day in order to get the voter

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1 history into the analysis; that is, in order to have -- in
2 order to know which voters -- which registered voters voted, we
3 needed to have that information reported to -- from the
4 counties to the Secretary of State.

15:04:23 5 And so the Secretary of State's office recommended that we
6 use a voter file from January for the analysis.

7 Q And what was any other challenges that you encountered in
8 performing that precinct-level analysis?

9 A Yes. A second major challenge was after I knew -- after I
15:04:39 10 calculated the number of voters by race in each precinct, I had
11 to match the precinct-level data on voters to the
12 precinct-level election results.

13 And this was surprisingly difficult in several counties
14 because the voter file might use numbers to identify each
15:04:55 15 precinct, but the election returns might use precinct names to
16 identify them instead. And so I had to manually match them up
17 in many cases, and use the files provided by the Secretary of
18 State to do matching in other counties.

19 Q So were you ultimately able to match all of the precincts?

15:05:09 20 A No. There were a small number of precincts in a few
21 smaller counties where I was not able to match up the precinct
22 level -- the voter file to the precinct-level election returns.

23 Q So approximately how many precincts were you able to
24 match? Or I guess for how many voters, if that's an easier
15:05:33 25 question?

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1 A Yeah. I think that's a better metric.

2 I was able to match more than 90 percent of the voters who
3 cast a ballot to a voting precinct, and similarly more than
4 90 percent of the ballots cast to voters in those precincts.

15:05:46 5 Q And do you have any concerns that the unmatched precincts
6 would change or bias the results of your analysis in any way?

7 A I don't. If I -- when I looked at the unmatched areas,
8 the areas that I couldn't match up, the distribution of voters
9 by race, it was essentially the same percentage of voters were
10 matched among whites and blacks.

11 90.4 of the white voters and 90.4 percent of blacks voters
12 were successfully matched. So I don't think I'm systematically
13 missing voters of either group.

14 Q Can we put up Plaintiffs' Exhibit 79, Figure 3, which is
15 on page 12.

16 Dr. Palmer, can you please explain to me what this figure
17 shows?

18 A So this figure is ecological inference results for the
19 first congressional district only using the precinct-level
15:06:37 20 data. And so just like in Figure 1, it's set up the same way.

21 On the left, I list each of the different elections and
22 identify the candidates of choice for each group. And then on
23 the right, I plot support for the black candidate of choice.

24 Q And what does Figure 3 tell us?

15:06:54 25 A Figure 3 shows us a similar pattern as we saw in Figure 1.

1 We see the African-Americans and white voters each have clear
2 candidates of choice, and they're opposing each other.

3 Black voters are highly cohesive in their support for
4 their candidate of choice, and white voters are supporting the
15:07:11 5 opposing candidate.

6 Q And just to clarify, I think you said similar to Figure 1.
7 Do you mean Figure 2?

8 A I'm sorry. Yes. Figure 2.

9 Q Figure 1 is the map.

15:07:18 10 A Yes.

11 Q So I wanted to make that clear. And where would I find
12 the numerical values for the point estimates and the confidence
13 intervals reflected in Figure 3?

14 A In Table 3.

15:07:29 15 Q And could we please turn to Table 3, which is Plaintiffs'
16 Exhibit 79, page 19?

17 So please explain what information Table 3 provides.

18 A Table 3 provides the same sort of results as we saw
19 earlier in Table 1. I list each election, then the black and
15:07:53 20 white candidates of choice, and then the percentage of each
21 group voting for the black candidate of choice with the
22 estimate followed by the confidence interval in parenthesis
23 behind -- after it.

24 Q So what conclusions were you able to draw based on the
15:08:08 25 estimates depicted in Figure 3 and Table 3?

1 A There's a high level of racially polarized voting in the
2 first congressional district.

3 Q So I'm going to try to put up -- if Heather will
4 indulge -- Figures 4, 5, and 6 on the same screen for the sake
15:08:27 5 of efficiency from Plaintiffs' Exhibit 79. We'll see if that's
6 readable.

7 And if you can tell from this, and you also have it in
8 front of you, as well, each of the figures -- can you please
9 explain to me what we learned from Figures 4, 5, and 6, and
15:08:46 10 what these are?

11 A So these figures show the results of the precinct-level
12 ecological inference analysis for the second district in Figure
13 4; the third district in Figure 5; and the seventh district in
14 Figure 6.

15 And across all three of them, all three districts, we see
16 the same pattern, that afternoon African-Americans and white
17 voters have different candidates of choice, that
18 African-American voters are highly cohesive in support of their
19 candidate of choice, and that white voters are supporting the
15:09:00 20 opposing candidate.

21 Q And where would we find the numerical estimates for these
22 figures? I believe it's -- there's Tables 4, 5, and 6 that
23 correspond with Figures 4, 5, and 6. Does that sound right?

24 A That's correct.

15:09:30 25 Q Can we put those three on the board, as well?

1 Okay. And can you explain to us what do these tables
2 show?

3 A These tables show the same thing as the previous table we
4 just looked at. But for the second, third, and seventh
15:09:49 5 congressional districts, they show each election, the black and
6 white candidates of choice, and then the percentage voting for
7 the black candidate of choice for each group with an estimate
8 and a confidence interval.

9 Q Okay. If we can now call up Table 7 -- actually before
15:10:05 10 that, Figure 7 of Plaintiffs' Exhibit 79 on page 16.

11 Can you explain to me what this figure is?

12 A This figure is precinct-level ecological inference
13 results, but for the full focus area.

14 Q So no one congressional district, but all of them
15:10:27 15 together?

16 A That's right. So unlike the previous ones where I was
17 able to include elections for the U.S. House, this only has
18 statewide elections.

19 Q And what does this figure show?

15:10:37 20 A It shows that same pattern that we've seen before, that
21 African-Americans and white voters have different candidates of
22 choice, that African-American voters are highly cohesive in
23 support of their candidate of choice, and that white voters are
24 strongly supporting the opposing candidate.

15:10:52 25 Q And it seems here that the confidence intervals, that

1 vertical line on either side of the white dot and black dot,
2 are fairly narrow here; is that right?

3 A Yes.

4 Q What does that mean?

15:11:02 5 A That's just reflective of the fact that we have a lot of
6 data here. We have -- this analysis has the most information
7 going into it of all of them, because we have every precinct
8 available instead of just the precincts in any one district.

9 Q So you can feel very confident that these estimates are
15:11:21 10 quite precise?

11 A Yes. Under this model, we get more precision.

12 THE COURT: Can I ask a question, please?

13 MS. KHANNA: Sure.

14 THE COURT: Am I correct that the precinct analysis
15:11:30 15 was only done of the 2018 statewide elections; is that right?

16 THE WITNESS: That's right.

17 THE COURT: Okay. Thank you.

18 BY MS. KHANNA:

19 Q Dr. Palmer, can you perhaps explain why you only performed
15:11:42 20 the 2018 -- why you only performed the precinct analysis on
21 2018 elections?

22 A Yes. It was because of data availability.

23 And so while I could get voter files for earlier
24 elections, that matching up of the voter file precinct to the
15:11:57 25 election results precinct I was only able to get the

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1 information I needed to do that step for 2018.

2 Q Thank you.

3 Can we please turn to Table 7, which is page 23 of
4 Plaintiffs' Exhibit 79? Can you please explain what
15:12:15 5 information this table provides?

6 A This is just the numbers used in Figure 7. And so
7 precinct-level ecological inference results for the focus area.

8 Again, I'm listing each election, the black and white
9 candidates of choice, and then the percentage of each group
15:12:32 10 voting for the black candidate of choice.

11 Q And what is the average estimated vote share of
12 African-Americans for their candidates of choice in the focus
13 area as a whole?

14 A 98.3 percent.

15:12:42 15 Q And where are you looking to see that number? Is there
16 somewhere specific in your report?

17 A Yes. Paragraph 35 on page 9.

18 Q And what is the average estimated vote share of whites for
19 the African-American candidate of choice in the focus area?

15:13:01 20 A 17.4 percent.

21 Q And based on this table, is it accurate to say -- oh,
22 sorry. If we could go back to Table 7. Thank you.

23 Based on this table, is it accurate to say that the white
24 vote share for the black preferred candidate was lower when the
15:13:20 25 candidate was African-American than when that candidate was

1 white?

2 A On average, yes, by about two percentage points.

3 Q So what conclusions did you draw based on the analyses in
4 Figure 7 and Table 7?

15:13:35 5 A There's a high level of racially polarized voting in each
6 of the four districts individually and in the focus area as a
7 whole when you use precinct-level ecological inference.

8 Q Okay. So the figures and tables that we just looked at
9 analyze the extent to which African-Americans and whites
15:13:54 10 preferred different candidates.

11 What analysis did you do to determine the extent to which
12 African-American preferred candidates actually win in the focus
13 area?

14 A Just as I did for the focus area as a whole, I simply
15:14:08 15 calculated the percentage of the vote that each candidate
16 received in each district. And that's in Table 8.

17 Q Can we please call up Table 8, which is on page 24 of
18 Plaintiffs' Exhibit 79? Can you please explain what Table 8
19 shows?

15:14:25 20 A So first I list each election that I look at, and then the
21 black and white candidates of choice based on the ecological
22 inference analysis. And even though I'm looking at four
23 different districts, because the black and white candidates of
24 choice in the statewide elections were the same, in all four
15:14:43 25 districts, I only list them once.

1 And then I list in the next set of columns the vote share
2 for the black preferred candidate and the white preferred
3 candidate in CD 1, and then in CD 2, CD 3, and CD 7.

4 Q And so it seems that there are three congressional
15:15:02 5 districts at the top in which only one district would have
6 voted in that election -- in each election; is that right?

7 A That's right. Because those are the U.S. House elections.

8 So if we look at the very top row, that's U.S. House, the
9 first congressional district. And what we see there is that in
15:15:18 10 CD 1, the black preferred candidate received 36.8 percent of
11 the vote. The white preferred candidate won with 63.2 percent
12 of the vote. We don't have any numbers in the rest of that row
13 because that contest only happened in the first congressional
14 district.

15:15:32 15 Q And those numbers that you mentioned -- 36.8 and 63.2 --
16 are the actual vote shares obtained by each candidate; is that
17 right?

18 A Yes.

19 Q And I notice here that House District 7, which was one of
15:15:45 20 the districts you analyzed, is not included on this table. Can
21 you explain why?

22 A That election was not contested by both major parties.

23 Q So there was no -- there was no contest basically in that
24 election?

15:15:59 25 A That's right.

1 Q And what does Table 8 tell us about the extent to which
2 African-American preferred candidates win elections in these
3 congressional districts?

4 A If we compare the vote shares for the black and white
15:16:15 5 preferred candidates in the first, second, and third districts,
6 we see that the white preferred candidate is winning with large
7 margins, often more than 20 percentage points.

8 In contrast, in CD 7, we see that the African-American
9 preferred candidate is winning with large margins of about 40
15:16:32 10 percentage points.

11 Q Dr. Palmer, after you submitted your initial report in
12 this case, did you receive reports from defendant's experts
13 Drs. Johnson and Hood?

14 A Yes.

15:16:46 15 Q And did either expert report address the analyses you
16 performed in your initial report that we just discussed?

17 A No. Neither Dr. Hood nor Dr. Johnson contested any of my
18 conclusions or my methodology or empirical results.

19 Q But you did submit a rebuttal report in this case; is that
15:17:05 20 right?

21 A Yes.

22 Q And that's Plaintiffs' Exhibit 80?

23 A Yes.

24 Q Why did do you that?

15:17:09 25 A Dr. Hood in his report questioned the functionality of the

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1 new majority-minority districts drawn by Mr. Cooper, and I was
2 asked to analyze a performance of those districts.

3 Q And what data did you examine to answer that question?

4 A It required a variety of data. First, the actual maps
15:17:33 5 drawn by Mr. Cooper in the form of block equivalency files,
6 which are files that list every census block and which district
7 they're assigned to on each map. Then county-level and
8 precinct-level election results and voter turnout data from the
9 2018 general election. And that's all from the Secretary of
15:17:51 10 State. The voter file that I used in my previous analysis I
11 used again. And then the new data here on precinct boundary
12 shape files for some counties, in order to map out where
13 voters -- to map out voters in counties that were split between
14 two districts under Mr. Cooper's maps.

15:18:13 15 Q So then what analysis did you perform to analyze whether
16 the districts would be able to perform for the minority
17 preferred candidates?

18 A The first thing I did was I calculated vote shares for
19 each candidate in the statewide elections in 2018 in each
15:18:29 20 district under each of the four maps.

21 Q So let's call up Plaintiffs' Exhibit 80, Figure 1.

22 MR. DAVIS: Your Honor, at this point, I would like to
23 lodge an objection, if I may.

24 THE COURT: All right.

15:18:46 25 MR. DAVIS: Dr. Palmer's analysis on whether these

1 districts would perform are based solely on the results of the
2 2018 election. That's not information that would have been
3 available to the Alabama Legislature in 2011. They could not
4 have looked at those results obviously and used that to
15:18:59 5 determine whether or not these districts would, in fact,
6 provide an opportunity to elect.

7 MS. KHANNA: Your Honor, if I may respond.

8 THE COURT: Yes.

9 MS. KHANNA: The legal question here is not what
15:19:08 10 information, data, or intent the map drawers had in 2011. The
11 question is whether race is -- voting is racially polarized in
12 Alabama in these areas. It is not about the intent of the
13 legislature at the time, because it's not a legislative-intent
14 case.

15:19:26 15 So Dr. Hood, when he raises the question of voter turnout,
16 himself relies on post-2010 data to suggest that there's not --
17 that there's a functionality problem here, in accordance with
18 that same legal standard that we have all been operating under.

19 MR. DAVIS: I would respond, Judge, that I don't think
15:19:46 20 this is part of Dr. Palmer's polarized voting analysis. He's
21 assessing whether these districts would, in fact, provide an
22 opportunity to elect.

23 But if the question is whether the Alabama --

24 THE COURT: Isn't that beyond the scope of his
15:19:59 25 original report?

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1 MS. KHANNA: It is of his original report. It is in
2 response to --

3 THE COURT: And also beyond the scope of his expertise
4 to some extent, is it not?

15:20:12 5 MS. KHANNA: I don't believe it's beyond the scope of
6 his expertise. His expertise is in analyzing racial voting
7 patterns in election results.

8 But it is included in his rebuttal report, specifically in
9 response to Dr. Hood's analysis, which itself is based on
15:20:28 10 post-2010 data.

11 THE COURT: Is it based on post-2010 data?

12 MR. DAVIS: Dr. Hood did not issue -- he did look at
13 post-2011 data.

14 He didn't issue an opinion that these districts would not
15:20:40 15 perform. He said the numbers are so close, there are
16 questions, especially when you look at turnout.

17 But now that it's clear that we are only dealing with the
18 declaratory judgment in this case and that our focus is
19 backwards looking, we don't think that an assessment based on
15:20:56 20 2018 data would be relevant, because the Alabama Legislature
21 could not have used that.

22 MS. KHANNA: Your Honor, I would agree that the focus
23 is about whether the current map is a violation, but it is not
24 about whether the legislature knew or should have known that it
15:21:10 25 was a violation, or intended to violate, or had good

1 information, bad information, good faith, or bad faith. None
2 of that is the issue before this Court, whether on declaratory
3 or injunctive relief.

4 The question of functionality frankly was an issue raised
15:21:25 5 by their expert. We don't believe it is part of our
6 affirmative burden in a Section 2 case. But having been raised
7 by his expert, upon looking at post-2010 data, I think it's
8 appropriate for our expert to respond to say if you think this
9 relevant, I can look at the relevant data.

15:21:40 10 THE COURT: Okay. But your expert already said that
11 Dr. Hood didn't take issue with any of this expert's report,
12 right?

13 MS. KHANNA: That's correct. Dr. Hood did not take --

14 THE COURT: And so his rebuttal was not to defend
15:21:53 15 anything that was part of his original report, right?

16 MS. KHANNA: That's correct, Your Honor.

17 He did respond to a concern raised by Dr. Hood for the
18 first time in Dr. Hood's report to demonstrate that that
19 concern was -- an attempt to demonstrate that that concern was
15:22:10 20 not valid. We do not believe that the functionality is a part
21 of the Section 2 affirmative burden on plaintiffs, in any
22 event.

23 THE COURT: All right. Well, I'm going to overrule
24 the objection, but will keep in mind sort of the extended scope
15:22:31 25 with the involvement of the 2018 stuff on that, so...

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1 MS. KHANNA: Thank you, Your Honor.

2 THE COURT: Okay.

3 BY MS. KHANNA:

4 Q Dr. Palmer, can you please explain to us what does Figure
15:22:42 5 1 show -- or is this Figure 1? -- Figure 1 shows?

6 A So Figure 1 shows the vote shares of the African-American
7 preferred candidates; that is, the candidates identified as
8 African-American preferred candidates in my previous report
9 under each of the four plans in the second and seventh
15:23:00 10 congressional districts.

11 And so here, the black dot doesn't correspond to white or
12 black voters, but rather to the second congressional district,
13 and the white dot to the seventh district under Mr. Cooper's
14 maps.

15:23:12 15 And so if we zoom in, for example, on just the top left
16 quadrant, what we see is each of the statewide contested
17 elections in 2018, and then the vote share in the second and
18 seventh districts for the African-American preferred candidate.

19 And there's a dotted line at 50 percent, and these dots
15:23:31 20 are well to the right of 50 percent. And what that means is
21 that the African-American preferred candidate is winning a
22 significant majority of the overall vote in these districts, in
23 this particular map; and if we zoom back out, in all four maps.

24 Q And you did say this, but I just want to make extra clear.
15:23:48 25 Here, you have black dots and white dots. We previously looked

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1 at other figures in which the black dot meant the black
2 preferred candidate -- or the black vote share, and the white
3 dot meant the white vote share. That's not the case here; is
4 that right?

15:24:01 5 A That's right. Here the black dot means vote share in CD
6 2, and the white dot, vote share in CD 7.

7 THE COURT: And that would be total votes black and
8 white?

9 THE WITNESS: All votes from everybody.

15:24:15 10 BY MS. KHANNA:

11 Q Let's call up Table 1 on the same page, please. Please
12 describe what Table 1 shows us.

13 A These are just the numbers that are plotted in Figure 1.
14 And so they show for each contest what percentage of the vote
15:24:32 15 the African-American preferred candidate would have received in
16 each district under each map.

17 And so, for example, in -- under Revised Plan 1 election
18 for Governor, the African-American preferred candidate would
19 have won 59.2 of the vote in CD 2, and 68.8 percent of the vote
15:24:51 20 in CD 7.

21 Q And can you tell here what is the lowest vote share that
22 the African-American preferred candidate would have won under
23 District 2 or District 7 in any of these illustrative plans?

24 A The lowest vote share in any contest under any plan was
15:25:08 25 58 percent of the vote.

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1 Q And in some cases it's much higher; is that correct?

2 A In many cases it's much higher.

3 Q Okay. In his report --

4 THE COURT: Excuse me. And that is true even though,
15:25:21 5 if I recall correctly, several of the plans drawn by Mr. Cooper
6 had a lower percentage than 58 percent of African-American
7 voters; is that right? Am I remembering that correct?

8 THE WITNESS: That's right.

9 THE COURT: Okay. Thank you.

15:25:44 10 BY MS. KHANNA:

11 Q Now, in his report, Dr. Hood discussed turnout in Alabama;
12 is that right?

13 A Yes.

14 Q And what is your understanding of Dr. Hood's conclusion
15:25:55 15 when it comes to turnout in Alabama?

16 A My understanding is that Dr. Hood looked at statewide
17 turnout rates by race, and he found a racial turnout gap where
18 African-Americans were turning out at lower rates than white
19 voters statewide.

15:26:12 20 Q Did you have any reason to dispute that?

21 A I don't dispute his analysis.

22 Q Did you perform any additional analysis regarding the
23 actual composition of voters based on Mr. Cooper's illustrative
24 plans?

15:26:25 25 A Yes. I don't find a statewide estimate of turnout rates

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1 to be very useful in assessing the functionality of these
2 districts.

3 And so I took a different approach, which was using the
4 voter file. And so we know where all those voters are located,
15:26:42 5 and we know who actually voted.

6 I simply calculated the actual number of voters by race,
7 of actual people who actually voted in 2018 in each district
8 under all four maps. And that's in Table 2.

9 MR. DAVIS: Your Honor, for the record, I would like
15:26:58 10 to lodge the same objection to the assessment of the voter
11 composition.

12 THE COURT: Objection noted and overruled.

13 BY MS. KHANNA:

14 Q Can we please call up Table 2 of Plaintiffs' Exhibit 80?
15:27:14 15 What does Table 2 tell us?

16 A So Table 2 shows us the percentage of actual voters in
17 2018 who are black, white, or of some other group in District 2
18 and District 7 under each of the four maps.

19 And so what we see is under all four plans in both
15:27:33 20 districts a majority of the actual voters, of the people who
21 actually cast a ballot in this election, were black.

22 Q So this is not -- like we were looking in Mr. Cooper's
23 plans, we are not looking at the black voting age population
24 here; is that right?

15:27:46 25 A That's right. We're looking at percentage of voters that

1 were black, percentage of voters that were white, and
2 percentage of voters that were in some other group.

3 Q So while Dr. Hood looked at the race of voters who turned
4 out statewide, this analysis looks at the race of voters who
15:28:05 5 voted in -- as drawn in Mr. Cooper's illustrative plan; is that
6 right?

7 A There's a few different differences to highlight. One is
8 statewide versus looking at the individual districts under each
9 map. And I think that's an important distinction.

15:28:19 10 The second thing is that what Dr. Hood is looking at is
11 the percentage of among the -- among black registered voters,
12 what percentage turned out to vote? And that's what he means
13 by turnout is what percentage of African-Americans who are
14 registered to vote did vote? And here I'm looking at what
15:28:38 15 percentage of the actual voters belong to each group?

16 And so we see here in Table 2 that under all four plans in
17 both districts a majority of the actual voters were black.

18 Q So, Dr. Palmer, based on your functionality analysis,
19 would you have any concerns that any of Mr. Cooper's
15:28:55 20 illustrative plans would fail to provide African-American
21 voters an opportunity to elect in either District 2 or District
22 7?

23 A No. African-Americans make up a majority of the actual
24 voters in both districts under all four maps. And their
15:29:10 25 candidates of choice are able to win by significant margins.

1 Q Dr. Palmer, you are aware that defendant's experts have
2 questioned whether plaintiffs' illustrative plans should be
3 evaluated based on the AP black metric versus the SR black
4 metric? Are you aware of that?

15:29:29 5 A Yes.

6 Q And does that debate affect your analysis in any way?

7 A No. All of my analyses in both reports use a voter's
8 self-identified race from the voter registration database. I'm
9 not looking at different census classifications of race at all.

15:29:47 10 THE COURT: And if I'm not mistaken, the information
11 from voter registration deals with single race black, right?
12 Only those who -- I mean, you only have one choice there,
13 whether to identify yourself as black or as something other,
14 right? Am I confused on that?

15:30:07 15 THE WITNESS: That's my understanding.

16 THE COURT: Okay. So you used in your analysis the
17 information from voter registration, which would be single-race
18 black or all -- whatever it is.

19 THE WITNESS: I don't think it's single-race black
15:30:24 20 because a mixed-race person could choose which box they're
21 checking.

22 THE COURT: Right. It's how they self-identified.

23 THE WITNESS: That's right.

24 THE COURT: But they didn't have an option to
15:30:35 25 self-identify other than with one checkmark?

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1 THE WITNESS: That's my understanding.

2 THE COURT: All right.

3 BY MS. KHANNA:

4 Q Dr. Palmer, I just want to summarize with your overall
15:30:47 5 analysis. What conclusions overall do you arrive at in the
6 course of your work in this case?

7 A I find high levels of racially polarized voting.

8 African-American -- white preferred candidates
9 consistently defeat African-American preferred candidates in
15:31:04 10 the focus area in the first, second, and third congressional
11 districts. And under Mr. Cooper's illustrative maps,
12 African-American voters make up the majority of the electorate
13 and are able to elect their candidates of choice.

14 MS. KHANNA: Thank you. No further questions on
15:31:19 15 direct.

16 THE COURT: Cross-examination? Mr. Davis?

17 CROSS-EXAMINATION

18 BY MR. DAVIS:

19 Q Good afternoon, Dr. Palmer.

15:31:50 20 A Good afternoon.

21 Q Dr. Palmer, were you retained as an expert in the case of
22 *Thomas vs. Bryant* in Mississippi?

23 A Yes.

24 Q What was that case about?

15:31:58 25 A That case was about a single state Senate district in

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1 Mississippi.

2 Q What was the nature of the claim against that Senate
3 district?

4 A Can you refresh my memory?

15:32:16 5 Q Sure. Would you help if you saw a copy of your report
6 from that case?

7 A Sure. Thank you.

8 MR. DAVIS: May I approach?

9 THE COURT: You may.

15:32:31 10 BY MR. DAVIS:

11 Q Let me redirect -- refocus my question, Dr. Palmer.

12 Do you agree that the case was about Senate District 22 in
13 Mississippi?

14 A Yes.

15:32:56 15 Q And that Senate District 22, as drawn, was 50.8 percent
16 black voting age population?

17 A Yes.

18 Q Okay. And do you agree that the plaintiffs were claiming
19 that even though African-Americans were more than 50 percent of
15:33:07 20 the district, they were unable to elect their candidate of
21 choice in that district?

22 A Yes.

23 Q And do you agree that as part of that lawsuit the
24 plaintiffs in that case claimed that Section 2 required
15:33:18 25 Mississippi to redraw the district to increase the percentage

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1 of black voters in that district?

2 A That's my understanding.

3 Q And what analysis did you perform in that case,
4 Dr. Palmer?

15:33:30 5 A I did a racially polarized voting analysis in that case.

6 Q Okay. And did you also assess whether if black percentage
7 voting -- excuse me -- if the black voting age population was
8 increased to 62 percent, did you opine that blacks would then
9 be able to elect their candidate of choice?

15:33:47 10 A Yes.

11 Q So is it true, Dr. Palmer, that a 50 percent black
12 district or a district that's just over 50 percent
13 African-American voting age population does not necessarily
14 allow the African-American voters to elect their candidate of
15 choice?

15:34:02

16 A Not necessarily.

17 Q Okay. Now, in 2011 would you agree that Alabama was
18 governed by Section 5 of the Voting Rights Act?

19 A I believe so.

15:34:17 20 Q Okay. Would you agree that because Alabama was governed
21 by Section 5 of the Voting Rights Act that Alabama's
22 congressional districts had to be precleared by the Department
23 of Justice?

24 A I believe so.

15:34:29 25 Q Okay. If Alabama had redrawn congressional District 7 and

1 lowered the percentage of African-American voters in that
2 district to the point where African-American voters would be
3 unable to elect their candidate of choice, would you agree that
4 Alabama would have had a hard time getting that district
15:34:52 5 precleared?

6 MS. KHANNA: Objection. Calls for a legal conclusion.

7 Dr. Palmer is not an expert on what would qualify for
8 preclearance by the Department of Justice, what they would have
9 objected to.

15:35:02 10 THE COURT: I'm aware of that. I will overrule and
11 allow this witness to opine.

12 THE WITNESS: Can you repeat the question, please?

13 BY MR. DAVIS:

14 Q Yes.

15:35:09 15 Would you agree that if Alabama dropped the voting age
16 population -- the African-American voting age population of
17 congressional District 7 to such a low point that
18 African-Americans would be unable to elect their candidate of
19 choice, that Alabama would have had a difficult time getting
15:35:27 20 that district precleared?

21 A I don't know.

22 Q Okay. Would you agree that if African-Americans had been
23 successful in electing their candidate of choice in
24 Congressional District 7, but that if Alabama then dropped the
15:35:41 25 African-American voting age population to such a low percentage

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1 that they no longer could elect their candidate of choice, that
2 Alabama would in that case have diminished the ability of
3 African-Americans in Congressional District 7 to elect their
4 candidate of choice?

15:35:57 5 MS. KHANNA: Same objection, Your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: I don't know.

8 BY MR. DAVIS:

9 Q If they go from can to can't, you don't agree that that's
15:36:06 10 diminishing the opportunity to elect?

11 A To be clear, you're not specifying a certain number.
12 You're just saying if the district is -- if the black
13 population is reduced to below some point and there's not some
14 other equivalent district drawn with those voters in it.

15:36:22 15 For example, District 7 could become District 6 and be
16 essentially the same with a different number, and then 6 would
17 be precleared; is that correct?

18 Q I'm sorry, Dr. Palmer. I'm having a difficult time
19 understanding. Let me try to ask it another way.

15:36:38 20 Do you not agree that if African-Americans have been
21 successful for years in electing their candidate of choice in a
22 congressional district, but the state then comes in and lowers
23 the African-American population to the point, whatever point
24 where they no longer can do so, in that case, don't you agree
15:36:58 25 that Alabama would have diminished the opportunity of

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1 African-Americans to elect their candidate of choice?

2 A I think so.

3 Q Okay. Now, in 2011 did Alabama -- the state of Alabama
4 have any of the evidence that you assessed to determine whether
15:37:17 5 a district along the lines of what Dr. -- what Mr. Cooper has
6 proposed would, in fact, perform and provide the opportunity to
7 elect?

8 A Can you be more specific?

9 Q Sure. The obvious question. Your analysis was based on
15:37:33 10 2018 elections, right? When you looked at those to determine
11 whether or not African-Americans were a majority of the
12 electorate in the focus area?

13 A Yes.

14 Q Alabama did not have the results of the 2018 elections
15:37:45 15 when it was acting in 2012 or 2011?

16 A Yes.

17 Q Okay. And you didn't look at any elections before 2011,
18 correct?

19 A That's right.

15:37:54 20 Q You conclude in your first report, Dr. Palmer, that voting
21 is polarized in Alabama along racial lines, correct?

22 A Yes.

23 Q Does your analysis consider the reasons that any voter
24 votes the way he or she does?

15:38:20 25 A No.

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1 Q Did you investigate whether a majority of whites in
2 Alabama vote Republican because of some kind of racial bias, as
3 opposed to maybe issues, or beliefs about the issues, or
4 partisan politics?

15:38:34 5 A No.

6 Q And the tool you used of ecological inference cannot
7 answer that question, can it?

8 A No. It's not meant to.

9 Q So you're not saying that any voter is doing anything
10 wrong by choosing to support any particular political party?

11 A No.

12 THE COURT: While we're on that, may I ask a question
13 that's been burning in my head?

14 Dr. Palmer, did you consider in any of the demographic
15 stuff the difference between democratic candidates and
16 Republican candidates and democratic voters and Republican
17 voters, or did you only look at the question of race?

18 THE WITNESS: I only looked at race.

19 BY MR. DAVIS:

15:39:34 20 Q Similarly, Dr. Palmer --

21 MR. DAVIS: Oh, I'm sorry, Your Honor. Had you
22 concluded?

23 THE COURT: Yes.

24 BY MR. DAVIS:

15:39:39 25 Q When you looked at the different supports the different

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1 candidates got, did you consider how successful any candidate
2 was in their fund-raising?

3 A No.

4 Q Did you assess name recognition?

15:39:50 5 A No.

6 Q Did you assess how popular that candidate was in the
7 voting public?

8 A No.

9 Q Would you agree that the support that a candidate gets in
15:40:00 10 an election can be related to things like fund-raising and name
11 recognition?

12 A Sometimes.

13 Q Sometimes? Would you agree that the strength of the local
14 political party can be a valuable asset to a candidate?

15:40:15 15 A Potentially.

16 Q All right. Dr. Palmer, I'd like to understand a little
17 better the ecological inference analysis that you performed.
18 Now, we spoke during your deposition about the concept of
19 bounds, and that's a concept that's part of ecological
15:40:55 20 inference, correct?

21 A Yes.

22 Q Now, what I have got up is a hypothetical precinct. There
23 are three on this sheet. And I recognize that you don't
24 perform an ecological inference analysis on one, two, or three
15:41:05 25 precincts?

1 A That's right.

2 Q Okay. It would take a lot.

3 I just want to understand some of the first steps you
4 would perform. So let's say hypothetically there was a

15:41:14 5 precinct that had 1,000 voters. 900 of those voters were
6 minority voters, and 100 were white voters. And then you know
7 from the election returns that candidate A received 850 votes
8 and candidate B received 150 votes.

9 Where does ecological inference start with this data to
15:41:35 10 determine whether support -- whether either race is cohesive in
11 their support of a particular candidate?

12 A So I'm not sure if start is a right way of thinking about
13 it. But if you're asking about how bounds are used by
14 ecological inference, that's something I can answer with this
15:41:58 15 table.

16 Q Okay.

17 THE COURT: Before you do that, back up and educate me
18 on what you mean by bounds. You both seem to understand that,
19 and I have no idea what it's meant in the context of this
15:42:14 20 ecological analysis that you're doing.

21 THE WITNESS: I'll do my best to explain it without
22 getting too technical. There are --

23 THE COURT: Okay. The less technical the better. I
24 appreciate that.

15:42:23 25 THE WITNESS: So there are a few other methods that

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1 are also used to analyze racially polarized voting.

2 But ecological inference, to my understanding, has been
3 accepted as the best one to use because it recognizes a really
4 important constraint in any of our estimates. It recognizes
15:42:40 5 that no candidate can get less than 0 percent of the vote or
6 more than 100. And no group could support a candidate at less
7 than 0 percent or more than 100 percent, which seems really
8 obvious.

9 Of course, African-Americans can't support their preferred
15:42:57 10 candidate with 110 percent of their vote, but --

11 THE COURT: Generally, unless there's something funky
12 going on at the ballot box.

13 THE WITNESS: With proper elections, it would be
14 impossible.

15:43:07 15 THE COURT: Right.

16 THE WITNESS: But some of these models, like
17 ecological regression, which is a different method used for
18 RPV, can produce estimates that look like that. That doesn't
19 always mean they are bad. But that's a downside to other
15:43:21 20 models.

21 And so what ecological inference recognizes is that we can
22 learn information from those limits. That is, we can use these
23 natural limits of, of course, a group can't support a candidate
24 more than 100 percent or less than 0 to start limiting the
15:43:37 25 range of possibilities and get better estimates.

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1 And so I think when we look at this table, that will help
2 clarify it. If I can turn back to the table.

3 BY MR. DAVIS:

4 Q Yes, please, Dr. Palmer.

15:43:49 5 A So here we have a precinct with 900 minority voters, and
6 100 white voters. 850 votes for candidate A and 150 votes for
7 candidate B.

8 Let's consider one extreme, where minority voters really
9 like candidate A. It's impossible that more than 850 of them
15:44:10 10 voted for candidate A because there's only 850 votes for
11 candidate A.

12 So one extreme is 850 voters voted for -- 850 minority
13 voters voted for candidate A, and 50, then, the remainder, had
14 to have voted for candidate B. And then 0 white voters voted
15:44:30 15 for candidate A, and 100 white voters voted for candidate B.

16 That's one extreme that we can learn and that we can sort
17 of narrow down the range of possibilities just by recognizing
18 that these bounds have to exist. These numbers have to add up
19 the right way.

15:44:44 20 We can also get another bound at the opposite side, which
21 is suppose all 100 white voters love candidate A. Then we can
22 say there's 100 candidate A votes from the white voters, and
23 the rest have to be made up for by the minority voters. So
24 there have to be 750 minority votes for candidate A to get to
15:45:03 25 850. Then there's 0 votes for candidate B from white voters,

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1 and 150 votes for candidate B from minority voters.

2 That's a second bound. And that doesn't -- that's a
3 pretty big range, right? We went from 0 to 100 on these
4 groups. But that actually starts limiting the possibilities.

15:45:22 5 And as we add more and more precincts, we have different
6 limits, different bounds in each precinct. That provides
7 valuable information to the estimate.

8 THE COURT: I think this is getting to another big
9 question that's been reverberating in my head since you have
15:45:37 10 been testifying. And that is, you know, if I remember
11 correctly, not a single time that I have completed a ballot
12 have I marked what my race was before I put it into that little
13 slot so it would go and be counted.

14 And so my question has been all the while: How do you
15:46:00 15 know who voted for what candidate or the race of those who
16 voted for which candidate? And I think that's what Mr. Davis
17 is getting to now.

18 You come up with some kind of formula to make that
19 determination, as opposed to actually knowing how the votes
15:46:19 20 were cast; is that correct?

21 THE WITNESS: That's right. We never get to see how
22 the individual voter actually votes. But we can see the places
23 that have a lot of voters of -- we can see how many voters of
24 each group there are in each place, and then how that aggregate
15:46:34 25 group of voters cast their ballot. And so we can look for

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1 patterns across that.

2 For example, places with a very low black population,
3 places with a mixed black and white population, and then places
4 of high black population will have different patterns when
15:46:49 5 racial -- when voting is polarized on which candidates they're
6 supporting. And so we can use ecological inference to produce
7 an estimate. And we call it estimate because there is some
8 uncertainty about it -- it's coming out of a model -- about the
9 levels of support from each group for each candidate.

15:47:03 10 THE COURT: Okay.

11 THE WITNESS: And the bounds are part of the
12 information that go into that model along with these general
13 voting patterns.

14 THE COURT: Well, you could tell, could you not,
15:47:16 15 actually how many -- well, you still won't know the race. But
16 you would be able to tell how many voters voted Republican and
17 how many voters voted Democrat, right?

18 THE WITNESS: Yes.

19 THE COURT: Okay. You didn't look at any of those
15:47:30 20 numbers, right?

21 THE WITNESS: No.

22 THE COURT: Well, of course, those would be the total
23 numbers, because in each one of these races that you have
24 looked at, it was a Republican versus a Democrat race, correct?

15:47:42 25 THE WITNESS: Yes.

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1 THE COURT: Okay.

2 BY MR. DAVIS:

3 Q So, Dr. Palmer, let's walk through some of these steps.

4 Okay. First, would you agree that if had this

15:47:52 5 hypothetical Precinct 1, that when it comes to minority support

6 for candidate A, at least 750 minority voters voted for

7 candidate A?

8 A Yes.

9 Q And it could be as much as 850?

15:48:05 10 A Yes.

11 Q Okay. And then 0 -- somewhere between 0 and 100 white

12 voters voted for candidate A?

13 A Yes.

14 Q And minority support for candidate B would be at least 50?

15:48:31 15 A Yes.

16 Q But no more than 150?

17 A Yes.

18 Q And then we're still at between 0 and 100 for white

19 support for candidate B?

15:48:45 20 A Yes.

21 Q So looking solely at Precinct 1, you could have on one

22 extreme a situation where 750 minority voters supported

23 candidate, and all 100 white voters supported candidate A?

24 A If this is our only data point we have available?

15:49:12 25 Q Yes.

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1 A Then, yes.

2 Q Okay. So in that event, in Precinct 1, if it was 750
3 minority voters and 100 white voters all supporting candidate
4 A, voting is not polarized at all?

15:49:25 5 A I'm sorry. Can you repeat that?

6 Q Sure. If you have 750 minority voters supporting
7 candidate A and 100 white voters supporting candidate A, voting
8 is not polarized?

9 A That's right.

15:49:37 10 Q Okay. On the other extreme, you could have all 850
11 minority voters supporting candidate A and zero white voters
12 supporting candidate A?

13 A Yes.

14 Q And in that case, voting is polarized?

15:49:51 15 A Yes.

16 Q So how does ecological inference look at these different
17 precincts and make an analysis of which of these extremes is
18 correct, or if it's somewhere in the middle?

19 A So that's why we have a model, and why we bring a lot of
15:50:04 20 data to the model, and why we want as much data as we can.

21 So that's why, for example, I said I couldn't do
22 ecological inference on the counties in one congressional
23 district alone. There just isn't enough information to look at
24 those and infer with any confidence what the pattern is.

15:50:23 25 But when you have 1,000 precincts or even just several

1 dozen precincts -- when you have the data, and in each place
2 the makeup of the voters is different, the votes cast for each
3 candidate are different, you're going to get different bounds,
4 different limitations, and then you can fit a model that says
15:50:42 5 what pattern best fits the data that we can see.

6 Q Okay.

7 A And so that's what ecological inference does, and that's
8 what you can't learn from any one or two or three precincts
9 examples, but can learn from fitting a model to the entire data
15:50:55 10 set.

11 Q Aren't assumptions part of ecological inference analysis?

12 A Assumptions are part of all models.

13 Q Okay. Isn't there a particular assumption -- and I will
14 quote from your deposition here. You say, "The assumptions in
15:51:09 15 ecological inference is that" --

16 MS. KHANNA: Your honor, objection. I think it's an
17 improper impeachment.

18 THE COURT: I haven't heard the question.

19 MS. KHANNA: I believe he's just quoting from the
15:51:18 20 deposition.

21 THE COURT: I don't think we've gotten there. Let me
22 hear the question.

23 MR. DAVIS: I was indeed going to quote a line from
24 his deposition. I don't know why that would be improper.

15:51:31 25 THE COURT: Ask him a question as to what he testified

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1 about.

2 BY MR. DAVIS:

3 Q Sure. This is something you said in your deposition,
4 Dr. Palmer, and I am going to ask if you still agree with this.

15:51:42 5 You said in your deposition that the assumption in
6 ecological inference is that minority voters across the
7 precincts in the data are going to vote similarly, and that
8 white voters across the precincts will vote similarly.

9 A Yes.

15:51:56 10 Q That's a common assumption in an ecological inference,
11 correct?

12 A Yes.

13 Q Okay.

14 THE COURT: Isn't that what you're trying to prove?

15:52:04 15 So you begin with the assumption that what you want to prove is
16 correct?

17 THE WITNESS: No. That's not right.

18 The assumption is that overall on average -- and there
19 will be variation across the place and across the precincts --
15:52:23 20 that there is some average level of support for each group for
21 each candidate. And what we're trying to find is are there
22 differences in that support?

23 So it could be -- you can run ecological inference and
24 find that neither group has a candidate of choice. With the
15:52:40 25 same assumptions going in and saying on average -- you can say

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1 in a place you might think on average 50 percent of black
2 voters are voting for candidate A and 50 percent are voting for
3 candidate B.

4 THE COURT: You may continue, Mr. Davis.

15:52:55 5 BY MR. DAVIS:

6 Q Sure. But do you not assume as part of ecological
7 inference that -- let's take two precincts as part of hundreds
8 that you view.

9 You've got one precinct where average income level is
15:53:08 10 really low and average education level is really low. And you
11 have another precinct where average income and education is
12 really high.

13 Does ecological inference assume that the black voters in
14 both of those precincts will vote along similar patterns? And
15:53:24 15 that the white voters in those two very different precincts
16 will vote along similar patterns simply because of race?

17 A Ecological inference will not assume that you have the
18 same patterns in the same places, but that there is a pattern
19 on average that you can find.

15:53:39 20 Q Okay. You said that the assumption is that minority
21 voters across the precincts in the data are going to vote
22 similarly?

23 A That doesn't mean the same.

24 Q Okay. What does it mean?

15:53:51 25 A There's going to be some variation in different places.

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1 So in some places, you'll find that the support of black voters
2 for their -- for whatever that -- areas, groups, candidate
3 choice is lower, and some is going to be higher. We are
4 reporting averages here.

15:54:08 5 So, for example, what I am not saying is that let's say
6 the average I report is 95 percent of black voters are
7 supporting their candidate of choice. I'm not saying it's
8 95 percent in Precinct 1, and 95 percent in Precinct 2, and
9 95 percent in Precinct 3, and so on.

15:54:22 10 I'm saying on average, if you average black support across
11 all these precincts, it will be 95 percent. But some will be
12 higher and some will be lower.

13 Q So you're not assuming any similarity in -- by voting
14 patterns across precincts when you begin the analysis?

15:54:42 15 A You're assuming that -- you are assuming that there is a
16 common trend across these groups. But you're not -- you're not
17 assuming what that trend is.

18 You are not assuming that the groups are polarized, for
19 example, to start. The model -- you are saying there is a
15:54:56 20 common trend. You are using the model to find what that is.
21 But it could be anywhere from 0 to 100 for either group, and
22 you don't know going in, and you can't assume going in what it
23 will be.

24 Q Okay. Does ecological inference assume that black voters
15:55:09 25 will have similar patterns regardless of education and income

1 levels?

2 A It does not take into account education and income levels.

3 Q Okay. Does it assume that white voters will vote

4 similarly across precincts regardless of education and income

15:55:25 5 levels?

6 A It doesn't take that into account.

7 Q Okay. Do you have any basis to assume that voters in

8 Alabama will vote the same along racial patterns regardless of

9 income and education levels?

15:55:39 10 A I'm sorry. Can you repeat that?

11 Q Sure. Is there any basis to assume that white voters in

12 different precincts will vote the same even though there are

13 different education and income levels?

14 A I don't know.

15:55:51 15 Q Okay. Was there a pattern in the candidate of choice for

16 black voters, in terms of their party affiliation?

17 A I don't discuss that in my report.

18 Q Did you notice that at all?

19 A You can look at the candidates of choice in my report.

15:56:12 20 Q Okay.

21 THE COURT: The question was whether you noticed it at

22 all.

23 THE WITNESS: Yes.

24 BY MR. DAVIS:

15:56:21 25 Q What did you notice?

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1 A African-Americans support democratic candidates.

2 Q Have you ever done a polarized voting analysis where most
3 of the candidates of choice of African-American voters were
4 Republican candidates?

15:56:34 5 A No.

6 Q Do you agree that there are more voters in Alabama who
7 tend to support the Republican party than who tend to support
8 the democratic party?

9 A More voters overall?

15:56:46 10 Q Yes.

11 A Yes.

12 Q Would you agree that Alabama's a conservative state?

13 A That's my general understanding.

14 Q Okay. Is anybody calling Alabama a battleground state for
15 purposes of the upcoming presidential election?

16 A I don't believe so.

17 MR. DAVIS: May I have a moment, Your Honor?

18 THE COURT: Yes, you may.

19 MR. DAVIS: No further questions at this time.

15:57:36 20 THE COURT: Any redirect?

21 MS. KHANNA: Yes, Your Honor. Just a few questions on
22 redirect, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. KHANNA:

15:57:59 25 Q Dr. Palmer, I believe you were asked on cross the

1 question: Would you agree that a bare majority-minority
2 district -- just over 50 percent -- does not necessarily allow
3 African-Americans to elect their candidates of choice? Do you
4 recall being asked that question?

15:58:19 5 A Yes.

6 Q And you agreed that a bare majority-minority district does
7 not necessarily allow African-Americans to elect their
8 candidates of choice. Do you agree?

9 A Yes.

15:58:29 10 Q Would you agree that a bare majority-minority district
11 just over 50 percent BVAP can elect African-Americans to elect
12 their candidate of choice?

13 A Yes.

14 Q What would that depend on?

15:58:41 15 A It would depend on things like turnout, voter
16 participation, and it could also depend on the level of
17 racially polarized voting.

18 So, for example, if you had a district where turnout was
19 equal among both groups, or both groups are turning out in
15:58:58 20 proportion to their share of the district, you would think that
21 would be a likely district to perform for African-Americans and
22 elect their candidates of choice. You also could have a
23 district where the level of racially polarized voting is lower.

24 For example, if 20, 30 percent or even lower than that --
15:59:15 25 let's just say 20 percent of white voters are supporting the

1 African-American candidate of choice, and 100 percent of
2 African-American voters are -- just to make the math easy -- in
3 a 50/50 district, you would get 50 percent of the vote for the
4 African-American candidate of choice from African-American
15:59:31 5 voters and additional 10 percent of the vote from white voters,
6 and that candidate would win 60/40.

7 Q I believe you were also asked on cross a hypothetical. If
8 there is a district in which African-Americans can elect their
9 preferred candidates and then it is redrawn into a district in
15:59:52 10 which they can't elect their preferred candidates, that might
11 be diminishment for purposes of retrogression. Do you recall
12 being asked that?

13 A Yes.

14 Q And I believe you agreed with that?

16:00:01 15 A Yes.

16 Q Is your understanding that CD 7 is currently Alabama's
17 sole majority-minority district?

18 A Yes.

19 Q And in your opinion, do any of Mr. Cooper's illustrative
16:00:14 20 District 7 render CD 7 a district in which African-Americans
21 can't elect their candidates of choice?

22 A No.

23 Q Can we please pull up Plaintiffs' Exhibit 80, Table 2? I
24 believe it's on page 4. Yes.

16:00:42 25 I want to focus on District 7, which was the district we

1 just talked about. Is it fair to say that under three out of
2 four of Mr. Cooper's revised plans, over 55 percent of the
3 actual voters in District 7 are African-American?

4 A Yes.

16:01:03 5 Q You were also asked on cross about whether or not your
6 analysis of racially polarized voting considered certain
7 factors such as the fund-raising of the candidates and the
8 party platforms. Do you recall that?

9 A Yes.

16:01:24 10 Q Are these -- are those factors standard -- standard in the
11 methodologies used among experts in evaluating racially
12 polarized voting?

13 A No. My understanding is those factors are not used.

14 Q You were also asked about various assumptions that are
16:01:49 15 included in the ecological inference model. Do you recall
16 that?

17 A Yes.

18 Q Are there assumptions in any statistical model?

19 A Yes.

16:01:56 20 Q Is it your understanding -- are you saying that the
21 ecological inference method is somehow set up to find racially
22 polarized voting?

23 A Absolutely not. It's not only possible, but can easily
24 happen where you run the model and don't find any evidence of
16:02:14 25 racially polarized voting.

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1 Q Have you ever used ecological inference to find that there
2 is no racially polarized voting?

3 A Yes. For example, in the *Bethune Hill* trial there, where
4 I was looking at racially polarized voting in House of delegate
16:02:30 5 districts, in some districts there were racial polarized
6 voting, but in other districts, there were not.

7 And in particular there, I found that white voters tended
8 to be split between the two parties and did not have a clear
9 candidate of choice.

16:02:43 10 Q And you used -- as you just mentioned, you used the
11 ecological inference method to analyze racially polarized
12 voting in the *Bethune Hill* case?

13 A Yes. And not just the same method, but the exact same
14 procedure and really the same computer code.

16:02:59 15 Q And the Court credited your analysis in that case?

16 A It did.

17 Q And you used ecological inference in the course of your
18 work in the *Thomas v. Bryant* case?

19 A Yes.

16:03:07 20 Q And the Court credited your analysis in that case?

21 A Yes.

22 Q Are you aware of any case in which ecological inference
23 has been rejected by a court as a basis for determining
24 racially polarized voting?

16:03:18 25 A Not to my knowledge.

1 Q As an expert in this field, is ecological inference
2 commonly used by other experts and statisticians to determine
3 racially polarized voting?

4 A Yes. I have seen it frequently used by other experts.

16:03:32 5 Q Would you say it's the best available model for assessing
6 racially polarized voting?

7 A In my opinion, yes.

8 MS. KHANNA: No further questions, Your Honor.

9 THE COURT: Any recross?

16:03:47 10 MR. DAVIS: (Nodded head.)

11 RECROSS-EXAMINATION

12 BY MR. DAVIS:

13 Q So, Dr. Palmer, if I understand your testimony, a district
14 that's barely over 50 percent black voting age population,
16:04:11 15 maybe that district can perform, maybe it can't?

16 A That's right.

17 Q And it depends, you said, on things like voter turnout and
18 the extent of voter polarization?

19 A Yes.

16:04:24 20 Q Is there any difference in the levels of voter
21 polarization in Mississippi and Alabama?

22 A I don't know.

23 Q Is Alabama -- are African-Americans in Alabama turning out
24 at a higher rate than they are in Mississippi?

16:04:38 25 A I don't know.

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1 Q Have you ever, in any polarized voting analysis, ever
2 found that there isn't polarized voting when a majority of
3 white voters in that jurisdiction supported Republicans?

4 A I'm sorry. Can you repeat the question?

16:04:56 5 Q Sure. Let's say you're performing a racially polarized
6 voting analysis. You determine that there is a candidate of
7 choice of white voters, and that candidate of choice is the
8 Republican candidate.

9 Have you ever performed a racially polarized voting
16:05:10 10 analysis in such circumstances where you did not find that
11 voting is racially polarized?

12 A I don't believe so.

13 Q You looked again at the 2018 general election results and
14 determined that African-American voters were, in fact, a
16:05:36 15 majority of the electorate in the districts, correct?

16 A Yes.

17 Q Just so -- again -- never mind.

18 You saw Table 2 before. That is from your supplemental
19 report. Again, that's not information that the Alabama
16:06:01 20 Legislature had when it drew the districts in 2011?

21 A That's right.

22 Q Okay. Are you aware of any evidence that would have been
23 available to the Alabama Legislature that showed them that, in
24 fact, if they had drawn those districts, the districts in
16:06:16 25 Mr. Cooper's illustrative maps, that they would have given

1 African-American voters an opportunity to elect?

2 A Can you please repeat the question?

3 Q Sure. Do you present any evidence that would have been

4 available to the Alabama Legislature in 2011 that would have

16:06:32 5 told them, the Alabama Legislature, that if they draw those

6 districts as Mr. Cooper suggested, that it would provide a fair

7 opportunity for African-American voters to elect their

8 candidate of choice?

9 A I don't provide that evidence in my report, but they could

16:06:46 10 have had evidence from earlier election years at that time.

11 Q Do you know of that any such evidence?

12 A I don't know what evidence they considered.

13 Q Okay. Are you aware of a state asking that congressional

14 districts be precleared where they say, we've lowered the black

16:07:03 15 voting age population in these districts a lot. We have no

16 idea if they'll work, but don't worry, by 2018 they will?

17 A I don't know.

18 MR. DAVIS: Nothing further.

19 THE COURT: Anything further?

16:07:16 20 MS. KHANNA: Just one question, Your Honor.

21 FURTHER REDIRECT EXAMINATION

22 BY MS. KHANNA:

23 Q Dr. Palmer, do you have reason to believe or any reason to

24 believe that the Alabama Legislature would have had election

16:07:28 25 data at its disposal when drawing maps?

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1 A Yes.

2 Q The same election data that you had except for different
3 years, correct?

4 A That's my understanding.

16:07:36 5 Q And if you were looking at election data for a different
6 year, you could provide the same analysis, the same -- perform
7 the same analysis that you performed here?

8 A Yes.

9 MS. KHANNA: Thank you. No further questions.

16:07:49 10 THE COURT: Anything else?

11 MR. DAVIS: Nothing else, Your Honor.

12 THE COURT: Okay. I think this is a good time for a
13 break. We will come back at 4:20.

14 (Recess.)

16:22:55 15 THE COURT: Be seated and come to order.

16 MR. WALKER: Your Honor, we have come up with what we
17 think is probably the schedule that we're going to have. And
18 we can give that to you at the end of the day.

19 THE COURT: Yeah. That would be good. We'll take it
16:23:37 20 up then. Let's go on with this next witness, please.

21 MR. OSHER: The plaintiffs' next witness is Ms. Karen
22 Jones.

23 THE COURT: Okay.

24 KAREN JONES,

16:23:45 25 having been first duly sworn by the courtroom deputy clerk, was

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1 examined and testified as follows:

2 THE COURTROOM DEPUTY CLERK: Please state your name
3 for the record.

4 THE WITNESS: Karen Jones.

16:24:01 5 DIRECT EXAMINATION

6 BY MR. OSHER:

7 Q Hey, Ms. Jones.

8 A Hey.

9 THE COURT: And if you would, please, how do you spell
16:24:06 10 your first name?

11 THE WITNESS: K-A-R-E-N.

12 THE COURT: Okay. There are a variety of ways to
13 spell that name. So I just wanted to make sure we had yours
14 correct. Thank you.

16:24:18 15 BY MR. OSHER:

16 Q Ms. Jones, are you a plaintiff in this lawsuit?

17 A Yes.

18 Q And do you live in Alabama?

19 A Yes.

16:24:23 20 Q And what county do you reside in?

21 A Montgomery County.

22 Q And do you live in the city of Montgomery?

23 A Yes.

24 Q How long have you lived in Alabama?

16:24:32 25 A I was born and raised in Montgomery, Alabama, went to high

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1 school and graduated in Montgomery. I moved to Birmingham to
2 attend University of Alabama Birmingham. I became ill and had
3 to move back to Montgomery, Alabama in about '94, '95. And in
4 1999, I moved to Georgia. And then in 2009, I moved back to
16:25:01 5 Montgomery, Alabama, where I now reside. And I have been ever
6 since.

7 Q Great. Thank you. And tell us a bit about your
8 educational background.

9 A I'm a high school graduate of George Washington Carver
16:25:16 10 High School, Montgomery, Alabama. I have my Bachelor's of
11 Science in psychology, and my master's in public
12 administration.

13 Q Where did you get the master's?

14 A At the University of Alabama Birmingham.

16:25:29 15 Q Ms. Jones, do you currently hold any public office?

16 A Yes, I do.

17 Q And what is that?

18 A I am on the state democratic executive committee for
19 District 77.

16:25:41 20 Q And that's an elected position?

21 A Yes.

22 Q Have you run for any other public office?

23 A Yes.

24 Q And what were those?

16:25:48 25 A I ran for Montgomery City Council District 6 in about -- I

1 think it was 2011. A former councilman died. And then in
2 2015, I ran for City Council District 7 in Montgomery municipal
3 election.

4 Q And during your campaigns for city council, to what extent
16:26:12 5 did you engage with residents of Montgomery to understand their
6 interests and needs?

7 A I went door to door. I canvassed. I participated in
8 forums. I participated in debates. And just overall in the
9 community meeting people.

16:26:28 10 Q Do you participate in other civic organizations?

11 A Yes, I do.

12 Q And what are those?

13 A I serve on the board of legal services Alabama. I am -- I
14 help with Save Black Boys, Every Town USA For Gun Safety, Moms
16:26:49 15 Demand Action, Students Demand Action, SOS, Save Ourselves,
16 Movement For Justice and Democracy. I'm the co-county chair
17 for Alabama Poor Peoples Campaign.

18 Q And you listed a number there. I'm curious about Save
19 Ourselves. What is that organization?

16:27:10 20 A It is -- and I need to mention one more. ALFRA, Alabama
21 Family Rights Association.

22 Q Uh-huh.

23 A But SOS is an organization. It is a nonprofit
24 organization that works on social justice issues.

16:27:28 25 Q And do you run any nonprofit organizations?

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1 A Yes, I do.

2 Q And what is that organization?

3 A It is Whom It Concerns -- W-H-O-M-I-T-C-O-N-C-E-R-N-S --

4 Incorporated. It's a 501(c)(3). We focus on youth

16:27:51 5 development, community development, and assist nonviolent

6 returning inmates to the community by helping them find

7 resources, and the such.

8 Q Okay. And in all of this work, can you identify what

9 organizing -- organizing work you do relating to voting?

16:28:10 10 A I do -- I have voter education, voter registration,

11 workshops, seminars. And I also do workshops on how to restore

12 voting rights for those individuals who may believe they have

13 lost their voting rights who were locked up before and getting

14 out.

16:28:39 15 So the moral turpitude laws have changed. So some of them

16 have their rights restored due to that law change, and they

17 don't know that their rights have been restored. So I help

18 them with that to find out.

19 Q Ms. Jones, how do you identify racially?

16:28:58 20 A I'm an African-American black.

21 Q Are you currently registered to vote in Alabama?

22 A Yes.

23 Q And when was the first time you registered to vote?

24 A In 1993.

16:29:11 25 Q And how old were you then?

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1 A I was 18.

2 Q And when you moved out of the state to move to Georgia,
3 did you move your registration to Georgia?

4 A Yes, I did.

16:29:20 5 Q And when you moved back to Alabama, did you re-register in
6 Alabama?

7 A Yes.

8 Q And have you been registered since you moved back in 2009?

9 A Yes. In every election.

16:29:31 10 Q So do you vote regularly?

11 A I do.

12 Q Would you say that voting is important to you?

13 A It is a sacred event for me personally because I -- I take
14 it as a serious event, sacred event because so many of --

16:29:50 15 members of my community, my ancestors have shed blood and died
16 for me to have the right to vote. So I take it seriously. And
17 that's why I vote in every election.

18 Q And what role do you see your vote playing in Alabama's
19 political system?

16:30:07 20 A My voice counts. So my vote, you know, I want it to
21 count. So it means something to me to vote for somebody that I
22 think is in the best interest or have the best interest for my
23 community and for the black community and myself.

24 Q Ms. Jones, what congressional district do you live in?

16:30:29 25 A District 7.

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1 Q And who currently represents Congressional District 7?

2 A Congresswoman Terri Sewell.

3 Q Have you voted for Representative Sewell in congressional
4 elections?

16:30:40 5 A Yes.

6 Q And in each of those election in which you have voted for
7 Representative Sewell, has she won her election?

8 A Yes.

9 Q Were those elections competitive?

16:30:50 10 A No.

11 Q Can you tell me why you believe that?

12 A Well, it's little to no competition being that she is a
13 front runner, well known. She has name recognition. It's
14 really no competition. She usually wins 3 to 4 to 1 if she has
16:31:11 15 an opponent, but she's...

16 Q Ms. Jones, do you feel that your vote matters in
17 Congressional District 7 when voting the congressional
18 elections?

19 A In all elections, I feel my vote matters. I feel like it
16:31:26 20 would mean more if I had -- it's like it's diluted to me
21 because with Congresswoman Terri Sewell, she's a shoe-in. So,
22 I mean, it's not to say that I am going to stay home, but I
23 know she's going to win. And most of us know she's going to
24 win, so, you know.

16:31:49 25 Q Is there something about who lives in District 7 that

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1 makes you feel this way?

2 A Who lives in District 7?

3 Q The population of voters in District 7?

4 A The black community, yes.

16:32:03 5 Q And tell me more about that. What is it about the fact
6 that there's a black community in District 7 that makes you
7 feel as if your vote is diluted?

8 A Well, we're stacked and packed in District 7, whereby out
9 of seven Congress people we just -- I mean, we just -- we just
16:32:23 10 have her to represent the black issues. And she's flying by
11 herself -- issues that affect the black community, mental
12 health issues, health care, criminal justice, education. It's
13 just her loan self that focuses on issues in the black
14 community.

16:32:44 15 Q Now, you used the term "stacked and packed." What do you
16 mean by that?

17 A Well, I feel like the district -- well, I know that her
18 district is majority black. So she's a shoe-in with little to
19 no competition or anybody else to go with because of the name
16:33:06 20 recognition or whatever. So...

21 Q All right. In your view, are there more African-Americans
22 that are necessary to elect Terri Sewell in her district?

23 A Yes.

24 Q You mentioned that you feel like your vote is diluted in
16:33:27 25 District 7. Based on your community organizing work, have you

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1 developed a sense as to whether other black voters in your
2 district feel similarly?

3 A Yes. Most voters and most who are trying to vote -- and I
4 try to do voter education and voter registration. People like,
16:33:49 5 well, she's going to win anyway, so why do I need to go vote
6 for her? Y'all going to elect her in because, you know, she
7 always gets in.

8 And I tell them their vote matters. You know, you need to
9 vote anyway because we have a right to vote.

16:34:04 10 So I think the general consensus is whether or not an
11 individual, black individual votes for her, she's going to get
12 it anyway because the majority black, consistent black voters
13 are going to go to vote for her, anyway.

14 Q Ms. Jones, what result are you trying to achieve in this
16:34:24 15 lawsuit?

16 A I would really love another congressional district with
17 hopefully a person of color, black person who will focus on
18 issues in the black community. That will help in my mind the
19 issues that Terri Sewell can't get to. That extra person can
16:34:48 20 focus on those black issues that she couldn't get to. So I
21 think it would be a great help to the black community.

22 Q Ms. Jones, you mentioned -- well, before I go there,
23 before we go to those specific issues, does the person have to
24 be a black candidate in order to represent the interests and
16:35:15 25 needs of the black community?

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1 A No. But they should have the black interests at heart in
2 that state, yeah.

3 Q So let's talk about some of those issues. Based on your
4 experience organizing in Montgomery, have you found that the
16:35:29 5 African-American community in the area has particular needs and
6 interests relating to health care?

7 A Yes.

8 Q And what are those?

9 A Affordable health care and Medicaid expansion. I, being a
16:35:44 10 woman who doesn't have children, I had a stroke last year. And
11 had it not been for me going to a charity hospital, waking up
12 at 3:00 in the morning and being in line -- people come from
13 all over to go to Medical Outreach, and they only accept 12.
14 So you have to stay in line.

16:36:06 15 And I remember one time being Number 13 and having
16 two weeks of heart medication left without any insurance,
17 without Medicaid because I don't have any children. I also
18 have epilepsy.

19 So they provide medical services that I would not have
16:36:21 20 been able to get as a woman without a child and without
21 Medicaid in Alabama. So I thank God for them.

22 And since then, I have disability now. But I had to have
23 a stroke and died three times before I got insurance and health
24 care in Alabama.

16:36:42 25 Q Does the African-American community in Montgomery have

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1 particular needs or interests relating to education?

2 A Yes.

3 Q What are those?

4 A Higher education. I've been -- prior to me becoming ill,
16:36:56 5 I had a job since I was 14 years old. So I got Pell Grant one
6 time, I remember, \$300. So I've always had to get student
7 loans. And now student loans are just like burdensome.

8 So we need someone in there who will fight for Pell Grants
9 for low income people. Even though I had a job at 14, I had to
16:37:22 10 get a permit to work because I wanted to work. You know,
11 because I wanted to work. I wanted to go to college. I
12 couldn't pay for it. And I really want to go back to college
13 to get my Ph.D., but I'm out of funding.

14 So I think somebody who would help with education and
16:37:41 15 post-secondary education is somebody we need.

16 Q What about lower levels of education -- elementary school,
17 middle school, high schools? Are there particular needs and
18 interests of the African-American community in Montgomery
19 related to those levels of education?

16:37:57 20 A Yes. I am a lay advocate for children, primarily children
21 with special needs, as well. So I see our special needs
22 children being thrown out to alternative schools and then
23 really getting arrested. Most time they're autistic, ODD, ADHD
24 combined, but severe issues in special needs that usually have
16:38:26 25 those children instead of individuals who understand them,

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1 pushed out into the criminal -- the juvenile system. So it's
2 really the school to prison pipeline at an early age as early
3 as elementary, and I see that.

4 Q Does the African-American community in Montgomery, based
16:38:47 5 on your work there, have particular needs or interests relating
6 to criminal justice?

7 A Oh, yes. While working on voter registration and voter
8 education, we have individuals to come in for expungement or to
9 ask about expungement because they owe so much restitution.
16:39:08 10 Sometimes a lot of them owe on restitution, but they can't get
11 a job. They can't get a job because we also have a debtor's
12 prison, debtor's court in Montgomery.

13 So if they don't have ID or their driver's license, even
14 the temporary agencies, they won't hire them because you must
16:39:26 15 have ID. So I say a hungry man is an angry man. They have to
16 do what they have to do to eat.

17 I don't condone illegal activities. But they often find
18 themselves in a predicament. And so the criminal is bad.

19 Q What about the specific relationship between the black
16:39:54 20 community in Montgomery and law enforcement?

21 A It's bad because of the lack of jobs, accessibility to get
22 the jobs. And if you don't have a driver's license or if you
23 are driving, you're profiled and targeted. And usually if you
24 get stopped, you're going to get not one ticket, usually four.

16:40:22 25 And we've basically, those of us who are in the community,

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1 kind of basically know the first three things that -- a pattern
2 that the police will stop you for -- not fully stopping, not
3 using your signal, proper signal, lane, and improper turn. And
4 so those are the three categories that we've nailed down. And
16:40:51 5 then from there, you're going to at least get three to four
6 more tickets on top of that.

7 Q And have there been recent instances in Montgomery that
8 has affected the relationship between the African-American
9 community and law enforcement?

16:41:05 10 A Yes. Three years ago. I think it's been about
11 three years.

12 My childhood neighbor, Greg Gunn, was walking home
13 unarmed, never got charged for anything. A white officer, new
14 officer, rookie, Aaron Cody Smith, he stopped him. They beat
16:41:28 15 him with an ASP baton, and gave him a one-inch gash in the back
16 of his head, tased him multiple times, shot at him seven times.
17 Five bullets struck -- three in the front, twice in the back.
18 He was just only probably from me to you to his front door of
19 his house. Never was charged for anything. He was just
16:41:49 20 walking home.

21 So that kind of caused a schism between the community and
22 the police department. Where we had kind of a good
23 relationship under Chief Kevin Murphy, and he was forced to
24 resign after he made a statement about apologizing for the
16:42:12 25 action of Montgomery Police Department during the Civil Rights

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1 era, and John Lewis gave him a ribbon. We had a good, good
2 connection in the community.

3 But when this -- just atrocious act of assassination of an
4 unarmed black man walking back home happened, it kind of --
16:42:34 5 everybody's on edge right now because the trial hasn't started,
6 and they moved it to Dale County where he won't have a jury of
7 his peers.

8 And Ms. Gunn, she just died maybe two months ago. So we
9 kind of in our feelings about it right now.

16:42:49 10 Q What about employment? Does the African-American
11 community in Montgomery have particular needs and interests
12 related to employment?

13 A We do.

14 Q What are those?

16:42:58 15 A There's little to no jobs. Job availability, again, due
16 to people -- their driver's license. And I wish they would do
17 a work permit -- would allow people if they have tickets paying
18 on them to allow them to drive during certain hours to get to
19 and from work that would at least help them pay on tickets. I
16:43:26 20 raised that to the city council, too, before. Or the bus
21 transportation where it would take you in a car maybe
22 15 minutes to get somewhere. If you ride the city line, it may
23 take you up to two hours if that driver stops and pick you up
24 at the stop because sometimes I don't know why they keep
16:43:47 25 driving by.

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1 But it's -- and nobody's really hiring now.

2 Q And those transportation issues, do they translate to
3 employment issues?

4 A They do.

16:43:57 5 Q And why is that?

6 A Because most of our -- and I used to be on Montgomery
7 transportation coalition. So I kind of know that most of the
8 transportation, they don't go to the industrialized areas, like
9 the Hyundai subsidiaries and plants like that where they can
16:44:18 10 go. They don't go out that far. And for the disabled
11 community, and they don't go to certain communities. So it's a
12 lot going on with our public transit system.

13 Q Does the African-American community in Montgomery have
14 particular needs and interests related to affordable housing?

16:44:36 15 A Oh, yes. I tried to assist with others. Most
16 homelessness has increased in Montgomery tremendously where if
17 they're not living under the bridges or whatever, they are
18 using the hotels as apartments because even if parents or a
19 family have jobs, it's not enough to afford the apartments now.
16:45:05 20 So the affordability of it, you making 7, \$8, you can't afford
21 a nice apartment.

22 And then with the public housing, they closed down a lot
23 of them, and then they're remodeling some. But the list is so
24 long. And I couldn't believe it when I moved back to
16:45:25 25 Montgomery. So I said I'm going to apply just to see. Well, I

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1 got my approval letter probably year before last, and I had
2 applied in 2009.

3 Q And, finally, what about access to useful utilities or
4 sewage? Does the African-American community in Montgomery have
16:45:45 5 issues related to that?

6 A Oh, the electricity bills are just ridiculous. And I try
7 to refer people to 211 and call 211 and ask for utility
8 assistance. If they receive food stamps, they can ask their
9 caseworker for all available assistance. But their utility
16:46:10 10 bills now -- I think Alabama Power went up about maybe, I think
11 maybe 20 percent or so. But most family utility bills range
12 from 500 to \$1,100.

13 We have triple -- triple-digit heat. So most of the
14 houses that some lower income families do get a chance to live
16:46:35 15 in, they have -- not central heat and air, but the air
16 conditioners that you put in the windows, which draws a lot.

17 Q What about sewage? Are there -- have there been issues
18 relating to the black community and access to working sewage?

19 A Oh, my God, yes. Water and the flooding and in no man's
16:46:58 20 land. Believe it or not in 2019 the sewage and the flooding in
21 what we call no man's land -- that's out past Madison Park, Ty
22 Rove area (phonetic), Hunter's Station area, community areas,
23 the Vineyard.

24 Q And are these predominantly black communities?

16:47:19 25 A Predominantly black and low income areas.

1 Q So we just ran through a long list of issues that you've
2 told us about. Are you saying that the white residents of
3 Alabama don't have interests in these particular issues or
4 needs relating to these issues?

16:47:35 5 A They may do. But most times they get their situations
6 taken care of and have resources made readily available from
7 what I notice.

8 And because I'm with the Poor People's Campaign and other
9 organizations, and as an advocate, I'm not limited to
16:48:00 10 Montgomery County. I go all over the state to help parents and
11 to help people. So I see. And as compared to Montgomery being
12 the capital city, the capital county, is an embarrassment that
13 we have these issues in 2019.

14 Q So is it -- it's the level to which the African-American
16:48:24 15 community is affected by these issues that sets them apart from
16 white residents' interaction with these issues?

17 A It is.

18 Q Ms. Jones, do you regularly follow political campaigns in
19 Alabama?

16:48:40 20 A Yes, I do.

21 Q And have you observed any instances in which candidates in
22 Alabama have referred to race as a reason to vote for or
23 against a particular candidate?

24 A They don't do it blatantly. But they do, do it
16:49:03 25 subliminally through the pronouns. You can hear the

1 undertones, the racial undertones -- "those people," "they,"
2 "them," "us," "we."

3 Q Does this happen often in Alabama?

4 A Yes, it does.

16:49:18 5 Q Let's talk about a few specific instances. Have you
6 personally heard a member of Congress from Alabama make a
7 statement invoking race as a -- as part of candidacy or
8 political campaign?

9 A Yeah. Mo Brooks.

16:49:35 10 Q What did you hear Mo Brooks say?

11 A He had a commercial, and it was something to the effect of
12 that he would shoot immigrants -- be able to shoot immigrants,
13 and that was -- I had to find it on YouTube to make sure I
14 heard what he said. And it was -- that was terrible. I think
16:49:59 15 most terrible thing for somebody in government to blatantly
16 say.

17 Q And when specifically did you hear him make the statement?

18 A Probably about 2017 when he was running -- 2017, 2018.

19 Q What does that statement regarding shooting undocumented
16:50:23 20 immigrants, what does that have to do with race?

21 A It has a lot to do with race, because as a person of
22 color, to me, it implied people of color. And it invoked -- it
23 invoked to me white superiority, white supremacy. It invoked a
24 type of racism and the green light for others who believe in
16:50:56 25 what he was saying that it was okay. Because if he's in

1 government and saying it's okay to do it, it would lead crazies
2 out here to believe it's okay to do it.

3 Q In the most recent race for Alabama's governor, did you
4 hear any candidate make statements invoking race as a reason to
16:51:16 5 vote for or against someone?

6 A It -- in the gubernatorial race?

7 Q Uh-huh.

8 A I didn't hear anything about, you know, blatantly race.
9 But Governor Kay Ivey did make a statement about preserving the
16:51:37 10 Confederate monuments and statutes. And that hit kind of hard
11 in the black community because what about our history? What
12 about the symbolism that it reflects to black people and people
13 of color, the Native Americans? When you say preserve
14 Confederate statutes and monuments and memorials, you didn't
16:51:59 15 say anything about enhancing black status, memorials, and any
16 symbols that, you know, mean -- matter to the black community
17 or people of color.

18 Q To you and to the people in your community, based on
19 conversations you have had in your work, what does the
16:52:20 20 preservation of Confederate monuments mean to the black
21 community?

22 A When I heard that commercial, it -- I felt like she was
23 saying white supremacy forever, you know, white nationalism
24 forever, not anything to embrace unity and diversity. But
16:52:42 25 clearly we're going to recognize these treasonous white

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1 supremacists and hold them to a higher level, and nothing is to
2 ever change that.

3 I mean, the bill says that it -- forever basically you
4 cannot do anything, remove or alter any statue or anything that
16:53:05 5 has to do with a Confederate soldier. And when we as a black
6 person have to hear that, that that -- I mean, we want to bring
7 change, you know. It really is bad. And it's terrible.

8 Q And then what about in the most recent mayoral race in
9 your town? Were there any statements regarding race, invoking
16:53:34 10 race to sway people's votes?

11 A In the August 27th race, it was good, you know.
12 Everything was fine. But then when it came down to a runoff
13 between a white male, David Woods, versus a black male, Steven
14 Reed, I don't know what happened. But the mudslinging, it was
16:54:01 15 -- it was ugly.

16 And David Woods had -- it was a survey out, and they
17 called your phone, selected people phones. And they called my
18 mom's phone. And I was there. And asked about 24 questions.

19 Q Did any of those questions relate to race?

16:54:20 20 A Yes, they did. Basically, not specifically, he's black,
21 you know, Steven Reed's black, don't vote for him.

22 But like it just told like where he lived, as if that
23 mattered. That he lived in a certain community, as if black
24 people couldn't afford to live in that community in which he
16:54:47 25 lives.

1 That was -- that was -- I mean, most of the questions were
2 very incendiary and invoked some racial overtones, not
3 undertones. It was really ugly.

4 Q Did David Woods make a part of his platform being tough on
16:55:10 5 crime?

6 A Yes. And that was very interesting that he wanted to
7 create more police stations and hire more police.

8 He also has a show. He's over WCOV television station.
9 So his show promotes like cops in Montgomery, like that type of
16:55:33 10 show. But most time whenever they show it, you see black
11 people being arrested. They film it.

12 And so when he starts saying we're going to be tough on
13 crime, we're going to hire more police, we're going to put more
14 police stations, and to us, it's not finding the root cause of
16:55:59 15 what's going on because we do have white people performing
16 crimes. But it's as if he wants to invoke some type of martial
17 law with all these police, what he wants to create.

18 And so it's not a good time, being that we still have an
19 open case with a white officer who assassinated an unarmed
16:56:22 20 black man for walking while black, is still being paid by the
21 city of Montgomery. They didn't fire him. And this black man
22 wasn't charged with anything.

23 So it wasn't the time for him to even bring that up.

24 Q Do these sort of statements, how do they make you feel as
16:56:42 25 an African-American Alabamian?

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1 A I have seven brothers, five older, plenty of nephews and
2 great nephews. And it -- it's frustrating. And it makes me
3 angry that if you want to be over entire city diversity -- but
4 the majority of black, over 60 percent black, and you talking
16:57:07 5 about some issues that are going to drive us apart. It's
6 frustrating because we thought we would -- you know, it's 2019,
7 so...

8 Q Ms. Jones, are you a member of a political party?

9 A Yes.

16:57:26 10 Q And do you prefer -- what party do you prefer?

11 A Democratic party.

12 Q And you prefer the democratic party over the Republican
13 party?

14 A Yes.

16:57:36 15 Q Tell us why that is.

16 A For me, the democratic party's platforms and individuals
17 who run as a Democrat, their platforms focus on issues
18 pertaining to what I am in alignment with and what the black
19 community is in alignment with -- health care issues, mental
16:57:57 20 health. When I say health care, I mean affordable health care,
21 criminal justice system, and just climate, you know, ecological
22 issues.

23 Q Is there something about the relationship between the
24 Republican party and race that makes you prefer the democratic
16:58:24 25 party over the Republican party?

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1 A Yes.

2 Q What is that?

3 A Being a Republican for me, seeing somebody who is a
4 Republican right now tells me that they're racist because
16:58:35 5 nothing I've heard a Republican say is in alignment with the
6 platform that will help the interests of the black community.

7 Q And does that view of the Republican party, is that
8 connected to statements that members of the Republican party
9 have made?

16:58:58 10 A Yes.

11 Q Any in particular that we've talked about today?

12 A Yeah. I was talking about so much statistics.

13 Q Would you agree that it relates to being -- allowing such
14 statements to be made by members of the Republican party that
16:59:22 15 informs this view?

16 A Yes.

17 Q Based on your work relating to voting and voting
18 registration, do black citizens of Montgomery encounter
19 barriers when trying to vote?

16:59:36 20 A Yes.

21 Q Tell me about actually registering to vote. What sort of
22 barriers do African-Americans residents in Montgomery encounter
23 when trying to register to vote?

24 A Some of them are afraid to register to vote because of
16:59:50 25 what they feel like they've -- if they were locked up before,

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1 even though I tell them they banned the box on the application,
2 they still feel like, man, they're going to reject it. They're
3 going to find out I'm a felon. I have to educate them because
4 the moral turpitude laws have changed, which have decreased
17:00:12 5 most of the moral turpitude laws.

6 So that's a major factor that I see when I'm out
7 registering doing voter registration drives. That's a major
8 thing.

9 Q And does the disproportionate incarceration and criminal
17:00:33 10 records of the black community impact their ability to restore
11 their voting rights?

12 A It does. Most of the individuals are black males
13 primarily. I've had very few black females with former felons.
14 But black males primarily are very disenfranchised. Their
17:00:58 15 restitution when they get out, you know, to pay for
16 restitution. So if they have tickets, say, for instance, they
17 can't get ID. So you can't get ID, you are can't really get a
18 job. Not only that, you can't -- if you can't work, you can't
19 pay the restitution and also with child support. They can't
17:01:23 20 pay child support.

21 And so it's a number of elements that affects voter
22 registration and people. And primarily with -- when I go out
23 and do these voter registration drives.

24 Q What about actually casting a vote? Do African-American
17:01:40 25 residents of Montgomery encounter barriers actually casting a

1 vote even if they're registered?

2 A Oh, my God, yes. Their names are what I've been seeing in
3 the last few elections, because Montgomery has had so many
4 elections in the last three years, it's ridiculous, special
17:02:01 5 elections. So a lot of their names are not showing up on the
6 rosters.

7 When they go there to the precinct, the precincts have
8 changed. So they say that they send notices out, but I know
9 they don't because I'm an avid voter. And I haven't received
17:02:27 10 my voter registration card that they said they sent out to
11 everybody. I had to call the board of registrars and say, hey,
12 I didn't get mine. Everybody else is saying they have theirs.
13 Make sure that I am listed as an active voter, I'm still on the
14 roll because I don't have a middle name. So I want to make
17:02:46 15 sure that Karen no-middle-name Jones is on the roll as active.

16 And so take a typical person may not know to call the
17 board of registrars. And it's frustrating for them if they've
18 been living behind a church that is a precinct for all these
19 years, and then abruptly something changes that they have to
17:03:13 20 now go about two, three miles over to the library.

21 Q And does someone with fewer resources, would they be able
22 to handle the situation that you handled as well as you were
23 able to?

24 A No. They get frustrated. They'll call me and tell me
17:03:29 25 about it and I'm about to just leave, you know. And I said,

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1 don't go anywhere. Just ask for a provisional ballot, and we
2 will work out everything later. It's really frustrating.

3 I worked for the first time at a white precinct last
4 year -- no. Yeah. It was last year. And it was so smooth,
17:03:54 5 people just came in, they went to the line and got -- it was so
6 smooth. I hadn't ever experienced a smooth transition like
7 that. And I was like, why is this so smooth over here? It
8 didn't take them a good 10 minutes from the time they came in
9 the building to leave out. Where as with us, you know, the
17:04:19 10 power is not working, your name's not on the list. It's
11 just -- where's your ID. And then you have to educate people
12 if they don't have ID. If two people at the precinct and
13 recognize them, they still can vote.

14 So it's a lot of disenfranchisement at the black precincts
17:04:45 15 that I was just -- I was in amazement when I was down Vaughn
16 Road, way down Vaughn Road. It was like a whole other
17 experience. I was like, wow, it really can happen, just go in
18 and vote and go home without a problem.

19 Q Ms. Jones, have you done organizing work in Mobile?

17:05:03 20 A I helped with the Alabama Poor People's Campaign.

21 Q And do you interact with people who live in Mobile?

22 A Some of the organizers when we have our Poor People's
23 Campaign training and meetings, yeah.

24 Q And based on that work, do you have a sense of whether
17:05:21 25 there's similarities between the cities of Mobile and

1 Montgomery?

2 A Yes. They have a same --

3 THE COURT: Just a minute, Ms. Jones. I'm not sure if
4 you said that you had actually done work in Mobile or that you
17:05:33 5 know people who have done work in Mobile.

6 THE WITNESS: I know people who have done work in
7 Mobile.

8 THE COURT: But you have not actually done work there
9 yourself?

17:05:42 10 THE WITNESS: I've gone to the rallies and --

11 THE COURT: In terms of voter registration and things
12 of that nature?

13 THE WITNESS: No.

14 BY MR. OSHER:

17:05:53 15 Q Have you had conversations with people who live in Mobile
16 about the issues that they -- the African-American community
17 faces?

18 A Yes.

19 Q In Mobile?

17:06:01 20 MS. HOWELL: Your Honor, I am going to object to that
21 as hearsay.

22 THE COURT: If we go further than has she had
23 conversations, yes, it would be hearsay.

24 BY MR. OSHER:

17:06:08 25 Q Would you say that you have had many conversations with

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1 people in Mobile during your organizing work?

2 A Yes.

3 Q That was -- thank you. Based on those conversations, have
4 you learned a general sense of the issues that
17:06:22 5 African-Americans are facing in Mobile?

6 MS. HOWELL: Your Honor, I am going to renew my
7 objection.

8 THE COURT: Sustained. It doesn't matter how many
9 people have told her something, that's still hearsay, is it
17:06:31 10 not?

11 MR. OSHER: Your Honor, based on her actual organizing
12 work she's done with the Poor People's Campaign, it's the same
13 organization, she could develop a lay opinion as to what is
14 going on Mobile.

17:06:44 15 MS. HOWELL: Your Honor, she's already testified that
16 she did not directly work with them.

17 THE COURT: I sustain the objection.

18 MR. OSHER: Thank you, Your Honor. No further
19 questions. Thank you.

17:06:59 20 THE COURT: Cross-examination?

21 MS. HOWELL: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. HOWELL:

24 Q Hi, Ms. Jones.

17:07:33 25 A Hi.

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1 Q Thank you for taking the time to come up today. We
2 appreciate it.

3 A You're welcome.

4 Q I wanted to ask you a few follow-up questions about what
17:07:40 5 your counsel was just asking you.

6 So you talked about having moved back to Montgomery in
7 2009; is that correct?

8 A Yes.

9 Q Okay. So you've lived in Montgomery since the 2011
17:07:53 10 districts were drawn; is that right?

11 A Yes.

12 Q Okay. And you, in fact, attended a hearing about those
13 districts, did you not?

14 A A public hearing, yes.

17:08:01 15 Q Okay. And you actually spoke at that hearing, correct?

16 A Yes.

17 Q Okay. And you spoke about a couple of things, right? And
18 we talked about those at your deposition, didn't we?

19 A Yes. But you know I had a stroke. So you have to refresh
17:08:17 20 my memory.

21 Q All right.

22 A For specifics.

23 Q I'm happy to do that.

24 MS. HOWELL: So and, Your Honor, I have here this -- I
17:08:41 25 had taken an excerpt from Defendant's Exhibit 3, which I

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1 recognize that plaintiffs' counsel had objected to at least in
2 part. That's the preclearance submission from the 2011 act.

3 This is just a transcript of the Montgomery hearing. I'm
4 not offering it for -- I believe what the grounds of the
17:09:00 5 objection were for relevance relating to the state of mind of
6 the legislators as they were passing the Act. And my aim here
7 is only to get Ms. Jones' testimony on the record, so --

8 THE COURT: Okay. Is there any objection to that
9 component?

17:09:15 10 MR. OSHER: That doesn't involve our objection to the
11 exhibit.

12 THE COURT: Okay. Ms. Howell, are you wanting to
13 offer this as an exhibit?

14 MS. HOWELL: Yeah. If -- if I could, Your Honor, that
17:09:45 15 would be -- that would be my preference to offer this as an
16 exhibit.

17 THE COURT: All right. Do you want brand new number,
18 or do you want to do this like Defendant's Exhibit 3-A, or
19 however?

17:10:00 20 MR. DAVIS: Do a brand new number.

21 THE COURT: Okay.

22 MS. HOWELL: I will defer to my co-counsel.

23 MR. WALKER: 313.

24 THE COURT: So Defendant's Exhibit 313? Is there any
17:10:12 25 objection to that being admitted?

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1 MR. OSHER: No objection, Your Honor.

2 THE COURT: Okay. Thank you.

3 MS. HOWELL: I do, Your Honor, have copies of the
4 excerpt that I am working with if the deputy -- if the Judge or
17:10:22 5 the witness would care to see it in a place of other than on
6 the Elmo.

7 THE COURT: I'm fine with it there for now.

8 MS. HOWELL: Your Honor, may I approach?

9 THE COURT: You may.

17:10:44 10 BY MS. HOWELL:

11 Q Ms. Jones, and if you will flip to -- it's 383. It has
12 the number at the bottom when you start speaking.

13 Okay. So now that you have your testimony from the
14 hearing that's in front of you, if you want to take a minute to
17:11:13 15 read it, I'm happy to give that to you. But it appears that
16 the only two things that you talked about at the hearing were
17 wanting more notice about it and the need for legislators who
18 were working on the district to pay attention to communities of
19 interest.

17:11:28 20 Does that seem correct to you?

21 A No. I talked about the lack of notice given in a timely
22 manner. I talked about fair representation and having a
23 commission for citizens to be in the redistricting process.

24 As you can see, when I stated that we needed a
17:11:57 25 redistricting -- I saw it better over here -- that we needed a

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1 redistricting commission, a citizens redistricting commission.
2 I also talked about legislators allowed to choose their voters
3 instead of voters choosing their legislators by being in the
4 writing of the district's process. And so they can kind of
17:12:24 5 cherry pick who gets their vote.

6 Q So it would be fair to say, then, that you covered a fair
7 amount of ground in your short speech --

8 A Yes.

9 Q -- at the public hearing?

17:12:35 10 Okay. Do you see anywhere in there that you requested the
11 drawing of a second majority-minority district in Alabama?

12 A No.

13 Q Okay. And did you, in fact, request such a district be
14 drawn in 2011?

17:12:48 15 A No.

16 Q I'm sorry. Was that no?

17 A Yes, that was no.

18 Q Okay. So you waited until 2018 and filing this case to
19 request a second majority-minority district be drawn in
17:13:18 20 Alabama; is that correct?

21 A Yes.

22 Q Okay. You also talked about several different things with
23 your counsel. Particularly, I want to draw your attention to
24 certain things that you had said about the local election that
17:13:35 25 recently took place in Montgomery. And the candidates in that

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1 election were as you mentioned David Woods, correct? And
2 Steven Reed was the other candidate?

3 A For the runoff.

4 Q For the runoff.

17:13:45 5 A Yes.

6 Q All right. And can you tell me who won that election?

7 A The black male, Steven Reed.

8 Q Okay. And he won actually in a landslide; is that a fair
9 characterization?

17:13:58 10 A Yes.

11 Q Okay. You also talked a lot about interests that you
12 thought that you characterized as being interests of the black
13 community, I believe. You talked about affordable health care,
14 correct?

17:14:21 15 A Yes.

16 Q Okay. And education needs?

17 A Yes.

18 Q And criminal justice?

19 A Yes.

17:14:27 20 Q And also employment, right?

21 A Yes.

22 Q Okay. Would you not agree that all of those are interests
23 common to any number of voters in Alabama?

24 A No.

17:14:39 25 Q Why not?

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1 A Because there's a significant disenfranchisement in the
2 black community in education, in criminal justice, in having
3 health care.

4 If you look at the statistics, you will see that whereas
17:14:54 5 they tout we just may have 9 percent unemployment in Alabama in
6 the black community, it's probably three to four times as high.
7 So it's kind of when they give statistics they show a general
8 number. They don't actually show what's going on in the black
9 community.

17:15:17 10 A A black person's going to get more time for crack cocaine
11 than a white person will get for powder cocaine, and we know
12 this. So the numbers are kind of skewed, if you would, when we
13 see them on the news in the headlines. And these are facts.

14 We can look at bonds being given to a black person who
17:15:42 15 commits murder versus a white person who commits murder. The
16 bonds are really ridiculous and racial. And it is what it is.

17 Q And I do hear what you are saying, Ms. Jones. But white
18 people, too, are concerned about affordable health care, are
19 they not?

17:16:04 20 A I don't know. I'm black. I don't -- I'm telling you from
21 my point of view.

22 When we are talking about health care, and I'm standing in
23 line and have to wake up at 3:00 a.m. to try to get heart
24 medication and seizure pills, you know who's in that line?
17:16:26 25 Majority is black people in that line.

1 Q Let me reframe this for you, Ms. Jones. Do you know of
2 anybody who wants unaffordable health care?

3 A I haven't asked.

4 Q You haven't asked. Do you know of anyone who wants
17:16:39 5 unaffordable health care?

6 A I don't know. I have not asked. You -- that's just
7 like -- do you know anyone who would want -- who would not want
8 a Louis Vuitton bag? It depends on what that person values.

9 If you can afford health care, it wouldn't matter to you
17:17:00 10 whether you wanted affordable health care because you got money
11 to pay for your doctor bill. I can't pay -- I can't get my
12 heart medications when I didn't have insurance. And when you
13 looking at 13 pills and you on a waiting list, it's a
14 difference for an indigent person who is impoverished person
17:17:24 15 with no options versus someone who has money and it doesn't
16 matter whether they're down to their last medication because
17 they can go get some more. It's a big difference.

18 Q You also talked about how you feel right now that someone
19 who votes Republican is racist, correct?

17:17:47 20 A Yes.

21 Q Does voting for Republican candidates render the voter
22 racist?

23 A Yes.

24 Q Haven't you voted for Republican candidates?

17:17:55 25 A Yes. But I'm black, and I can't be racist by definition.

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1 Q Thank you, Ms. Jones.

2 A You're welcome.

3 THE COURT: Any redirect?

4 MR. OSHER: Just a brief redirect, Your Honor.

17:18:25 5 REDIRECT EXAMINATION

6 BY MR. OSHER:

7 Q Do you still have that document in front of you?

8 A I do.

9 Q Do you see it on the screen?

17:18:46 10 A Yes.

11 Q This paragraph here that I'm pointing to that starts at
12 dates and times. The last sentence, you're referring to the
13 citizen redistricting commission that you were discussing
14 earlier; is that correct?

17:19:01 15 A Yes.

16 Q Can you read for us?

17 A "The citizens redistricting commission will consider
18 public input in legal and expert advice to meet the Voting
19 Rights Act's requirement."

17:19:15 20 Q Did you know that you might have a legal right to a second
21 majority-minority district in Alabama in 2011?

22 A I didn't. When I called about redistricting to the
23 legislative reference office, you will get transferred umpteen
24 number of times.

17:19:37 25 THE COURT: Okay. I think you answered the question.

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1 Thank you.

2 THE WITNESS: Oh, okay.

3 MR. OSHER: Thank you, Your Honor. No further
4 questions.

17:19:42 5 THE COURT: Anything further?

6 MS. HOWELL: Nothing further, Your Honor.

7 THE COURT: Thank you. Thank you, Ms. Jones. You may
8 step down.

9 And I think this is a good time to recess for the day. I
17:19:54 10 know our court security officers will be glad to know that.

11 All right. Thank you. I think you said you've got some
12 material for me or something to discuss? We can do that up
13 here, or if you want to take a break and come back to the
14 office, whatever.

17:20:22 15 (Whereupon, the above proceedings were concluded at
16 5:20 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K. Decker

11-15-19

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF ALABAMA
 3 SOUTHERN DIVISION

4 LAKEISHA CHESTNUT, an individual; *
 5 MARLENE MARTIN, an individual; * 2:18-cv-00907-KOB
 6 BOBBY DUBOSE, an individual; * November 5, 2019
 7 RODNEY LOVE, an individual; KAREN * Birmingham, Alabama
 8 JONES, an individual; JANICE * 9:00 a.m.
 9 WILLIAMS, an individual; RODERICK *
 10 CLARK, an individual; JOHN HARRIS, *
 11 an individual, *
 Plaintiffs, *
 vs. *
 JOHN H. MERRILL, in his official *
 capacity as Alabama Secretary of *
 State, *
 Defendant. *

12
 13 TRANSCRIPT OF BENCH TRIAL
 14 VOLUME II
 15 BEFORE THE HONORABLE KARON O. BOWDRE
 CHIEF UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(In open court.)

THE COURT: You may be seated. Plaintiff may call your next witness.

MR. SPIVA: Thank you, Your Honor.

Your Honor, plaintiffs call Dr. Peyton McCrary.

DR. PEYTON MCCRARY,
having been first duly sworn by the Courtroom Deputy Clerk, was
examined and testified as follows:

THE COURTROOM DEPUTY CLERK: Will you please state your name into the microphone for the record?

THE WITNESS: My name is Peyton McCrary.

THE COURTROOM DEPUTY CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SPIVA:

Q Good morning, Dr. McCrary.

A Good morning, Mr. Spiva.

Q One thing -- you're doing fine so far -- but the court reporter asked us to remind all of our witnesses to just speak into the microphone because it helps her with taking down the transcript. You know, sometimes when we put things on the screen, it's natural to turn away from it to see what's on the screen, but if you can just keep that in mind.

A Good advice.

Q Dr. McCrary, you've been retained as an expert by the

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1 plaintiffs in this case; is that right?

2 A Yes.

3 Q Let's begin with a little bit of your background. Can you
4 please describe for us your educational history?

09:06:43 5 A Well, I received a B.A. and M.A. from the University of
6 Virginia in history, and a Ph.D. from Princeton University in
7 1972 also in the department of history.

8 Q And what did you do after receiving your doctorate?

9 A I was already teaching at the University of Minnesota,
09:07:04 10 where I taught from 1969 to '76. I then taught for two years
11 at Vanderbilt University in Tennessee. And then from 1978 to
12 1990, I was a professor of history at the University of South
13 Alabama in Mobile.

14 Q Okay. And let's turn to Plaintiffs' Exhibit 81. And in
09:07:29 15 particular -- first of all, is Plaintiffs' Exhibit 81 the first
16 declaration that you submitted in this case, Dr. McCrary?

17 A Yes.

18 Q Okay. If we could turn to the back of that where your
19 curriculum vitae appears, which is just after the report
09:07:46 20 itself.

21 A Yes, sir.

22 Q And is this your curriculum vitae?

23 A Yes, it is. I prepared it, and it's up to date to the
24 best of my recollection.

09:08:02 25 Q Okay.

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1 THE COURT: For the record, that's page 39, right?

2 MR. SPIVA: Thank you, Your Honor.

3 BY MR. SPIVA:

4 Q And, Dr. McCrary, what did you teach at the universities
09:08:24 5 that you taught at?

6 A Well, in addition to teaching the standard United States
7 history course, I taught courses in history of the south. I
8 taught courses in some of those institutions in the American
9 party system. I taught a course in quantitative methods at the
09:08:42 10 University of South Alabama. And I taught African-American
11 history one year at Vanderbilt.

12 Q And what type of quantitative methods did you teach?

13 A Well, I taught students about the analysis of legislative
14 behavior using roll call voting analysis, the statistical
09:09:07 15 methods used to analyze voting behavior.

16 One of my graduate students did a master's thesis
17 following that course in which she analyzed racially polarized
18 voting in Mobile County, as I recall.

19 Q And after you finished your teaching at the University of
09:09:29 20 South Alabama, where did you go after that?

21 A Well, I was employed for 26 years as a social science
22 analyst in the Department of Justice in the Civil Rights
23 Division in the section that enforced the Voting Rights Act.

24 Q And what was your role while employed at DOJ's Civil
09:09:48 25 Rights Division?

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1 A One of my principal responsibilities was to help the
2 attorneys understand the factual evidence in cases, to
3 determine which disciplines would be the logical place to look
4 for appropriate expert witnesses, suggesting appropriate expert
09:10:08 5 witnesses, and giving the attorneys a choice of persons who
6 could do the analysis needed, working with the lawyers and the
7 experts to make sure that they understood one another, and
8 helping the lawyers to assess the evidence of experts -- expert
9 testimony from opposing parties.

09:10:26 10 Q And during that time, did you personally testify as an
11 expert in Section 2 cases?

12 A Not ordinarily. I did once testify in a case in Alabama
13 back I think in 1991 because I had -- before being employed by
14 the Department, I had been an expert witness for the plaintiffs
09:10:50 15 in that case.

16 And as I recall, Judge Dubina accepted the motion from
17 that attorney that the Department of Justice be asked to
18 participate on an amicus basis for the purpose of putting on my
19 testimony. Otherwise, I did not testify except through written
09:11:17 20 declarations in certain circumstances in cases during my
21 employment by the Department.

22 Q Did you receive any special recognition relating to your
23 work at DOJ?

24 A Yes. I think it was in 2011 I received the Maceo Hubbard
09:11:31 25 Award for sustained commitment to the enforcement of the Voting

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1 Rights Act.

2 Q Have you published literature on the subject of voting
3 rights?

4 A Yes. For the last 35 years, almost all of my scholarly
09:11:47 5 writing and publications has been concerned with the history of
6 discriminatory election laws in the south, the enforcement, the
7 adoption and enforcement of the Voting Rights Act, methods used
8 by expert witnesses in addressing issues in voting rights
9 litigation, and the impact of enforcement of the Voting Rights
09:12:10 10 Act on minority representation in Alabama and also in South
11 Carolina.

12 Q And I take it from your last answer, you have written
13 specifically about voting rights in Alabama?

14 A Yes, in a variety of those publications.

09:12:22 15 Q Can you tell us what the publications were? And if we can
16 go to page 5 of Plaintiff's Exhibit 81, paragraph 8. And it's
17 actually on pages 4 and 5. I'm sorry.

18 And if you could actually describe for us what you have
19 written about voting rights in Alabama?

09:12:50 20 A Well, let me start with a chapter that I coauthored as the
21 senior author in a book published by Princeton University Press
22 in 1994 called *Quiet Revolution of the South: The Impact of*
23 *the Voting Rights Act*. I was the senior author of the Alabama
24 chapter in that book. There were chapters on each of the
09:13:10 25 states covered by Section 5 of the Voting Rights Acts. I also

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1 was the coauthor on the South Carolina chapter.

2 In a recent volume of essays honoring my -- the second
3 reader on my dissertation, Shelton Hackney, just before he
4 passed away of Lou Gehrig's disease, I had an essay that
09:13:32 5 focused on the evidence in *Dillard vs. Crenshaw County, Alabama*
6 in which I was an expert back in the 1980s.

7 I also discussed Alabama evidence in a journal article I
8 published on the subject of racially polarized voting, looking
9 at expert testimony in Alabama cases, analyzing not only the
09:13:57 10 degree to which voting patterns were polarized along racial
11 lines, but also looking at the racial disparities in
12 socioeconomic circumstances cited by an expert in addressing
13 the totality of circumstances test under Section 2 of the
14 Voting Rights Act.

09:14:16 15 Q Did you also write a book chapter about the evidence
16 presented in city of Mobile?

17 A Yes. As a matter of fact, I forgot about that. That was
18 my first publication dealing with voting rights matters in a
19 collection published in 1984 called "Minority Vote Dilution."

09:14:35 20 That essay summarized the historical evidence that I had
21 presented as an expert witness in the two Mobile voting rights
22 cases in 1981. And it originated as written testimony to the
23 subcommittee on civil and constitutional rights of the House
24 Judiciary Committee, which was a part of the record before
09:14:55 25 Congress in amending Section 2 of the Voting Rights Act in

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1 1982.

2 Q And you mentioned that you submitted, I guess, written
3 testimony in connection with the 1982 amendments to the Voting
4 Rights Act?

09:15:11 5 A Yes.

6 Q And did you also testify live before Congress before those
7 amendments?

8 A No, I didn't; only submitting written testimony.

9 Q Okay. Have you provided any other congressional testimony
09:15:26 10 on voting rights?

11 A Yes. Most recently, I gave both written and oral
12 testimony before a subcommittee on -- of the House Judiciary
13 Committee regarding the facts that Congress should know in
14 considering new voting rights litigation. The staff member who
09:15:50 15 explained what my task was in that instance, he said it was to
16 provide history 101 on the Voting Rights Act.

17 THE COURT: And when was that, Dr. McCrary?

18 THE WITNESS: That was in March of this year.

19 THE COURT: Okay.

09:16:05 20 BY MR. SPIVA:

21 Q Have you published on aspects of the totality of the
22 circumstances test under Section 2?

23 A Yes. In several of my journal articles, in explaining
24 both the case law and explaining how experts have applied
09:16:21 25 quantitative evidence in addressing the totality of

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1 circumstances test set out in the Senate's report 1982, I have
2 addressed that.

3 Q Have you published literature regarding statistical
4 analysis of voting behavior?

09:16:37 5 A Yes. The article to which I referred earlier regarding
6 racially polarized voting explains the evolution of the
7 statistical methods used by expert witnesses in voting rights
8 cases in the 1970s and 1980s. It was published almost 30 years
9 ago.

09:16:54 10 Q And during your time at DOJ and then after your retirement
11 from DOJ, did you continue to teach?

12 A Yes. I'm in my 13th year of co-teaching a course on
13 voting rights law at G. W. Law -- George Washington University
14 Law School in the district where I co-teach the course with a
09:17:18 15 former colleague of mine in the Civil Rights Division of the
16 Department of Justice.

17 Q I don't know if you mentioned it. What's that course
18 concerning?

19 A Voting rights law.

09:17:26 20 Q Okay.

21 A However, I am not an attorney.

22 Q How many times have you testified in court as an expert
23 relating to voting rights?

24 A I think this is my 18th time in court, 17 or 18.

09:17:45 25 Q Okay. And turning to paragraph 6 and 7 of Plaintiffs'

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1 Exhibit 81, which is your first declaration, which I think
2 summarized some of your testimony, can you describe the subject
3 matter of those cases that you testified in?

4 A In most of the cases in Alabama in which I testified, I
09:18:18 5 was addressing the history of discrimination affecting voting
6 and the degree to which laws that were being challenged were
7 adopted with a racially discriminatory purpose.

8 In one case, *Harris vs. Graddick*, I was testifying about a
9 small part of the historical evolution of the laws regarding
09:18:43 10 the appointment of poll officials in Alabama.

11 And in the years since my retirement, I've testified in
12 one case, a case last year tried in Montgomery before Judge
13 Watkins, regarding the method of electing statewide judicial
14 officers in Alabama.

09:19:07 15 Q Is that the case that is often called the Alabama Judges'
16 Case?

17 A Yes.

18 Q And have you also testified concerning the Senate factors
19 in any of those cases?

09:19:20 20 A Yes. In that case, as I recall, and also in a Georgia
21 case, which was settled following my deposition in the case.

22 Q Okay. Let's see. Were you qualified by the Court as an
23 expert in each of the cases that you testified in?

24 A Yes.

09:19:49 25 Q And let me ask you -- you've confirmed that Plaintiffs'

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1 Exhibit 81 is your first declaration.

2 Let's turn briefly to Plaintiffs' Exhibit 82, and ask you
3 if you can confirm that that's the second declaration or
4 rebuttal report that you submitted in this case.

09:20:10 5 A That's correct.

6 Q Okay. Are the opinions and conclusions that you reached
7 in this case contained in those two declarations?

8 A Yes.

9 Q And have you changed your opinions or conclusions in any
09:20:25 10 way?

11 A Only in clarifying an error I made in my deposition
12 answers to a question which I addressed in an errata sheet.

13 Q Okay. But in terms of the opinions and conclusions that
14 you reach in the declarations, you haven't changed any of
09:20:48 15 those, I take it?

16 A No.

17 Q And can you just briefly describe the materials you
18 reviewed in creating your expert declarations?

19 A Well, I reviewed the sort of documents that both
09:21:04 20 historians and political scientists address in -- or
21 investigate in describing all of the subject matter that I --
22 with which I'm dealing in this report, and look at the
23 secondary literature that is, say, writing by social scientists
24 and other qualified scholars on the issues that are relevant to
09:21:32 25 the case, look at the government documents that are relevant to

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1 the issues in the case, including census data when appropriate.

2 I examined documents that are somewhat unusual in
3 extensive review of expert witness reports and expert witness
4 testimony in voting rights cases. I look at records submitted
09:22:01 5 under Section 5 review during the period before *Shelby County*
6 *vs. Holder* was decided by the Supreme Court in 2013. I also
7 look at court decisions which often provide important factual
8 evidence.

9 I also sometimes write about the evolution of the case law
09:22:23 10 and teach that subject matter in court -- in the course I teach
11 at G. W. Law school, but I have never addressed the legal
12 questions in any expert witness testimony that I have given.

13 Q And I don't know if you mentioned this. I assume you also
14 reviewed secondary sources written by historians and political
09:22:41 15 scientists, including yourself?

16 A That's actually where I started.

17 Q Oh, okay. Sorry. I missed that.

18 MR. SPIVA: Your Honor, at this time, I'd like to
19 offer Dr. McCrary as an expert in the -- as a historian,
09:22:53 20 particularly the history of discrimination affecting voting
21 including in Alabama and in statistical methods in racially
22 polarized voting.

23 THE COURT: Any objection?

24 MS. HOWELL: I'm so sorry.

09:23:08 25 THE COURT: Any objection?

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1 MR. SPIVA: I just offered him as an expert. We
2 already stipulated to his expertise.

3 MS. HOWELL: Correct. I'm sorry. Could you restate
4 what you were offering him as an expert in?

09:23:18 5 MR. SPIVA: Sure. Your Honor, we offer Dr. McCrary as
6 an expert historian, particularly in the history of
7 discrimination affecting voting including in Alabama, and in
8 statistical methods particularly concerning racially polarized
9 voting.

09:23:33 10 MS. HOWELL: Your Honor, I had not understood
11 Dr. McCrary to be testifying as to the statistical methods
12 underlying racially polarized voting. I had understood him to
13 be only an expert on the history of discrimination.

14 MR. SPIVA: Only the history of racially polarized
09:23:49 15 voting. Anything that he is going to testify about that is in
16 his report. And we have stipulated to him being able to
17 testify about anything that's in his report.

18 In other words, he's not going to rerun the testimony of
19 Dr. Palmer. But he talks about the history of racially
09:24:10 20 polarized voting in his report.

21 THE COURT: Not about statistical methods.

22 MR. SPIVA: I mean, he's not going to go through the
23 things that Dr. Palmer did yesterday. But in testifying about
24 the history of racially polarized voting, it may touch on, you
09:24:27 25 know, the statistical methods that are used to do that. But

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1 it's not -- it's going to be a very, you know -- it would be
2 ten -- it would be a very minor part of what he might say.

3 THE COURT: Do either of his reports talk about
4 statistical methods?

09:24:45 5 MR. SPIVA: They do. I will amend the request, Your
6 Honor.

7 THE COURT: Okay.

8 MR. SPIVA: So instead of saying statistical methods,
9 why don't I say racially polarized voting -- the history of
09:24:57 10 racially polarized voting.

11 MS. HOWELL: Your Honor, we have no objection to that.

12 THE COURT: Okay. All right. Then I recognize him as
13 an expert in the historical aspects of voting, discrimination
14 in voting, and racially polarized voting.

09:25:47 15 MR. SPIVA: Thank you, Your Honor.

16 BY MR. SPIVA:

17 Q So, Dr. McCrary, could you first just please explain what
18 you were asked to analyze for your initial report in this case?

19 A I was asked to analyze the history of racial
09:26:08 20 discrimination affecting voting in Alabama, including laws
21 adopted by the state over the years and the degree to which
22 there appear to be continuing effects of that history in more
23 recent voting behavior and patterns of representation in the
24 state.

09:26:29 25 Q Okay. And did you also look at devices that enhance the

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1 opportunity for discrimination in voting?

2 A That's a part of the history of discrimination that I
3 described in summary.

4 Q Okay. I take it you looked at several of the Senate
09:26:58 5 factors in the factual analysis of several of the Senate
6 factors?

7 A Yes. It happens that my testimony addresses a number of
8 factors set out in the Senate report in 1982 as criteria for
9 assessing the totality of circumstances evidence in a case.

09:27:17 10 Q And I know you said you're not a lawyer. In your
11 experience in testifying in voting rights cases, is it common
12 for social scientists to become familiar with the relevant case
13 law in this area?

14 A Yes. In order to be of use to the Court, we need to
09:27:34 15 understand the legal context that the Court has to address the
16 facts in, and so it's helpful to understand the Court
17 decisions.

18 Q Okay. And is it common for historians in the area of
19 voting rights to use Court decisions in their scholarly work?

09:27:53 20 A Yes.

21 Q And do you often incorporate court decisions in your own
22 scholarly work?

23 A Yes.

24 Q And can you please explain what you understand the purpose
09:28:04 25 of the totality of the circumstances analysis under Section 2

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1 to be?

2 A Well, the totality of circumstances test was adopted by
3 Congress in 1982 with the intention of relying on the criteria
4 that the Supreme Court set out in *White versus Regester* in 1973
09:28:28 5 in which the old Fifth Circuit elaborated on in *Zimmer vs.*
6 *McKeithen* I think in 1974, in which the courts had been
7 following as ways of assessing problems of minority vote
8 dilution in the 1970s before the Supreme Court handed down *City*
9 *of Mobile vs. Bolden*.

09:28:50 10 Q Let's maybe walk through the various Senate factors that
11 your reports address, or particularly your first report. Let's
12 begin with the first factor the extent of any history of
13 official discrimination in the state or political subdivision
14 that touches the right of the members of the minority group to
09:29:07 15 register to vote or to otherwise participate in the democratic
16 process.

17 What overall conclusion did you reach regarding the first
18 Senate factor?

19 A That there was an extensive history of racial
09:29:22 20 discrimination affecting voting in Alabama which continues to
21 have effects in current election circumstances in Alabama.

22 Q And did you also look at the history of discrimination in
23 social and economic life in addition to political life?

24 A Yes. I looked at the racial disparities in socioeconomic
09:29:46 25 characteristics, both in the period before the adoption of the

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1 Voting Rights Act and in more recent decades.

2 Q And what historical period did you consider in reaching
3 the conclusion you mentioned a minute ago?

4 A My primary focus is the period since the end of the white
09:30:06 5 primary in the mid-1940s up through more or less the present
6 period.

7 Q But did you also look to some extent at history from
8 Reconstruction through the period of the white primary?

9 A Very briefly in introducing the -- or explaining, I should
09:30:29 10 say, the changes that began in the mid-1940s.

11 Q Okay. And let me begin by asking you just a couple of
12 questions about the post-Reconstruction period.

13 Can you provide, I guess, just a brief history of the
14 post-Reconstruction period and then discuss the period around
09:30:55 15 1901?

16 A Well, anyone who's studied Alabama history knows that
17 African-Americans were enfranchised during the Reconstruction
18 period, and they continued to be able to vote in elections in
19 Alabama until really the work of the 1901 constitutional
09:31:14 20 convention, which is usually referred to by Alabama historians
21 as the state's disenfranchising convention.

22 That convention adopted various tests or devices,
23 including a literacy test to be implemented or enforced, I
24 should say, by local boards of registrars, a poll tax that
09:31:39 25 further served to make it difficult for persons who were poor

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1 to vote, and subsequent to the convention the establishment of
2 a white primary that had been in practice in some localities
3 long before the 1901 convention.

4 Q And did the 1901 convention adopt any other devices such
09:32:04 5 as property qualifications or disqualification of voters who
6 had been convicted of crimes?

7 A There were property qualifications for voting which would
8 have had an effect of disenfranchising poor whites, as well as
9 poor African-Americans. And so there was a provision that
09:32:24 10 allowed persons whose ancestors may have fought in the
11 Confederate Army to participate in elections despite not
12 meeting the property qualifications.

13 The Constitution included felon disfranchisement
14 provision, which actually antedated 1901, but was modified in
09:32:48 15 the convention. And in particular, including a provision of
16 the Constitution known for decades as the petty crimes
17 provision specifying certain misdemeanors that were also
18 disqualifying beyond the felonies. And those particular
19 methods were cited by one of the delegates to the
09:33:15 20 constitutional convention as crimes typically committed by
21 Negroes, and, therefore, an appropriate way of limiting black
22 participation in the political process.

23 Q And how did you reach the conclusion that the provisions
24 that were adopted by the 1901 convention were intended to
09:33:36 25 prevent African-Americans from voting?

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1 A First of all, it's undisputed among all the historians who
2 have written about the subject, including most prominently
3 Malcolm McMillan, whose published dissertation was a study of
4 constitutional development in Alabama, and for many years a
09:33:55 5 professor of history at Auburn, as I recall.

6 But in addition to that, I had occasion to analyze the
7 debates in the constitutional convention in earlier research,
8 so I'm familiar with the language of the delegates. And that
9 history has been discussed also in numerous judicial decisions,
09:34:17 10 which means that incidentally I reviewed the language of the
11 convention over the time I've worked on the history of Alabama.

12 Q Am I understanding you correctly that there was -- that
13 the purpose of these provisions was explicitly stated by the
14 people who convened the convention?

09:34:36 15 A Repeatedly.

16 Q I'm sorry?

17 A Repeatedly.

18 Q Okay. And let's maybe pull up paragraph 16 of your first
19 report, Plaintiffs' Exhibit 81, which is on page 10.

09:34:57 20 What effect did these provisions that were adopted in the
21 state's constitution in 1901 have on black voter registration?

22 A The impact was to eliminate virtually all black registered
23 voters from the voter rolls. The numbers I cite in that
24 paragraph were 181,000 registered before the 1901 constitution,
09:35:27 25 and two years later, 3,000 were left on the rolls.

1 Q Okay. And what effect, if any, did the provisions have on
2 the partisan landscape of the state of Alabama?

3 A Well, African-Americans had been voting predominantly
4 Republican during the 19th century. And the Democratic party
09:35:50 5 was proud to call itself the white supremacy party. It was
6 overwhelmingly white. The disenfranchising convention
7 essentially eliminated the Republican party from effective
8 politics in Alabama for decades.

9 Q And what effect, if any, did the rise of one party rule on
09:36:12 10 the state have on the competitiveness of Alabama elections?

11 A Well, they were competitive as long as you were white;
12 that is to say African-Americans weren't allowed to participate
13 in the primary by party rules that were sanctioned by state law
14 most of the time.

09:36:27 15 Q And so you're referring there to the white primaries that
16 you referenced earlier?

17 A Yes, sir.

18 Q And what happened to the white primaries ultimately?

19 A Well, following the outlawing of the white primary in
09:36:44 20 Texas in *Smith vs. Allwright* by the Supreme Court in 1944, each
21 of the southern states that had conducted white primaries
22 ultimately had to concede that African-Americans could
23 participate in democratic primaries even though some adopted
24 measures trying to retain the white primary.

09:37:07 25 Q And how did the state of Alabama react to that decision?

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1 And it might be helpful to pull up paragraph 17 just for
2 reference.

3 A Well, in 1946, following the outlawing of the Alabama
4 white primary, an amendment to the state constitution was
09:37:26 5 proposed by, as I recall, E.C. Boswell from one of the north
6 Alabama counties, which was popularly known as the Boswell
7 Amendment, which would add to the literacy test adopted in
8 1901, a requirement that individual -- an individual seeking to
9 register be able to read and interpret any provision of the
09:37:51 10 federal constitution.

11 That was ratified by the voters in 1946. And it was
12 originally proposed by Gessner McCorvey of Mobile, who was a
13 longtime chair of the Alabama State Democratic Executive
14 Committee and whose -- and I happen to have read the records of
09:38:16 15 the Alabama State Democratic Executive Committee for the years
16 of the 1940s, '50s, and early 1960s, so I ran across his
17 comments there. But they have also been quoted in several
18 historical studies that I cite in my report.

19 Q What was the effect of the Boswell Amendment?

09:38:38 20 A Well, it would have had a significant effect on reducing
21 African-American voting registration, except that it was struck
22 down by the federal courts in *Davis vs. Schnell* in 1949, I
23 think.

24 Q And before it was struck down, though, what effect did it
09:38:54 25 have, in terms of giving registrars discretion?

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1 A Well, it certainly gave registrars maximum discretion. I
2 haven't examined the numbers of persons who were turned away
3 from voter registration. And I don't recall that other
4 historians have examined the statistical effects of the
09:39:18 5 quantitative effects, I should say, in that brief period when
6 it was implemented.

7 But it gave, as the Court noted in *Davis vs. Schnell*, it
8 gave considerable discretion to local registrars, most of whom
9 were only high school graduates. Almost none of whom had ever
09:39:37 10 been to law school. And as the Court noted, there are
11 provisions of the state -- of the U.S. Constitution which are
12 difficult for lawyers to explain.

13 Q That's for sure.

14 THE COURT: I think we could get an amen on that.

09:39:59 15 BY MR. SPIVA:

16 Q And so you mentioned a minute ago that the Boswell
17 Amendment was, I guess -- the Supreme Court struck it down in
18 1949. How did the state of Alabama react to the Schnell
19 decision striking that down?

09:40:18 20 A The legislature came up with another constitutional
21 amendment, which was ratified by the voters in 1951, I think,
22 the voter qualification amendment.

23 Q And what was the purpose of the voter qualification
24 amendment?

09:40:31 25 A Well, according to a study by the Alabama -- University of

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1 Alabama political scientist Donald Strong in the mid-1950s, it
2 was adopted with a racially discriminatory purpose.

3 And what it did was to require that the literacy test be
4 constructed by the Alabama State Supreme Court, which it
09:40:54 5 continued to do until that literacy test was eliminated by the
6 adoption of the Voting Rights Act in 1965.

7 Q And then let me ask you: In addition to restrictions --
8 do you have water up there?

9 A I do.

09:41:13 10 Q Okay. Good. In addition to restrictions on voter
11 registration, were there other methods of election used
12 pre-1965 that were designed to eliminate the ability of
13 African-Americans to elect their candidates of choice?

14 A Yes. In 1951, for example, the legislature adopted an
09:41:37 15 anti-single shot law for municipal elections in the state of
16 Alabama.

17 Q What's an anti-single shot law?

18 A Single-shot voting was used throughout the country by
19 minority voters -- and not just African-Americans, but other
09:41:52 20 minority voters and political minorities, as well -- to provide
21 a means of obtaining some representation in local government by
22 voting in an at-large election system for the one candidate
23 they preferred so as to increase the mathematical weight of the
24 votes they cast.

09:42:13 25 And, therefore, an anti-single shot law -- also known as a

1 full slate law -- would eliminate the possibilities of
2 providing token representation, if you will, or some
3 representation for minority voters by requiring that anyone who
4 didn't vote for all the seats up for election at a given moment
09:42:38 5 have their ballot disqualified.

6 Q Okay. And if we could just step -- take one step back,
7 because I think the -- we may have missed the kind of the
8 premise or the reason these anti-single shot laws were passed.

9 Can you tell us about the use of at-large elections rather
09:42:59 10 than single-member districts during this period of time?

11 A Well, at-large elections are -- were a dominant feature of
12 Alabama election law for many years. Although after the
13 disfranchisement of African-Americans in 1901, a significant
14 number of counties moved back to single-member districts, and
09:43:25 15 after the end of the white primary began moving back to the use
16 of at-large elections. It's the case that at-large elections
17 make it difficult, if not impossible, for voters who are in a
18 minority in a jurisdiction to elect candidates of their choice
19 where there is racially polarized voting.

09:43:49 20 And that's why in order to understand the way in which an
21 at-large election system operates, analyzing racially polarized
22 voting is necessary. Where there's no racially polarized
23 voting, at-large elections would not likely have a
24 discriminatory effect. And the same thing would likely to be
09:44:06 25 true of an anti-single shot law.

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1 Q And this is probably an obvious question, but during this
2 period of time that you have been talking about, roughly the
3 '40s through the '65 Act, was the there racially polarized
4 voting in Alabama?

09:44:19 5 A Yes.

6 Q And so then can you explain how the anti-single shot law
7 interacts with at-large voting to undermine African-American
8 voting participation?

9 A Well --

09:44:45 10 Q And I know you probably partly described that, but you can
11 kind of consider me a slow undergrad guy, so...

12 A Well, the effect of the anti-single shot laws is most
13 evident in the municipal elections that were the focus of it.

14 African-Americans had reached significant voting strength
09:45:04 15 in the city of Tuskegee, Alabama, also to some extent in Mobile
16 and Montgomery and in Birmingham. And it was in that context
17 that the legislature decided, after explicit explanation of the
18 racial effects of an anti-single shot law, to prevent the black
19 vote from increasing or from having a chance to elect
09:45:29 20 candidates in those elections by member of the legislature.

21 The effect of these laws was to make it impossible for
22 African-Americans to elect a candidate of their choice in those
23 places where they were reaching a level where that would be
24 possible.

09:45:51 25 Q And what about the numbered place requirement? What is

1 that? And how does that relate to the discussion we've been
2 having?

3 A Well, numbered place requirements had been used for some
4 elections in Alabama before 1961. But in 1961, the legislature
09:46:09 5 adopted Act Number 221, which set forth a requirement that all
6 at-large elections or multi-member district elections in
7 legislatures require candidates to qualify for a specific
8 place -- Place Number 1, Place Number 2, Place Number 3, and so
9 on.

09:46:31 10 And the effect of that was to convert all elections in an
11 at-large system into head-to-head contests for a particular
12 place. And it has the effect of eliminating the possibility of
13 single-shot voting; thereby making the 1951 municipal election
14 law prohibiting single-shot voting irrelevant.

09:46:56 15 Q And with respect to these provisions -- the anti-single
16 shot law, the numbered place requirement -- who typically
17 passed that? Were they passed at the local level? The state
18 level?

19 A In Alabama in that period, especially and for decades
09:47:18 20 afterwards, almost all jurisdictions lacked the authority to
21 set their own method of election. The Alabama Legislature did
22 so. And when localities wanted to change the method of
23 election, they had to operate through the local legislative
24 delegation from the county in which they were located.

09:47:44 25 And so there were a few cities that had home rule

1 provisions under the Alabama municipal election code, as I
2 recall. But other than home rule cities, the legislative
3 delegation was typically granted local courtesy by the entire
4 legislature in passing those laws.

09:48:08 5 Q Can you put up paragraph 24 of Plaintiffs' Exhibit 81,
6 which appears on pages 15 and 16?

7 And I'll just ask you: What was the purpose of these
8 provisions -- the anti-single shot, the numbered place
9 requirement? What was the purpose of those provisions?

09:48:31 10 A To limit African-American abilities to elect
11 representatives of their choice.

12 Q And how did you reach that conclusion?

13 A I already referred to the racially explicit justification
14 for the anti-single shot law in 1951. The evidence is in some
09:48:49 15 ways more dramatic, in regard to the 1961 numbered place law.
16 And I cite some of that specific evidence in my report in that
17 paragraph or in successive paragraphs.

18 Q Okay. What is the language that you're referring to, in
19 terms of the 1961 plan?

09:49:13 20 A There is one news article in which Bob Ingram of *The*
21 *Montgomery Advertiser* said explicitly that the new law, Act
22 221, was -- and I'm quoting -- "aimed at Negroes as much as
23 anything else," end of quote.

24 Mr. Ingram actually testified as a witness in the 1991
09:49:41 25 trial where I was an expert and did not recall that. But he

1 did write that in 1961.

2 Q Is that in paragraph 26? Is that quoted in paragraph 26?

3 A Actually, that's quoted in paragraph 25 of the report.

4 Q Okay.

09:49:59 5 A But the most dramatic evidence is cited in paragraph 26 --

6 Q If we could pull that up, please?

7 A -- in an indented quote.

8 Q Paragraph 26, next page?

9 A This was a speech given by Frank Mizell who was active in
09:50:19 10 the democratic party leadership before the Alabama State
11 Democratic Executive Committee in January of 1962.

12 He was explaining to the executive committee why the
13 democratic primaries would have to employ the numbered place
14 requirement adopted by the legislature in 1961. And he
09:50:41 15 explained its purposes in, shall we say colorful language that
16 it would no longer be considered politically correct.

17 Q Yeah. It's explicitly racist language; is that right?

18 A Yes.

19 Q Okay. And that's seen in the indented paragraph in
09:51:06 20 paragraph 26 of your first report?

21 A Yes.

22 Q Okay. What effect, if any, did Jim Crow laws have on
23 these provisions, or how did they interact with these
24 provisions?

09:51:25 25 A Well, recall that the state of Alabama, like the state of

1 Virginia in which I grew up, was operating under a system of
2 official racial discrimination in all walks of life. And so
3 the social context in which the election process operated was
4 affected by that.

09:51:43 5 For example, I cite evidence of the racial disparities in
6 educational levels of African-Americans and whites in Alabama
7 cited in --

8 Q Pull up paragraph 28, which appears on pages 18 and 19.

9 A -- cited in Donald Strong's study of voter registration in
09:52:02 10 Alabama in 1956.

11 And that evidence I'm familiar with from a book I assigned
12 in teaching Alabama history Horace Mann Bond's classic study of
13 *Negro Education in Alabama*, which was his desecration at the
14 University of Chicago in 1939, where he first used per pupil
09:52:24 15 expenditure data by race for the funding of the white schools
16 and the Negro schools in the Jim Crow system, demonstrating
17 that there were quite remarkable racial disparities in the
18 funding for black and white schools at that time. And other
19 studies have shown using similar data that this continued.

09:52:44 20 And consequently, every time the census measured
21 educational achievement, there was a racial disparity observed
22 even then in the 1950s and '60s between whites and blacks. And
23 since the level of education of voters is considered by
24 political scientists analyzing the degree of political
09:53:04 25 participation from the 1960s forward to be the single most --

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1 usually the single most important determinative of voter
2 participation rates, certainly augmented by other social and
3 economic characteristics, such as poverty levels and access to
4 vehicles, educational disparities have a marked impact on the
09:53:30 5 degree to which poor people are able to register and vote --
6 poor people, whether white or black.

7 Q What role, if any, did violence play in this history that
8 you have been discussing?

9 A Well, violence was a significant factor in the late 19th
09:53:48 10 century. And there were instances reported in studies of
11 Alabama, like other states, where there was sometimes physical
12 intimidation of persons seeking to register and vote. But the
13 evidence on that score that I've examined is a lot less
14 dramatic than, say, in Mississippi.

09:54:09 15 But there were, of course, in -- well, in Birmingham in
16 the 1950s there were the bombing of various black churches not
17 directly related to the political process, but creating an
18 atmosphere of racial intimidation. They were, of course, not
19 carried out by officials, but by members of the Klu Klux Klan,
09:54:35 20 or other similar organizations.

21 But in that period, of course, Birmingham was sometimes
22 referred to in the press as "Bombingham".

23 Q Can you tell us what, if anything, you found regarding the
24 state's role in political violence against African-Americans at
09:54:53 25 any point in this history?

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1 A Other than in the late 19th century, I can't recall any
2 violence until the incident at the Edmund Pettus Bridge in
3 Selma in 1965 where state troopers did attack physically Civil
4 Rights marchers with the implicit authorization of Governor
09:55:23 5 George Wallace in what was often referred to in the press as
6 "Bloody Sunday".

7 Q And you mentioned in that last answer that other than in
8 the late 19th century. What in the late -- just briefly in the
9 late 19th century, what role did the state either sponsored or
09:55:44 10 violence under the color of law play?

11 A The only things I recall are local officials who were
12 involved as in Mobile, where I remember in the 1870s at one
13 point a piece of field artillery was rolled out into the
14 streets and pointed at the polls in the seventh ward of the
09:56:05 15 heavily black ward of Mobile in the 1870s. But I don't think
16 that had anything to do with state officials.

17 Q And going back to the "Bloody Sunday" violence that you
18 mentioned a moment ago, did this violence prompt intervention
19 from the federal government?

09:56:24 20 A Yes.

21 Q And how so?

22 A Well, it played a significant role in stimulating voting
23 support in the Congress for the adoption of the Voting Rights
24 Act of 1965.

09:56:38 25 Q So now I'd like to focus on the period after the Voting

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1 Rights Act of 1965. What effect did the Voting Rights Act have
2 on black registration in Alabama?

3 A Well, because it struck down the use of tests or devices,
4 such as the literacy test, and understanding clauses, and the
09:57:00 5 requirement that new registrants have an existing registered
6 voter vouch for them when seeking to register, the Voting
7 Rights Act also provided for the use of federal examiners and
8 federal observers.

9 And in the early period -- in the early years after the
09:57:22 10 adoption of the Voting Rights Act, some Alabama counties did
11 have federal examiners who were sent in to register voters if
12 there was a determination in the federal government that that
13 was necessary to provide effective voter registration
14 opportunities.

09:57:43 15 Federal observers were sent in and continued to be sent in
16 right on through the 2006 Reauthorization Act in elections
17 where it was believed by federal authorities that there was a
18 possibility of interference with elections on the part of the
19 people running them against the interest of minority voters.

09:58:09 20 The federal examiners were rarely used, but the threat of
21 using federal examiners played a role, according to most of the
22 studies of this period, in encouraging local officials to
23 cooperate with the -- with the requirements of the Voting
24 Rights Act.

09:58:27 25 And in a few instances in Alabama -- I remember writing

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1 about two or three of them -- the state courts sought to
2 prevent the enforcement of the Voting Rights Act in their
3 jurisdiction. And their decisions were overturned by federal
4 courts.

09:58:45 5 Q And how did the state respond to the passage of the '65
6 Voting Rights Act?

7 A Well, the state was one of many southern states that
8 supplied an amicus brief before the Supreme Court decision in
9 *South Carolina vs. Katzenbach*.

09:59:07 10 Q And did the state or local jurisdictions in Alabama adopt
11 any dilutive practices after the passage of the '65 Act?

12 A There were a number of counties as I recall which had not
13 yet adopted at-large elections that did shift back to use of
14 at-large elections.

09:59:26 15 The Wallace administration also encouraged private efforts
16 of voter mobilization. And that's been studied by political
17 scientists. And they think that plays a role in the fact that
18 while the Voting Rights Act enfranchised African-Americans in
19 Alabama, it also enfranchised a lot of white people who had
09:59:47 20 been -- who had previously not been voting, in part because not
21 only the Voting Rights Act, but a federal court determination
22 that the Alabama poll tax was unconstitutional.

23 Q And what role did the Department of Justice, the federal
24 Department of Justice play in this process between 1965 and
10:00:11 25 1982?

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1 A Well, first of all, the Department of Justice -- I didn't
2 address this in my report. But the Department of Justice did
3 play a substantial role in drafting the Voting Rights Act.

4 But what I did discuss in my report is that the
10:00:26 5 Department, in addition to sending federal observers or federal
6 examiners to which I've also already referred, was enforcing
7 the provisions of Section 5 of the Voting Rights Act which
8 required all voting changes --

9 Q Paragraph 31, please, on Page 20. Sorry to interrupt.

10:00:46 10 A -- which required all voting changes from many
11 jurisdictions covered under the formula set out in Section 4 to
12 get federal approval of those voting changes either by
13 administrative review by the Department of Justice or by a
14 three-judge court in the District of Columbia.

10:01:07 15 Thus, the Department of Justice played a substantial role
16 in either preclearing, as they did most of the time, for
17 changes in voting in Alabama, but sometimes objecting when
18 there were changes that appeared to have racially
19 discriminatory -- the possibility of a racially discriminatory
10:01:27 20 effect, or were adopted with a racially discriminatory purpose.

21 Q And do you discuss in your report how many times the
22 Department of Justice objected to proposed changes to elections
23 procedures in Alabama?

24 A Yes. I cite numerical data regarding objections in the
10:01:48 25 1970s, '80s, '90s, and the early 21st century.

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1 Q Okay. And did you also cite data concerning the number of
2 times the federal government sent observers to Alabama?

3 A I think I did at one period in the 1970s.

4 Q Is that reflected in paragraph 31 of your report, which is
10:02:09 5 up on the screen?

6 A Yes.

7 Q Okay. And did federal courts play a role in identifying
8 discriminatory conduct by Alabama officials during this period?

9 A Yes.

10:02:30 10 Q Can you discuss that? I guess particularly with regard to
11 Hale County, Marengo County?

12 A Well, the Hale County case that I cite in paragraph 32 was
13 a case decided by a District of Columbia court under Section 5
14 of the Voting Rights Act.

10:03:05 15 Hale County filed a lawsuit seeking a declaratory judgment
16 by the three-judge court in D.C. as I recall after the
17 Department of Justice had objected to a change from district to
18 at-large elections. And the federal court enforced an
19 objection -- determined de novo to refuse preclearance to the
10:03:31 20 change.

21 The Marengo County case was a long running case which I've
22 studied a good bit. And it began as an equal protection
23 challenge to the Fourteenth Amendment in the 1970s. And I
24 think the first trial was held when the Equal Protection Clause
10:03:52 25 was the operative legal issue under which the Court was

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1 reviewing the matter. But it was eventually decided, I think
2 in 1984, where Section 2, as amended in 1982, was the operative
3 legal basis for the Court's decision. And the evidence in that
4 case was very substantial. And it required a change from
10:04:14 5 at-large elections to the use of a fairly drawn single-member
6 district plan.

7 Q And was there a similar court case in 1982 in the city of
8 Mobile?

9 A Well, actually, the two Mobile cases -- one challenging
10:04:30 10 the county school board's at-large elections and the city
11 commission elections for the city of Mobile -- was decided in
12 1982 before the revision of the Voting Rights Act. So it was
13 actually decided under the Equal Protection Clause, under the
14 intent standard before the creation of a Section 2 results
10:04:50 15 test.

16 Q And what was the result of that case?

17 A A change to single-member districts under which
18 African-Americans were able to elect representatives of their
19 choice.

10:04:59 20 Q And was there a finding concerning discriminatory intent
21 in that case?

22 A Yes.

23 Q What was that finding?

24 A That the adoption of at-large elections for the county
10:05:10 25 school board in 1876, and the adoption of at-large elections

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1 for the city commission in 1911 were adopted with a racially
2 discriminatory purpose and with a racially discriminatory
3 effect.

4 Q Dr. McCrary, how was the 1982 amendment to Section 2 of
10:05:38 5 the Voting Rights Act relevant to your analysis of official
6 voting-related discrimination in Alabama?

7 A Well, a part of the amended Section 2 sets out a totality
8 of circumstances case -- or a test under which the very first
9 factor was the history of racial discrimination affecting
10:06:02 10 voting about which you've been asking me.

11 Q And after the 1982 amendments, what role did the
12 Department of Justice play in limiting voting-related
13 discrimination in Alabama?

14 And if we could put up paragraph 33, please.

10:06:18 15 A Well, the Department brought numerous voting rights
16 lawsuits under Section 2 as it had under the Equal Protection
17 Clause focusing on Black Belt counties in Alabama.

18 But what I discussed in that paragraph is a case involving
19 the city of Pleasant Grove, Alabama, which initiated -- was
10:06:49 20 initiated from a Section 5 lawsuit by the city seeking
21 preclearance of changes involving annexations to which the
22 Department of Justice had objected. Of course, the Department
23 was defending the interests of the United States in that
24 litigation.

10:07:08 25 That was a case that I have written about extensively,

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1 including the legal issues used by the city in its -- and its
2 treatment by the Supreme Court in deciding how to interpret the
3 requirements of Section 5 of the Voting Rights Act.

4 But as a practical matter, what the Court was doing was
10:07:33 5 refusing to preclear certain annexations because they were a
6 part of a pattern of racially selective annexations by the city
7 in which efforts by surrounding black communities to seek
8 admission into the city boundaries were rejected, whereas white
9 jurisdiction -- white areas were routinely annexed as a part of
10:08:01 10 municipal policies.

11 And the city's defense was there were no black voters in
12 Pleasant Grove, so there couldn't be anything that would
13 signify retrogression because they had prevented them from
14 coming in. And that was ultimately rejected by the federal
10:08:18 15 courts, including the United States Supreme Court, in the
16 decision I cite there.

17 Q And how many times did the DOJ object to preclearance
18 submissions between 1982 and 2006 from Alabama?

19 A I don't remember the precise numbers, but I set them out
10:08:38 20 in the report.

21 Q Is it set out in paragraph 33 that's on the screen?

22 A Yes. I identify there seven objections from the state of
23 Alabama as a whole, and 39 from local jurisdictions, and that's
24 for the years between 1982 and 2006.

10:09:08 25 And I also note that the Department of Justice sent

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1 federal observers to monitor elections during that period to
2 Alabama jurisdictions 91 times.

3 Q And can you just explain what -- is the sending of federal
4 observers, is that what you were discussing earlier when you --
10:09:28 5 I think -- I don't know if you called them observers or
6 inspectors?

7 A I referred earlier to the use of federal examiners and
8 federal observers beginning in the late 1960s.

9 And while federal examiners were rarely used after 1980 to
10:09:44 10 my recollection, federal observers continued to be used to
11 observe elections where there were reports that there might be
12 racial problems at the polls.

13 Q And was that the purpose -- or what under what
14 circumstances were federal observers sent?

10:10:06 15 A Where there were reports from persons in a particular
16 jurisdiction, or knowledgeable observers, or sometimes actually
17 local officials that were relayed usually by telephone to the
18 Department of Justice staff and sometimes by written letters.

19 Q Do you talk in your report about the case of *Harris vs.*
10:10:37 20 *Graddick* in 1984?

21 A Yes.

22 Q And what is the -- what did you -- what is the discussion
23 of that case?

24 And we can take down that paragraph. Thanks.

10:10:45 25 A Well, *Harris vs. Graddick* which in a later phase of the

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1 case was entitled *Harris vs. Siegelman*, when the Attorney
2 General was a different person -- involved the procedures for
3 appointing poll officials in local jurisdictions, which had
4 resulted in virtually no African-American poll officials.

10:11:13 5 And the evidence in the case before Judge Myron Thompson
6 documented that there was an intimidation factor in the
7 operation of elections in all-white polling, when all the poll
8 officials were white in a jurisdiction which was both minority
9 black and in majority black jurisdictions, especially for older
10:11:41 10 voters.

11 Q And what happened in that case?

12 A Well, as I recall, Judge Thompson issued a preliminary
13 injunction initially in *Harris vs. Graddick* that set up
14 procedures for trying to equalize the appointment of poll
10:12:02 15 officials, you know, governed by state law.

16 Q And was that an important change in voting in Alabama?

17 A Yes. Along with many other changes, it increased the
18 opportunity for African-Americans to register and vote.

19 And the increasing parity between black registration and
10:12:24 20 white registration, or between black turnout and white turnout
21 that continued right up into the present day, the tendency to
22 merge toward parity, though never quite reaching parity, was we
23 think significantly influenced by the appointment of black poll
24 officials.

10:12:42 25 Q And what's the importance of having black poll officials

1 present at the polls?

2 A It was intended, I suspect, and certainly had the effect
3 of giving the appearance of welcoming to voters whatever their
4 race.

10:13:04 5 Q Were there any other decisions during this period --
6 roughly 1982 to 2006 -- that indicated racial discrimination in
7 voting in Alabama?

8 A Well, the most important is *Dillard vs. Crenshaw County,*
9 *Alabama*, a case about which I've written extensively. And that
10:13:24 10 was a case in which I served as an expert witness at the
11 preliminary injunction phase of the case in 1986.

12 Q And what was the issue there?

13 A The issue was the use of at-large elections where the
14 plaintiffs were arguing that there was a state policy of using
10:13:40 15 at-large elections to dilute minority voting strength whenever
16 African-Americans were in a position of substantial voting
17 strength where they could affect the outcome of elections.

18 Q And what was the outcome of that?

19 A The Court enjoined the further use of at-large elections
10:14:01 20 in the nine county commissions that were initially involved in
21 the litigation as defendants.

22 The plaintiffs then amended their complaint to add all the
23 municipalities and school boards in the state, where, as I
24 recall, there were at-large elections and no African-Americans
10:14:21 25 elected to public office.

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1 Eventually, I think about 175 or 176 jurisdictions agreed
2 to go, and signed consent decrees agreeing to go from at-large
3 elections to either fairly drawn single-member district plans,
4 or to cumulative or limited voting plans if they preferred,
10:14:43 5 which allowed very substantial increases in minority
6 representation in local governing bodies.

7 Q I'm going to turn to redistricting issues -- the history
8 of redistricting issues in Alabama. And let me -- if we can
9 put up paragraph 37, please, of your report, which appears on
10:15:06 10 pages 23 and 24 of Plaintiffs' Exhibit 81.

11 And just beginning with the 1980s, can you please describe
12 what you found regarding the DOJ's preclearance submissions for
13 districting maps?

14 A Well, the Department of Justice objected to state
10:15:31 15 legislative redistricting plans at least twice. Initially on
16 the grounds that the plan was retrogressive because it reduced
17 the number of majority-minority districts from the benchmark
18 plan. And in the second instance because it appeared
19 intentionally to fragment or crack minority voting strength in
10:15:58 20 some portion of the Black Belt counties.

21 Eventually, black plaintiffs filed a lawsuit, and the
22 Court ordered an interim plan for the 1982 elections. And the
23 state agreed to a new redistricting plan in 1983, which was a
24 compromise with the plaintiffs that I suppose resulted in a
10:16:24 25 consent decree.

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1 Q Can we pull up paragraph 38 of Plaintiffs' Exhibit 81,
2 which appears on pages 24 -- just page 24?

3 In the 1990s redistricting cycle, what objections, if any,
4 did DOJ make to the state's congressional plan?

10:16:48 5 A Well, the congressional plan was objected to by the
6 Department because an intentionally fragmented black population
7 concentrations in order to dilute minority voting strength.
8 And there was also a separate lawsuit in federal court and a
9 three-judge court ordered the use of an interim redistricting
10:17:14 10 plan for congressional seats.

11 And that interim plan, like the state legislative plan to
12 which the Department had objected, had only a single black
13 majority district, but it was the first black majority
14 congressional district in the state and allowed the election of
10:17:33 15 the first African-American to Congress since the Reconstruction
16 period.

17 Q And were there any issues -- did DOJ object -- turning
18 from the 1990s, did the DOJ issue any objections to Alabama's
19 redistricting plan after the 2000 census?

10:17:57 20 A No.

21 Q And if we could put up paragraph 42, please.

22 And then looking at this last redistricting period, was
23 there a racial pattern in Alabama's legislators' vote for or
24 against the congressional plan that resulted from the 2011
10:18:23 25 redistricting?

1 A Well, when I was reviewing the adoption of the 2011 plan,
2 one of the documents I examined carefully was the preclearance
3 submission from the state of that 2011 plan, because I'd always
4 found the submission documents to have very important
10:18:45 5 information. And one of the things that the preclearance
6 submission letter from the state emphasized was the importance
7 of the fact that the legislature was now controlled by the
8 Republican party.

9 Now, the Republican party had not been in control of a
10:19:07 10 majority in the legislature throughout most of the period I've
11 been describing. It was under Democratic control.

12 Beginning in the mid 1960s -- usually we attribute it to
13 the 1964 presidential election -- there was a growing tendency
14 of white voters to leave the Democratic party and go into the
10:19:28 15 Republican party. Political scientists describe the pattern at
16 issue as a secular realignment; that is, a realignment that is
17 more gradual, not a critical realignment, but a gradual
18 realignment of voters. And in this case, the white voters were
19 gradually leaving the Democratic party and going into the
10:19:51 20 Republican party with increasing tendency to switch parties
21 that culminated finally in Republican victories earlier than
22 2011.

23 But in 2010 the elections dramatically increased the
24 strength of the Republican party in the Alabama Legislature,
10:20:14 25 leading the state to emphasize the significance of that fact as

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1 a background factor in the redistricting plan adopted in 2011.

2 Q In your opinion, what caused the secular shift that you
3 just described?

4 A Well, this is not something I've analyzed in my own
10:20:30 5 research, but the studies by political scientists who have
6 written about that process in Alabama, as in other southern
7 states, emphasize the racial concerns that white voters had
8 with the operation of the national Democratic party.

9 Of course, there were antecedents to that in the Dixiecrat
10:20:50 10 movement in 1948, and objections in the party before 1965.

11 But, you know, this is a -- this is a subject that political
12 scientists have looked at, to answer your question.

13 Q Okay.

14 MS. HOWELL: Your Honor, before we go any further, I
10:21:09 15 need to belatedly lodge an objection. That opinion is not
16 expressed anywhere Dr. McCrary's report, nor is anything about
17 the political shift or the partisan shift -- excuse me -- and
18 party affiliations in Alabama addressed anywhere in his report.

19 MR. SPIVA: Well, it's addressed in -- the party
10:21:25 20 affiliations and the split in the vote is addressed right here.

21 But this is, I think is just a part of the history. I
22 mean, he's discussing the history of racial issues in Alabama.
23 And it's pretty closely linked, I think, to the rest of his
24 opinion.

10:21:45 25 THE COURT: Well --

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1 MR. SPIVA: I don't intend to go any further with
2 this. That was --

3 THE COURT: Dr. McCrary said that he had not analyzed
4 it himself, anyway. So I wasn't giving a lot of weight to
10:21:58 5 that.

6 But the report merely states a fact that the Republican
7 party gained control in 2010. I don't think there's any
8 dispute about that.

9 So sustained and overruled at the same time. Okay?

10:22:14 10 MS. HOWELL: Thank you, Your Honor.

11 THE COURT: You may proceed.

12 BY MR. SPIVA:

13 Q Let me turn to Senate Factor 2, Dr. McCrary, the existence
14 of racially --

10:22:29 15 THE COURT: Well, are we leaving the 2011 submission?

16 MR. SPIVA: Yes. Yes.

17 THE COURT: Okay.

18 MR. SPIVA: Do you have questions?

19 THE COURT: Well, that plan was precleared, was it
10:22:44 20 not?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Okay. Thank you.

23 BY MR. SPIVA:

24 Q Turn just briefly to racially polarized voting, the second
10:22:56 25 Senate factor.

1 And you were not asked to examine the extent of present
2 racially polarized voting in Alabama; is that correct?

3 A That's correct.

4 Q But did you examine the historical racially polarized
10:23:12 5 voting in Alabama?

6 A Yes. I cited a good bit of evidence about the history of
7 racially polarized voting in Alabama.

8 Q Okay. And maybe if we can put up paragraph 53 of your
9 report, which is on pages 32 to 33 of Plaintiffs' Exhibit 81.

10:23:43 10 First of all, what conclusion did you reach regarding the
11 history of racially polarized voting in Alabama?

12 A Well, I reached the conclusion that racially polarized
13 voting was a dominant trend in Alabama voting practices from
14 the late 1940s, when blacks began voting in significant numbers
10:24:02 15 in elections that were meaningful, right on up through the last
16 period that I discussed; that is to say, up until recently.
17 And that this was a critical reason why the use of at-large
18 elections effectively diluted minority voting strength in the
19 past. And so that's the general conclusion.

10:24:25 20 Q Let me turn to Senate Factor 3, the use of mechanisms that
21 enhance the opportunity for discrimination.

22 And, Dr. McCrary, is it fair to say that you discussed
23 that in your discussion of the history of discrimination, some
24 of the things we've already been talking about this morning?

10:24:49 25 A Yes.

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1 Q Okay. And that would be things like at-large elections,
2 anti-single shot voting, et cetera?

3 A Well, at-large elections aren't classified as an enhancing
4 device. The term means to designate provisions that enhance
10:25:06 5 the discriminatory potential of at-large elections, which
6 includes the use of anti-single shot laws, and numbered place
7 laws, and other circumstances in other states. It also
8 includes majority vote requirements.

9 And, you know, there's evidence that I cited in the
10:25:27 10 history of the use of enhancing devices that we've already
11 covered.

12 Q And does the state engage in any such practices today?

13 A No. It's -- I believe it's correct to say it's prohibited
14 by federal court decisions.

10:25:44 15 Q What about in terms of at-large elections? Does the state
16 continue to have at-large elections for certain offices?

17 A In some cases, yes. Not in the legislature. But, of
18 course, there are at-large elections for judicial office in the
19 state of Alabama.

10:26:07 20 Q And you've served as an expert in a case challenging that,
21 I take it?

22 A Actually in two cases involving judicial elections.

23 THE COURT: What were the results of those cases?

24 THE WITNESS: Well, in 1991 the plaintiffs failed to
10:26:26 25 prevail in *SCLC vs. Evans* or *Siegelman*, whatever the final

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1 style of the case was. And the more recent case is still
2 pending before Judge Watkins, I believe.

3 BY MR. SPIVA:

4 Q And that's the Alabama, I think, state conference NAACP
10:26:46 5 case?

6 A Yes. Yes.

7 Q Regarding Senate Factor 4, exclusion from slating process,
8 that's not something that you looked at, correct?

9 A That's correct.

10:26:57 10 Q And then -- and that's because there is no slating process
11 or was no slating process in Alabama?

12 A That's correct, to my knowledge.

13 Q And Senate Factor 5, the extent to which members of the
14 minority group bear the effects of discrimination, can you tell
10:27:21 15 us what conclusions you reached regarding this factor?

16 And if we could pull up paragraphs 54 and 55 of
17 Dr. McCrary's report, that would be good. It's on pages 33
18 through 34.

19 A Once again, I am not considering the current evidence of
10:27:41 20 racial disparities in socioeconomic characteristics and how
21 that affects the ability of African-Americans to participate in
22 office. That's something that I -- that another expert has
23 testified about.

24 I was considering the history of socioeconomic
10:28:01 25 characteristics and their impact on political participation

1 rates relying primarily on the expert witness reports from a
2 variety of cases, and relying on findings by -- factual
3 findings by federal courts.

4 I also have examined the census data, when looking at
10:28:27 5 expert witness reports, to confirm that I agreed with an
6 expert's assessment in past cases; not in this case.

7 Q I mean, do you disagree with any of the plaintiffs'
8 experts' assessment in this case?

9 A No.

10:28:42 10 Q Okay.

11 A But that wasn't my charge.

12 Q Yeah. And what does the social science literature about
13 socioeconomic status and political participation state?

14 And maybe if we can pull up paragraph 56 of his report?

10:29:04 15 A Well, as I said in the report, there's little dispute
16 among political scientists that lower socioeconomic
17 characteristics tend to deter voter participation by everyone,
18 not just along race lines. But because African-Americans are,
19 generally speaking, in most places substantially poorer and
10:29:29 20 less well-educated than whites in those jurisdictions, it
21 naturally has a racial implication, as well.

22 And the political scientists who have looked at the racial
23 aspects of this -- of this question, agreed readily with
24 that -- that extension.

10:29:47 25 Q Did you reach any conclusions about whether

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1 African-Americans participate politically in Alabama at the
2 same rate as non-Hispanic whites?

3 A Yes. Relying on studies --

4 Q Paragraph 57, please.

10:30:00 5 A -- relying on studies by political scientists that I cite
6 in my report, and also relying for the 1970s on reports by the
7 United States Commission on Civil Rights, I concluded that
8 there never has been complete parity in political participation
9 rates in Alabama. Although we have, as I said earlier, moved
10:30:26 10 in the direction of parity over time as a result of the
11 enforcement of the Voting Rights Act and various federal court
12 orders.

13 Q And did you review registration and turnout information
14 from more recent elections in Alabama?

10:30:42 15 A Yes. I looked at the Secretary of State's website in
16 Alabama and found that there continue to be, according to the
17 official records of the state, modest disparities between white
18 and black participation rates in 2018, which I think is the
19 first time racial turnout by race was reported by the Secretary
10:31:03 20 of State's office.

21 THE COURT: And by "modest disparities," what do you
22 mean?

23 THE WITNESS: I'm sorry, Your Honor. I didn't hear
24 your question.

10:31:13 25 THE COURT: I'm sorry. By "modest disparities," what

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1 do you mean?

2 THE WITNESS: That they were not as great as they used
3 to be. You know, I cite, I think, the specific numbers in the
4 report from 2018, and also in the earlier decade from studies
10:31:30 5 published by political scientists.

6 MR. SPIVA: I'm trying to find the reference, Your
7 Honor.

8 MS. HOWELL: Your Honor, I believe that's paragraph 60
9 of his report.

10:31:40 10 MR. SPIVA: Thank you.

11 THE COURT: Thank you.

12 THE WITNESS: Yes.

13 BY MR. SPIVA:

14 Q And what do you report in paragraph 60, just for the
10:31:49 15 record?

16 A That in 2018 -- in the 2018 general election, black
17 turnout remained lower than white turnout; 52.2 percent for
18 blacks, 55.1 percent for whites.

19 THE COURT: So that's what you mean by "modest"?

10:32:05 20 THE WITNESS: Yes.

21 THE COURT: I am not a mathematician, but about a
22 3-point difference, 3 percentage point difference?

23 THE WITNESS: In terms -- yes. Yes, that's correct.

24 BY MR. SPIVA:

10:32:15 25 Q And with regard to Senate Factor 6, racial appeals, that

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1 was not something that you were asked to look at in this case;
2 is that right?

3 A No. That's correct.

4 Q And with regard to Senate Factor 7, the extent to which
10:32:30 5 the minority group has been elected to public office in the
6 jurisdiction, what conclusion did you reach regarding this
7 factor?

8 And if we could maybe pull up paragraph 46 of
9 Dr. McCrary's report which is on pages 28 and 29 of Plaintiffs'
10:32:57 10 Exhibit 81.

11 A Well, in that paragraph, I report data from a 1981 report
12 that was prepared by lawyers in Alabama and became a part of
13 the record before Congress in regard to the amendments of
14 Section 2 -- of the Voting Rights Act in 1982.

10:33:17 15 And there were virtually no blacks elected to office in
16 Alabama except in black majority jurisdictions, or in a small
17 number of instances in single-member districts, which appear to
18 have been majority-minority districts. But they were only a
19 handful of districts.

10:33:37 20 Q Can we put up paragraph 48, which is on pages 29 to 30 of
21 Plaintiffs' Exhibit 81, of Dr. McCrary's first declaration?

22 Dr. McCrary, between Reconstruction and 1992, how many
23 African-American members of Congress were elected from Alabama?

24 A None.

10:34:04 25 Q And does that include U.S. senators?

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1 A Yes.

2 Q And after 1992 how many African-American Congress people
3 have there been in Alabama?

4 A One.

10:34:25 5 Q Okay. And do you describe in your report in paragraph 49
6 the history of election to statewide offices in Alabama?

7 A Yes.

8 Q What did you find?

9 A That no African-Americans were elected to statewide office
10:34:54 10 in Alabama except in the context of judicial elections where
11 African-Americans were appointed to fill a vacancy in some
12 judicial office and then ran as incumbents for reelection,
13 beginning with Oscar Adams in, I think, 1982, early 1980s, and
14 continuing through the 1990s, when Ralph Cook and John England
10:35:20 15 were both appointed and elected to judicial office.

16 But beginning in the year 2000, even incumbent
17 African-American judges running for election have been
18 defeated, so that in the 21st century no black judges have been
19 elected statewide in the state of Alabama.

10:35:41 20 Q And between 2000 and 2008, were there black candidates who
21 ran for statewide office that lost?

22 A Yes. I cite several in the report. But all of them lost,
23 whether incumbents or not.

24 Q Okay. And Alabama has never had an African-American
10:36:18 25 governor?

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1 A No.

2 Q And let me ask you about state legislative elections.

3 What conclusion did you reach about African-American
4 representation in the state legislature?

10:36:31 5 A Well, almost all African-Americans elected to the state
6 legislature in Alabama have been elected under court-ordered
7 single-member district plans.

8 Beginning with the early 1970s -- 1973 or '4, something
9 like that -- and the study of elections to legislative office
10:36:59 10 in *Quiet Revolution in the South* includes data on Alabama that
11 substantiates that for the period up through the end of the
12 1980s. But I know that that continues to be the case.

13 Q And let me just turn to the one additional relevant factor
14 in the -- articulated in the Senate report, the tenuousness of
10:37:29 15 the plan.

16 What is the tenuousness consideration, Dr. McCrary?

17 A Well, under the Senate factors that were, as I said, taken
18 from the Supreme Court's criteria in *White vs. Regester* back in
19 1973, one of the factors that a court can consider is whether
10:37:50 20 the reasons given for the adoption of a particular election
21 method are tenuous. And, of course, the way it's phrased by
22 the Court and by the Congress is somewhat ambiguous, but it is
23 essentially raising the question of assessing the credibility
24 of the reasons asserted for the adoption of the plan.

10:38:15 25 Q Let me ask if we can put up paragraphs 44 and 45, which

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1 are on pages 27 and 28 of Dr. McCrary's first declaration,
2 Plaintiffs' Exhibit 81.

3 And let me ask you: What was your opinion that you
4 reached and reported in your report concerning the connection
10:38:41 5 between the past redistricting plan and -- well, let me strike
6 that. Let me get a better question.

7 What opinion, if any, did you reach concerning tenuousness
8 and the passage of the 2011 congressional plan?

9 A Well, when I examined the reasons asserted by the state in
10:39:03 10 its preclearance submission, which included legislative
11 documents such as the guidelines adopted by the reapportionment
12 committee, I concluded that the justification offered for the
13 racial composition of Congressional District 7 were tenuous.

14 Q And how did you reach that conclusion?

10:39:29 15 A Well, first, I reviewed what, of course, the state said
16 its reasons for adopting the plan were. And that's set out in
17 the guidelines adopted by the legislature, which are very close
18 parallels to the guidelines established in the 2000, 2001,
19 which was actually what the state cited in its preclearance
10:39:55 20 submission.

21 And those reasons included an awareness that all of the
22 criteria that the state set out had to be subordinated if there
23 were a conflict between the one person one vote requirement of
24 the Voting Rights Act and compliance with the requirements of
10:40:20 25 the -- I'm sorry -- the one person one vote standard sent down

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1 in federal courts decisions since 1962 and '64, and also with
2 compliance with Voting Rights Act.

3 Q Let me ask you: Did the analysis of the electoral results
4 in CD 7, both before and after passage of the plan, weigh into
10:40:51 5 your analysis of tenuousness?

6 A Yes, they did.

7 Q And how so?

8 A Well, in addition to the point I initially stated, the
9 guidelines set out an understanding of the requirements of
10:41:06 10 Section 5 of the Voting Rights Act as to retrogression.

11 And the standards that it set out to govern the adoption
12 of a congressional redistricting plan were the same as the
13 guidelines for adopting legislative plans.

14 And as the Court I'm sure is well aware, the Alabama --
10:41:28 15 the U.S. Supreme Court found that that -- that guideline
16 provision was not a correct interpretation of the retrogression
17 standard under Section 5, and was a part of the evidence the
18 Court considered in reaching a conclusion that the legislative
19 plans were racial gerrymandering.

10:41:54 20 Q What about the margins by which the representative of CD 7
21 had been elected both before and after the adoption of the
22 plan, which is reported in paragraph 44 of your report?

23 A Well, the incumbent in Congressional District 7 had been
24 elected with over 70 percent of the vote, which indicates that
10:42:15 25 the racial -- the African-American composition of the district

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1 was far higher than necessary to provide a fair opportunity to
2 elect candidates of their choice for minority voters. And in
3 fact, the margins for prior congressional elections in
4 Congressional District 7 going back into the 1990s was also far
10:42:39 5 higher than needed to provide a fair opportunity to elect.

6 Recall that the standards set out in the Department of
7 Justice's guidelines for the administration of Section 5, as
8 the Court notes in the ALBC case, have always required a
9 functional analysis of the electoral process in order to assess
10:43:04 10 the degree to which the effect of a plan, the expected effect
11 of a plan would be retrogressive.

12 In other words, the Department of Justice, like the
13 federal courts, and like all the expert witnesses in addressing
14 redistricting questions, considers the level of registration
10:43:27 15 and turnout by minority voters -- I'm sorry -- by the minority
16 population and the majority group in the population. It
17 considers the role of primary elections and general elections
18 in the outcome, because sometimes that can affect the level of
19 functionality. It depends on an assessment of the degree to
10:43:54 20 which there is, despite racially polarized voting, a sufficient
21 degree of white crossover voting to provide an opportunity to
22 elect foreign minority voters if they are in coalition with
23 that white crossover group.

24 So all of these are a functional analysis that the
10:44:15 25 Department of Justice and federal courts have always followed

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1 really since the 1970s in assessing a redistricting -- a
2 particular district in a redistricting plan. And where a
3 district is significantly higher than it needs to be under that
4 functional analysis, political scientists and historians and
10:44:37 5 the courts refer to that as packing.

6 And, you know, there were periods in the past where a
7 district might be 70 or 80 percent black, and that certainly
8 would constitute packing. But it's not necessary to understand
9 the meaning of the term packing that it be that high. If it is
10:44:58 10 far higher than it needs to be, then the plan is packed.
11 Congressional District 7 was already packed, and it continued
12 to be packed.

13 In the 2011 plan, the justification offered was tenuous in
14 the sense that the state took the position, and it states this
10:45:17 15 in its preclearance submission that there -- that you could
16 not -- that the jurisdiction could not reduce the minority
17 percentage in the district without violating the retrogression
18 standard of Section 5, and that's just incorrect. And I say
19 that not as a matter of law, but by observing how the
10:45:37 20 Department of Justice has administered the plan over the last
21 few decades during a quarter century, of which I was actually
22 involved in the enforcement of Section 5.

23 Q Thank you.

24 THE COURT: We've been going for a while. I kept
10:45:53 25 waiting for a time, but I'm not sure this is a good one, but I

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1 think we're going to go on and take a break. We will come back
2 at 11:00 o'clock.

3 MR. SPIVA: Thank you, Your Honor.

4 (Recess.)

11:03:31 5 THE COURT: You may proceed.

6 MR. SPIVA: Thank you, Your Honor.

7 BY MR. SPIVA:

8 Q Dr. McCrary, I think we left off before the break with
9 Your Honor's question about preclearance of the 2011 plan.

11:03:48 10 Does the fact that the 2011 plan was precleared, i.e.,
11 determined not to be retrogressive indicate it also complies
12 with Section 2 of the Voting Rights Act?

13 A No. Every preclearance letter contains boilerplate
14 language saying that determination under Section 5 doesn't
11:04:08 15 signify that the voting change is in compliance with Section 2
16 of the Voting Rights Act, or I think the Fourteenth and
17 Fifteenth Amendments.

18 Q And are you saying DOJ should not have precleared the plan
19 because of packing?

11:04:25 20 A No.

21 Q And why is that?

22 A Well, the analysis of packing is only a part of what would
23 make a plan objectionable if there is other evidence of
24 discriminatory purpose in the decision-making process. So that
11:04:48 25 if there were such evidence, the Department could object under

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1 the purpose prong of Section 5.

2 But I have no idea whether the Department considered or
3 found any evidence that would have justified a purpose
4 objection. So as far as I'm aware, the plan, which was
11:05:10 5 challenged in federal court as well as in the Department's
6 administrative process, was assessed under the purpose prong.
7 I didn't work on that case.

8 Q Let me turn to your rebuttal report, Dr. McCrary, which is
9 Plaintiffs' Exhibit 82 and just ask you a couple of questions
11:05:31 10 about that.

11 In your rebuttal report or your second declaration, were
12 you responding to defendant's experts' assertions that the
13 definition of black for purposes of the *Gingles* analysis should
14 exclude multiracial and/or ethnically Hispanic
11:05:54 15 African-Americans?

16 A Yes. I was asked to respond to only that specific point.

17 Q And can you describe or can you state your response to
18 that assertion?

19 A Well, what I said in my report was, first of all, that all
11:06:10 20 the expert witness reports that I've examined over the years
21 are consistent with the approach that Mr. Cooper takes in his
22 analysis in his report in this case, and that it's also
23 consistent with the way the term black has been -- or Negro in
24 earlier decades -- has been assessed in Alabama, both in
11:06:34 25 Alabama law, as I understand it, and in practice.

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1 Q All right. And you're referring to the one drop rule?

2 A Yes, among other things.

3 Q Okay. What was the one drop rule?

4 A Well, the idea was that any degree of Negro ancestry makes
11:06:55 5 a person a Negro. And that, of course, was something that
6 could practically be enforced only if there were visible
7 evidence or local knowledge of the race of the person. But
8 that's what the law required.

9 And in all of the segregated societies of the south, if a
11:07:17 10 person were of Negro parentage, that would -- meant that they
11 would go to a racially segregated school -- school for Negro
12 students.

13 Q Based on your experience working in voting rights and in
14 the DOJ, what is the proper way to define African-American in
11:07:37 15 this case?

16 A I'm not sure precisely what you're asking me.

17 Q In terms of any-part black and single-race black.

18 A Well, first of all, in most jurisdictions, it doesn't make
19 much difference which definition you use unless you're in a
11:07:57 20 jurisdiction with numerous racial groups and attitudes toward
21 race that are different from southern states such as Alabama.

22 But the usual procedure is to use any -- any evidence of
23 blackness. Remember we're talking about reported data in most
24 cases here, unless the expert has to rely on census data and
11:08:25 25 states that don't have racial identification of registered

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1 voters and so on.

2 So any-part black is the most logical racial variable to
3 use in an exercise such as Mr. Cooper's engaging in. But it
4 wouldn't make any practical difference if he used an
11:08:49 5 alternative definition in most instances, and I suspect in
6 Alabama. If there were evidence to the contrary, I would
7 certainly consider it. But I wouldn't expect to see it.

8 Q Thank you, Dr. McCrary. I have no further questions.

9 THE COURT: Cross-examination?

11:09:05 10 MS. HOWELL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. HOWELL:

13 Q All right. Good morning, Dr. McCrary. I think we're
14 still in morning.

11:10:15 15 A Good morning, Ms. Howell.

16 Q I'm going to tell you on the front end I'm going to try
17 and use the Elmo to show you parts of your report on a less
18 tech savvy scale than what plaintiffs' counsel was able to do.
19 But if that doesn't work out, then I do have hard copies that I
11:10:33 20 can give to you and to the Court to facilitate questioning.

21 So you were brought on as an expert in this case to talk
22 about the history of racial discrimination in Alabama; is that
23 right?

24 A Among other things, yes.

11:11:00 25 Q Okay. And you've been qualified as an expert in the

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1 history of voting discrimination in Alabama?

2 A Yes.

3 Q Okay. So -- we'll start back. Does Alabama have a white
4 primary today?

11:11:25 5 A No.

6 Q Okay. How long has it been since Alabama has had a white
7 primary?

8 A Since 1945.

9 Q Does Alabama have a poll tax today?

11:11:34 10 A No.

11 Q How long has it been since Alabama had a poll tax?

12 A Since 1966, I believe.

13 Q Okay. Does Alabama use a literacy test today?

14 A No.

11:11:42 15 Q How long has it been since we had a literacy test in
16 Alabama?

17 A Since 1965.

18 Q And you don't know of anyone from the 1901 constitutional
19 convention who is still alive and kicking and legislating in

11:11:57 20 Alabama today, do you?

21 A I certainly do not.

22 Q Okay. Your report addresses an awful lot of history that
23 occurred prior to 1965 and the passage of the Voting Rights
24 Act; is that correct?

11:12:13 25 A That's correct.

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1 Q Okay. And the bulk of it up until probably paragraph 33,
2 I think, only addresses events that occurred prior to about
3 1985. Would that be a fair characterization?

4 A That's probably right, yes.

11:12:30 5 Q And 1985 was about 30 years ago or so, right?

6 A 34.

7 THE COURT: We don't do math around here. We're
8 lawyers.

9 A Pardon?

11:12:45 10 THE COURT: We're lawyers. We don't do math.

11 BY MS. HOWELL:

12 Q You talked a lot about at-large elections and their use
13 across the state of Alabama, and local jurisdictions in
14 particular, correct?

11:13:12 15 A Yes.

16 Q The state of Alabama doesn't use at-large elections to
17 elect its Congressmen or women, does it?

18 A No, not anymore.

19 Q And it hasn't since about 1970, right?

11:13:24 20 A Since it was outlawed by the Congress of the United States
21 in 1967, I think it's required to use single-member districts.

22 Q I want to talk to you a little bit about a paragraph in
23 your report that plaintiffs' counsel didn't really take up with
24 you, but which you mentioned in one of your opening comments,
11:13:53 25 which is paragraph 36.

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1 Now, this is really in your narrative of a history in
2 voting registration in Alabama. This is really the only
3 paragraph that deals with something we might call relatively
4 current. Is that a fair characterization?

11:14:31 5 A If you consider 2011 not current, yes.

6 Q But occurring at approximately the same time that the
7 congressional districts were passed that are at issue in this
8 case?

9 A I'm not sure I understand the question, Ms. Howell.

11:14:55 10 Q Sure.

11 A If you could pare it down.

12 Q Let me rephrase that. Current being things that happened
13 at approximately the same time or in the same era even as the
14 time that the congressional districts that are at issue in this
11:15:06 15 case were passed?

16 A Well, I did talk about 2018 data in regard to assessing
17 the levels of registration and turnout in Alabama. And I
18 talked about election history going up to shortly before the
19 2011 redistricting plan. But my report is primarily focused on
11:15:30 20 the period before the adoption of the plan.

21 Q Okay. Thank you.

22 So in this paragraph, in paragraph 36, you talk about the
23 implementation of the voter ID law in Alabama?

24 A Yes.

11:15:43 25 Q And your report concluded, and we discussed this in your

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1 deposition, that the voter ID law disproportionately burdened
2 African-American voters; is that right?

3 A That's correct.

4 Q And when we discussed it at your deposition, I showed you
11:15:58 5 the opinion in that case, did I not?

6 A You did.

7 Q And then you subsequently went back in your errata and
8 made a correction that you didn't believe that the statement
9 that you made in this paragraph of the report, that the voter
11:16:11 10 ID law disproportionately burdened African-American voters was
11 incorrect?

12 A That's correct.

13 Q Okay. So that case was decided by a court in 2017,
14 correct?

11:16:41 15 A I don't remember the precise day, but I will take your
16 word for it.

17 Q Okay. I'll just show to you that -- oh.

18 A Actually it was 2018, according to the --

19 Q Yes.

11:16:56 20 A -- document you just put up.

21 Q I have gotten my years mixed up. We don't do math here.
22 I do recall.

23 A How do you deal with birthdays?

24 THE COURT: Forget them.

11:17:09 25 MS. HOWELL: Or allow your parents to remember them in

1 some instances.

2 THE WITNESS: Sorry for that, Your Honor. I didn't
3 mean to be --

4 THE COURT: That's okay. I have forgotten many
11:17:21 5 birthdays of mine.

6 BY MS. HOWELL:

7 Q Now, can you tell me which court issued a decision in this
8 case?

9 A This was decided by the district court in the Northern
11:17:42 10 District of Alabama.

11 Q Okay. Which is the same court that we're currently
12 before, right?

13 A Yes.

14 Q And that case is still on appeal, correct?

11:17:49 15 A I actually don't know that. I will take your word for it.

16 MS. HOWELL: Your Honor, may I approach the witness
17 with a copy of this opinion?

18 THE COURT: You may.

19 MS. HOWELL: And would Your Honor like a copy of the
11:18:04 20 opinion?

21 THE COURT: Sure. I don't have enough to read in this
22 case.

23 BY MS. HOWELL:

24 Q So on the copy that I've given you, and which I'm going to
11:18:25 25 try and negotiate here on the Elmo, as well, there is a page

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1 that is tabbed.

2 A Yes.

3 MS. HOWELL: Your Honor, it's page 15 of the opinion.

4 BY MS. HOWELL:

11:18:59 5 Q So on the copy that is on the Elmo, you'll see that I have
6 highlighted a portion. And I wondered if you could read that
7 highlighted portion for me.

8 A This highlighted portion says, "Frankly, the discrepancy
9 in photo ID possession rates among white, black, and Hispanic
11:19:18 10 registered voters in Alabama is minuscule. In other words, it
11 appears that very few registrants of any racial group may
12 presently be affected by the photo ID law."

13 Q Okay. So when your report said that the voter ID law
14 disproportionately burdened African-American voters, do the
11:19:48 15 Court's words give you any pause about whether it reached the
16 same conclusion?

17 A Not in those two sentences. But the Court does say there
18 is a statistical disparity in the possession of photo ID
19 requirements. And my recollection is that in another portion
11:20:03 20 of the opinion the Court notes that Secretary of State Merrill
21 conceded that there were numerical disparities in possession of
22 photo ID.

23 What the Court says here is that the rate is minuscule, in
24 the Court's words, or it's not great enough to worry about; not
11:20:23 25 that there were no racial disparities.

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1 Q Okay. Is a racial disparity -- is a disparity in
2 possession rates the same thing in your mind as a
3 disproportionate burden?

4 A It depends on the circumstances. The Court here reaches
11:20:38 5 the conclusion that because they could -- as I recall the
6 opinion, because they could get photo ID documents that would
7 satisfy the requirements of the Alabama law, that this is not
8 burdensome. And the Court has legal reasoning that I don't
9 recall that would further buttress that opinion.

11:21:04 10 The Court reached the conclusion that isn't inconsistent
11 with the fact that I cited that there's a racial disparity in
12 possession, which I interpreted as creating a burden.

13 Q Okay. Well, your report, in fact, doesn't make any
14 mention of a disparate possession rate, but it does say that it
11:21:25 15 disproportionately burdened African-American voters?

16 A Well, that's what I meant by possession rate is evidence
17 of burden.

18 Q Okay. So I've moved the opinion down a little bit and
19 have further highlighting. And if I could also get you to read
11:21:40 20 those portions that are highlighted, as well.

21 A The Court says, "Anyone without a photo ID can obtain one
22 for the sole" --

23 Q I'm sorry, Dr. McCrary.

24 A I'm sorry. You asked me about Dr. Siskin's estimate?

11:21:56 25 Q Yes. And we'll clarify for the record, Dr. Siskin was one

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1 of plaintiffs' experts in that case, correct?

2 A Yes. I'm sorry. I skipped that passage.

3 Q No. That's quite all right.

4 A "But in the end, Dr. Siskin's estimate does not
11:22:08 5 matter" -- that is, his estimate that found a racial disparity
6 in the possession rate. "This is because a person who does not
7 have a photo ID today is not prevented from voting if he or she
8 can easily get one. And it is so easy to get a photo ID in
9 Alabama, no one is prevented from voting."

11:22:28 10 Q Okay. And would you mind continuing with the further
11 highlighted portion?

12 A "Anyone without a photo ID can obtain one for the sole
13 purpose of voting, free of charge. These IDs can be obtained
14 at Secretary Merrill's office at the state capital building in
11:22:43 15 Montgomery, any board of registrars' office located in each
16 county and open during daily business hours, or to an event
17 where the secretary's mobile ID unit is visiting."

18 Q Okay. Thank you.

19 And that takes me to actually the very next sentence in
11:23:01 20 your paragraph 36, where you say "Subsequently, the state
21 closed 31 driver's license offices located in predominantly
22 poor and African-American areas making it disproportionately
23 more difficult for black voters to acquire the identification
24 necessary to vote." Did I read that correctly?

11:23:24 25 A Yes.

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1 Q But what the opinion actually says, right, is that there
2 are far more opportunities in other places to get the required
3 photo ID under that law; is that correct?

4 A That's correct.

11:23:35 5 Q Okay. So that whether those driver's license offices were
6 closed or were, in fact, subsequently reopened as they were,
7 that would not have been the thing that prevented any voter
8 from getting the identification necessary to vote?

9 A I'm uncertain about the dates of those closures in
11:23:56 10 relation to the Court's ruling. They were -- were they before
11 the Court's decision in 2018? I mean, I read about them in the
12 newspapers, and I just don't remember the exact period in which
13 it occurred.

14 Q Certainly. But the Court's point was, in fact, was it
11:24:15 15 not, that other IDs were available and readily so for no charge
16 whatsoever regardless of what the driver's license offices'
17 availability was?

18 A Yeah. That's correct. I don't remember that the Court
19 referred to the closing of DMV offices.

11:24:36 20 Q Okay. Now, you talked some about racially polarized
21 voting in Alabama in your report as part of the historical
22 context for understanding the history of voting discrimination
23 in Alabama, right?

24 A Yes.

11:25:19 25 Q Okay. And you are not discussing racially polarized

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1 voting as a statistical expert in this case, right?

2 A That's correct.

3 Q Okay. But based on the testimony that you have given this
4 morning, isn't voting going to be racially polarized in any
11:25:40 5 state where a majority of white voters tend to vote Republican?

6 A Well, it depends on the racial composition of the voters
7 who identify as Republican. In most states, that would
8 certainly be true.

9 In the sense that the Republican party has become
11:25:58 10 overwhelmingly a party of white voters and the Democratic party
11 is cohesively supported by a substantial majority of
12 African-Americans, that's a reflection of the racial disparity
13 in party identification.

14 Q So in a state like Alabama, where the vast majority of
11:26:16 15 black voters vote for Democratic candidates, and the vast
16 majority of whites voters vote for Republican candidates, there
17 will always be racially polarized voting in a state where white
18 voters vote Republican?

19 A Not always, but usually.

11:26:30 20 Q Okay. Now, you also talked about the history a little bit
21 of objections to Alabama's prior congressional districts. And
22 I believe that's at paragraph 38 of your report -- or
23 paragraphs 37 and 38.

24 And, specifically, you talked about the objections that
11:27:08 25 the Department of Justice lodged in 1992 to Alabama's

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1 congressional district, right?

2 A One objection, I think.

3 Q Okay. And Alabama was ordered to/agreed to draw a single
4 majority-minority district in response to that, correct?

11:27:25 5 A Well, my recollection is that simultaneously there was a
6 lawsuit in federal court and that -- I don't remember the
7 precise connection between the DOJ objection and the Court's
8 order, but I know that the Court ordered an interim
9 redistricting plan to be in effect.

11:27:49 10 Q Okay. But that redistricting plan had just the single
11 majority black district, correct?

12 A That's correct.

13 Q Okay. And that is what your report says, right?

14 A Yes.

11:27:58 15 Q Okay. Alabama has never been ordered to draw a second
16 majority-minority district, has it?

17 A Not to my knowledge.

18 Q Okay. You also talked some about the tenuousness of
19 rationales given for making a particular election law or
11:28:22 20 electoral change, I guess. That was in paragraph 45 of your
21 report. Do you recall talking about that?

22 A Yes. But let me get paragraph 45 to see precisely what
23 you're referring to. Sorry.

24 Q But your conclusion about the tenuousness of the
11:29:10 25 rationales given for drawing Alabama's congressional districts

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1 in 2011 was that nothing but tenuous justifications had been
2 given, and that's what you indicate in the last sentence of
3 that paragraph?

4 A No, not that nothing was ever asserted, but that the
11:29:28 5 assertions didn't require maintaining the same racial
6 composition or higher composition of blacks in the district.

7 Q Are you able to distinguish that from passage of the 2011
8 congressional plan?

9 A No. I'm referring to the comparison with other criteria
11:29:54 10 that are set out in the guidelines. And because the drawing of
11 the district falls into the category that political scientists
12 would and historians would characterize as packing, and under
13 some circumstances, that is to say, if there was Section 2
14 voting rights lawsuit, then that issue would have become an
11:30:21 15 issue that wasn't an issue in the Section 5 review, that
16 compliance with Section 2 of the Voting Rights Act would have
17 to take into account the fact that the district was packed.

18 And all the other criteria was supposed to be subordinated
19 to compliance with the Voting Rights Act, the one person one
11:30:42 20 vote requirement in federal reapportionment law, and the Equal
21 Protection Clause.

22 Q Okay. But your paragraph ends with the conclusion that
23 the justifications for drawing Congressional District 7 the way
24 that it was drawn appear to have been tenuous, at best; is that
11:31:04 25 correct?

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1 A Yes.

2 Q And you're not an expert in legislative intent, are you?

3 A Well, I've testified about discriminatory intent in all
4 manner of cases over the last 40 -- I'm sorry -- 39 years.

11:31:16 5 So, you know, I am routinely considered an expert on
6 assessing the degree to which the intent underlying the
7 adoption of any law or redistricting plan is racially
8 discriminatory.

9 Q Do you know who had input into the drawing of
11:31:33 10 Congressional District 7?

11 A I didn't make that examination. I only examined the
12 documents submitted for Section 5 review by the state.

13 THE COURT: So is your answer that you do not know who
14 had input?

11:31:49 15 THE WITNESS: Well, I know it was the legislature.
16 But beyond that, I don't know anything -- any details about it.
17 I haven't investigated that.

18 BY MS. HOWELL:

19 Q Okay. And you don't know the intent of any of the
11:32:00 20 legislators or other people who had any kind of input into the
21 drawing of that district?

22 A No. I wasn't asked to assess the intent behind the plan.

23 Q Do you consider obtaining preclearance from the Department
24 of Justice to be a tenuous justification?

11:32:16 25 A No. That's one consideration in drawing the plan, as the

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1 guidelines indicate.

2 Q Okay. And you were, in fact, employed at the Department
3 of Justice when the 2011 congressional plan was precleared,
4 right?

11:32:27 5 A That's correct.

6 Q Okay.

7 MS. HOWELL: Your Honor, could I have a moment?

8 THE COURT: You sure may.

9 MS. HOWELL: Dr. McCrary, I think that's all I have
11:33:14 10 for you at the moment. Thank you.

11 THE COURT: Any redirect?

12 MR. SPIVA: Yes.

13 THE WITNESS: Ms. Howell, do you need this document
14 back?

11:33:21 15 MS. HOWELL: No. You're free to keep it if you'd
16 like.

17 REDIRECT EXAMINATION

18 BY MR. SPIVA:

19 Q Dr. McCrary, I'd like to begin with the discussion of
11:33:52 20 voter ID. You recall the discussion of that on your
21 cross-examination where Ms. Howell had you read certain
22 portions of the *Merrill vs -- Greater Birmingham Ministries vs.*
23 *Merrill* decision?

24 A Yes.

11:34:08 25 Q And when you were deposed, did you have an opportunity to

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1 review the full opinion?

2 A No. I foolishly agreed to answer questions based on a
3 cursory examination during the deposition, which didn't give me
4 an opportunity to read the entire opinion. And thus I gave an
11:34:33 5 incorrect answer in the deposition.

6 Q And did you submit an errata upon reviewing your
7 deposition transcript?

8 A I did. And I corrected my concession that I had been
9 wrong in the declaration about the numerical disparity in the
11:34:47 10 possession of photo IDs.

11 Q That's right. Dr. McCrary, as I tell my kids, I have made
12 a mistake before. I thought I was wrong, but I wasn't.

13 MR. SPIVA: If I can use the Elmo -- and this is going
14 to really test my skills, Your Honor.

11:35:05 15 BY MR. SPIVA:

16 Q Dr. McCrary, you recall that Ms. Howell had you read a
17 couple of portions of this opinion?

18 A Yes.

19 Q And I want you to -- I'd like to ask you to read a couple
11:35:23 20 of the portions around the portions she asked you to read.

21 THE COURT: Can you identify which page number that's
22 on, please?

23 MR. SPIVA: Yes. Yes, Your Honor. This appears on
24 page 15 in the printed Westlaw copy.

11:35:38 25 BY MR. SPIVA:

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1 Q And if you could read the highlighted portions of this --
2 of the opinion that surround the areas that Ms. Howell had you
3 read.

4 A Okay. It begins with data from the plaintiffs' expert in
11:35:52 5 that case, Dr. Siskin.

6 "1.37 percent of white registered voters, 2.44 percent of
7 black registered voters, and 2.29 percent of Hispanic
8 registered voters may not currently have an acceptable photo
9 ID."

11:36:10 10 Q And then further down after the section that Ms. Howell
11 had you read it says -- where it says "nonetheless"?

12 A "Nonetheless, the numbers show that black and Latino
13 registered voters are almost twice as likely as white voters to
14 lack an acceptable photo ID for voting."

11:36:25 15 Q Okay. Thank you.

16 And do you know in terms of when -- you're familiar with
17 Shelby County, the Shelby County decision?

18 A Yes. I worked on the case.

19 Q Okay. And that eliminated essentially the preclearance
11:36:44 20 regime under the Voting Rights Act?

21 A Yes. By finding that the formula for coverage of Section
22 5 to be unconstitutional, the Court's decision effectively
23 eliminated the preclearance review process.

24 Q And do you know whether Alabama's photo ID law was
11:37:03 25 passed -- was enacted before or after the Shelby County

1 decision was issued?

2 A My understanding is it was after the elimination of
3 preclearance review.

4 Q Okay. And so does that mean -- was Alabama's voter ID law
11:37:20 5 subject to preclearance?

6 A No.

7 Q Okay. You recall Ms. Howell asked you some questions
8 about the closure of the DMV offices, the 31 DMV offices
9 located in predominantly poor and African-American areas that
11:37:43 10 you reported in paragraph 36 of your report?

11 A Yes.

12 Q And are you aware that those offices were opened back up
13 prior to the photo ID opinion pursuant to an agreement between
14 Alabama and the U.S. Department of Transportation?

11:38:07 15 A That's my recollection, that the closure of the driver's
16 license offices was several years, probably two or three years
17 at least prior to the Court's decision.

18 Q So that situation had been remedied at the time that the
19 Court issued its decision saying that it would be easy in the
11:38:26 20 Court's findings to obtain a free ID?

21 A Well, the closure of those offices had been remedied, yes.

22 Q Correct. And were you aware that the U.S. Department of
23 Transportation had made a finding that the closings
24 disproportionately hurt black residents?

11:38:45 25 A I recall that from news coverage, but I didn't factor that

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1 into my declaration.

2 THE COURT: Do you know how long those offices were
3 closed?

4 THE WITNESS: I don't recall, Your Honor. My
11:39:00 5 recollection is it was for some months.

6 THE COURT: A few months as opposed to years?

7 THE WITNESS: That's my recollection.

8 BY MR. SPIVA:

9 Q Dr. McCrary, you were asked some questions about how long
11:39:16 10 it had been since Alabama had a poll tax, since Alabama, you
11 know, had a literacy test, et cetera.

12 Do you recall Ms. Howell asking those questions?

13 A I do.

14 Q And do you believe that the history pre-1965 of voting
11:39:40 15 discrimination in Alabama is irrelevant to the state of race
16 relations in Alabama today?

17 A No. But in regard to the concessions about which you
18 asked, all of them, as I recall, were found to be in violation
19 of federal law.

11:40:00 20 Q And do you believe that that history is relevant to the
21 issues of access to voting or electoral participation among
22 African-Americans today?

23 A Yes. For example, the educational disparities that I
24 testified about on direct are things that have a long-lasting
11:40:17 25 effect. There are African-Americans in Alabama's electorate

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1 today who were raised in a public school system that was
2 racially discriminatory in its operation, with poor funding for
3 African-American students in segregated schools.

4 Moreover, parents' level of education affects the level of
11:40:45 5 education achieved by their children. That is to say, children
6 of parents who are of limited educational background are often
7 subject to burdens in acquiring the quality of education in
8 their own life so that the educational disparities, for
9 example, contribute over decades to the socioeconomic
11:41:13 10 characteristics that measure educational achievement, which are
11 the very things that the census report documents down into the
12 present day.

13 And with regard to other aspects of the way in which the
14 Jim Crow system operated, there are numerous court decisions in
11:41:31 15 which courts have agreed with social scientists that the
16 effects of the Jim Crow era are extended into the continued
17 racially polarized voting in southern states. So that that's
18 why evidence about the history of racially polarized voting is
19 relevant to an assessment of the current levels of racially
11:41:57 20 polarized voting, though they can, and, of course, are directly
21 measured by statistical evidence, and in this case, presented
22 by another expert.

23 Q And does the history of discrimination in voting by the
24 state of Alabama have any current relevance to political
11:42:18 25 participation by African-Americans today?

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1 A Well, I think I've already answered the question. It
2 does.

3 Q Okay.

4 MR. SPIVA: If I can just have one second to confer.

11:42:32 5 Thank you. I have no further questions.

6 THE COURT: Any further cross, Ms. Howell?

7 MS. HOWELL: No, Your Honor.

8 THE COURT: Okay. Do we want to get started with a
9 new witness, or wait until after lunch to do that? Whatever
11:42:47 10 y'all want to do.

11 MR. SPIVA: We have another witness here, Your Honor,
12 so we could start. I don't think we would finish before lunch,
13 but we could get started, if Your Honor wants.

14 THE COURT: Okay. I'm good with that.

11:43:02 15 All right. Thank you, Dr. McCrary. You may step down. I
16 should have said that first. I apologize.

17 And the plaintiff may call your next witness.

18 MR. SPIVA: Ms. Madduri is going to call the next
19 witness, Your Honor.

11:43:18 20 THE COURT: Okay. Is that going to be Representative
21 Knight?

22 MS. MADDURI: Yes. Plaintiffs call Representative
23 John Knight.

24 THE COURT: I thought I recognized him sitting out
11:43:50 25 there.

1 JOHN KNIGHT,
2 having been first duly sworn by the courtroom deputy clerk, was
3 examined and testified as follows:

4 THE COURTROOM DEPUTY CLERK: Please state your name
11:43:53 5 for the record.

6 THE WITNESS: John Knight, Jr.

7 THE COURTROOM DEPUTY CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MS. MADDURI:

11:44:13 10 Q Good morning, Representative Knight.

11 A Good morning.

12 Q We can get started with some background information.
13 Where do you currently live?

14 A Montgomery, Alabama.

11:44:24 15 Q And where were you born?

16 A Montgomery, Alabama.

17 Q And where did you grow up?

18 A Montgomery, Alabama.

19 Q Have you lived in Alabama all of your life?

11:44:34 20 A I have.

21 Q Did you serve in the military at any point?

22 A I did.

23 Q How long were you in the military?

24 A For two years.

11:44:43 25 Q After you served, did you return to Montgomery?

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1 A I did.

2 Q Approximately when was that?

3 A 1969.

4 Q And did you attend college?

11:44:58 5 A I did.

6 Q Where did you attend college?

7 A Alabama State University.

8 Q Where is Alabama State University?

9 A Montgomery.

11:45:08 10 THE COURT: Montgomery.

11 BY MS. MADDURI:

12 Q And when did you graduate, sir?

13 A 1974.

14 Q Is Alabama State University a historically black college?

11:45:18 15 A It is, yes.

16 Q And what race do you identify as?

17 A I'm black.

18 Q What is your current occupation?

19 A Retired.

11:45:28 20 Q And what job did you hold before you retired?

21 A I retired from Alabama State University after 38 years of
22 employment.

23 Q And what was the last position you held there?

24 A Executive vice-president.

11:45:41 25 Q Did you work anywhere else prior to working at Alabama

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1 State University?

2 A Throughout my life?

3 Q Maybe after you graduated college.

4 A Oh, after I graduated college, yeah. I worked at Alabama
11:45:56 5 Public Service Commission. I worked for the United States Post
6 Office.

7 Q And are you involved with any community organizations?

8 A I am, yes.

9 Q What are those?

11:46:07 10 A I am involved with the Montgomery County Democratic
11 Conference. I'm involved with the Montgomery Improvement
12 Association, the NAACP, YMCA, Leadership Montgomery, Leadership
13 Alabama, and a number of other organizations.

14 Q Do these organizations work throughout the state of
11:46:33 15 Alabama?

16 A Some of them do, and some are restricted -- not
17 necessarily restricted, but work basically in Montgomery.

18 Q Understood. And have you ever held elected office?

19 A I was on the county commission of Montgomery for 12 years.

11:46:47 20 Q And approximately when did you start serving on the
21 Montgomery commission?

22 A Montgomery County Commission, my memory serves -- around
23 1980. I served 12 years until 1992.

24 Q Okay. Have you held any other elected office?

11:47:02 25 A Member of the Alabama Legislature.

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1 Q And approximately when were you elected?

2 A 1993, and I came out in 2018.

3 Q What district did you represent when you were in the
4 legislature?

11:47:16 5 A Montgomery, Alabama, District 77.

6 Q Is that a majority black district?

7 A It is.

8 Q Was it a majority black district when you were elected?

9 A It was.

11:47:27 10 Q When you were in the legislature, what committees did you
11 serve on?

12 A I served on the Ways and Means Committee. I served on
13 public safety. And I served on health. I served on local
14 government, contract review. Those are the committees.

11:47:49 15 Q Were you a member of any caucus?

16 A I was a member of the legislative black caucus and the
17 minority caucus, as well as the Democratic caucus.

18 Q Did you share any of those caucuses?

19 A I shared the legislative black caucus for eight years.

11:48:05 20 Q Did you ever serve on the reapportionment committee?

21 A No, I did not.

22 Q When you were in the legislature, what were the issues
23 that your constituents were bringing up with you most often?

24 A Oh, they would bring up education, economic development in
11:48:23 25 terms of jobs, making certain that jobs would come to

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1 Montgomery and to Alabama.

2 They were also bringing up the criminal justice system,
3 health care, the general issues that people are concerned
4 about.

11:48:35 5 And it depended on who you're talking to. Different
6 people would have different issues.

7 Q Do you think any of these issues affected the black
8 community differently than they affected the white community?

9 A I do, yes.

11:48:48 10 Q In what ways?

11 A Well, in many ways the criminal justice system mainly
12 because you find more blacks incarcerated than you do whites in
13 the state of Alabama, as well as the problems that we've had in
14 our Alabama criminal justice system.

11:49:02 15 The education issue relative to being able to get a
16 quality education in the state of Alabama, not having to leave
17 Alabama as you had to do years ago in order to go to graduate
18 schools and things of that nature.

19 And many other things that would impact the day-to-day
11:49:20 20 living of the people within the state of Alabama. These are
21 the type things that I find that were of interest.

22 Q Have you observed a need for affordable housing in
23 Montgomery?

24 A Yes. I also served -- I forgot and left that off. I
11:49:35 25 serve on the Montgomery Housing Authority Board. I have been

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1 there for a number of years. And that has been one of my
2 passions to try to provide affordable housing within the city
3 of Montgomery.

4 Q And is there an area that the board focuses on in terms of
11:49:51 5 housing?

6 A Well, right now, we are focusing away from the traditional
7 aspect of public housing moving towards affordable housing.
8 And what I mean by that is trying to have mixed housing
9 communities rather than just public housing projects and trying
11:50:08 10 to have market rate rents, Section 8 vouchers, and all of that
11 combined to build communities and to strengthen communities
12 rather than just having large -- with all poor people stacked
13 together.

14 So we have gone in that direction just recently under my
11:50:24 15 leadership trying to make certain that we stabilize and sustain
16 low-income areas of the city of Montgomery.

17 Q In terms of the people who are looking for low-income
18 housing -- and you mentioned public housing, as well -- do you
19 know approximately how many people in Montgomery are currently
11:50:45 20 looking for that?

21 A Right now on our waiting list, the last time I checked, we
22 had approximately 8,000 people on the waiting list for public
23 housing or subsidized housing in the Montgomery area.

24 Q Do you know what the demographic makeup of that waiting
11:51:02 25 list is?

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1 A Majority black.

2 Q In your experience -- you mentioned criminal justice as an
3 issue of interest. In your experience, have you observed any
4 criminal justice disparities between black and white children?

11:51:21 5 A Well, what I've observed, it seems like black children are
6 incarcerated faster than others. They are charged with -- many
7 people are incarcerated for possession of marijuana and things
8 of that nature. And it seems like within the criminal justice
9 system itself there's a disproportionate number of
11:51:46 10 African-Americans that happen to be criminalized within the
11 Alabama correctional system.

12 Q In your time in the legislature, did you work on any
13 issues that were affecting Mobile?

14 A Mobile? Well, yeah. I chaired the Ways and Means
11:52:05 15 Committee for 12 years. So in that position, I would have the
16 opportunity to work with legislators and representatives from
17 the Mobile area relative to the things that were of interest to
18 them, things such as the docks in Mobile. I passed a bond
19 issue of raising money for the docks in Mobile, and a number of
11:52:28 20 other things relative to the funding for the school system in
21 the Mobile area. Just a number of things that would be of
22 interest to the local legislative delegation of the people from
23 Mobile.

24 Q Did you observe any issues that affected the black
11:52:42 25 residents of Montgomery and also the black residents of Mobile?

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1 A Well, yes. Yes. That would be -- in many cases, some of
2 the same issues, with the exception of where Mobile is located
3 that affected Mobile or affected people in Montgomery.

4 When it came to the criminal justice system, people were
11:53:03 5 equally concerned about that. When it comes to education, I
6 found there was an interest in that. When it came to health
7 care, all of these things are things that are common whether
8 you are in Mobile or Montgomery.

9 Q When you served as a legislator, were you a member of a
11:53:18 10 political party?

11 A Yes.

12 Q Which one?

13 A Democratic party.

14 Q And are you a member of the Democratic party today?

11:53:26 15 A I am.

16 Q Do you have views on whether African-Americans in Alabama
17 tend to support a particular political party?

18 A The majority of African-Americans support the Democratic
19 party in Alabama.

11:53:46 20 Q What are your views of the party, in terms of race and
21 racial justice in Alabama?

22 A My views of the Democratic party?

23 Q Sure, as concerns the Democratic party.

24 A I am a member of the Democratic party because I feel
11:54:03 25 comfortable within the Democratic party. I have never felt

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1 welcome in the Republican party in the state of Alabama.

2 I feel that the Democratic party represents those core
3 values that I believe in, in terms of making sure that people
4 are treated fairly, making certain that you have good
11:54:19 5 education, making certain that we have fair wages, that we
6 concentrate as well on bringing jobs to Alabama. All of those
7 things are of interest and a priority for the Democratic party.

8 But the things that helps me most is the broad tint that
9 comprise the Democratic party where all people should feel
11:54:40 10 welcome and want to be a part. Even if you don't totally agree
11 on everything, the ability to work together collectively as a
12 group of people, I find that to be very interesting and the
13 reason that I share most of the views of the Democratic party,
14 not necessarily all views, but most of the views.

11:54:58 15 Q I think you said you feel comfortable in the Democratic
16 party. Why is that? What did you mean by that?

17 A Well, because I can interact with other people of my race,
18 as well as other people that would be in my situation, or
19 moderate income situation, things of that nature.

11:55:16 20 And you have things in common that you can talk about and
21 that you can relate to -- educational issues, economic
22 development issues, health care, criminal justice reform.
23 Those are the type things that I find is very appealing and
24 challenging when it comes to trying to address in this state.

11:55:35 25 Q And are there race or racial justice issues that draw you

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1 to the Democratic party?

2 A Well, I think the Democratic party with its broad tint are
3 as fair as it possibly can be when it comes to racial issues.
4 When it comes to trying to work across racial lines and things
11:55:58 5 of that nature, I think that they do a good job of trying to do
6 that.

7 Q So we're discussing the Democratic party. I asked you why
8 you think most African-Americans in Alabama -- I'm sorry. I
9 asked you whether you had views about the Democratic party in
11:56:23 10 terms of race and racial justice.

11 Do you have any views about the Republican party in
12 Alabama in terms of race and racial justice?

13 A Well, my view is basically -- has been based on my
14 experience with the Republican party here in Alabama, that it
11:56:38 15 seems to be kind of one-sided when it comes to racial justice.

16 People that run under the Republican banner, just an
17 example, Attorney General, things of that nature, will talk
18 about how tough they're going to be on crime. I think it was
19 one Attorney General that ran that they're going to lock them
11:56:57 20 up and keep them until -- until the eyeballs popped out, or
21 something of that nature, talking about the electric chair.

22 THE COURT: I think that was Graddick, was it not?

23 THE WITNESS: I couldn't remember exactly.

24 THE COURT: Back when we had the Yellow Mama.

11:57:14 25 THE WITNESS: That's what it was.

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1 THE COURT: Some of us still remember that.

2 THE WITNESS: I do. I certainly do.

3 THE COURT: Yeah. Not the high point in Alabama
4 elections, I don't think.

11:57:23 5 THE WITNESS: No, it's not.

6 THE COURT: Sorry.

7 MS. MADDURI: No problem, Your Honor.

8 THE COURT: Well, during this little break that I've
9 created -- and I apologize -- you were talking about criminal
11:57:40 10 justice reform, and I understand that Cam Ward has been
11 somewhat of a leader in criminal justice reform. And which
12 party is he affiliated with?

13 THE WITNESS: He is affiliated with the Republican
14 party. He really should be a Democrat.

11:57:57 15 THE COURT: I won't tell him you said that. But there
16 are some Republicans that are interested in criminal justice
17 reform.

18 THE WITNESS: Well, I have had the opportunity --
19 there have been some Republicans interested in criminal justice
11:58:10 20 reform.

21 And, you know, as I chaired the Ways and Means Committee,
22 you know, I have had opportunity to work with some Republicans.
23 We were able to. But just overall, the party itself has not
24 been that receptive to include some of the blacks that have
11:58:26 25 been in the Republican party. They wished they would be able

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1 to progress much more within the ranks of the party than they
2 are able to progress.

3 BY MS. MADDURI:

4 Q Since Your Honor brought up Charlie Graddick, do you know,
11:58:43 5 Representative Knight, whether Mr. Graddick is currently
6 serving in the criminal justice system in Alabama?

7 A Yes. Surprising to me, he served as chair of the Pardon
8 and Paroles Board for the state of Alabama at this point.
9 That's an oxymoron, but it's...

11:59:05 10 Q And you --

11 THE COURT: Between those times, do you recall what he
12 was doing?

13 THE WITNESS: I think he was district judge in Mobile,
14 if I'm not mistaken.

11:59:21 15 THE COURT: Was he a District Attorney there?

16 THE WITNESS: I may be wrong. It may have been
17 District Attorney. But...

18 MS. MADDURI: He does have a judge title, so...

19 THE COURT: But he was elected in Mobile, whatever the
11:59:34 20 position was?

21 THE WITNESS: Yes, Your Honor.

22 BY MS. MADDURI:

23 Q You mentioned some of the statements you remember
24 Mr. Graddick saying. In your opinion, how did those -- how do
11:59:47 25 those statements relate to race?

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1 A Well, I just think it was a code word for race at that
2 particular time during -- it was in the heat of a campaign, if
3 I recall correctly. It was just code words to excite his base
4 and to get people to turn out and vote.

12:00:04 5 Q When you say his base, who do you mean?

6 A Which would be his white constituents.

7 Q Okay. I think we have established you have a lot of
8 experience with Montgomery. So let's talk about Montgomery for
9 a moment.

12:00:24 10 Are you aware of if Montgomery County is currently
11 majority black?

12 A It is, yes.

13 Q And are you familiar with the current configuration of
14 Montgomery in the congressional district map?

12:00:39 15 A In the congressional district map, I think we have three
16 congressional districts in Montgomery.

17 Q So Montgomery County is split between three congressional
18 districts?

19 A That is correct, yes.

12:00:57 20 Q In your view, does that configuration have any impact on
21 the county of Montgomery?

22 A Oh, absolutely. I think when you have -- when you pick up
23 just a small portion of a congressional district, it decreases
24 your impact within the district or with your congressperson
12:01:17 25 that's representing that district.

1 I think that if you had a greater portion of Montgomery in
2 the congressional district, you would have more impact because
3 a person only represents, say, a few thousand people within
4 that particular county, would take very little interest in the
12:01:33 5 county, or that's been what I have seen in terms of experience.
6 They would -- they would tend to pay more attention to the
7 areas with the largest population.

8 Q And how does -- if it does, how does that affect the
9 residents of Montgomery?

12:01:48 10 A Well, I think the residents think that you don't get some
11 of the services that you think you should get or some of the
12 things that you would ordinarily receive from your
13 congressperson representing you, dilute having some time the
14 congressional people that represent your district.

12:02:05 15 Q Do you think there are any benefits to Montgomery by being
16 split three ways?

17 A No. Other than saying that you have three congressional
18 representatives.

19 Q Do you know if Montgomery has always been split that way?

12:02:24 20 A No. I think that -- the only other time we've been split
21 with two congressional districts.

22 THE COURT: Doesn't that mean you have got two more
23 people you can pick up the phone and call and say we need help
24 here?

12:02:42 25 THE WITNESS: It does. But the ones with very little

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1 population will pay you little attention.

2 THE COURT: Okay.

3 BY MS. MADDURI:

4 Q How do you think that being in a single district would
12:03:02 5 help the county of Montgomery?

6 A I think -- I think it's extremely important for the county
7 of Montgomery. One thing would be important about it is
8 Montgomery is the capital city of the state. So you need
9 strong representation on a congressional level.

12:03:17 10 And with the things that are taking place -- in
11 particular, Montgomery now with all the growth and things of
12 that nature, I think that if you didn't have the congressional
13 district split as much as they are, you could get more, in
14 terms of tourism, getting dollars to come into the state
12:03:35 15 relative to the history of Montgomery, and more attention paid
16 on the congressional level to Montgomery than what has been
17 paid in the past. And I think that, you know, if you had a
18 good strong representative representing Montgomery, it would
19 bring dollars to the capital city, and the capital city could
12:03:57 20 be a showplace to this nation.

21 Q Representative Knight, approximately when were you born?
22 And I won't ask you for an exact year.

23 A You want an exact year, or you don't want an exact year?

24 Q It's up to you.

12:04:12 25 THE COURT: Well, he told us when he finished the

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1 military.

2 MS. MADDURI: That's true. But like you said, Judge,
3 we're not so good with the math in here.

4 THE WITNESS: Okay. I was born June 7th, 1945.

12:04:24 5 BY MS. MADDURI:

6 Q And I know you said you grew up in Montgomery. So what
7 was your childhood like?

8 A Well, I grew up on Hall Street, kind of central
9 Montgomery. I remember my first house, a shotgun house and
12:04:44 10 outdoor facilities. And I remember when we got indoor
11 facilities probably when I was about five or six years of age.

12 I remember -- the most dramatic thing that I remember
13 about Hall Street was when the Klan marched down Hall Street.
14 Hall Street was located not far from Dr. Martin Luther King's
12:05:13 15 house and not far from Dr. Ralph Abernathy. So there was Klan
16 activity during that particular time, and they marched down
17 Hall street. And I can remember my dad making us get under the
18 bed and stuff like that.

19 Q Do you recall any bombings in your neighborhood when you
12:05:30 20 were growing up?

21 A Yes. Ralph Abernathy's house was bombed, and Dr. King's
22 house was bombed, and a service station on the corner of High
23 and Jackson was bombed.

24 Q What kind of work did your parents do?

12:05:46 25 A My father was in the military, World War II veteran. My

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1 mother was a domestic worker.

2 Q And what was your -- what was your schooling like?

3 A Oh, I went to a segregated -- I went to Booker T.

4 Washington High School. Well, I started off in elementary

12:06:05 5 school. I started off at Saint John's Catholic School because

6 my parents wanted me to go with Catholic school, started off

7 with what they considered to be a good education.

8 I stayed there three years, and asked if I could go to

9 public schools because in the neighborhood that I lived in, in

12:06:20 10 the Catholic schools, we had to wear uniforms and ties. So

11 coming back home was not a good experience coming back home

12 through the neighborhood.

13 They finally, after the third grade, said I could go to

14 Booker T. Washington. And then went to McDavid Elementary

12:06:34 15 School and finished Booker T. Washington High School, which was

16 a segregated high school in 1963.

17 Q Other than schooling, did segregation affect other parts

18 of your life growing up?

19 A It did. I mean, I recall the times when, you know, water

12:06:49 20 fountains were separate, riding on the back of the bus. We

21 lived one block from a park that we couldn't -- couldn't use,

22 couldn't play in.

23 And, you know, it's just -- it's just southern life the

24 way it was at that particular time. And, you know, as a kid,

12:07:08 25 sometimes you didn't think about those things. But as you grew

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1 up and as I became of age, that's the reason that I took an
2 active role in the community because I wanted to make a
3 difference and make things change.

4 Q Was part of that active role in the community in the Civil
12:07:29 5 Rights movement?

6 A It was. I was not a leader in the Civil Rights movement,
7 but I participated. During the Civil Rights movement, you
8 know, in high school, I would participate in some of the
9 marches and demonstrations.

12:07:44 10 I have to be very candid under oath. At that time, I
11 didn't know what some of them were all about, but it was just a
12 way to get out of school. So we participated in that.

13 But I -- after finishing high school, I got more involved
14 working with SCLC and other organizations with the various
12:08:01 15 demonstrations and marches in Montgomery and other areas, as
16 well.

17 Q And why did you choose to get more involved after high
18 school?

19 A Well, at that particular time, it was because -- I mean,
12:08:16 20 it was just so much excitement about the opportunity to make a
21 difference, and for things to change and not to accept the
22 status quo of the way things had been, and not have to go
23 through things that your parents had to go through.

24 You know, my father was a sharecropper. So, you know,
12:08:34 25 those are the type things you want to make certain that you

1 make it better for your kids.

2 Q Are there any particular demonstrations or marches that
3 stick out in your mind today?

4 A Well, one was when we marched for the state capital. And
12:08:59 5 I don't know what the issue was at that particular time, but I
6 was in that particular march. And we were surrounded by state
7 troopers. We couldn't leave.

8 And my parents happened to see me on TV, came down to try
9 to get me out of the march, but they wouldn't allow them to do
12:09:17 10 so. That was one time because I was really talked to very
11 harshly about being in the march without them knowing it.

12 Another time is we marched from Alabama State University
13 to the state capital. And I remember the police officers going
14 into the crowd with horses, and things of that nature.

12:09:39 15 I remember some marches where we marched, and the Klu Klux
16 Klan was lined up down the streets, with all types of names,
17 and things of that nature.

18 I mean, there was just all kind of marches during that
19 time.

12:09:54 20 Q Do you think conditions for African-Americans in Alabama
21 have improved since that time?

22 A Oh, yes. Things have -- there have been improvements.
23 There's no question about it.

24 I mean, I realize that a lot of very young people said,
12:10:15 25 well, nothing has changed. But much has changed.

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1 But I have seen things seem to -- I have seen some
2 regression taking place in recent years, and that's very
3 troubling to me. I think we made a lot of progress in the
4 Civil Rights movement, and we opened a lot of doors. But I've
12:10:33 5 seen regression in the last several years that's very
6 discouraging.

7 Q What are some of the ways or areas in which you've seen
8 regression?

9 A Well, the one area that concerns me happens to be
12:10:46 10 education, a lack of funding for education, the lack of
11 emphasis on education. The other thing has been, as I said
12 earlier, the criminal justice system itself and the way that
13 people are incarcerated. And the lack of funding for mental
14 health, and those things that really impact families in so many
12:11:08 15 different ways.

16 And I found that a lot of people in Alabama are being
17 incarcerated. And in many cases, they have no health
18 insurance, but they can't get the treatment that's necessary to
19 sustain them so that they will stay out of the criminal justice
12:11:24 20 system itself. And for us not to pay attention to that is very
21 disturbing.

22 And at one time, you know, there were opportunities -- I
23 would say opportunities were opening up after the Civil Rights
24 movement and affirmative action plans, and things of that
12:11:44 25 nature. But now you find in many cases opportunities in

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1 Alabama the doors are shut. That's why we lose so many young
2 people.

3 If they go to college and get a degree -- just like we
4 tried to encourage all our kids. If you go get an education,
12:11:59 5 you will be able to sustain yourself and your family.

6 Well, what happens is when they get an education to
7 include advanced degrees, in many cases they have to leave the
8 state of Alabama and go to New York, go to California, or even
9 go overseas somewhere to be gainfully employed to be able to
12:12:14 10 establish themselves and get the careers that are necessary for
11 what they have been trained for.

12 So I find that very disturbing and discouraging,
13 especially after all the efforts that we put into the Civil
14 Rights movement -- the marches, the demonstrations, the -- I
12:12:29 15 mean, the intimidation of parents being intimidated, afraid
16 that they would lose their jobs because of what they were
17 fighting for, and things of that nature.

18 So where we are now, it seems like there's been some
19 regression taking place.

12:12:48 20 Q In terms of the disparities you're speaking of and the
21 opportunities for employment in Alabama, am I right in
22 understanding that you believe that the situation that you just
23 described affects African-Americans differently than it affects
24 white folks?

12:13:09 25 A Yes. That's what I am talking about -- African-Americans.

1 You see, in my generation, we encourage our daughters and sons,
2 look, you go get an education and things are going to be okay.
3 With the anticipation that they do that, that they will be
4 welcome and they can stay in Alabama.

12:13:24 5 But you look at Montgomery, for example. It may be a
6 little differently in Birmingham. You look at Montgomery. You
7 look at the banking industry. You see very few blacks as
8 presidents of a bank or vice-presidents of a bank. You look at
9 the high-level jobs. I am not talking about entry-level jobs.
12:13:39 10 I'm talking about high-level jobs and opportunities for blacks.
11 In many cases, they're just not there.

12 Because what happened is you have -- so often progress
13 comes down through the family. So where you have families who
14 have been successful throughout their lives, had money and
12:14:06 15 economic growth, then their children benefit from that. In the
16 African-American family, you don't have as much of that.

17 So you have to -- you have first generations of young
18 people trying to get into the workforce, trying to get into
19 high-level positions that they've never been in before. And a
12:14:23 20 lot of that is missing as from what I have seen within the
21 state of Alabama.

22 Even though we have gone out -- and I worked very hard to,
23 as a matter of fact, for the Republican governor trying to do
24 economic development and bring industry to the state. We
12:14:38 25 brought companies like Hyundai, Mercedes, Honda to have

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1 manufacturing jobs and things of that nature for people to be
2 gainfully employed. And I think it's extremely important to do
3 that.

4 Q I think you mentioned that African-Americans, when they
12:14:56 5 leave the state of Alabama for places like New York or
6 California, they have different job opportunities. Can you
7 tell me more about that?

8 A Well, it's almost like when I was coming up as a kid. For
9 summer jobs, we would leave Alabama. We would go to New York,
12:15:10 10 wait tables and do things of that nature to make enough money
11 to come back home.

12 But now you can go to college, and you're unable -- with
13 the exception -- I have nothing against this. Unless you to
14 happen to have been a star athlete at one of the major
12:15:28 15 schools -- Alabama, Auburn -- you can come back if you're
16 African-American and get a high-level job. But just the
17 average working Joe out there that go and get a quality
18 education, it's extremely difficult for them to be able to come
19 back within the environment that we have here in this state and
12:15:42 20 be gainfully employed at that level.

21 Q What do you mean by the environment in the state?

22 A The way that the structure is set up. The -- and in terms
23 of being able to get the type of jobs that you're qualified
24 for.

12:16:00 25 Q And so you think that African-Americans who leave Alabama

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1 are able to get the jobs that they're qualified for outside of
2 Alabama?

3 A Oh, yeah. I mean, I know kids that's gone to University
4 of Alabama engineering program, get an engineering degree, but
12:16:20 5 to get a job they go to Detroit. I know people that have
6 gotten Ph.D. degrees, but to get a job they have to go
7 somewhere else to have the type of position that they feel
8 they're qualified for.

9 Q In your experience, do white folks also have to leave
12:16:41 10 Alabama to get those same kinds of opportunities?

11 A I don't think necessarily they have to, but I think some
12 of them do. But I think it's not a matter of choice for
13 African-American kids. I think many of them have to because
14 there are no jobs -- the jobs are just not here and available
12:16:59 15 to them in this state.

16 Q Do you think those disparities in job opportunities
17 between African-Americans and white folks in Alabama, do you
18 think that leads to income disparities?

19 A Oh, absolutely.

12:17:19 20 Q Can you tell me more about that?

21 A Well, I mean, because you have the low paying job for
22 African-Americans in this state, they don't have the high-level
23 jobs as I was explaining. There's certainly going to be a
24 disparity in terms of income and wealth, and that's what you
12:17:34 25 see in the state.

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1 Q These incomes -- sorry. These disparities in education
2 and income, do you believe that those affect voting?

3 A Oh, it does. I mean, the less education you have, the
4 less likely you are to have faith in the system and want to go
12:17:59 5 vote.

6 I mean, I run into people each day in the neighborhood
7 that say, Well, why, my vote doesn't count. Why should I go
8 and vote? Those are the type things you run into with less
9 education. And I think that adversely impacts

12:18:13 10 African-Americans in this state.

11 Q And what about the income disparities? Does that also
12 affect people's voting?

13 A It does. It does. And it reminds me of when I first got
14 elected to the legislature. I had no idea what I was getting
12:18:32 15 into and what I would encounter.

16 And the first thing that I encountered was in Alabama a
17 family of four making \$3,500 had to start paying Alabama income
18 taxes. I mean, that was unconscionable to think if you have a
19 family of four, you are making \$3,500, and you have to start
12:18:48 20 paying Alabama income taxes. But you would have large
21 multimillion dollar corporation that would be paying zero in
22 taxes.

23 I was able to work -- I tried to get it up to the poverty
24 level. And I was able to work to get it up to \$12,500 for a
12:19:07 25 family of four. And that was working with -- even though --

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1 working with a Republican governor to do that. So it was the
2 black caucus and the Republican governor that worked together
3 do that.

4 The other thing I have tried to do in this state that is
12:19:26 5 very regressive is we have a sales tax on food and groceries.
6 I have tried to get that removed. That is -- I have not been
7 successful over the length of time that I spent in the Alabama
8 Legislature trying to get that done. But I hope some day that
9 somebody will be able to get it done.

12:19:40 10 Q So these two taxes you mentioned -- taxing very low
11 incomes and also taxing food, do you think that
12 disproportionately impacts African-Americans in Alabama?

13 A It does, because we are disproportionately lower incomes
14 than others. When we elevated the tax for the family of four,
12:20:03 15 I think the total amount of it at that time, I think, was
16 \$60 million.

17 Q In terms of when someone has a lower income or a lower
18 paying job, have you observed any practical barriers that get
19 in their way when they go to vote or want to vote?

12:20:24 20 A I'm sorry. I don't --

21 Q I can --

22 A Okay.

23 Q In terms of when somebody has a lower paying job or, like
24 you said, the manufacturing job like these hourly jobs?

12:20:40 25 A Okay.

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1 Q Something like that or a lower income one, does that --

2 A Well, and if I'm not understanding your question
3 correctly -- but I think it depends on the type of job that you
4 have.

12:20:51 5 There are some people that I work with they can only go
6 vote during their lunch hour. So if you have a large election,
7 they go during the lunch hour, when they go to the polls, they
8 see a long line, well, on their mind, they have got to get back
9 to work or they're going to lose their job. They are not going
12:21:08 10 to stay in a long line and cast their vote. They are going to
11 go back to their job.

12 The other thing is there are many people that work two and
13 three jobs. And the polls open at 7:00, close at 7:00. There
14 needs to be a way that the voting is more available more than
12:21:27 15 just on election day, early voting, and things of that nature,
16 so it will be convenient for people that have jobs such as that
17 to be able to go vote.

18 And there are still people that feel intimidated if they
19 tell the people that they're working for that they want to take
12:21:47 20 off to go vote because years ago it was an intimidating factor
21 if you worked in a certain environment to tell people that you
22 were going to go and vote without losing your job, or something
23 of that nature.

24 So you still have some of those factors that's commonplace
12:22:06 25 in certain areas of the state and in certain households.

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1 Q You touched on a few things, so I will take them one by
2 one.

3 The intimidation you mentioned. Can you tell me a little
4 bit more about that?

12:22:20 5 A Intimidation at the polls, or you mean intimidation to go
6 vote, or what?

7 Q Either one. We can start with you said intimidation about
8 potentially I think being discouraged from your employer or
9 something related to your employment?

12:22:36 10 A I was talking about if a person has a job where they only
11 have an hour off for lunch and they choose to go and vote
12 during that hour, if they -- if it's a long line and confusion
13 at the polls, they're not going to stay there and go vote.

14 And then you say, Well, will you come back after you get
12:22:55 15 off? Well, then most of them got to go pick up their kids or
16 something of that nature.

17 There's all these types of things that come into play when
18 it comes to that. And I think that's the reason that we have
19 not been able to have legislation that will allow people to do
12:23:11 20 early voting.

21 Now, we do have absentee voting. But the affidavits and
22 all that have to be signed, that's intimidating to many people
23 because you have to swear that you are going to be out of town
24 or something of that nature to go vote. And people are afraid
12:23:24 25 that if they do that and something happens and they're not,

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1 that they will be arrested, or be charged with voter fraud, or
2 something of that nature.

3 And that's been -- and in the state of Alabama, there has
4 been a lot of talk about voter fraud in the Black Belt, or
12:23:41 5 absentee voter fraud, things of that nature, which puts up a
6 red flag in the minds of a lot of good people that would love
7 to work in the voting process but are afraid that if they do
8 so, that they're going to be charged with a crime, in terms of
9 absentee voter fraud and things of that nature. And you
12:24:01 10 haven't found much of that.

11 As a matter of fact, in my experience in working in the
12 community, I worked there for a number of years. You have to
13 beg people almost to go vote. Nobody is running over you to go
14 vote. To say that if it's convenient for people to go vote
12:24:16 15 that you would have all this voter fraud, I mean, it's just
16 another way of intimidating voters and keeping them afraid of
17 the process.

18 Because, see, within certain communities, there were times
19 when people were just afraid to go to the courthouse. So when
12:24:31 20 you go and you trying to get people to fill out affidavits or
21 things of that nature, nobody wants to spend, or even have the
22 money to hire lawyers to defend them once they're charged with
23 voter fraud, or something of that nature.

24 Q When you say certain communities, what do you mean?

12:24:46 25 A In African-American communities. Those are the ones that

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1 I've worked in all of my life.

2 Q And does the intimidation that you're talking about --
3 intimidation and the fear in African-American communities --
4 does that actually lead to people not voting?

12:25:02 5 A Oh, absolutely.

6 Q Even today?

7 A Yes. Yes. It's not as -- it's not as pervasive today as
8 it was years ago.

9 I remember in Montgomery at one time when we had a mayor
12:25:15 10 there that was a very strong mayor, at certain voting places,
11 you would have city police officers stationed out there on
12 motorcycles in front of every polling place. Well, I mean, we
13 challenged that. We challenged. We finally eliminated that.

14 One other instance during one period during the polling
12:25:36 15 places, they would have a white gentleman with dark glasses
16 standing at the front door. People are thinking those are FBI
17 agents so they wouldn't go in and vote.

18 These are the type things that I have actually seen. And
19 we've challenged a lot of that. We got it eliminated. But
12:25:52 20 it's still in the minds of many. You still have a lot of
21 things where they are intimidated about going to vote.

22 Q You mentioned that it can be difficult for people who have
23 jobs where they have just an hour off at lunch or something
24 like that to go vote. In your experience, do African-Americans
12:26:27 25 disproportionately hold those kind of jobs?

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1 A Yes. Hold many of those jobs, yes, and still do. That
2 hasn't changed in a number of years.

3 Q You also mentioned that there are occasions where people
4 are working two to three jobs or something like that --

12:26:41 5 A Yeah.

6 Q -- which might also make it difficult to vote on election
7 day. Are those jobs also disproportionately held by
8 African-Americans in your experience?

9 A Yes. You have more African-Americans having to work two
12:26:52 10 and three jobs. Don't get me wrong. I don't want to imply
11 that there are not others that do the same thing. But
12 disproportionately, African-Americans are affected.

13 Q You also discussed intimidation around absentee voting.
14 Can you tell me more about that?

12:27:10 15 A There's been quite of that here within the state of
16 Alabama where there have been accusations about voter fraud and
17 illegal absentee voting especially in the Black Belt area; not
18 as much in the Montgomery area, but in the Black Belt area of
19 our city, which happens to be where a majority of the blacks
12:27:29 20 live.

21 That -- and most of it has not turned out to be actual or
22 factual information. It's just been out there where people are
23 intimidated when it comes to the absentee ballot process.

24 Q You've mentioned education a number of times since we
12:28:11 25 began speaking. Are there disparities at the lower education

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1 level in the K-12 space that you've observed?

2 A In the K-12?

3 Q Uh-huh.

4 A When you say disparities, you mean in funding or?

12:28:26 5 Q Either in quality of education, or funding for education,
6 or access to education, and just generally in the education
7 realm for that group?

8 A I can't speak too much on that particular on K-12. I can
9 speak on higher ed.

12:28:44 10 But in the K-12, in Montgomery, the public school system's
11 composed majority -- I'll say 85 to 90 percent of blacks are in
12 public education. White kids go to private schools. The
13 public education system has been underfunded.

14 In Montgomery you have the lowest millage rate of any
12:29:12 15 other schools in the state.

16 THE COURT: Have the lowest what rate?

17 THE WITNESS: Millage rate. Property tax.

18 THE COURT: Okay. Thank you.

19 THE WITNESS: It's the bare minimum that's required by
12:29:24 20 state law, and that has been a problem in terms of funding for
21 the educational system there in the state of Alabama.

22 And the reason that that has prevailed in Montgomery is
23 because most of the white kids are in private schools. So to
24 be able to get the rate increase there in Montgomery, we have
12:29:41 25 had it on the ballot I think twice.

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1 BY MS. MADDURI:

2 Q And it's failed?

3 A It's failed, yes. Uh-huh.

4 Q Do you have an understanding of how --

12:29:50 5 THE COURT: Just a minute. Doesn't Montgomery have, I
6 think, the highest rated high school in the state?

7 THE WITNESS: That's very interesting you ask that
8 question, but that is correct. But that's the magnet program.

9 THE COURT: Yeah. I grew up in Montgomery.

12:30:06 10 THE WITNESS: Okay.

11 THE COURT: So, you know, have a lot of ties there
12 myself. But the magnet school?

13 THE WITNESS: The magnet school.

14 My position on that is I feel like every school should be
12:30:16 15 a magnet school. And when you take the smartest kids out and
16 put them all into one program, then you leave very little
17 incentives for average kids -- I know I was an average student.

18 So coming up, if I didn't have somebody that made better
19 grades than I did or something to strive for, you know, it
12:30:36 20 just -- I don't know if I would have had the effort or the
21 energy to --

22 THE COURT: Yeah. I think we would probably agree a
23 lot on education issues.

24 But I did note that as a point of pride for a lot of folks
12:30:50 25 in Montgomery that they do have the best high school in the

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1 state.

2 THE WITNESS: Oh, yes. Yes. Uh-huh.

3 THE COURT: Okay.

4 THE WITNESS: And it's interesting, because as we
12:31:04 5 attract industry there, I look at the public school system.
6 And you see what takes place in the public school system for
7 some of the kids that's coming from overseas, the Korean
8 students. I mean, there are programs there and they do very
9 well.

12:31:17 10 And the magnet program, all of the kids in the magnet
11 program do very well. So if we --

12 THE COURT: We shouldn't leave the rest behind.

13 THE WITNESS: Right.

14 THE COURT: I agree with you on that.

12:31:33 15 BY MS. MADDURI:

16 Q You said that the public school system in Montgomery is I
17 believe you said 85 to 90 percent black. And then most of the
18 white children or students are in private schools.

19 Do you have a sense or understanding of how that division
12:31:49 20 occurred, or has it just always been that way?

21 A Well, when I grew up, I was -- I grew up in the segregated
22 system. When integration came, as I recall -- and I think
23 during that period of time, I was in between college and the
24 military.

12:32:08 25 When integration came, they would close the black schools,

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1 and the black kids had to go to the white schools. And the one
2 thing that concerned me about that was why couldn't it not be
3 just the reverse? Because I felt like Booker T. Washington was
4 one of the greatest high schools there in the city. Why
12:32:24 5 couldn't you have an equal sharing of transfer of students?
6 But it didn't end up that way.

7 All of the black kids had to go and the teachers, and
8 transfer. And Booker T. Washington -- I think Carver
9 maintained, but Booker T. Washington did not. And they turned
12:32:42 10 it into what they called a magnet program.

11 And Booker T. Washington is one of the magnet programs for
12 performing arts.

13 Q You said that they closed the black schools, and then the
14 black children went to white schools?

12:32:55 15 A Well, they didn't close -- well, yeah. As we would know
16 the schools.

17 What I was saying is to me the ideal plan would have been
18 to have -- it was Booker T. Washington or Carver and then -- I
19 just use these as the examples of -- Lee and Lanier.

12:33:13 20 THE COURT: And Jeff Davis. Let's not forget Jeff
21 Davis.

22 THE WITNESS: My daughter finished at Jeff Davis.
23 It's hard -- and Jeff Davis.

24 But so that if you could take and keep Booker T.
12:33:28 25 Washington, just mix the students in that way from, say,

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1 Lanier, and then have students from Carver going to Lee,
2 something of that nature rather than getting rid of the black
3 schools itself. That happened during that particular time.

4 THE COURT: But Carver High School was maintained.

12:33:48 5 THE WITNESS: Yeah. Carver has maintained, and it's
6 still there, yes. Uh-huh.

7 BY MS. MADDURI:

8 Q So, then, when the these closings were or consolidations
9 happened, did the schools become integrated fully?

12:33:59 10 A Yeah. Well, they -- yeah. They became integrated, yes.

11 Q And do they --

12 A You had busing. You had all of the ingredients that took
13 place as it relates to that.

14 Q So what happened between then and now where the schools
12:34:17 15 are now 90 percent black?

16 A Because you had a proliferation of private schools.

17 Q And white children went to private schools?

18 A Yes, over a period of time. That's what has happened.

19 Q Based on what you have observed, is it your belief that
12:34:33 20 African-American students and white students are getting equal
21 education in Alabama?

22 A Not in Montgomery.

23 Q And what about in the higher education level, in terms of
24 college or graduate school? Are there disparities that you
12:34:54 25 observed there?

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1 A Yes, I did. And I filed a lawsuit on it. *Knight v.*
2 *Alabama*. I felt that -- well, what happened years ago in the
3 higher education arena, they created the school systems: one
4 for blacks and one for white -- separate but equal.

12:35:16 5 You had Auburn University, and you had Alabama. You had
6 Alabama A&M, and you had Alabama State University. Alabama A&M
7 was created as the counterpart basically for Auburn University
8 which would have been the land grant programs in the state; and
9 Alabama State University created for blacks, which would have
12:35:33 10 been the equivalent of Alabama.

11 But they were never funded at the same level. They were
12 separate, but they were not equal.

13 So I filed a lawsuit January 15th, I think it was 1981,
14 alleging that there still existed in the state the remnants of
12:35:53 15 a dual system of higher education. And that suit went on for a
16 greater portion of my adult life hood.

17 Q Does the state fund those schools?

18 A They're partially funded by the state, yes. They're
19 state-supported schools, yes. Not fully. You have tuition,
12:36:13 20 and you have other things that make up the complete budget for
21 higher ed.

22 Q What was the outcome of that case?

23 A I was eventually successful in that. And there were
24 remedies put in place by the Court.

12:36:27 25 Q And what did the Court find in the case?

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1 A That there still remained in Alabama the vestiges of a
2 dual system of higher ed and to order the state to come up with
3 corrective actions.

4 Q Was there a finding of intentional discrimination on the
12:36:44 5 part of the state?

6 A I don't -- I can't recall whether there was a finding of
7 intentional. I don't -- I was just so happy to get the
8 funding. I don't know about the details.

9 Q I understand. That's lot of details for lawyers.
12:37:02 10 What was the remedy that was ordered?

11 A The remedy was -- well, initially we were asking for money
12 to make up for the disparities that were taking place. And I
13 really didn't like the remedy initially, but I think the more
14 that I looked at it, I think it was a good remedy.

12:37:24 15 There were -- Alabama State and A&M were awarded certain
16 what they call high demand programs, a certain amount of money
17 for both schools. But it was also given an opportunity to
18 develop new programs over a period of time that were not
19 competing programs by the other universities.

12:37:45 20 As a matter of fact, in the Montgomery area, one of the
21 allegations were that in order to keep the schools segregated
22 that you had the branch campus of your major universities
23 located in Montgomery with a population of less than 200,000.
24 You had a branch campus of Auburn University, and you had a
12:38:04 25 branch campus of Troy.

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1 So given a choice, white students would go to the branch
2 campus of Troy or the branch campus of Auburn before they would
3 come to an HBCU. So that made it extremely difficult for an
4 HBCU to attract white students especially from the state of
12:38:23 5 Alabama or that particular area there.

6 So it froze the program for those schools. They couldn't
7 bring on any new programs that would duplicate what was being
8 offered at Alabama State and Alabama A&M. And that gave
9 Alabama State and Alabama A&M an opportunity to have what would
12:38:44 10 be known as high demand programs.

11 Alabama State was given several doctoral programs or given
12 forensic science, physical therapy, programs such as that.
13 Alabama A&M -- they combined the extension program with Auburn.
14 So now it's called the Alabama Extension Program.

12:39:02 15 So Alabama A&M participates fully in the extension program
16 with Alabama A&M, and they were given some advanced programs as
17 well. So that's kind of a summary.

18 Oh, the other thing which was the most controversial part
19 was the Court order that Alabama State and Alabama A&M had to
12:39:20 20 recognize that they were traditionally or historically black.
21 But they were not black universities. So they gave minority
22 scholarships.

23 So that was controversial because you had whites getting
24 scholarships to the black college campus. And some of the
12:39:36 25 black students were a little upset about that because they

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1 couldn't get scholarships otherwise.

2 But it worked out to integrate or to bring whites onto the
3 campus of Alabama State, as well as onto the campus of Alabama
4 A&M.

12:39:50 5 Q Was there a monetary award in the remedy?

6 A There was a monetary award. I mean, over a period of
7 time, like I said, initially we really wanted some cash up
8 front, but we got -- I think it was -- I don't remember the
9 exact amount initially.

12:40:11 10 But over a period of time, it's been millions of dollars
11 that's gone to Alabama State, as well as Alabama A&M not only
12 for physical growth but for the new programs, as well.

13 Q And was there -- was part of that remedy in order to
14 correct the disparate findings that African-American --
12:40:30 15 historically black colleges had in Alabama?

16 A Well, I don't think it insisted on correctly because it
17 was such a large gap that it's almost impossible -- when you
18 look at what has happened over the period of time since 1874,
19 you know, Alabama State and Alabama A&M with the lack of
12:40:55 20 funding, but it was to take us from where we were at that
21 particular time, given new programs and the opportunity to take
22 it from there. I think that was basically kind of the way that
23 the order was written.

24 It didn't give us a large amount of money that would make
12:41:11 25 up for the disparities of the past, but it gave an opportunity

1 to move from that point forward and try to do some things as it
2 relates to equalizing the playing field.

3 THE COURT: Ms. Madduri, would this be a good time to
4 take a break?

12:41:32 5 MS. MADDURI: Yes. I apologize. Yes, that would be
6 great.

7 THE COURT: I don't know what time it is. We'll come
8 back at 1:45.

9 MS. MADDURI: Thank you.

12:41:45 10 THE COURT: Thank you.

11 (Recess.)

12 THE COURT: Ms. Madduri, are you ready to proceed?

13 MS. MADDURI: Yes, ma'am.

14 THE COURT: You may do so.

13:46:55 15 BY MS. MADDURI:

16 Q Mr. Knight, do you believe that there is official
17 voting-related discrimination in Alabama today?

18 A Yes, I do.

19 Q Are you familiar with the current voter ID law in Alabama?

13:47:16 20 A Vaguely, yes. Uh-huh.

21 Q In your opinion, is the voter ID law a form of
22 voter-related discrimination?

23 A I was against the voter ID law because I think it created
24 such an issue for people having to go and get their ID to be
13:47:33 25 able to vote.

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1 As a matter of fact, we tried to come up with legislation
2 that would address that issue and make it possible where almost
3 any form of ID you would be able to identify. I come from the
4 train of thought that if you were a resident of Montgomery, you
13:47:48 5 shouldn't have to go through a lot of hassle to be able to
6 register and vote for the candidate of your choice. It should
7 be open, and there shouldn't be any barriers put up.

8 Now, having said that, I do think there has to be
9 accountability. You do have to have some form. But it doesn't
13:48:05 10 have to be as strict as Alabama has. I would think there could
11 be some better ways to do it.

12 The special technology the way it is now and the way that
13 you can identify people, there are so many ways now that I
14 think you could make it easier for people to vote and then be
13:48:19 15 able to take advantage of everybody having that opportunity.

16 Q In terms of the current law that Alabama does have, do you
17 think that disparately impacts African-Americans in Alabama?

18 A I think so. I think that any time you put barriers like
19 that in place it has an adverse impact on low-income families
13:48:41 20 and people that -- working families, things of that nature
21 rather than professional families. And I think
22 African-Americans make up the majority of that. Not that it
23 will not have an adverse impact on anybody to fill in that
24 category, but African-Americans are more affected by it.

13:48:56 25 Q Have you observed any issues with DMV offices in the Black

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1 Belt in the last few years?

2 A If I recall correctly, it was Governor Bentley at that
3 time. Something came up in the legislative process that he was
4 not satisfied with relative to the black caucus. And I think a
13:49:22 5 way of punishment was closing some of the -- the offices in the
6 Black Belt.

7 I'm trying to think of what that issue may have been, but
8 I don't recall at this time. But it -- the Governor got very
9 upset with the black caucus on some bill or legislation that he
13:49:43 10 wanted that we were opposed to. And when we looked up, he had
11 closed all of the voting places in some of the Black Belt
12 areas, voter ID places in the Black Belt area.

13 Q How would the closing of the DMV offices impact
14 African-Americans differently than it might white voters?

13:50:05 15 A Well, the feedback that I got -- and I'm not in the Black
16 Belt -- but people would have to drive sometimes an hour to get
17 to a location where they would be able to get their ID to be
18 able to vote. And I mean, that's a lot just to go get an ID to
19 be able to go vote.

13:50:27 20 So, and then there was some problems with the hours. I'm
21 not thoroughly familiar with all of the details because most of
22 the legislators from that particular area handled that issue
23 with the Governor in trying to make the corrections. But it
24 was a tremendous, you know, burden on people in the Black Belt
13:50:48 25 to be able to do that. Somebody from that area will probably

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1 have more information than I on that.

2 Q Certainly. Have you --

3 THE COURT: Do you know how long that was a problem?

4 THE WITNESS: For some reason, we were very aggressive

13:51:05 5 and adamant about -- to include, we started filibustering in

6 the legislature. So I don't know. It may have been 30 days or

7 so. I'm not certain on the exact time on that.

8 THE COURT: But it wasn't a period of years?

9 THE WITNESS: No, ma'am.

13:51:21 10 THE COURT: Okay.

11 BY MS. MADDURI:

12 Q Mr. Knight, have you observed any issues with

13 African-Americans not being on the voter rolls when they go to

14 vote?

13:51:31 15 A Yeah. That's interesting you would ask that question. I

16 ran for Senate this last election, and I've been a Democrat all

17 my life. And when I got to the polls to vote in the election,

18 I was told that -- it was in the runoff election -- and I was

19 told that I had voted in the Republican primary so I couldn't

13:51:55 20 vote in the Democratic runoff election. And it took me almost

21 half a day to correct that.

22 Q Have you observed the same thing happening to other

23 African-Americans?

24 A Yes. I work -- I worked the polling places on election

13:52:15 25 day, and there are all kind of problems many times on election

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1 day. People going to vote, names not on the list, they be told
2 by people that -- election officials -- that they have to go to
3 the courthouse to correct it.

4 Some election officials will allow them to vote
13:52:32 5 provisional ballots. Others would not.

6 There have been instances where polling places are not
7 open on time. But they have allowed -- when they were not open
8 on time and we complained about it, they would extend the hours
9 and keep the polling place open for that length of time that
13:52:51 10 they were closed.

11 There have been instances where the 30-foot rule, 30-feet
12 rule that you have to stand 30 feet from the poll if you have
13 any campaign material, where in some polling places, they would
14 not allow people to have campaign material at all whether it
13:53:11 15 was 30 feet or anywhere on the property.

16 So there have been -- I mean, just about in every election
17 you have some problems that you are going to deal with on
18 election day. And now, these are precincts in the
19 African-American community. I focus my attention basically in
13:53:26 20 those African-American communities in the city of Montgomery.

21 THE COURT: So you don't know if there are similar
22 problems in any of the white precincts?

23 THE WITNESS: No, ma'am, I don't. Huh-uh.

24 BY MS. MADDURI:

13:53:41 25 Q Have you received complaints from African-Americans about

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1 these issues?

2 A I have, yes.

3 Q Have you received any complaints from white voters?

4 A Not at the same level. Maybe two or three. I know the
13:53:59 5 issue of dealing with my name not being -- where there was a
6 mixup on whether somebody voted Republican or Democrat, I think
7 a few whites had a problem with that, as well.

8 Q Mr. Knight, do you know how many African-Americans have
9 been elected to statewide office in Alabama?

13:54:33 10 A I know Justice Adams was elected statewide to the Supreme
11 Court. Justice England, I think -- I know he was appointed. I
12 think he was elected, as well. Justice Cook was appointed, but
13 I don't think he was subsequently elected.

14 So that would be two that I could think of immediately. I
13:55:08 15 can think of those two that's been elected.

16 Q And in the Alabama state legislature, are you aware of
17 approximately how many African-Americans are in the house?

18 A It's 27.

19 Q Are any of them elected from non-majority black districts?

13:55:30 20 A All of them are elected from majority black districts.
21 There's one district that I would consider kind of marginal.
22 That's the one that -- the Locy Baker district down in Houston
23 County. It may be -- it may be kind of even. That's the only
24 one that would be considered marginal in my mind. All the rest
13:56:02 25 of them are majority black.

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1 THE COURT: The one in Houston County, what did you
2 call it?

3 THE WITNESS: The Locy Baker -- he's the
4 representative that got elected from that district.

13:56:15 5 THE COURT: Do you know how to spell Locy?

6 THE WITNESS: L-O-C-Y.

7 THE COURT: Okay. Thank you.

8 BY MS. MADDURI:

9 Q Do you think the fact that no African-Americans have been
13:56:32 10 elected statewide have an effect on --

11 A Let me -- there was -- there is a district. James Fields
12 got elected from a district in Cullman, Alabama.

13 Q And James Fields is African-American?

14 A He's African-American, yes. He's no longer there. He got
13:56:49 15 elected one term from a district in Cullman, Alabama. I
16 remember that.

17 Q Do you remember approximately when that was?

18 A That was in -- not this past session, but the session of
19 the legislature before that.

13:57:04 20 THE COURT: And do you know the racial makeup of
21 Cullman?

22 THE WITNESS: It's white. I don't know --

23 THE COURT: It's predominantly white, isn't it?

24 THE WITNESS: Yes. I think so. It is.

13:57:19 25 BY MS. MADDURI:

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1 Q Do you think that the fact that no African-Americans have
2 been elected statewide has an impact on the African-American
3 community in Alabama?

4 A Well, yes. I think that anytime you can't have
13:57:35 5 representation it's going to have an impact on it. You like to
6 feel like you have people that will have at least not
7 everything that you stand for that you believe in, but at least
8 represent some of the views that you might have and that you --
9 you have that type of representation on all levels.

13:57:54 10 Q When you were in the state legislature, were you involved
11 in the passage of any laws in relation to the composition of
12 boards, city boards in Montgomery?

13 A That was -- I was involved in that around 19 -- around
14 1993 -- at the time that Montgomery changed from the council
13:58:24 15 form of government to the -- from the mayor-council to the
16 commission form of government -- from the commission to the
17 mayor-council form of government.

18 I passed a bill in the Alabama Legislature that would add
19 diversity to all of the municipal boards. It was a bill that
13:58:44 20 gave the council the authority to make -- to make
21 recommendations -- to make appointment to municipal boards,
22 where in the past the mayor had made appointments to all
23 municipal boards. So most of them were basically white.

24 When we passed that bill, that bill gave African-Americans
13:59:02 25 an opportunity to be represented on municipal boards because we

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1 had a council form of government where you had four blacks and
2 five whites -- nine-member council. So you at least have four
3 African-Americans on all your municipal boards within the city
4 of Montgomery.

13:59:19 5 Q I'm just about done with you. I promise.

6 Were you ever the victim of a crime in your home? At your
7 home?

8 A A crime in my home? Oh. Well, yes, it was a crime. I
9 mean, I had a cross burned in my yard.

14:00:00 10 Q Can you tell me about that?

11 A That was in 19 -- it had to be around 1981 or so.

12 At the time, there was a lot of controversy in the city of
13 Montgomery. I led the protest on the demonstration
14 concerning -- I'm trying to think exactly now what the issue
14:00:20 15 was at that time. I was working with Montgomery improvement
16 association. It was a controversial dealing with the police
17 department and something that had happened. I think it may
18 have been an African-American that got shot in the back or
19 something of that nature. And we were holding demonstrations.

14:00:38 20 And one Sunday morning, my neighbors called, and there was
21 a cross in my yard, a big telephone pole and a cross that
22 was -- I mean, it was like daylight.

23 Q Did you find out who did -- who did it? Who committed the
24 crime?

14:01:00 25 A The best that I could remember -- at that time, I think

1 the Attorney General was Jimmy Evans. And they were able, with
2 the Southern Poverty Law Center, I think they -- they were able
3 to find some people for that, along with some other things that
4 had been planned. Because at one of the demonstrations there
14:01:25 5 had been a plan to blow up a bridge or something that we were
6 going to march over.

7 So they were able to gather that information. I think
8 they tied all of it together. I don't know all the details
9 about the outcome of it or when it happened. But I do know
14:01:40 10 that something did happen as it relates to them being able to
11 identify some of the people that were involved in it.

12 Q Do you recall who those people were?

13 A No, I do not.

14 Q That's all my questions for you right now.

14:02:00 15 A Thank you.

16 THE COURT: Cross-examination?

17 MS. HOWELL: Briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. HOWELL:

14:02:40 20 Q Hi, Representative Knight. I didn't get to meet you
21 earlier. I'm Laura Howell, and it is nice to meet you in
22 person finally. I've heard a lot about you.

23 A I hope it has been good.

24 Q It has been.

14:02:53 25 And you have covered a lot of ground. So please forgive

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1 me if I take a little bit longer than maybe I should just
2 asking you a bunch of questions.

3 So you've talked a lot about -- and it sounds like you're
4 very passionate about improvements for the city of Montgomery;
14:03:10 5 is that a fair statement?

6 A I would want to think so, yes. Uh-huh.

7 Q And you talked about sort of your perspective on having
8 Montgomery split between three congressional districts, right?

9 A Yes.

14:03:25 10 Q And how you felt like that diluted the influence that
11 someone might have there, right?

12 A Yes.

13 Q Okay. You also said that there was probably less interest
14 in looking after the city of Montgomery; is that correct? Did
14:03:46 15 I understand you correctly?

16 A I don't know exactly what -- the intent on what I'm saying
17 on that is I think that if you have a person that represents
18 30,000 people opposed to somebody that only represent 3,000,
19 that you would have more impact, in terms of the
14:04:02 20 decision-making process with that individual in terms of their
21 priorities.

22 Say, for instance, in politics, you establish your
23 priorities. If you got something that you can deliver to
24 30,000 people, you're going to do that before you deliver to
14:04:17 25 3,000 people. That's kind of --

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1 Q I understand. So we have three Congress people that
2 represent some part of the city of Montgomery, correct?

3 A We do, yes.

4 Q And one of them is Terri Sewell, correct?

14:04:32 5 A That's correct.

6 Q And one of them is Martha Roby?

7 A Yes.

8 Q Those are the two bigger ones at issue, I think, in this.

9 A And Mike Rogers.

14:04:40 10 Q And Mike Rogers is in District 3, right?

11 A Yes.

12 Q Do you know where Martha Roby lives?

13 A No, I don't. I could guess, but I do not know.

14 Q So you don't know that she lives in Montgomery?

14:04:54 15 A Oh, no. She lives in Montgomery. I thought you meant the
16 street address or something.

17 Q Oh, no, sir. I wouldn't ask you that in open court.

18 A Oh. She lives in Montgomery. Yes. I'm sorry.

19 Q Do you think she's doing an effective job representing her
14:05:07 20 portion of the city of Montgomery?

21 A I think she's a good representative, yes.

22 Q Do you think that her ability to represent the city of
23 Montgomery depends on her living in Montgomery? Do you think
24 that she represents it -- I'm sorry. That's compound.

14:05:21 25 Do you think that she represents it well living there?

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1 A I think based -- because she happens to be who she is, and
2 she served on the city council there in Montgomery, I think
3 that's had an added impact in terms of her ability to represent
4 Montgomery.

14:05:39 5 Q So in wanting -- I presume you would like a congressperson
6 who would represent Montgomery probably better and more fully
7 than someone represents it now?

8 A Well, I would just want the best representation that we
9 could get for Montgomery. Mainly because it's the capital
14:06:02 10 city, as I said. And I think with all of the things that's
11 taken place in the capital city with the possibility of tourism
12 and the amount of revenue that could come in, that good
13 representation, you know, in Montgomery will certainly be a
14 plus.

14:06:19 15 Q Sure. But are you saying that the current representatives
16 are not representing it as well as they could?

17 A No. I'm not going to say that -- not as well as they
18 could necessarily. I'm just saying if a person only had
19 3,000 -- if Martha Roby only had 3,000 people from Montgomery
14:06:38 20 district, and she had 30 or 40,000 from Houston County, then
21 the emphasis would be more on Houston County than Montgomery,
22 and her priorities would be more in Houston County than
23 Montgomery. That's all.

24 THE COURT: But wait a minute. The Montgomery
14:06:51 25 representative isn't divided with Houston County, right?

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1 THE WITNESS: I just used that hypothetical as an
2 example.

3 THE COURT: Okay. All right. So Mike Rogers
4 represents part of Montgomery, Macon, Russell, Lee, Tallapoosa
14:07:11 5 Chambers, Randolph, Clay -- oh, he has a big one -- St. Clair,
6 Calhoun, Cleburne, and Cherokee roughly for District 3?

7 THE WITNESS: Right. I assume.

8 THE COURT: So you're saying that because he only has
9 a small part of Montgomery County, he would be less receptive
14:07:31 10 to issues that affect Montgomery County?

11 THE WITNESS: Yes. It's just to me -- it's just -- I
12 mean, it's just natural that you have got all those other
13 counties with much larger population, more population and
14 voters, that you have got to take care of those before you take
14:07:47 15 care of a small population there.

16 BY MS. HOWELL:

17 Q Okay. So let me ask you this, then: Have you seen any of
18 the illustrative plans drawn by plaintiffs' experts in this
19 case?

14:07:58 20 A No, I have not.

21 Q Okay. So then you might not know that certain of those
22 illustrative plans combine portions of Mobile County with
23 Montgomery County in a proposed second majority black district.

24 Do you think that a potential future congressperson's
14:08:17 25 attentions would be divided between Mobile County or even the

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1 city of Mobile and the city of Montgomery if they were to
2 represent portions of both?

3 A Now, when it comes to the congressional districts, I have
4 looked at several districts. You have the one that's in the
14:08:33 5 seventh, and I know sometime ago we had another one similar to
6 the board of education district, and there's one dealing with
7 Mobile. I'm not familiar with the details of the Mobile. The
8 only one I'm familiar with partially would be the one that
9 exists at the present time.

14:08:48 10 I do think that as you draw those that you have
11 communities of interest. Say, for instance, Mobile and
12 Montgomery would have some things in common that a
13 representative could very well represent both -- both of those
14 areas equally and be very successful in doing so.

14:09:09 15 But when you get down to having three like we have in
16 Montgomery at the present time, I think that you could get very
17 little, in terms of attention from, say, Mike Rogers' district.
18 I know Mike, so -- I mean Representative Rogers. He's a good
19 representative. But I can understand where he would pay more
14:09:28 20 attention to the -- he would pay more attention to Talladega

21 maybe rather than he would Alabama State University, if that --
22 Q Sure. But I thought -- I understood that part of your
23 point had to do with the proportion of the population that they
24 were representing. And so in the instance where Mobile, the
14:09:52 25 city of Mobile, and the city of Montgomery were in a single

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1 district, the city of Mobile is larger than the city of
2 Montgomery, isn't it?

3 A I don't know what the population is. But it may be a
4 little larger. But I mean, if it's the entire city, I think
14:10:10 5 that would depend on the total number of the population. And
6 to me, that would determine your interests. If you split it
7 half and half or what your interests might be.

8 But there will be some areas of commonality to Montgomery,
9 as well as Mobile, because both of them are urban areas. And
14:10:26 10 some of the needs and concerns would be for both areas.

11 Q Sure. But the same could also be said for the current
12 congressional districts, right? So Mobile -- or, excuse me --
13 Montgomery is an urban area the same way that perhaps Dothan is
14 also a small urban area, right?

14:10:41 15 A It could be said possibly, yes.

16 Q And Montgomery is also an urban area that's represented in
17 part by Terri Sewell in the same way that Birmingham is in part
18 represented by her, and that's also an urban area, right?

19 A Right.

14:10:55 20 Q And you're not contending today as part of your testimony
21 that the city of Montgomery could only be represented
22 effectively by a black representative, correct?

23 A Could only be by a black representative?

24 Q Correct.

14:11:14 25 A No. I would -- what I am contending is I think blacks

1 should have the opportunity that if they want to elect a black,
2 they should have the opportunity to do so. And if you don't
3 have a majority black district, you limit your opportunity to
4 be able to do that presently in Alabama the way that the voting
14:11:31 5 trends are.

6 Q But, for example, Representative Roby could, in fact,
7 represent Montgomery just as effectively as Representative
8 Sewell could?

9 A I don't know if I want to answer that question. Martha --
14:11:48 10 Representative Roby is a very good representative.
11 Representative Sewell is a very good representative.

12 Q A very diplomatic answer from a legislator, sir.

13 You also talked about -- a little bit about party
14 affiliation. And we --

14:12:05 15 THE COURT: May I ask a question before you leave that
16 completely?

17 Are you aware, Representative Knight, of circumstances
18 where Representative Sewell and Representative Roby have worked
19 together to accomplish things for their respective districts?

14:12:26 20 THE WITNESS: Yes, I am. And they work very well
21 together. I'm very familiar with that. They have -- I mean,
22 they have put together a great alliance, in terms of working
23 together. There's no question about that.

24 THE COURT: And in that sense, sometimes having two
14:12:46 25 people working together to accomplish things can get more done

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1 in the House of Representatives than one person trying to get
2 something done.

3 THE WITNESS: In that particular instance, I would
4 have to agree with you on that.

14:13:00 5 THE COURT: Thank you.

6 BY MS. HOWELL:

7 Q You also talked earlier in your testimony about your
8 political affiliation. And you are -- you associate with the
9 Democratic party, correct?

14:13:16 10 A I'm a Democrat.

11 Q And you told us, I believe, that you felt comfortable
12 within the Democratic party in part because of shared
13 characteristics, including race, right? Of other members of
14 the party?

14:13:32 15 A I think that's correct.

16 Q Did you feel comfortable in the party when it was not
17 predominantly black members?

18 A Oh, yes, I was comfortable in the party. I mean, we had
19 within the Democratic party -- now, I'm not going to say that
14:13:56 20 we agreed on everything or -- but I felt comfortable because, I
21 mean, there were other blacks in the party, and there were
22 whites in the party that in some cases totally disagreed with
23 the views of the black caucus. And we would fight and debate
24 and everything else. But there was a comfort level because all
14:14:19 25 of us were members of the same party.

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1 Q Right. And you felt comfortable working with them?

2 A Yes. Yes.

3 Q And that was regardless of their race, right?

4 A I have been able to work across not only racial lines, but
14:14:32 5 I've been able to work across political lines, as well.

6 Q Okay. And, in fact, some of the people that were
7 especially state legislators used to be members of the
8 Democratic party and have since shifted over to the Republican
9 party, correct?

14:14:46 10 A That is correct.

11 Q Are you still comfortable working with them even though
12 they are members of the Republican party?

13 A I feel comfortable working with them. But once they
14 changed to the Republican party, some of their ideas changed
14:14:59 15 dramatically. But they still remain the same individuals.

16 Q Okay. And you've served in the state legislature for a
17 good long time, right?

18 A Yes, I think 20 -- 20 years.

19 Q Yeah. I'm attempting to do more math. We were talking
14:15:19 20 about the difficulties inherent in that earlier today for
21 lawyers. And I believe it's 25 years that you served?

22 A 25, okay.

23 Q And the Democrats were, in fact, the majority political
24 party in the state legislature until 2010, weren't they?

14:15:36 25 A That is correct.

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1 Q And then that shifted in 2010, right?

2 A Yes.

3 Q So that the Republican -- I'm sorry. So that the
4 Republicans became the majority political party?

14:15:47 5 A Yeah. They call it storming the statehouse.

6 Q And just to follow that a little bit more.

7 So the Democrats were the minority political party at the
8 time that the current congressional districts were drawn,
9 right?

14:16:04 10 A The -- we were the minority, yes. We were the minority
11 party, yes.

12 Q The minority caucus, I guess?

13 A Caucus.

14 Q You also told us that you were the chair of the Alabama
14:16:22 15 Legislative Black Caucus; is that correct?

16 A That's correct.

17 Q And that you served for eight years, I think?

18 A That's correct.

19 Q Do you recall what years you served as chair of the
14:16:30 20 caucus?

21 A The eight -- let's see. '15 -- two consecutive years from
22 '15 back -- from '18 back. I'm sorry.

23 Q Two consecutive terms?

24 A Terms, yes.

14:16:51 25 Q Okay. So from 2010 to 2018, does that sound right?

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1 A 2010 to 2018. That would be correct, yes.

2 Q Okay. And in that capacity, did you have any role in
3 helping draft or draw up the new congressional districts that
4 were passed in 2011?

14:17:23 5 A If my memory serves me correctly on that, I think most of
6 the work on the congressional districts were dealt with, with
7 the congressional delegation. We got -- I think we got a
8 recommendation of the plans that came down. I didn't -- I
9 didn't personally work on any congressional plan, no.

14:17:45 10 Q Okay. So you didn't personally work on putting together
11 even a map or anything like that? Do you know if the black
12 caucus did?

13 A Well, I'm sure we put together a map because we would have
14 to introduce the maps, yes.

14:18:02 15 Q Okay. Do you know if any maps were introduced by a member
16 of the black caucus?

17 A There were -- I don't remember -- I think Representative
18 McClammy introduced at least one or two maps on behalf of the
19 legislative black caucus for the congressional district.

14:18:21 20 I may be -- Representative McClammy or Representative
21 Laura Hall. I'm not certain on that, but there were some that
22 were introduced or were provided to districts in the state for
23 African-Americans.

24 Q Do you happen to know when those plans were introduced in
14:18:37 25 the legislature?

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1 A No, I do not.

2 Q Okay. So you don't know whether that was before or after
3 the congressional plan had passed the legislature?

4 A I don't. I don't recall.

14:18:46 5 Q Okay. Do you recall having any discussions with members
6 of the majority party -- of the Republican party when those
7 plans were being drafted?

8 A I'm sure I may have. I'm not certain. I know that we --
9 on the behalf of the caucus, we were trying to convince them
14:19:06 10 that we would like to have two majority black districts.

11 Q Okay. Did you personally do that? Or did someone else in
12 the caucus do that?

13 A I probably personally talked to some members on the
14 legislature on that. That would have been on the
14:19:23 15 reapportionment committee. Whoever from the caucus -- and I
16 think it was Representative McClammy or Representative Laura
17 Hall. I'm not certain which one at this point.

18 Q But they either Representative McClammy or Representative
19 Hall would have spoken to someone?

14:19:37 20 A Yes. Or someone on the legislative black caucus would
21 have spoken to someone.

22 Q But you have no personal knowledge of that?

23 A I don't think so.

24 Q Okay.

14:19:45 25 A You're talking about congressional district, not

1 legislative district?

2 Q Correct.

3 A Okay.

4 Q Did you work with anyone on the state legislative
14:19:55 5 districts?

6 A Oh, yes.

7 Q Okay. Did you spend a significant amount of time on
8 those?

9 A Yes, ma'am.

14:20:01 10 Q Okay. And you submitted plans presumably for those, as
11 well?

12 A We submitted several plans, yes.

13 Q And then subsequently the legislative black caucus decided
14 to file suit over those state legislative plans, didn't it?

14:20:22 15 A That is correct.

16 Q Okay. And do you recall what the claims were in that
17 case?

18 A They are too complex for me. But, I mean, we went all the
19 way -- those are the plans, I think, if you're talking about
14:20:35 20 the same one. We went all the way to the Supreme Court on
21 that.

22 Q And that was before a three-judge court in Montgomery went
23 all the way up, came all the way back down, right?

24 A Yes.

14:20:44 25 Q And resulted in changes to the state legislative

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1 districts, correct?

2 A It did.

3 Q But that case did not bring any claims against the
4 congressional districts in Alabama, did it?

14:20:54 5 A That case, to my recollection, was strictly on the
6 legislative districts, not the -- you said the congressional
7 districts?

8 Q Yes, sir.

9 A Not that I am aware of. I don't think -- I don't think
14:21:08 10 that was included in that.

11 Q So it only concerned the state legislative districts?

12 A The state legislative districts, yes.

13 Q Okay. Now --

14 A I wouldn't mind including the congressional districts in
14:21:22 15 there.

16 Q Well, why did you not?

17 A I don't -- we were only addressing the legislative
18 districts.

19 Q Okay. You also talked a lot about the different problems
14:21:50 20 that have faced Montgomery that you've seen while you've been a
21 legislator. You mentioned a lack of emphasis on education, and
22 a lack of funding for mental health, and seeking criminal
23 justice reform. I believe those were three big ones that you
24 mentioned, correct?

14:22:07 25 A Yes.

1 Q Would you characterize those as concerns that are specific
2 to Alabama, or do you think that those are nationwide concerns?

3 A Well, I mean, I can speak for what I -- what I experienced
4 here in Alabama. I don't know on the national level whether
14:22:20 5 they have the same issues and/or concerns or not. I think they
6 have some that are very similar. But I think that when it
7 comes to the correctional department, when it comes to mental
8 health, it's much more pervasive here than other areas from
9 what I've seen.

14:22:36 10 When you look at the number of people that's incarcerated,
11 you look at the complaints even from corrections, in terms of
12 being unable to handle the caseload when it comes to mental
13 health patients that they have within the corrections facility,
14 there's an ongoing lawsuit on that at the present time.

14:22:55 15 So I mean, it's just -- I mean, it's -- it's at a boiling
16 point here in Montgomery. And something has to be done from a
17 legislative perspective to address it.

18 Q But you think that those concerns are particular to
19 Alabama?

14:23:13 20 A I'm not going to say they're particular to Alabama, but
21 I'm just saying that the concerns are real here in Alabama. I
22 can speak for that being here.

23 And having been in the legislative process and knowing
24 what it takes to actually try to address those which would be
14:23:29 25 additional funding and the difficulty in terms of trying to get

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1 the funding to do what's necessary. So I can speak to that.
2 But I can't say on the rest of the country what it might be.

3 Q You also talked about a lack of opportunities for, in
4 particular, younger people in Alabama, and noted that people
14:23:55 5 are leaving the state to seek other opportunities, especially
6 members of the black community; is that correct?

7 A Yes. Uh-huh.

8 Q And you said that you didn't think -- that you were very
9 concerned about leaving -- leaving children in a better
14:24:13 10 position than their parents were in when they were their age;
11 is that fair?

12 A I think that's fair. I want to make sure that they are in
13 a better position than their parents, yes.

14 Q And I framed that very badly, and you put it more
14:24:28 15 eloquently than I did.

16 Do you have kids?

17 A I do.

18 Q Do you think that they're in a better position than you
19 were in when you were their age?

14:24:36 20 A Oh, yes.

21 Q Okay. You also discussed some problems that at least you
22 have seen a very particular side of in Montgomery and mentioned
23 particularly -- I'm thinking of the millage rate and that being
24 on the ballot twice in Montgomery, to raise the millage for
14:25:05 25 public education; is that right?

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1 A That's correct.

2 Q And you said it had failed twice. Do you know when that
3 was on the ballot?

4 A I should -- I can't give you the dates. I remember
14:25:17 5 because -- I can't remember when it was on the ballot, no.

6 Q Do you know if it was in like the last five years?

7 A No, not the last five years.

8 Q Okay. More than a decade ago, maybe? Before 2008?

9 A Maybe.

14:25:31 10 Q So --

11 A I can give you the name of the people --

12 Q The names of the people that?

13 A That -- that was supportive of it because it was a good
14 cross-section of people that supported it, but it just didn't
14:25:51 15 pass. I'm sorry.

16 Q We're all a little looser after lunch. Apparently, it's
17 nap time.

18 So when you talked about the millage increase being voted
19 down, you also had mentioned at a different point in time in
14:26:04 20 your testimony that the city of Montgomery and Montgomery
21 County are both majority black, are they not?

22 A They are now, yes.

23 Q Do you know when that became the case?

24 A Just recently within the last four years possibly.

14:26:18 25 Q Okay. All right. You also talked about -- you were asked

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1 questions about problems with voter rolls and with polling
2 places in Montgomery. Do you remember that?

3 A Yes.

4 Q And you talked specifically about, you know, places not
14:26:39 5 being open when they were supposed to be, or being moved
6 around, and other things of that nature, I believe; is that
7 right?

8 A I did.

9 Q Well, first, do you recall -- or do you know actually
14:26:53 10 whether polling places are run by local officials or by state
11 officials?

12 A Well, the polling places are supervised by the Secretary
13 of State's office, as I understand it.

14 Q Do you know who is in charge of deciding where polling
14:27:08 15 places are?

16 A The county commission on the local level --

17 Q Okay.

18 A -- would be.

19 Q Do you know if the probate judge plays a role in that?

14:27:14 20 A I don't think the probate judge decides. I think the
21 county commission decides the location of polling places. I
22 think the probate judge can make recommendations.

23 Q Okay. But the -- excuse me. The probate judge is in
24 charge of making sure the polling places are staffed and
14:27:30 25 operational --

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1 A Yes.

2 Q -- is that fair?

3 Can you tell me when you encountered these problems at the
4 polling places?

14:27:41 5 A There have been problems at the polling places ever since
6 I was working the polling places even before I was an elected
7 official. And there are still problems we encounter at the
8 polling places.

9 Q And so you've even encountered problems at the polling
14:27:58 10 places while they have been under the supervision of the
11 current probate -- well, the probate judge who was recently
12 elected mayor?

13 A Yes. I have -- I personally have some problems at the
14 polling places there. But I'm saying there have been problems
14:28:13 15 at the polling places.

16 I worked at polling places every election just about, and
17 there have been various problems from people names not being on
18 the voting list; people that registered to vote, but their name
19 did not appear there, and they thought they were registered
14:28:28 20 voters but somehow the forms had not been turned in; people
21 going to the polling places and saying that their name's not on
22 the list, and they should be able even if their name is not on
23 the list, they should be eligible to vote a provisional ballot,
24 but the polling officials tell them they have to go to the
14:28:49 25 courthouse and register -- couldn't vote in that election.

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1 There's just a number of problems such as that that I have
2 seen take place at the polling places.

3 Q But those are all by and large either created by or
4 resolved by local election officials, are they not?

14:29:05 5 A Well, but you have -- I couldn't just pin it down to just
6 local officials, because the way the whole process operates, as
7 I understand it, is the Secretary of State on the state level
8 is responsible for the operations in state elections.

9 You also have voter registrars that's responsible for
14:29:30 10 voter registration, making sure everybody's on the voter list.
11 And the registrars are appointed by the Governor, the
12 Agricultural Commissioner, and one other person. But it's a
13 three-member panel that appoint all of the registrars.

14 Say, for instance, Montgomery right now is a majority
14:29:50 15 black county, but we have three white board members on the
16 board of registrars.

17 Q And the black probate judge, correct?

18 A And you have a black probate judge that recently got
19 elected.

14:30:03 20 Q Yes. Steven Reed has now been elected mayor?

21 A Yes.

22 Q In a landslide, right?

23 A It was.

24 Q But you would agree with me that these elections are meant
14:30:15 25 to be run and operated by and are currently, at least in

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1 Montgomery County, by both black and white officials alike?

2 A At the present time, yes.

3 Q I'm going to loop back really quickly.

4 We had talked about the Democratic party and your

14:30:48 5 leadership roles in the Democratic party. Would you say that

6 it's true that basically everywhere in the United States black

7 voters tend to vote for Democratic candidates?

8 A I -- I can't speak for everywhere. I say in Alabama that

9 is basically the case. And when you look at it across the

14:31:09 10 country, it seems that way.

11 Q Representative Knight, just a couple more questions for
12 you.

13 We had talked earlier about the legislative black caucus

14 being involved in the redistricting process for congressional

14:32:41 15 districts. Do you remember that?

16 A Yes.

17 Q And you said that Representative McClammy had by and

18 large, you thought, been in charge of introducing plans on

19 behalf of the caucus; is that right?

14:32:52 20 A I said he had introduced some. I mean, a number of people

21 introduce plans. I don't remember everybody. I think I

22 introduced plans myself.

23 Q For the congressional districts?

24 A Oh, not the congressional districts. No. I thought you

14:33:05 25 said on reapportionment.

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1 Q Oh, I'm sorry. I should have been more specific. For the
2 congressional redistricting?

3 A I don't -- I mean, I think Representative McClammy, I knew
4 he had a plan. Now, whether he introduced it or not, I'm not
14:33:18 5 certain.

6 Q Okay.

7 A Or a plan was introduced, if I'm not mistaken.

8 Q I wanted to show you a couple of maps from one of the
9 defendants exhibits, Exhibit 3, and ask you -- well, just to
14:33:31 10 confirm with you that these are the plans that were introduced
11 by Representative McClammy.

12 MS. MADDURI: Objection.

13 MS. HOWELL: He's says that he's in charge of the
14 legislative black caucus, and these were introduced on behalf
14:33:45 15 of the legislative black caucus. Unless you wish to withdraw
16 your statement that Representative McClammy was acting on
17 behalf of the caucus.

18 MS. MADDURI: He testified that he's not familiar with
19 the maps, or he's not even sure if they were introduced.

14:33:57 20 THE COURT: Well, I think it would be super human
21 amazing if he could, in fact, remember without seeing anything
22 what may have been introduced in 2010. So I have no problem
23 with Ms. Howell showing him the map and seeing if he remembers
24 it, or, you know, if he does, great. If not, that's another
14:34:19 25 thing.

1 And so which exhibit are you referring to?

2 MS. HOWELL: This is Defendant's Exhibit 3, Your
3 Honor. And I'm currently looking at -- it will be Exhibit C-10
4 of the preclearance submission. And it's Chestnut Defense 179.
14:34:43 5 Or actually let me see if I can get 179 and 180 on there at the
6 same time.

7 THE COURT: So it's part of Defendant's Exhibit 3? Is
8 that what you said?

9 MS. HOWELL: Yes, ma'am.

14:35:01 10 THE COURT: What page?

11 MS. HOWELL: I believe it will be pages 179 and 180
12 we're looking at.

13 BY MS. HOWELL:

14 Q And, Representative Knight, is that on your screen up
14:35:15 15 there, or no?

16 A No, it's not.

17 Q It might take a minute to pull up.

18 A It is now.

19 Q And can you read the top part of that page what it says?

14:35:34 20 A It says -- it says, "McClammy 2010 U.S. congressional
21 plan."

22 Q And then on the next page, which is Chestnut?

23 THE COURT: Well, just before we leave that, you may
24 be able to recognize Montgomery County a little better than I
14:36:01 25 do. But does that plan still show three districts in part of

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1 Montgomery County?

2 THE WITNESS: I think it only shows one. Well,
3 maybe --

4 THE COURT: Seems like the blue from 3.

14:36:25 5 THE WITNESS: Yeah.

6 THE COURT: Comes in there, and a little of the pink
7 from 7 still comes in there.

8 BY MS. HOWELL:

9 Q So does that map also appear to split Montgomery County
14:36:51 10 three ways?

11 A This map here? If the blue comes in, yes. And if the
12 pink comes in, it will split it three ways.

13 If I'm reading it correctly here based on what I --

14 Q I'm going to refer you --

14:37:15 15 THE COURT: And, Ms. Howell, I believe that this was
16 one of the exhibits that had not been pre admitted; is that
17 correct?

18 MS. HOWELL: That is correct, Your Honor. But I
19 believe that the only objection to the exhibit was to the
14:37:27 20 extent that it was offered as evidence of the legislature's
21 intent in passing the plans; unless plaintiffs articulate
22 another objection.

23 THE COURT: What's the objection to this information
24 that's in Defendant's Exhibit 3, which is the preclearance
14:37:51 25 submission?

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1 MS. MADDURI: Your Honor, Ms. Howell's correct. Our
2 objection is to the extent that the maps are offered as an
3 intent of legislators at the time.

4 THE COURT: Overruled.

14:38:06 5 MS. MADDURI: Or, no -- I'm sorry. I'm trying to say
6 that we agree with her. We're not objecting to the extent that
7 it's not being used for -- the intent of legislators.

8 THE COURT: Okay. All right. Got it.

9 MS. HOWELL: My apologies.

14:38:22 10 BY MS. HOWELL:

11 Q And, Representative Knight, I'm very sorry for my lack of
12 facility with all the technology. But we will flip to the next
13 page that's in this. And then if you can see right there, it's
14 very small print.

14:38:45 15 THE COURT: Ms. Howell, when you're away from the
16 microphone, you may need to speak just a little bit louder.

17 BY MS. HOWELL:

18 Q So on this next page, it talks about -- or it's a
19 population summary of the plan. Do you see that at the top?

14:39:07 20 A I do.

21 Q And I wonder if you can read -- I'm sorry.

22 A No.

23 Q I'm struggling. The number that is highlighted in yellow
24 there at the bottom, if you can take a quick look at this chart
14:39:31 25 and tell me how many of the districts in this plan have a

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1 majority black population?

2 A It looks like one.

3 Q Okay.

4 A Okay.

14:39:59 5 THE COURT: And just to be clear, this population
6 summary report on page 180 of Defendant's Exhibit 3 deals with
7 which congressional district plan? Can you tell,
8 Representative Knight?

9 THE WITNESS: It says plan -- it says Plan McClammy
14:40:25 10 Congressional B. I don't know what that is.

11 THE COURT: Okay. But this is not a population report
12 for the 2011 congressional redistricting plan that's at issue
13 here, right? Or Ms. Howell?

14 MS. HOWELL: Correct.

14:40:47 15 THE COURT: Not that I'm taking testimony from an
16 attorney.

17 MS. HOWELL: This is all submitted. I apologize for
18 lack of preparedness. But this is all part of the same single
19 exhibit to preclearance submission.

14:41:14 20 BY MS. HOWELL:

21 Q So that first plan -- that first plan only appears to have
22 one majority black district in it?

23 A That particular plan, yes.

24 THE COURT: And it's District 7, right?

14:41:37 25 THE WITNESS: Yes. It's District 7.

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1 BY MS. HOWELL:

2 Q And so that was one plan submitted by Representative
3 McClammy on -- presumably on behalf of the legislative black
4 caucus?

14:41:53 5 A I can't say it was on behalf of the caucus.

6 The way the legislative process operates, every legislator
7 has a right to introduce a plan. And there was several --
8 there may have been several plans that were introduced. I'm
9 just not certain.

14:42:09 10 Q Do you have any reason to dispute that all of the plans
11 that were submitted would be in the preclearance submission?

12 A Would be in the preclearance submission?

13 Q Yes, sir. To the Department of Justice?

14 A No. I don't know. I don't know.

14:42:29 15 Q I direct you to the next plan that was submitted by
16 Representative McClammy. Can you see from -- I apologize for
17 being terrible with technology.

18 THE COURT: You're doing fine.

19 BY MS. HOWELL:

14:42:57 20 Q Can you see from this view that's on your screen that this
21 is another of the congressional plans submitted by
22 Representative McClammy?

23 A I can, yes.

24 Q So it says, "2010 McClammy Congressional Plan 2M;" is that
14:43:14 25 right?

1 A Congressional Plan 2M, yes.

2 Q And then I switch to -- this is page 194, which is --

3 THE COURT: If you just give it a minute, it will kind
4 of adjust itself, and then you can adjust it in or out more.

14:43:34 5 BY MS. HOWELL:

6 Q And, Representative Knight, can you see up in the corner
7 of that page -- I'm going to mark it on mine, and hopefully
8 that shows up on yours -- and read back for me what that says
9 at the top?

14:43:56 10 A It says, "McClammy Congress 2M" it looks like.

11 Q Okay. So that appears to match the description on the
12 page before that it would be a plan submitted by Representative
13 McClammy?

14 A It appears to be, yes.

14:44:12 15 Q Okay. And then on the next page over, which I may have to
16 zoom again -- is that clear enough to read?

17 A I think I can make the numbers out here. Okay. Yes.

18 Q And can you read for me the part that I'm underlying on
19 the screen?

14:44:53 20 A "Plan McClammy Congress" -- I can't make out that.

21 Q Would you have any reason to dispute it if I told you it
22 said, "Plan McClammy Congress 2M?"

23 A 2 what?

24 Q 2M?

14:45:10 25 A 2M?

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1 Q You wouldn't have any reason to dispute that?

2 A I wouldn't have a reason to dispute it or not.

3 Q You've watched me flip through this book over here,
4 correct? So it probably and presumably goes with the other
14:45:25 5 things that read "McClammy Congress 2M"?

6 A Okay.

7 Q And can you see and read on here how many -- take a second
8 and look at the chart, and tell me how many majority black
9 districts are included in this plan?

14:45:41 10 A I see one, which is 420 -- looks like 425. 425,000 black.
11 And then there's another one that's -- I don't know, is that 3
12 or 2?

13 Q I believe that is a 3.

14 A 3? Okay. That would be 2, then. If that is a 3. I
14:46:06 15 can't make that number out.

16 THE COURT: That would be District 7 and District 3;
17 is that correct? Can you see that?

18 THE WITNESS: Yes. I can see the districts.

19 BY MS. HOWELL:

14:46:17 20 Q So this plan, in fact, did have two majority black
21 districts as part of it?

22 A According to what I see here, yes.

23 Q And then, Representative Knight, can you tell me what this
24 page says at the bottom?

14:47:24 25 A "Congressional Plan PPB," it looks like --

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1 THE COURT: What page is that on, please, Ms. Howell?

2 MS. HOWELL: That is on page 209, Your Honor.

3 THE COURT: Thank you.

4 BY MS. HOWELL:

14:47:34 5 Q And I will flip from there over to page 210, and then get
6 you, Representative Knight, to confirm that the writing up at
7 the top right there also says "McClammy Congress PPB"?

8 A It does, yes.

9 Q And does that appear to be a partial plan to you?

14:47:54 10 A It's like a partial plan, or the map has been cut off
11 here.

12 Q Yes. It does look like that.

13 A It's not the entire state.

14 Q Right. It does look like the map was cut off, which I
14:48:15 15 cannot vouch for the copying over at the state legislature.
16 I'm sorry.

17 A I can't either.

18 Q Let's see. I've now flipped over to page 211 of this
19 submission.

14:48:34 20 THE COURT: Representative, let me let you have the
21 book that I have.

22 THE WITNESS: Yes, ma'am. Thank you.

23 THE COURT: That may help you read it a little better.

24 BY MS. HOWELL:

14:48:49 25 Q And can you see up in the top left-hand corner that this

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1 also says "McClammy Congress PPB"?

2 A Yes. In the left, yes, "Congress PPB."

3 Q And it looks like, in fact, the map might have just been
4 cut off, doesn't it? Because there are numbers for all seven

14:49:07 5 districts, as opposed to just the three that were shown on the
6 map?

7 A There's numbers for all seven districts --

8 Q Okay.

9 A -- on this report, yes.

14:49:15 10 Q Yes. And according to this report, how many of the
11 districts does it look like contain a majority black
12 population?

13 A District 7 is the -- District 7 it looks like on this one.

14 Q Okay.

14:49:36 15 A One. One district.

16 Q Thank you. And do you have any reason to believe that
17 Representative McClammy submitted any other districting plans
18 that we wouldn't know about from this preclearance submission?

19 A I would have no idea. Like I say, legislators introduce
14:49:59 20 bills every day, so I would -- Mr. McClammy would have to
21 respond to that. I wouldn't know how many plans he would have
22 introduced.

23 Q But, to your knowledge, the legislative black caucus did
24 not present any other plans for the congressional redistricting
14:50:14 25 cycle in 2011 that contained two majority black districts

1 outside of the one that we just reviewed that Representative
2 McClammy put forward?

3 A To my knowledge, I'm not familiar with one. I'm not going
4 to say that one was not introduced on behalf of the caucus.
14:50:32 5 But I don't recall another one. I know that was a plan that
6 created two districts.

7 Q And that would be the middle plan that we looked at,
8 correct?

9 A From the one that I've seen here today, yes.

14:50:42 10 Q Thank you.

11 THE COURT: Ms. Howell, were you offering these
12 exhibits at this time?

13 MS. HOWELL: Yes, Your Honor. We would offer Defense
14 Exhibit 3 just for the purpose of showing those plans and what
14:51:07 15 was offered.

16 THE COURT: Okay. And should we just excerpt those
17 that you showed him, or are you -- trying to figure out what we
18 are wanting to do with this huge big book. And if you're not
19 offering it for the intent of the legislature, I think there's
14:51:31 20 not an objection to it now?

21 MS. HOWELL: That is my understanding, Your Honor,
22 that all of it would be admissible as long as it's not to show
23 intent.

24 THE COURT: Is that correct?

14:51:44 25 MS. MADDURI: We would withdraw our objection to

1 preclearance.

2 THE COURT: So Defendant's Exhibit 3 is admitted,
3 then.

4 MS. HOWELL: Thank you. And thank you, Representative
14:51:54 5 Knight. I apologize for all of the technical difficulties. I
6 know I am a millennial, but I'm really not.

7 THE COURT: Any redirect?

8 MS. MADDURI: No, Your Honor.

9 THE COURT: All right. Thank you, Representative
14:52:12 10 Knight. We appreciate you being here today. And you may step
11 down.

12 THE WITNESS: Thank you. Thank you.

13 THE COURT: Do you want a short break before we get to
14 our next witness?

14:52:23 15 MR. SPIVA: That would be good, Your Honor.

16 THE COURT: Okay. We'll come back at five after 3:00?
17 10 after 3:00.

18 MR. SPIVA: Thank you.

19 (Recess.)

15:13:29 20 THE COURT: Plaintiffs may call your next witness.

21 MS. KHANNA: Thank you, Your Honor. Plaintiffs call
22 Lakeisha Chestnut.

23 LAKEISHA CHESTNUT,

24 having been first duly sworn by the courtroom deputy clerk, was
15:13:35 25 examined and testified as follows:

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1 THE CLERK: Please state your name for the record in
2 the microphone.

3 THE WITNESS: My name is Lakeisha Chestnut.

4 THE COURTROOM DEPUTY CLERK: Thank you.

15:13:54 5 DIRECT EXAMINATION

6 BY MS. KHANNA:

7 Q Good afternoon, Ms. Chestnut.

8 A Good afternoon.

9 Q Ms. Chestnut, are you a plaintiff in this case?

15:14:00 10 A Yes, I am.

11 Q Do you live in Alabama?

12 A Yes, I do.

13 Q What county do you reside in?

14 A Mobile.

15:14:06 15 Q And what city do you reside in?

16 A Mobile.

17 Q Do you have family in Alabama?

18 A Yes, I do.

19 Q Which family?

15:14:12 20 A My husband, my kids, my mom, aunts, and uncles live in

21 Mobile County. I have family in Marengo, Wilcox County. And I
22 have family right here in Birmingham.

23 Q And how long have you lived in Alabama?

24 A I've been in Alabama since I was 17 months old. I moved
15:14:35 25 away when I was 20 in 1996. I've been off and on in Alabama

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1 for a while. And then I officially came home in May of 2016.

2 Q And what is it that you do for a living?

3 A I am a licensed sales agent and a team technical expert at
4 Results Companies in Mobile, Alabama.

15:14:59 5 Q And can you tell me a little bit about your educational
6 background?

7 A So I attended Murphy High School, got my GED in 1995, been
8 to college off and on. And now I'm currently a college student
9 at Academy of Art University in San Francisco, California where
15:15:19 10 I attend online study and screenwriting.

11 Q Ms. Chestnut, are you registered to vote in Alabama?

12 A Yes, I am.

13 Q When did you first register?

14 A When I was 18.

15:15:30 15 Q When you moved out of Alabama -- I believe you said 1996?

16 A Yes.

17 Q Did you change your voter registration?

18 A Yes, I did.

19 Q And when you moved back to Alabama in May of 2016, did you
15:15:41 20 re-register in Alabama?

21 A Yes, I did.

22 Q Do you vote regularly?

23 A Yes, I do.

24 Q Would you say that voting is important to you?

15:15:50 25 A It's very important to me.

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1 Q Why?

2 A Because my vote is my voice. It makes me hold the people
3 that represent me accountable for everything that they do,
4 whether it's a local level, state level, or even federal level.

15:16:02 5 Q And what congressional district do you live in?

6 A I'm in Congressional District 1.

7 Q Who currently represents Congressional District 1 in
8 Alabama?

9 A Bradley Byrne.

15:16:14 10 Q Have you supported him in congressional elections?

11 A No.

12 Q Have you voted for Bradley Byrne?

13 A No.

14 Q As far as you know, have Mr. Byrne's congressional races
15:16:23 15 been competitive --

16 A No.

17 Q -- since you returned to Alabama in 2016?

18 A No, they have not.

19 Q And what makes you say that?

15:16:30 20 A Because in the first time that he ran, he has run
21 unopposed. He has had some -- some opponents, I think, in one
22 primary, and a couple opponents in the general election.

23 In 2018, there was a young man by the named of Robert
24 Kennedy, Jr., who ran against him, and he lost by 30 points.

15:16:57 25 Q Ms. Chestnut, you grew up in the city of Mobile; is that

1 right?

2 A That is correct.

3 Q And since you moved back to Alabama, you've lived in
4 Mobile; is that right?

15:17:09 5 A That is correct.

6 Q Did you go to public school in Mobile?

7 A Yes, I did.

8 Q Do you have children who went to public school in Mobile?

9 A Yes, I did.

15:17:15 10 Q Based on your experiences in the area, does the
11 African-American community in Mobile have unique needs and
12 interests related to public education?

13 A Yes, they do.

14 Q And what would -- what are those?

15:17:27 15 A So -- excuse me -- our public schools are failing. A lot
16 of the black students that go to predominantly black schools
17 are basically struggling to survive, struggling to get, you
18 know, get their education. They are trying to do the best that
19 they can with what they have.

15:17:58 20 We have a few of our majority black schools that are
21 currently on the failing list. I don't think there's like a
22 couple of white schools that are on that list from Mobile
23 County.

24 But they work hard. They try their best. But and some of
15:18:20 25 them want to go to really good schools. But they -- some end

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1 up going to community college and then transferring to a
2 different, you know, transferring to another school. Some just
3 go straight from high school to the workforce.

4 So it's -- the struggle for having a really great public
15:18:47 5 education is truly real.

6 Q And you mentioned -- what about white -- white students in
7 Mobile or white families in Mobile? Do they -- don't they have
8 an interest in public education, as well?

9 A They do. But their needs are different than ours.

15:19:02 10 White kids don't -- when I was in school -- I will put it
11 to you like this. When I was in high school, I went to Murphy
12 High School. Murphy was, first of all, the first school that
13 was integrated in Mobile County. Second, it was a majority
14 white school when I went there. Now it's a majority black
15:19:19 15 school because all the students that attend Murphy or were in
16 Murphy's district are either going to private schools, like
17 Saint Paul's or Saint -- or UMS-Wright or McGill-Toolen, or
18 they're going to school further out west that have majority
19 white students that attend there. So they're not going to like
15:19:43 20 schools like Williamson or Blount or Vigor. They're going to
21 like Baker or Alma Bryant. Those are the schools that they're
22 attending.

23 Q And what about higher education? Are there any, in
24 particular, interests within the African-American community in
15:20:00 25 Mobile regarding access to higher education?

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1 A We can't afford it. I am a product of that. I don't have
2 a Pell Grant. I actually had to take the semester off because
3 I couldn't afford my classes this semester. My student loan
4 was only enough to pay for maybe one and a half of my classes.
15:20:20 5 So I have to wait until next semester to see if I have enough
6 in student loans just so I can attend my -- my classes next
7 semester. After that, I don't even know.

8 I just feel like I'm going to have to give up on my dream
9 of being a screen writer. You have to -- you -- student --
15:20:42 10 black students have to see if they can get a scholarship just
11 to attend school.

12 My daughter just graduated a few years ago. My
13 daughter -- she attended -- she wanted to attend Harvard. That
14 was her dream school. But she thought her grades weren't good
15:21:02 15 enough so she could attend Harvard. So she ended up at Bishop
16 State Community College, and then turned around and transferred
17 to Troy and switched her major a couple of times, but now she
18 is a chemical engineering major. And that's because that's the
19 only way she could afford to go to school.

15:21:21 20 So affordability, having the resources to be able to go to
21 school, not going into debt, you know, to get our degrees? I
22 mean, I'm 43 years old, and I'm still trying to go back to
23 school, and I can't even afford it.

24 So, yes, so those are one of our immediate concerns with
15:21:38 25 higher education.

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1 Q Does the African-American community in which you live in
2 Mobile have any unique needs or interests relating to criminal
3 justice?

4 A Yes.

15:21:49 5 Q And what are those?

6 A We're more concerned with a lot of police brutality.

7 My husband walks everywhere that he wants -- that he needs
8 to go. I can't begin to tell you how many times that my
9 husband has come home and said that he's been pulled over by
10 the police just because he looked like somebody that committed
11 a crime. Every night when he goes out for his nightly walk,
12 I'm afraid that he may never come home.

13 The last time he got pulled over by the police, they held
14 him for an hour and a half for a shooting that happened in the
15 opposite direction that he was going because he went to
16 Wal-Mart to go grab dinner for the night. And when he was
17 coming back, that's when the police stopped him.

18 So that's a concern. It's a concern for me.

19 I be at home alone sometimes. What if one of my neighbors
15:22:46 20 like what happened to the young lady in Fort Worth? What if
21 one of my neighbors got concerned and saw me in the window and
22 shoots me in my own home? You know.

23 My stepson, 15 -- well, actually 16, just turned 16, I
24 worry about him.

15:23:04 25 So we worry about those things. We worry about the high

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1 incarceration rates, how a lot of our black young black men are
2 being incarcerated at higher rates than whites. It is an
3 issue.

4 And I wish that we had more -- somebody who actually
15:23:25 5 represented us that actually addressed those concerns.

6 Q Has Congressman Byrne taken any actions in Congress
7 related to criminal justice?

8 A Yes, he did.

9 Q What did he do?

15:23:36 10 A He voted against the First Step Act.

11 Q And what is the First Step Act, as far as you know?

12 A The First Step Act is a bill that was passed that allowed
13 first-time offenders who get out on parole to get help with
14 education opportunities, job opportunities, housing, whatever
15:24:00 15 they need once they are released from jail.

16 And so that's a good first step. There needs to be more.

17 But for him to vote against that, something that is
18 helpful in the way, really kind of made me a little mad, little
19 upset about it.

15:24:23 20 Q Are there any particular needs or interests among the
21 African-American community in Mobile relating to employment?

22 A So Mobile is -- as far as jobs are concerned, the major
23 employers in Mobile are Austal, Airbus, and some people might
24 consider the docks. But the two biggest ones is Austal and
15:24:53 25 Airbus.

1 And with Austal, there is an apprenticeship program for
2 Austal. But, one, you need a GE -- you know, you need a high
3 school diploma or GED. You do need a clean record in order
4 to -- in order to be any part of this program.

15:25:15 5 Another one, of course, Airbus. You got to have a degree,
6 I know, because I looked. Because I was thinking about working
7 for Airbus at one point. But you have to have a degree of some
8 sort to work for Airbus. And also, another, clean record.

9 And a lot of young men don't have clean records. They
15:25:37 10 have a felony, and they can't get a job at Austal, or they
11 can't get a job at Airbus.

12 They work -- there are a lot of young men that have to
13 either start they own business if they can, like my nephew who
14 started his own power washing business. They have to work like
15:25:59 15 a fast food, like Burger King, or McDonald's, or retail, or
16 restaurants like Olive Garden.

17 I mean, there really is not a whole lot in the way of
18 good-paying jobs in Mobile unless you're working at a call
19 center or the other two places that I just mentioned.

15:26:22 20 Q Do you feel like the issues that you had mentioned about
21 African-Americans in the fields of education, criminal justice,
22 affect the abilities of African-Americans to obtain good
23 employment in Mobile?

24 A Yes.

15:26:33 25 Q Are there any particular needs or interests relating to

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1 health care among the African-American community in Mobile?

2 A This is one of my biggest issues. I am a daughter of a
3 nurse -- actually a granddaughter of a nurse. I have seen the
4 level of care and the access to care go down since my
15:26:59 5 grandmother was alive. And my grandmother passed away in 2001.

6 It's harder now when you go to the hospital, especially if
7 you have to go to the emergency room, and you have to get, like
8 get seen. If you're really sick, you have to wait. Sometimes
9 you have to wait four, five, even six hours in an emergency
15:27:22 10 room just to get seen. And even once you do get seen, you
11 still have to wait. I have known people that have been in the
12 hospital six hours before they even got in the back.

13 My daughter has sickle cell. She gets pain episodes
14 probably once every two to three months. She's also pregnant
15:27:53 15 again. And she can't even afford sometimes to go to the
16 hospital. She has to just grin and bear the pain at home
17 because she can't afford it.

18 So, yeah. Access, limited resources, stuff like that
19 impacts health --

15:28:16 20 Q Has Congressman Byrne taken any actions in Congress that
21 you are aware of relating to health care?

22 A He voted to repeal the Affordable Care Act.

23 Q And do you believe that the African-American community in
24 Mobile benefitted or benefits from the Affordable Care Act?

15:28:32 25 A I am one of those people that benefitted from the

1 Affordable Care Act. If it wasn't for the Affordable Care Act,
2 I wouldn't be able to have insurance at all even with my job.

3 So, yeah. I am one of those people that would
4 definitely -- and I also have a preexisting condition. I have
15:28:51 5 diabetes. And I'm -- and I also had asthma as a kid.

6 Q Does the African-American community in Mobile have any
7 particular needs or interests related to affordable housing?

8 A Yes. So the latest news out of Mobile is the Mobile
9 Housing Board in January is closing the Section 8 department.
15:29:20 10 They're firing everybody -- all the staff from Section 8, and
11 they're going to outsource it to a private company.

12 The waiting list for Section 8 is anywhere from five to
13 seven years long. There have been people that have been on
14 there for a long time.

15:29:43 15 My mom was homeless when she came home in 2017. My mother
16 is 67 years old. My mother has two bad knees, diabetes, high
17 blood pressure. She also has sleep apnea. My mother had to
18 sleep in her car. My mother had to couch surf.

19 My mother ended up in a homeless shelter. It wasn't until
15:30:14 20 October of last year she finally got hooked up with a program
21 that put her in an apartment that she could afford.

22 So we have a homeless population that is insane. We don't
23 have any public housing because they're getting -- doing away
24 with all the public housing. It's just hard to find an
15:30:42 25 affordable place to live in Mobile unless you have got a really

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1 great job.

2 Q Ms. Chestnut, is it your understanding that the city of
3 Mobile is a majority-minority city?

4 A Yes.

15:30:58 5 Q And Mobile is currently entirely located within a single
6 congressional district; is that right?

7 A That is correct.

8 Q And what congressional district is that?

9 A Congressional District 1.

15:31:10 10 Q Do you feel that having the city of Mobile wholly
11 contained within that one congressional district has served
12 Mobile citizens well?

13 A No.

14 Q If the city of Mobile were divided between CD 1 and a new
15:31:24 15 majority-minority district, do you feel the interests of the
16 city of Mobile residents would be better served?

17 A Yes.

18 Q And, Ms. Chestnut, I believe you were in the courtroom
19 while Ms. Howell was questioning Representative Knight and
15:31:37 20 asked whether having two people working together to represent
21 Montgomery can, in fact, benefit the residents of Montgomery.
22 Were you here for that?

23 A Yes, I was.

24 Q Do you believe that Mobile could benefit from having
15:31:51 25 representation by more than one representative?

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1 A Yes.

2 Q Ms. Chestnut, do you regularly follow political campaigns
3 in Alabama?

4 A Yes, I do.

15:32:07 5 Q Have you observed any instances in which a candidate in
6 Alabama has referred to race as a reason to vote for or against
7 a given candidate?

8 A Yes.

9 Q Does that happen often in Alabama?

15:32:19 10 A Quite a few times I've heard a couple of things that kind
11 of made me upset and mad and frustrated.

12 Q Let's talk about some specifics. Have you personally
13 heard members of Congress from Alabama make any such statements
14 about race recently?

15:32:40 15 A Mo Brooks.

16 Q What did you hear Mo Brooks say?

17 A Something about the war on white people. I'm still trying
18 to figure that one out.

19 Q And where did you hear Mo Brooks talk about war on white
15:33:03 20 people?

21 A He did an interview, radio interview I heard that I almost
22 threw my phone clean across the room when I heard it. But I
23 held my composure because my phone is expensive.

24 But I'm still trying to figure out what he means by a war
15:33:22 25 on white people.

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1 Q What did that statement mean to you?

2 A It means that white people should be afraid of people that
3 don't look like them, people that look like me, people that
4 look like my husband, you know, people that look like my
15:33:39 5 granddaughter. So that's what it means to me.

6 Fear. It incites fear.

7 Q Did you personally hear any such statements regarding race
8 made during Alabama's special election for Senate in 2017?

9 A Yes.

15:33:53 10 Q From whom?

11 A Roy Moore.

12 Q And what did you hear Roy Moore say?

13 A So in September of 2018, he did a rally in Florence,
14 Alabama. And I'm paraphrasing here. I could be wrong, but I'm
15:34:14 15 kind of paraphrasing here. But that families were together and
16 happy during the time of slavery. So that made me think that
17 so that slavery was good.

18 Q Is that what you heard when you heard?

19 A That's kind of -- that's kind of what I, you know, kind of
15:34:37 20 interpreted a little bit.

21 I wasn't born during that time. I don't even -- none of
22 my -- I think my ancestors were. But I get -- I'm sorry. I
23 just get mad when I hear things like that.

24 Q Did it affect you when you heard Roy Moore talk about a
15:35:07 25 time of slavery is when families were happier?

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1 A Yes. I would think families were happier even during the
2 time of Jim Crow, even during the time of Civil Rights, you
3 know, during the '80s.

4 Dynamics change, yes. I was raised by a single parent.

15:35:29 5 But that doesn't mean we weren't happy. We were very happy.

6 Q What does it mean to you when you hear -- when you heard a
7 candidate running for office indicate that families might have
8 been happier during the time of slavery?

9 A Makes me mad. Makes me -- you know how it makes me feel?

15:35:53 10 That I don't matter. I'm sorry. It makes me feel like I'm a
11 second class citizen in a state that I love.

12 I love the state. I may go away. I may be away from --
13 for a very long time, but this is my home. And I love my home.
14 And I want to be treated equally across the board. And I want

15:36:24 15 my voice to be heard. I'm sorry.

16 Q That's okay. Take your time.

17 A I'm sorry.

18 Q No. You're fine. Do you need a break or something?

19 A No. I'm good. I'm good. I knew it was coming. I

15:36:53 20 just --

21 Q Ms. Chestnut, did you personally hear any statements
22 regarding race made during the most recent Alabama Supreme
23 Court election?

24 A Yes, I did.

15:37:04 25 Q From whom?

1 A Tom Parker.

2 Q Do you recall in what forum you saw or heard Tom Parker?

3 A There were two videos that I saw. One came across my
4 YouTube feed.

15:37:18 5 And just so anybody don't understand anything about
6 YouTube and feeds, when you are on YouTube and you go to your
7 home -- your home portion of YouTube, it shows you different
8 videos that you may have an interest in or that you watch
9 before you may want to watch another one again.

15:37:36 10 In this case, because I had been watching a few political
11 ads on my YouTube, this particular video showed up on my feed.

12 Q Do you recall when -- when this happened?

13 A This was during the -- this was during the election -- the
14 election proceedings. And the video that I saw was -- the
15:38:01 15 beginning of it was a -- you saw a group of Latinos at a -- I
16 think at a fence, and they were talking about an invasion. And
17 how Tom Parker talked about how he took on the ALCU and the
18 Southern Poverty Law Center, which --

19 MR. WALKER: This goes to two of the exhibits about
15:38:30 20 which we made an objection.

21 MS. KHANNA: Sure, Your Honor. I haven't actually
22 sought to admit the exhibit yet, but I will offer to admit them
23 now, and we can discuss the exhibit, if that works for you.

24 MR. WALKER: No. I'm sorry if --

15:38:45 25 MS. KHANNA: That's fine. I was going to ask her to

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1 pull up the exhibits so we could identify it, and I'm happy to
2 discuss it now if, Your Honor --

3 THE COURT: All right. Normally we do side bars for
4 that, and even though we don't have a jury, I think we probably
15:38:59 5 should because of a witness presence, as well. So come up here
6 and talk to me about it.

7 (Bench conference:)

8 MR. WALKER: Your Honor, we objected to those two
9 exhibits because they weren't disclosed prior to being on the
15:39:27 10 exhibit list. And our position is --

11 THE COURT: Which ones are they? What numbers are
12 they?

13 MR. WALKER: I'm sorry --

14 MS. KHANNA: They're 85 and 86.

15:39:38 15 MR. WALKER: And our position is that if we had known
16 about them in discovery, we could have done discovery on when
17 they were shown, if they were shown, what formats they were
18 shown in, who had seen them, and that sort of thing. But we
19 don't have any of that information now.

15:39:51 20 MS. KHANNA: If I may respond.

21 So I believe that their objection is under Rule 37(c)(1).
22 And that provides that the evidence could be excluded if --
23 unless it is substantially justified for lack of disclosure or
24 harmless.

15:40:06 25 And here I think it's both. There was actually no

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1 discovery request asking for anything resembling these
2 exhibits. And these exhibits have never actually been in
3 plaintiffs' custody or control. They're on the Internet.

4 In fact, plaintiffs' counsel didn't even become aware of
15:40:21 5 them until after the close of discovery. And we disclosed them
6 on the pretrial list.

7 The defendants, Secretary Merrill and his counsel, were
8 present over a year ago at a trial where these videos were
9 played well before our witnesses were deposed. And, in fact,
15:40:36 10 Ms. Chestnut was -- even if we had disclosed them, you know, by
11 the close of discovery, Ms. Chestnut was deposed well before
12 the close of discovery.

13 I'm not sure how they would have been prejudiced by not --
14 they knew of these things existence on the Internet before we
15:40:51 15 even did.

16 THE COURT: Okay. But how did they know that they
17 were going to be used in this case?

18 MS. KHANNA: I think that we've -- we've never
19 actually been asked to identify all things in the public domain
15:41:01 20 that might be used in this case.

21 THE COURT: Okay. If this is something, though, that
22 you're relying on in your case in chief, why wasn't it part of
23 disclosures when you found out about it?

24 MS. KHANNA: Oh, when we found out about it, we did
15:41:14 25 disclose it. That was just after the close of the -- I think

1 the objection is it was after the close of discovery. We did
2 disclose it on the pretrial list after we found it about.

3 THE COURT: But disclosing it on the pretrial list
4 doesn't mean you disclosed it as soon as you found out about
15:41:29 5 it.

6 MS. KHANNA: Well, I can say that we did -- I can
7 assure you we did disclose it very shortly after we had found
8 out about it.

9 MR. WALKER: I don't question -- I'm just saying that
15:41:39 10 it's unfortunate perhaps for them when they found out about it,
11 but, nonetheless, we did not have the opportunity to do
12 discovery that we would have done to show its context, to show
13 who saw it, and various other things of that nature.

14 THE COURT: Okay. Well, I'm afraid I remember seeing
15:41:56 15 at least one of these myself.

16 Off the record.

17 (Discussion off the record.)

18 THE COURT: How is it really prejudicial, Dorman? I
19 mean, what would you have done, in terms of where it was shown
15:42:26 20 and -- you know, it was on TV, wasn't it?

21 MR. WALKER: Well, it was -- I think the testimony was
22 it was on YouTube. I don't know if it's actually -- I don't
23 know. I don't know if it was shown on -- I mean, the -- I
24 guess to the extent that what they ultimately seek to show is
15:42:44 25 the use of race in political appeals. Whether or not it was

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1 run on TV is relevant to how broadly that appeal was.

2 THE COURT: Yeah.

3 MR. WALKER: Whether it was beneficial advertisement
4 in the Tom Parker campaign.

15:42:58 5 THE COURT: And I think we're also at that point in
6 our world that you can't believe everything that you see and
7 hear in one of these things.

8 I saw something the other day that had been completely cut
9 and pasted and was totally, completely false.

15:43:21 10 MR. WALKER: Let me just say that Ms. Khanna is
11 indicating I went beyond the scope of our objection. And Jim
12 was actually going to argue this. So I didn't mean to -- and I
13 withdraw --

14 MS. KHANNA: I was actually going to say that I
15:43:33 15 believe that they stipulated to the authentication of it, that
16 it was, in fact, linked to Tom Parker's campaign. Yeah, we
17 provided that.

18 THE COURT: Okay. Well, I hate to rule against you
19 when Jim's not here.

15:43:45 20 MR. WALKER: That's quite all right.

21 THE COURT: And I had intended several times this
22 morning to ask him about his father-in-law.

23 (Discussion off the record.)

24 THE COURT: Okay. All right. Well, I'm going to
15:44:15 25 overrule your objection. But you can tell Jim that you fought

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1 it valiantly.

2 (End of side bar.)

3 THE COURT: So Plaintiffs' Exhibits 85 and 86 may be
4 admitted.

15:44:40 5 MS. KHANNA: Thank you, Your Honor.

6 Heather, can you --

7 THE COURT: You may publish those, if you'd like.

8 MS. KHANNA: Can you please pull up Plaintiffs'
9 Exhibit 85?

15:45:04 10 BY MS. KHANNA:

11 Q Ms. Chestnut, based on what you see on your screen, can
12 you identify if this is one of the videos that you mentioned
13 popped up on your YouTube feed?

14 A Yes.

15:45:16 15 MR. WALKER: I'm sorry. We don't have it. We're
16 good.

17 MS. KHANNA: Heather, can you please play the video?

18 (Whereupon, Plaintiffs' Exhibit 85 was played in open
19 court.)

15:46:10 20 BY MS. KHANNA:

21 Q Ms. Chestnut, the beginning of this ad mentioned an
22 invasion of -- an invasion -- I believe it is what you had
23 remembered, as well. And I think you saw the pictures of what
24 purported to be a bunch of immigrants coming in to some place.

15:46:28 25 When you saw that part of the ad, what did it -- what did

1 it make you think? How did you feel?

2 A Angry.

3 Q Why is that?

4 A This country was founded by immigrants. My ancestral
15:47:02 5 background is Native American, part of it, anyway. The other
6 part of it is Irish. I found that out.

7 Q Did you understand that reference to an invasion to be a
8 statement about race?

9 A Yes. Because the word "invasion" means that you're
15:47:34 10 invading someone -- you're invading somewhere, which means
11 you're coming in, and you're going to take something, as well.

12 What are people taking? I -- my ancestors didn't invade
13 this country. They were brought over here on ships. They were
14 sent somewhere else on reservations. They didn't invade. We
15:48:01 15 didn't take anything.

16 So why would you not allow at least a humane way to let
17 people who are running from persecution and violence find a
18 safe harbor here in this country?

19 Q So in what portion -- in what way did you see this to be a
15:48:28 20 statement about race?

21 A The word "if they." Who's "they"? Am I "they"? Is my
22 husband "they"? Is my friends who are Hispanic, are they
23 "they"? Who is this "they"?

24 Q Do you believe "they" to refer to Hispanics?

15:48:49 25 A Yes.

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1 Q Can we pull up Plaintiffs' Exhibit 86, as well, just the
2 top of it?

3 And I believe, Ms. Chestnut you testified that you had
4 seen a couple of video ads from Justice Parker's campaign; is
15:49:05 5 that right?

6 A Yes.

7 Q And do you recall seeing -- does this video that -- from
8 what you can see on the screen, is this a video you have seen
9 before?

15:49:12 10 A Yes.

11 Q Do you recall when?

12 A It was on my husband's Facebook timeline.

13 Q And just for the record, what does that mean it was on his
14 Facebook timeline?

15:49:22 15 A So when he pulls up his Facebook, or I pull up my
16 Facebook, if someone posts something, it usually goes onto like
17 what they call a news feed. So we call it a timeline. But it
18 comes in a news feed.

19 So you see what your friends posted, you know, or pages
15:49:39 20 that you liked what they posted. And one of his family members
21 posted this.

22 Q Do you recall when you saw it?

23 A It was during the election season.

24 Q Can we please play the video?

15:49:51 25 (Whereupon, Plaintiffs' Exhibit 86

1 was played in open court.)

2 BY MS. KHANNA:

3 Q Ms. Chestnut, when you saw this ad, when you saw Justice
4 Parker's reference to having taken on the Southern Poverty Law
15:51:01 5 Center, did you view that to be a statement about race?

6 A Yes.

7 Q Why?

8 A Because Southern Poverty Law Center Is a Civil Rights
9 organization.

15:51:10 10 I always felt -- there is the reason why I didn't go into
11 law. I always thought that law should be applied equally
12 across the board, no matter if you walk in someone's courtroom
13 whether you're white, black, Asian, pink, purple, it should be
14 equally across the board.

15:51:30 15 So why would you go up against an organization whose main
16 objective is to make sure that everyone in this country, in
17 this state, have the same rights as everybody else?

18 Q Is it your understanding that the Southern Poverty Law
19 Center has worked primarily on issues of racial justice?

15:51:55 20 A Yes.

21 Q And when you saw the portion of the ad discussing mob rule
22 and depicting Maxine Waters giving a speech, along with the
23 fires burning and the people running, did you view that to be a
24 statement or a sentiment about race?

15:52:15 25 A Yes.

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1 Q And why?

2 A Because they make it seem like black people are mobs.
3 We're just unruly. We just do whatever we want to do. We
4 don't respect nothing. We don't have -- you know, we don't
15:52:33 5 have no morals, no scruples, no nothing. We're out here
6 running willy-nilly.

7 Q And you can take this down. Thank you, Heather.

8 Ms. Chestnut, how do these types of statements make you
9 feel as an African-American voter?

15:52:47 10 A As I said earlier in my testimony, it makes me angry.
11 Makes me frustrated. It makes me feel like I'm a second-class
12 citizen. Makes me think that people don't care.

13 Q And what effect do these types of statements have on race
14 relations in Mobile?

15:53:12 15 A It divides us. There is a lot of people who are on --
16 used to be a lot of time when you can talk to your friends even
17 when you guys don't agree on everything. But you still had
18 respect for one another. You still was there for one another.

19 Nowadays we're so deeply divided, it's like you can't even
15:53:35 20 be friends on Facebook. And I've lost quite a few friends on
21 Facebook because I've disagreed with them on something. I've
22 said something, you know, your opinion's not a fact. It's just
23 an opinion.

24 But they want to believe everything they hear about black
15:53:57 25 people in general -- that we're lazy, that we don't do

1 anything, that all we want to do is collect entitlements, and
2 stuff like that. They just don't care.

3 And so my job is to prove everybody wrong.

4 Q Do you believe that the ads like the ones we've just seen
15:54:20 5 deepen the racial divides within Mobile?

6 A Yes.

7 Q Ms. Chestnut, do you travel to Baldwin County often?

8 A No. Not like I used to.

9 Q Why not?

15:54:31 10 A One, I don't have a car that would help. But Baldwin
11 County frightens me. It scares me a little bit. The stigma
12 that Baldwin County has is that it is a sundown county.

13 Q What is a sundown county?

14 A A sundown town. So a sundown county or town is a town or
15:54:58 15 a county that if you as an African-American are in after a
16 certain time, there's a possibility you may not make it out of
17 that area. You may be chased by white supremacists. You may
18 be followed by the police. You may be harassed the whole
19 entire time.

15:55:26 20 Yeah. You don't -- Baldwin County has always had that
21 stigma.

22 Q What makes your view of Baldwin County as a sundown town
23 or a place where African-Americans might not feel safe after a
24 given hour?

15:55:39 25 A So I have a little story to tell everybody. In 1981 there

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1 was a young black man by the name of Michael Donald. He was
2 19 years old. He was in a black neighborhood. He had just
3 left the store to buy his sister a pack of cigarettes.

4 Two Klu Klux Klansmen under the guise of giving them
15:56:04 5 directions to a local black club kidnapped Michael, brought him
6 over to Baldwin County. When he tried to run away, they beat
7 him with a tree limb. They tied him to a tree limb and still
8 continuously beat him with a tree limb.

9 They brought him back over to Mobile County --

15:56:29 10 Q Baldwin County?

11 A No. They brought him to Baldwin County. Then they
12 brought him back to Mobile County. And they hung him as a
13 reminder to every black person in that -- in Mobile, Baldwin,
14 wherever you live -- that you can't escape the Klan.

15:56:49 15 Q How old were you at the time of this incident?

16 A I was five years old.

17 Q And what do you remember about that incident?

18 A My mother served on that jury that convicted the man that
19 killed Michael Donald.

15:57:03 20 Q Does this history from Baldwin County continue to impact
21 your view of Baldwin County --

22 A It does.

23 Q -- today?

24 A It does. It impacts not only my view, it impacts a lot of
15:57:14 25 my friends' reviews. It impacts my husband's view.

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1 I was willing to take a chance for our anniversary and go
2 over to Applebee's because it's the only Applebee's in the area
3 is in Baldwin County, and for our anniversary celebrating our
4 one year. And my husband pushed back the whole time. No, I
15:57:38 5 don't want to go. Baby, it's not safe. Baby, I don't want to
6 go. Baby, we don't need to be over there. It -- we don't need
7 to be over there. I had to convince him that we're going to go
8 with friends. We'll be fine.

9 Well, luckily, our friends backed out. So we ended up at
15:57:58 10 Fridays and had our anniversary dinner.

11 But, yeah, he -- we don't -- we're -- it's -- the fear
12 is -- the fear is real about Baldwin County.

13 Q Have you had any personal experiences in Baldwin County
14 that would validate those fears or strengthen them?

15:58:19 15 A Yes. So when I first got my car in 2004, I had went over
16 to Fairhope beach and Parrish, which is one of my favorite
17 places to go during -- you know, during safe time of the day.
18 I went over there to kind of like clear my head and just relax
19 by the beach. And it was getting late.

15:58:41 20 So I said, well, I need to go, because I got to get up in
21 the morning and go to work. And as I was leaving Fairhope and
22 leaving going into -- coming almost into Daphne, there was a
23 Fairhope police officer that followed me the entire way until I
24 got to the -- to Daphne city limits.

15:59:05 25 He didn't pull over, didn't stop me. I wasn't doing

1 anything. I was driving the speed limit. I was -- you know,
2 had all the lights on, you know, properly made lane changes if
3 I need to. I was literally scared. I was in the car by
4 myself. I was so glad when I got to Daphne because I knew in
15:59:24 5 the next 10 minutes I would be at I-10 going west, going back
6 to Mobile County.

7 The last time I was really in Baldwin County, I went to
8 Fairhope for a protest. Yeah. I do that sometimes.
9 Protesting Roy Moore. Almost got ran over by a Roy Moore
15:59:47 10 supporter in front of the police. They didn't even do
11 anything. They just sent him on his merry way.

12 My friend who happened to go inside to kind of hear what
13 was being said -- the protest was over. I forgot where she had
14 parked her truck. It was raining. I was getting soaked. I
16:00:10 15 was texting her, saying, Come on, I'm getting wet. Can you
16 hurry up? And she was like, I'm on my way out. And while I
17 was standing there, a guy who claims that he was security had
18 nothing on him that said he was security basically called me
19 everything but a child of God. I was all kinds of N-words,
16:00:33 20 N-itches. I was -- I didn't feel safe.

21 It was luckily one of my friends who was actually
22 leaving -- was actually leaving told me to get in her car, and
23 she was going to drive me off the property until I could meet
24 up with my other friend who had brought me there.

16:00:51 25 I was a nervous wreck. I cried. I was -- I was -- I was

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1 ready to go.

2 Q Ms. Chestnut, have you spent any time in Montgomery?

3 A I have been to Montgomery quite a few times.

4 Q And in your view, does the city of Mobile have more in
16:01:07 5 common with Montgomery County or Baldwin County?

6 A They're more in common with Montgomery County. It's an
7 urban center. They both are urban centers. It's just like
8 Birmingham.

9 Birmingham is an urban center. They have the same, you
16:01:22 10 know, same concerns, same issues -- education, health care,
11 jobs, affordable housing.

12 Baldwin County is filled with -- no offense -- old white
13 retirees. There is -- there's -- I mean, there are retirees in
14 Mobile, but Mobile is starting to become a young and, you know,
16:01:48 15 fresh kind of, you know, city now.

16 It's more -- they're trying to be more things that's
17 geared to a lot of people my age, like in their 40s and
18 millennials. I mean, it's starting to kind of get younger and
19 hipper. So there's not like a whole lot there.

16:02:09 20 You go to -- if you go to Baldwin County, there's not that
21 big city feel as if you go to Mobile. They got that -- because
22 we have Mardi Gras, you know, different music festivals. We
23 have a cruise that leaves out of Mobile.

24 So it's got -- it's just got more there between Montgomery
16:02:29 25 County and Mobile County than Baldwin.

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1 Q Do you feel like there are certain cultural and economic
2 similarities between Mobile and Montgomery?

3 A Yes, there are. I mean, of course, both of them are --
4 and no lie -- they're both majority black cities and counties.
16:02:49 5 I know Montgomery just recently became more majority black.

6 But there's, you know, like I said, same concerns, you
7 know, as far as like the different issues that we all have
8 concerns about. So there's a lot more in common between Mobile
9 and Montgomery.

16:03:05 10 Q How easy is the -- sorry.

11 How easy is it to get from the city of Mobile to
12 Montgomery?

13 A Oh, all you got to do is hit I-65 and go north, and you
14 will be in Montgomery in no time.

16:03:18 15 Q Are there public transportation options between the two
16 cities?

17 A There's a Greyhound and a megabus.

18 Q Ms. Chestnut, are you a member of a political party?

19 A Yes, I am.

16:03:30 20 Q What party is that?

21 A I'm a Democrat.

22 Q What are your views of the two parties in Alabama when it
23 comes to issues of race and racial justice?

24 A So I've been a Democrat since I was 16. I always kind
16:03:50 25 of -- when I was growing up, my grandmother made sure I watched

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1 both national conventions every four years. She didn't tell me
2 to not watch Democrats. She didn't tell me to watch the
3 Republicans. She made me watch both of them because she knew
4 eventually I was going to have to choose a party when I got
16:04:11 5 older and I was ready to vote.

6 She always told me to vote along my convictions and what I
7 believe. And my beliefs line up more with the Democratic party
8 than the Republican party.

9 I feel comfortable as a black woman because they have the
16:04:30 10 core -- my core principles -- racial justice, social justice,
11 equal pay, equal -- equal rights for everybody. I align with
12 those thoughts in the Democratic party.

13 Do I -- do I agree with everything that the Democratic
14 party does? Not all the time. But I am -- you know, but I do
16:04:59 15 vote my convictions. I vote my -- my concerns. And the
16 Democratic party aligns right along with those.

17 The Republican party? I have friends who are Republicans.
18 Love them to death. We agree to disagree. But I can't feel
19 comfortable in a party that allows -- well, that's hospitable
16:05:27 20 to hate. I'm not saying everything that's a Republican is a
21 racist. But what I feel is -- and I gave this analogy
22 earlier -- if I'm sitting -- if I have a friend -- you know, if
23 you have got a friend named Joe, and Joe's sitting next to you,
24 and he is saying the most vile and disgusting things that you
16:05:50 25 have heard -- you've heard, and it goes against your core

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1 principles, your feelings, and if you don't stand there and
2 say, Hey, Joe, why are you saying that? Man, you know that's
3 wrong. You know, stop saying that. You know, and distance
4 yourself from them, then you've said volumes.

16:06:14 5 But if you're sitting there and you're letting him spew
6 all this hatred, all this vileness out of his mouth, and you
7 don't say anything, of course people are going to group you in
8 the same group. Of course it's going to happen.

9 So why would I want to associate myself with somebody --
16:06:34 10 with a party that allows that to happen? Like I said, I
11 know -- look, like I say, I got friends who are Republicans.
12 We agree to disagree. But they're not racists, and I know
13 that.

14 Some of them I've been friends with for 25 years or more.
16:06:51 15 I went to high school with them. But we don't sit there and --
16 you know, they hadn't never said anything that made me just
17 want to, you know, backhand them, or anything like that.

18 They -- you know, so I know where their hearts is. I know
19 where they -- you know. But some people, sometimes you don't
16:07:11 20 know where they heart is because of they're not speaking up and
21 they're not speaking out.

22 Q Do you feel -- as a black woman, do you feel welcome
23 within the Republican party in Alabama?

24 A No. I hate to say it. It needs to be -- can I say
16:07:28 25 something real quick?

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1 There needs to be more unity in this state. The reality
2 is, is that we're all equal. We're all the same. We're
3 Alabamians first before we're Americans. This is our home
4 state.

16:07:48 5 I love Alabama. I love it to death. I defend it to
6 death. When I lived up north, I would have people say bad
7 things about Alabama all the time. And you know what? I
8 wouldn't let nobody say anything bad about my home state.

9 We need to come together. We need to stop all this
16:08:10 10 division. It is time. And if this is the way for it to
11 happen, I'm all for it.

12 I'm not saying that I need another congressional district
13 so I can vote for a black candidate. Heck, it could be a white
14 candidate that could do the same thing -- represent the people
16:08:32 15 of this -- of this district the same way that they represent
16 District 7, that Terri Sewell represent the same district in
17 District 7.

18 I just want to be able to have a seat at the table. And
19 if I got to make my own table and put my own seat at it, that's
16:08:52 20 exactly what I'm about to do.

21 Q Thank you, Ms. Chestnut.

22 A Thank you.

23 MS. KHANNA: No further questions on direct.

24 THE COURT: Any cross-examination?

16:09:04 25 MS. HOWELL: Yes, Your Honor.

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1 CROSS-EXAMINATION

2 BY MS. HOWELL:

3 Q Hi, Ms. Chestnut.

4 A Hello.

16:09:43 5 Q You covered a lot of ground in your testimony here today,
6 and I just wanted to ask you a few follow-up questions about
7 it.

8 You moved back to Alabama in 2016, right?

9 A That is correct.

16:09:56 10 Q Okay. And you talked about -- well, some things that it
11 sounds like you've seen since then. And I want to ask you
12 particularly about the racial appeals that you talked about
13 hearing in elections.

14 A Uh-huh.

16:10:10 15 Q When do you recall having heard Mo Brooks talk about --
16 make the racial appeals that you were discussing earlier?

17 A Oh, let's see. I have heard him say it this year. I
18 heard him say it last year.

19 The most recent was an -- like I said, it was a radio
16:10:27 20 interview that I heard him, I heard him say that.

21 Q Do you recall which radio station you heard him on?

22 A I couldn't tell you. It was -- I can't really -- it's
23 like some northern -- up here in northern Alabama radio
24 station.

16:10:44 25 Q Okay. But you live in Mobile County, do you not?

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1 A Yes, I do. I do have iHeartRadio.

2 Q Okay. So you heard it on your phone on the radio
3 streaming on your phone?

4 A Yes.

16:10:55 5 Q Okay. Thank you.

6 You also talked about Roy Moore making racial appeals in
7 the 2017 campaign for a Senate seat for the state, right?

8 A Uh-huh.

9 Q And Roy Moore did not win that election, did he?

16:11:11 10 A No, he didn't.

11 Q Who won that election?

12 A Doug Jones.

13 Q And Doug Jones is a Democrat, is he not?

14 A Yes, he is.

16:11:18 15 Q He defeated the Republican candidate, did he not?

16 A Yes, he did.

17 Q You also talked about the interests that you have in
18 various sort of issues facing the state -- public education,
19 law enforcement, a couple of more things like that, affordable
16:11:46 20 housing, right?

21 A Yes.

22 Q Do you know whether public education is typically dealt
23 with by state or federal government?

24 A It starts at the federal, goes down to the state, and it
16:12:02 25 trickles down to the school boards.

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1 Q Okay. And school boards are local bodies, are they not?

2 A Yes, they are.

3 Q They're usually state officials, right?

4 A No. In Mobile County -- in Mobile County, we have -- we
16:12:15 5 elect our school board.

6 Q Right. But that's as a part of state government, right?

7 As opposed to federal government, right?

8 A Yes. Part of state government.

9 Q The same is true as far as law enforcement, right? Those
16:12:30 10 are usually state officers rather than federal?

11 A Yes.

12 Q And those issues are typically dealt with on the state
13 level?

14 A I would think so, yeah.

16:12:40 15 Q So a congressperson plays a more distant role in those
16 policy decisions?

17 A But even if they don't -- even if it's a state issue, it's
18 also a federal issue, too. People's rights are being violated.
19 That's the bottom line to this -- to this whole thing.

16:13:04 20 My husband -- look. My husband has a right to go wherever
21 he wants to go. If he wants to go to the store, he can go to
22 the store. If he has to go pay a bill, he can go pay a bill.
23 Unless he's doing something absolutely wrong, or he's walking
24 in the middle of the street, or walking naked somewhere, he
16:13:22 25 should be able to do that without being accosted by the police.

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1 I can't count on this hand -- on these two hands how many
2 times in the three years that me and my husband been together,
3 how many times he been stopped by the police for doing nothing.

4 We can appeal to the -- I can appeal to the mayor, the
16:13:44 5 city council, the governor, my state legislator, all day long,
6 but something has to start on the federal level and --

7 Q What are you hoping that your congressperson will do
8 differently to address those issues?

9 A I would hope that some type of piece of legislation will
16:14:01 10 make sure that if something happens, that police officers are
11 held accountable for their actions. I mean, because apparently
12 it's not happening on the local level, and it's definitely not
13 happening on the state level.

14 Q Have you taken any actions to see if anything can be done
16:14:20 15 on the local or state level?

16 A There was a young lady by the name of Shakeisha
17 (phonetic).

18 THE COURT: I'm sorry. That calls for a yes-or-no
19 answer.

16:14:31 20 THE WITNESS: Okay. That calls for yes or no? Okay.
21 Repeat that question again.

22 BY MS. HOWELL:

23 Q Have you done -- have you taken any actions on the state
24 or local level --

16:14:40 25 A Yes.

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1 Q -- to press those issues?

2 A Yes.

3 Q What are you hoping to accomplish in this lawsuit that
4 would address those issues?

16:14:46 5 A I want representation. I want a seat at the table.

6 I'm tired of being disfranchised. I'm tired of every time
7 I go to vote, I don't have nobody that I can vote for. There
8 is no competition. We want a seat at the table.

9 I am tired of hearing my fellow African-Americans in
16:15:12 10 Mobile County say the following to me: I don't vote because
11 they vote in who they want in. I don't want to vote. I don't
12 want to vote because why? My voice don't matter.

13 That's what is time for this to end.

14 Q And you --

16:15:36 15 A We have seven -- we have seven congressional districts.

16 THE COURT: I think you've answered the question.

17 Thank you.

18 THE WITNESS: I'm sorry. I just --

19 THE COURT: I know.

16:15:45 20 BY MS. HOWELL:

21 Q Do you think that redrawing the congressional districts
22 would motivate for people to vote?

23 A Yes. Sorry. I don't mean to sound kind of, you know,
24 forceful there, but, yes.

16:15:56 25 I have kids. I encourage them to vote.

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1 When I talk to young folks about voting, they don't want
2 to vote because they don't have a reason to vote. They don't
3 feel like they voiced -- their voice will be heard.

4 And like I said, they need -- we want a seat at the table.
16:16:18 5 How can I -- how can I get a seat at the table if my voice is
6 not being heard?

7 Q You talked toward the end of your direct examination about
8 a need for more unity in the state. Do you believe that
9 redrawing the congressional districts will accomplish that?

16:16:36 10 A Yes.

11 Q How?

12 A Because we will have a voice.

13 Q Do you think that filing a lawsuit accomplishes more unity
14 in the state?

16:16:47 15 A If it's to get y'all attention, yes.

16 Q Who is "y'all"?

17 A The state of Alabama, my home state.

18 Q I will ask you one final question. Do you believe that
19 Representative Sewell up in Congressional District 7 represents
16:17:08 20 her district better than Representative Byrne down in your
21 district represents his?

22 A Yes.

23 Q Why?

24 A Because she has -- because she has connections in every
16:17:22 25 part of her district. She has connections in Tuscaloosa. She

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1 has connections here in Birmingham. She has connections in
2 Selma.

3 I know Terri. I've actually went to convention with
4 Terri. So I know Terri. I know what her -- she's going --
16:17:38 5 she's -- I knew she was going to do a good job representing
6 District 7.

7 Q Do you know if Representative Sewell had any role in
8 drawing her congressional district?

9 A No, I do not.

16:17:50 10 Q Okay. Thank you very much, Ms. Chestnut.

11 A You're welcome.

12 THE COURT: Any redirect?

13 MS. KHANNA: Briefly, Your Honor.

14 THE COURT: All right.

16:17:58 15 REDIRECT EXAMINATION

16 BY MS. KHANNA:

17 Q Just a few quick questions, Ms. Chestnut.

18 A Uh-huh.

19 Q Do you believe that your member of Congress has the
16:18:08 20 ability to ask the Department of Justice to investigate
21 situations within a state?

22 A Yes.

23 Q Do you believe that your member of Congress has the
24 ability to write a letter to local officials if he or she
16:18:19 25 thinks that the state needs to take action?

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1 A Yes.

2 Q Do you believe that your representative in Congress has
3 the ability to vote to repeal mandatory minimums?

4 A Yes.

16:18:28 5 Q Do you believe that your representative in Congress has
6 the ability to vote for more funding for poor schools?

7 A Yes.

8 Q Do you believe that your representative in Congress has
9 the ability to vote to decriminalize the possession of
16:18:44 10 marijuana?

11 A Yes.

12 Q Do you believe that your representative in Congress has
13 the ability to vote for more affordable -- more funding for
14 affordable housing?

16:18:55 15 A Yes.

16 Q Section 8 is a federal program; is that correct?

17 A Yes.

18 Q You testified about Section 8 housing today?

19 A Yes. Yes.

16:19:00 20 Q Thank you, Ms. Chestnut.

21 THE COURT: Any recross?

22 MS. HOWELL: Just one question, Your Honor.

23 THE COURT: Okay.

24 RECROSS-EXAMINATION

16:19:14 25 BY MS. HOWELL:

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1 Q Your counsel just asked you a few questions about your
2 congressperson writing letters to those state and local
3 officials, correct?

4 A Uh-huh.

16:19:25 5 Q When those congress people write those letters, who has to
6 take the actions?

7 A The local -- local people.

8 Q Thank you.

9 THE COURT: Anything else?

16:19:36 10 MS. KHANNA: Oh, sorry. No. Nothing further, Your
11 Honor.

12 THE COURT: Thank you, Ms. Chestnut. You may step
13 down.

14 Call your next witness.

16:20:02 15 MR. SPIVA: Yes, Your Honor. Plaintiffs call
16 commissioner -- County Commissioner Sheila Tyson.

17 SHEILA TYSON,
18 having been first duly sworn by the courtroom deputy clerk, was
19 examined and testified as follows:

16:20:42 20 THE COURTROOM DEPUTY CLERK: Please state your name
21 for the record in the microphone.

22 THE WITNESS: Sheila Tyson.

23 DIRECT EXAMINATION

24 BY MR. SPIVA:

16:20:58 25 Q Good afternoon, Commissioner Tyson. Where do you live?

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1 A I stay in West End in the City of Birmingham at 1233, 14th
2 Place Southwest, 25211.

3 Q Okay. Thank you, Commissioner. How long have you lived
4 in Birmingham?

16:21:16 5 A I have stayed in Birmingham all of my life. I left for
6 about 17 years and came back.

7 Q In which congressional district do you live in?

8 A I stay in Congresswoman Sewell's district, and it's 7.

9 Q Have you -- and you said you had left Birmingham for a
16:21:36 10 time. What were you doing -- well, where did you go when you
11 left Birmingham?

12 A I was in the military, and I traveled all over. And I
13 worked -- also worked for the military.

14 Q And how long did you serve in the military?

16:21:53 15 A I served four years in active duty.

16 Q And then how long with the reserve time?

17 A I actually had several jobs. I worked in the post office.
18 I worked with several other disabled veteran units all over.

19 Q And that was all with the military?

16:22:13 20 A No. No. Some with the military and some wasn't. So, no,
21 it was federal government.

22 Q Okay. And which one branch of the military were you in?

23 A The Army.

24 Q And what was your position in the military?

16:22:30 25 A I was actually a warehouse specialist in a chemical

1 warehouse.

2 Q And when did you return to Alabama?

3 A I returned to Alabama in '82. Left, came back, and
4 returned back in '88. Left, came back, returned back in the
16:22:59 5 '90s.

6 Q Okay. And have you -- have you been then living again in
7 Alabama since the early '90s?

8 A Yes.

9 Q And did you attend college, Commissioner Tyson?

16:23:11 10 A No. I went to the Quartermaster School in the military.

11 Q And which high school did you attend in Birmingham?

12 A West End High.

13 Q When did you graduate?

14 A '79.

16:23:24 15 Q And can you describe your upbringing in Birmingham?

16 A When I grew up in -- my mother and father had seven
17 children. I had both parents. They were married.

18 I grew up in part of Smithfield. That was my early years.

19 Q When you say 'early years' -- sorry to interrupt. But in
16:23:52 20 Smithfield about --

21 A It was from to the third grade we stayed on Ninth Avenue
22 West. And that was right down the street from Graymont
23 Elementary School. And we moved out from over there when I was
24 in the third grade when my father -- my father died when I was
16:24:13 25 like five or six. I can't remember. But I was of age when he

1 died.

2 Q Tell me about your early schooling experience in
3 Smithfield. Did you go to a segregated school?

4 A Yes. We went to a segregated school. I went to ---
16:24:29 5 Graymont was the first school I went to. And that was when --
6 they was first segregated in, I think it was 1963 or '64. I
7 went in '64, maybe '65.

8 Q To Graymont?

9 A To Graymont Elementary School, along with my brothers.
16:24:48 10 And my other sister they was at -- it was me, Scooter,
11 Rosalind. And Jerome and Amanda, they was at Parker.

12 Q Okay.

13 A And Jerome was at Holy Family.

14 Q So when you were at Graymont, did you say around the '64
16:25:09 15 time period -- did you say that that was around the time it was
16 first being desegregated, or --

17 A It was then -- it was blacks being brought in to Graymont
18 Elementary School. We weren't the first ones brought in there.
19 But we were a big part of the groups that came in.

16:25:25 20 Q Uh-huh.

21 A And --

22 Q Tell me about that experience.

23 A It was horrible. I was little, and so I really wasn't
24 able to really protect myself and fight. But my brothers were.
16:25:38 25 They were -- they were big teenagers.

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1 And it was just hell every day. You had to -- when you
2 got to school, they tried to stop you from coming to school.
3 And on your way back, you got rocks throwed at you.

4 We used to call this coming off of -- we used to call it
16:26:01 5 turnpike because the road kind of twisted. So it was downhill
6 running, you know, every day. They had the smaller kids, they
7 had to grab each one of our hands on each side because we would
8 fall. And we had to run from the school about -- probably
9 about six blocks until we made it home.

16:26:24 10 Q And because of the treatment that you received at
11 Graymont, did your family make a change, in terms of where you
12 went to school next?

13 A We didn't -- my family didn't make a change. The system
14 made a change because of the fighting. They started fighting
16:26:43 15 back.

16 So they moved us to Wilkerson Elementary School. And we
17 had to walk from Ninth Avenue to Wilkerson, which the freeway
18 wasn't there. It was just a bunch of red dirt. So we used to
19 have to cut across.

16:26:59 20 And I remember it good because I was -- it was a dog -- it
21 was First Baptist Graymont Church. It was a dog in a fence
22 next door. And we used to have to cut across Graymont in order
23 to -- First Baptist Graymont in order to get across the red
24 dirt to the school. If not, it would add like some -- a whole
16:27:21 25 lot of more blocks on to the distance to walk.

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1 And I was so afraid of that dog if -- because I used to
2 have to walk sometime if I -- if my brother -- they had to go
3 to basketball practice, or something like that earlier, we -- I
4 would have to go by myself.

16:27:38 5 And my mom, she was sick. So she would walk halfway. And
6 when she get to the church, I used to have to walk the rest of
7 the way over the red dirt to get to Wilkerson.

8 Q Let me ask you: Was Wilkerson an integrated school?

9 A It was a black school.

16:27:54 10 Q Okay. So after your experience at Graymont, the system
11 moved you back to a segregated school?

12 A Yes. It's because -- and it was because of the fights.

13 It was the -- it was the white kids against the black kids.

14 And as long as the white kids was beating us up, nothing was
16:28:15 15 said, you know. It was -- you know, we reported it, but it was
16 all right.

17 But then black kids started beating the white kids back
18 up. That's when they moved us.

19 Q And how long did you go to the Wilkerson -- to Wilkerson?

16:28:29 20 A I left Wilkerson and went -- in the third grade and went
21 to -- that's when we moved. My mother got insurance money off
22 of my father death. And we built a house in West End.

23 Q And what was West End like racially, the area that you all
24 moved to when you were in third grade?

16:28:47 25 A They thought we were the moving company when we first

1 moved in because she actually built a house. So it was like --
2 and I can't remember -- I was in the third grade, so I had have
3 to go back the years and count.

4 When we first moved in the house, we were like probably
16:29:04 5 one or two people moving in at the same time that was
6 African-American. It was solid white.

7 And I remember a lady coming over with a basket. And I
8 was like -- I told you in the third grade. And she said that,
9 Is a lady of the house here? And I called my mom. And she
16:29:27 10 came, and she said, I was just wanted to, you know, meet the
11 family that was moving in.

12 She said, Well, how you doing? And the stare the lady
13 gave her was like you can't possibly being built a split-level
14 home in this area. And it was a corner lot.

16:29:44 15 So right then I was just looking because I knew my mother
16 actually was a foot soldier. So I'm looking like, oh, my God.
17 And she gave my mother the basket, and she took the basket.
18 And they didn't shake hands, but she did give her the basket.

19 Q And just to make sure the record is clear. So the lady
16:30:06 20 who came over to the house, she was expecting to see a white
21 family?

22 A Yes.

23 Q And so she was white, the neighbor?

24 A Yes.

16:30:12 25 Q Okay. And so what happened after that?

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1 A Gradually the families started moving out, out the
2 community, just one at a time within like -- it wasn't no years
3 or no months. This was like you wake up and a family gone.

4 It was like -- and my mother kept telling my brothers
16:30:39 5 the -- two neighbors across the street had girls. And the
6 girls was, you know, kept trying to talk to them. And she
7 said, I told you to stay out from over there. You going to end
8 up in jail. And they -- the girls wouldn't stop. And
9 gradually within a couple of weeks, them people, they were
16:30:59 10 gone. I'm talking like dominoes. Just gradually everyone was
11 moving, moving, moving.

12 And about time I got in the eighth grade, all of the --
13 all of the whites in that community was gone.

14 Q And did the neighborhood become a predominantly black
16:31:20 15 neighborhood then?

16 A It became -- we had one older lady. I cannot think of
17 this lady's name for nothing. There was one older lady stayed.
18 And she stayed across the street on the -- she stayed, like it
19 was about four doors down. And we used to help her, you know,
16:31:41 20 cut her grass. And my mama used to go over there and help her
21 also because she was really up in age. And that was the only
22 lady that stayed over there.

23 Q Only white lady that stayed?

24 A That was the only one. And I just think she was, you
16:31:58 25 know, satisfied that, you know, that she just didn't try to

1 move, I don't believe. I was so young. I really didn't focus,
2 you know, on that.

3 Q Where did you go to school during this period at the West
4 End neighborhood after Wilkerson? Did you go through high
16:32:18 5 school there?

6 A Went to Jackson Elementary School, which was right in our
7 back door.

8 Q Uh-huh.

9 A So that was like nowhere to walk.

16:32:27 10 Q Was that school predominantly black or predominantly white
11 when you got there?

12 A It was -- it was really, really white when we got there in
13 West End. It was really white. And gradually they -- they
14 left.

16:32:40 15 Q Uh-huh.

16 A And before I was in the eighth grade, it was all black.
17 Might have been one or two white students left.

18 Q Uh-huh.

19 A But I can guarantee you it wasn't many.

16:32:51 20 Q Uh-huh. And then where did you graduate from high school?

21 A At West End.

22 Q Uh-huh.

23 A I graduated, I think it was -- I'm almost -- because we
24 just had a class reunion. It was 360 graduated in my class.

16:33:04 25 We might have had 25, maybe, whites.

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1 Q When you graduated?

2 A When I graduated.

3 Q When you first started at -- sorry. I lost the name --
4 West End?

16:33:19 5 A Yes. West End.

6 Q When you first started there, was it -- was it integrated
7 at that point?

8 A It was well mixed. It was well mixed. It was -- behind
9 the high school, it was a lot of white people stayed behind in
16:33:34 10 that area. It was a lot of people stayed behind there.

11 Q When you graduated from high school, Commissioner, is that
12 when you first went into the military?

13 A I went in the military, yes.

14 Q Why did you decide to go into the military at that point?

16:33:51 15 A Well, when I was in high school, I was very good in
16 volleyball. I had an opportunity, actually, to go to college.
17 And both of my parents had died by then. And it was my sister
18 at the age of 21 raised five children. And I wanted to help
19 her.

16:34:18 20 And I was a community activist all the way from ten years
21 old all the way until I graduated. And I just -- I just felt
22 like I needed go because I wasn't going to stop doing what I
23 was doing. And I had her worried. That's when Bonita Carter
24 had died, got killed by the police. And we were sneaking out
16:34:40 25 of school, marching in the Civil Rights movement trying to get

1 Richard Arrington in office.

2 It was just, you know -- it was just a political thing

3 after every -- just protesting, protesting. And I had I -- I

4 just -- I felt like I needed to leave because if I didn't, I

16:34:59 5 was going to end up in some bad trouble because I wasn't going
6 to stop protesting.

7 Q Uh-huh.

8 A And my --

9 Q When you said you needed to leave, you mean you needed to
16:35:08 10 leave Alabama?

11 A I needed to leave Alabama because we wasn't stopping. We
12 kept protesting.

13 And my -- I got so -- and I'm so glad social media wasn't
14 back then because I probably would have got more whippings than
16:35:22 15 I did because she didn't want me, you know, taking, sneaking
16 out of school going to protest. And we did it. I did it
17 anyway.

18 And she wanted me to graduate. And I graduated. And when
19 I graduated, I needed -- I wanted to leave. They wanted --
16:35:40 20 when I went in the military, they wanted me to wait until 1980
21 to leave, but I had to leave.

22 And they, most of the time when they send you off, they
23 send you to the closest base and that's in Georgia. I would
24 have went to Fort -- to training, basic training. But I ended
16:36:00 25 up going to New Jersey because I wanted to leave so soon. So

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1 they sent me on December the 5th. So I had to leave then.

2 Q Uh-huh.

3 A Because we was still protesting. It was still so many
4 issues in the community. And I was still going to protests.

16:36:16 5 Q Let me ask you about that, because you said you'd been an
6 activist since the age of ten?

7 A Yes.

8 Q What did these protests involve, you know, from then
9 through the time that you were leaving Alabama?

16:36:27 10 A It was equal rights to vote. My mother did it, and, you
11 know, back then you took your children with you. And out of
12 seven kids, I was the one that decided to be a foot soldier
13 with my mom.

14 And we used to do voter registration. We used to do
16:36:47 15 marches to the poll. We was trying to get more people of
16 African-American on the city council in the City of Birmingham.
17 And we had the coalition back then.

18 I was a member of the coalition back in -- when they used
19 young people to actually lead a lot of the marches. And I was
16:37:12 20 within that group.

21 Q What kind of reaction did you get from local or state
22 officials to these marches and protests?

23 A Well, a lot of them, you know, they didn't like what we
24 were doing. You know, they used to -- I never got bit by a
16:37:33 25 dog. I never did experience that because all of that was gone

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1 by then. But we used to get cursed out and spit on, different
2 things.

3 Not so much about public officials, but it was just the
4 people who we were protesting against the different issues that
16:37:50 5 was going on within the City of Birmingham. It wasn't a
6 community thing. It was actually a city thing. And we were
7 leading the marches that we came together with the coalition
8 and met about.

9 Q Uh-huh.

16:38:03 10 A And most of the marches was led by children, young people,
11 because I wasn't a child then. I was a young adult. I was 18.
12 And it was by women.

13 Q Uh-huh. Uh-huh. Let me turn to the present day for a
14 minute. What is your current occupation?

16:38:24 15 A I'm a county commissioner for Jefferson County District 2.

16 Q And can you describe your district, in terms of
17 demographically and racially?

18 A I have a large portion of African-American, low income. I
19 have a percentage of whites in my district. But majority of
16:38:50 20 them are -- it's not -- I don't believe it's a median income.
21 You're either poor or you're rich, so they in the rich
22 category.

23 Q But these are some portion of your constituents?

24 A Yes.

16:39:02 25 Q And where do they stay?

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1 A Downtown, the south side, Lakeview.

2 Q Uh-huh.

3 A In that area.

4 Q And what -- what's the kind of -- the larger portion of
16:39:15 5 your district?

6 A It's poor from the southwest Titusville. I have Druid
7 here, Evergreen bottom, Fountain Heights. All of that is
8 behind the civic center. If you look behind the civic center,
9 all of that is nothing but poverty.

16:39:34 10 You go to Norwood. Norwood is kind of trying to build
11 itself up, but I have only like two streets off of Norwood.
12 Once you stopped right there at Uptown, everything back there
13 is nothing but low income.

14 Q Uh-huh.

16:39:49 15 A You skip over downtown, all that's money. Even within
16 the -- the low income apartments that's downtown, those are
17 mixed-use apartments. So you have a lot of upper-scale
18 citizens that stay in those apartments. You have a lot of low
19 income.

16:40:08 20 Q Uh-huh.

21 A Now, it's always a small portion -- I think it's maybe
22 like ten percent that live over there.

23 Q Uh-huh.

24 A And I have -- there's south town, which is low income.
16:40:21 25 That's about 525 units there. But all of the south side is

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1 like an upper-scale income.

2 And then you go to Titusville, that's low income. All the
3 way -- and you pull all the way back through Ensley,
4 Smithville, West End, Hillman Estates, all of that back there,
16:40:47 5 you go to Lipscomb, is very poor. And it's a lot of poor
6 whites and Latinos there in Lipscomb and Brighton.

7 You go all the way through to Bessemer, and that's where
8 my district stop at.

9 Q Okay. And then the area that you described at first that
16:41:02 10 you said was -- you said it was all kind of very deep poverty,
11 what's the racial makeup of that portion of your district?

12 A It's black.

13 Q And what are some of the concerns that your -- in the poor
14 areas of your district that your constituents have?

16:41:20 15 A They are not being represented. And that's one of the
16 main reasons that I ran for this position.

17 Q Do they have -- in terms of issues, do they have health
18 care concerns?

19 A Yes. They closed our county hospital. They had been
16:41:38 20 chipping away at the county hospital since 1999. They finally
21 closed the -- they sold the beds back in 2012.

22 Q Uh-huh.

23 A And they did a study three years ago. Diseases that was
24 back in the '60s, they are starting to pop back up now because
16:41:58 25 of the county hospital closing. And people now don't have

1 anywhere to go to be treated.

2 Q And are these individuals who don't have health insurance?

3 A They do not have health insurance. They are all indigent
4 care patients.

16:42:15 5 Q How important is the Affordable Care Act to your
6 constituents, Obamacare?

7 A I don't know how they came up with that name Obamacare. I
8 guess because he the one that talked about it.

9 But health care is so important. And I don't understand
16:42:36 10 how we are not taking advantage of this here in the state of
11 Alabama. And it's not -- it's hurting -- it's hurting so many
12 people.

13 The mortality rate of pregnant women here in the state of
14 Alabama, African-American women, it's the highest in the world.
16:42:59 15 How can that possibly happen? And we're not the largest state
16 in the United States. How can that -- how could that happen?

17 Diseases that you find in third-world countries are here
18 in Alabama. They see it in Jefferson County a lot. How is
19 that happening here when we have the -- the best hospital --
16:43:26 20 UAB -- in the country?

21 Q How about affordable housing? Is that a concern of some
22 of your constituents?

23 A They are chipping away affordable housing. If you look at
24 it -- you're making 7.25. Most of these jobs, if you're making
16:43:47 25 7.25, and you get 40 hours a week, that's still not enough to

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1 pay. The lowest rent you going to get is at least 750 a month.
2 And that's where I live at. And I stay in a bad area in West
3 End.

4 Q Uh-huh.

16:44:07 5 A So you going to pay \$750 to live in West End.

6 That's -- if you're going to get just a halfway decent
7 place, if you paid 325 or anything -- and I have been talking
8 about this for I don't know how many years. If you pay 325
9 here in Jefferson County, you going to be in a slum shotgun
16:44:32 10 house not fit for a dog to live in.

11 So affordable housing is very important. It's needed here
12 in this state. It's critically needed in this state.

13 Q And, Commissioner Tyson, what about criminal justice
14 issues and criminal justice reform? Is that something of
16:44:54 15 concern to you and your constituents?

16 A Of course it is. It's -- I actually -- we just -- we
17 had -- we just got through protesting. Yes. I am a
18 commissioner that protests still.

19 A young man just served two years in Bessemer jail, city
16:45:13 20 jail, for a crime that he was on camera where he was at work.
21 He had 100-something people saying he was at work. His time
22 clock said he was at work.

23 But he sat in the jail two years -- two years -- and a man
24 they just let out serve 59 years in jail for \$5.

16:45:36 25 So criminal justice is very important, and it's needed

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1 here.

2 Q Commissioner Tyson, I wanted to ask you was your district
3 a majority African-American district before you won?

4 A Yes.

16:45:51 5 Q And when were you elected?

6 A Last year. November the 14th, I will have been serving in
7 the county commission seat a year.

8 Q Okay. And did you run affiliated with a political party?

9 A Yes.

16:46:05 10 Q Which party?

11 A I'm a Democrat.

12 Q And have you held any elected office other than Jefferson
13 County Commissioner?

14 A Yes. I was a city council person.

16:46:18 15 Q And I take it city council here in Birmingham?

16 A In Birmingham.

17 Q And how long were you city councilwoman?

18 A I was appointed in 2013. I think I -- they left that seat
19 open for nine months before they appointed anyone because they
16:46:34 20 didn't want to appoint me. And I served, I think nine months.

21 And then I turned around, and I ran and won that seat. And I
22 was in five years.

23 Q And what part of Birmingham did you represent as a city
24 councilwoman?

16:46:48 25 A District 6. And it's a portion of the area that I have

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1 now. I still -- I have all of my city council district and my
2 county commission district.

3 Q And was the city council position a non-partisan position?

4 A Yes, it is.

16:47:02 5 Q And have you ever held any other elected offices?

6 A Yes. I was the neighborhood president. You have to vote
7 for that, and that's over the West End community. Then I was
8 a -- the Citizen Advisory Board president. That's over all 99
9 neighborhoods in Birmingham. So that's really over the whole
16:47:26 10 city. I was the neighborhood president.

11 Q Uh-huh. And in these various elected positions, have you
12 met regularly with your constituents or with your potential
13 constituents when you were campaigning for office?

14 A Yes. We had monthly meetings when I was at the Citizen
16:47:48 15 Advisory Board. We met every month.

16 Q Uh-huh.

17 A And as my city council, I met every quarter. And as a
18 county commissioner, we have been meeting every quarter.

19 Q Okay. And can you describe what the Citizen Advisory
16:48:09 20 Board is?

21 A Yes.

22 Q Sorry. You were president of the Citizen Advisory Board?

23 A Yes.

24 Q Can you describe what that is?

16:48:17 25 A The City of Birmingham has 99 neighborhoods and 23

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1 communities. And then we have an advisory board which is a hub
2 that convenes over all 99 neighborhoods. And I was the
3 president of that board.

4 And what we do, we talk to the citizens and find out the
16:48:39 5 issues. And we are the liaison between the mayor and the
6 citizens.

7 Q Uh-huh. And can you please describe your work in other
8 community organizations that you are involved with?

9 A I'm a member of the NAACP. I'm a member of the -- I'm the
16:49:03 10 chair of the Veterans of America. I'm a lifetime member of
11 Disabled Veterans. I'm an SELC member. I am the convenor for
12 the Alabama coalition on blacks city participation. I'm a
13 convenor for the Black Women's Round Table. I'm also the
14 second chair for Ignite Alabama, which is a women's group. And
16:49:30 15 I'm also the chair of the board for Black Youth Vote. And I
16 also sit on the board for the Community Advisory Committee,
17 which is the one that -- we have the largest Martin Luther King
18 breakfast in the United States.

19 Q Can you describe for the Court, Commissioner Tyson, when
16:49:57 20 you sleep? Sorry. I was just --

21 But so can you tell me a little bit about the work of the
22 Women's -- I may not get the title right -- women's coalition I
23 think you had mentioned? This is an organization that you take
24 to Washington, D.C. on an annual basis or women's round table,
16:50:19 25 I believe?

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1 A Yes. I'm the convenor for the state.

2 And what we do, we go into low income areas --

3 THE COURT: First of all, could you give me what the
4 correct name of the organization is?

16:50:34 5 THE WITNESS: It's the -- it's the Alabama Coalition
6 on Black Civic Participation. Up under that umbrella, we have
7 Black Youth Vote and Black Women's Round Table.

8 And we go into low income communities, and we educate,
9 motivate, and mobilize the communities around voting, and
16:50:58 10 voting and laws that will improve the quality of life of each
11 and every citizen.

12 And that's a non-partisan organization.

13 BY MR. SPIVA:

14 Q As part of that organization, Commissioner Tyson, have you
16:51:13 15 done work all around the state of Alabama?

16 A All around the state of Alabama.

17 Q Have you done work in Montgomery County?

18 A Montgomery.

19 Q How about Mobile?

16:51:21 20 A Mobile.

21 Q Can you describe the type of work you do with that
22 organization?

23 A We go in, and it's the -- it's depending on what issue
24 they're having.

16:51:32 25 Majority of the -- the reason we're in the neighborhoods

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1 and in the city is to advocate for voting, and encouraging and
2 registering people to vote.

3 And when we get there, we also mobilize them on other
4 issues -- environment. Some of them environmental issues,
16:51:54 5 some -- I'd say racial discrimination issues, criminal justice.
6 You name it. We have had to do so many things concerning the
7 citizens. It's no different than NAACP, but we just -- we are
8 on the ground more than that average -- of that group too.

9 I'm also a member of national action network. I forgot to
16:52:27 10 tell you that.

11 Q Okay. And so, Commissioner Tyson, you said we're on the
12 ground more. So have you been on the ground doing that type of
13 work in Mobile County?

14 A Yes.

16:52:36 15 Q And in Mobile city?

16 A Yes.

17 Q Okay. And have you gone block by block and knocked on
18 doors and sat in people's homes?

19 A Block by block, knocking on doors, all over Mobile.

16:52:53 20 Q In Montgomery?

21 A Montgomery, yes. Huntsville. Selma.

22 Q Uh-huh.

23 A Camden, Alabama, Perry County.

24 Q Uh-huh. What observations have you made about -- is this
16:53:09 25 predominantly in the African-American communities in those?

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1 A In the African-American community, we -- we really -- when
2 we go in, we go in and we pull up really the poverty rate in
3 these counties. And we look at the voting numbers.

4 Q Uh-huh.

16:53:27 5 A And that's how we can tell the need of where we need to
6 actually go. And, yes, majority of them are African-American
7 counties.

8 Q Uh-huh. What kinds of concerns have you heard in doing
9 that work -- strike that.

16:53:48 10 What have you observed, in terms of the concerns of the
11 people in those neighborhoods that you've met with in Mobile
12 County?

13 A They are concerned about health care. They are concerned
14 about housing, criminal justice, environmental concerns, and
16:54:10 15 the poverty level, and the condition that they are living in.

16 Q Would you say, based on your experience, that they -- that
17 the African-American and poor neighborhoods that you have
18 worked in Mobile share many of the same concerns that you have
19 talked about earlier that the African-American community has in
16:54:35 20 Birmingham and in Montgomery?

21 A Yes.

22 Q And do you do voter registration and get out the vote
23 efforts in connection with that work?

24 A Yes.

16:54:45 25 Q Can you tell me about that?

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1 A We go in and it's the -- okay. Just say that when we
2 go -- we went to Pritchard. You have to find a person to
3 partner with in there.

4 So we -- number one, we go to the largest churches, and
16:55:02 5 actually we connect with them. And it's always some type of
6 group -- NAACP, different groups that's out there advocating
7 for voting. We partner with those groups. And we educate them
8 on the process of voting and on the laws and the laws that has
9 been changed.

16:55:23 10 And we go out, and we go into the areas where it's low
11 voting at. And we go door to door. We go into the gymnasiums.
12 We go churches, schools, clubs, corner stores, wherever is
13 bodies, wherever is people. And we talk about voting and
14 educate them. And we try to get them to register to vote. And
16:55:50 15 we try to mobilize them and also just build up infrastructure
16 and where they can actually start their own organization and
17 become a part of our group.

18 Q What kinds of challenges have you experienced or have the
19 people that you have been trying to mobilize experienced in
16:56:07 20 trying to register and actually vote?

21 A You know, they don't trust the system. They have been
22 purged from the voting list. A lot of them have been purged
23 from the voting list.

24 They said that every time they go vote, they have to go to
16:56:23 25 another box. They said they no longer vote at that site again.

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1 So they have to go to another site. And the polling places are
2 too far from their residence.

3 And they're not -- I say, well, what about the provisional
4 ballot? They don't know what a provisional ballot is because
16:56:44 5 no one has ever offered them a provisional ballot.

6 And they also talked about that their ID have to have
7 their address on it. But if you are transit -- and really the
8 working poor and you don't have a sufficient income to pay
9 because of minimum wage being so low, it's hard to keep
16:57:07 10 somewhere to stay at. So that mean every time you move, you
11 got to get your -- another ID. And if it's not an ID, it's a
12 driver's license. And that costs.

13 Q Uh-huh.

14 A Every time that you move in order to match up with your
16:57:22 15 voting, that's on your voting record. And it's just -- they
16 said the process is too hard. And it's set up and it don't
17 make no -- well, our vote is not going to matter, and, you
18 know, and sometime, you know, they push back on us.

19 Q Have you found that there's a certain level of distrust in
16:57:44 20 the system among the communities that you work -- you've done
21 work in?

22 A A lot of distrust. Especially when they was purged off
23 the list.

24 Q I want to ask you more about that, the purging. Have you
16:57:55 25 actually kind of personally encountered that either in your

1 campaigns, or work here in Birmingham, or elsewhere?

2 A Yes.

3 Q This issue of people having been purged off the list?

4 A Yes. Yes. And we have talked to the Secretary of State
16:58:08 5 about it. Actually, trying to get the list with New South and
6 trying to actually get the list from the secretary of the
7 people that they took off of the list. And they wouldn't give
8 it to us. They said that we have to go to court. And we don't
9 have the money to go to court to sue to get the list.

16:58:34 10 Q And what -- you mentioned a New South. I don't know if
11 you've described that already.

12 A No. I left it out. I forgot to tell you.

13 We just had a meeting Saturday. It's New South Coalition.
14 It's another advocate group that advocate for voting and to
16:58:54 15 change laws.

16 Q Uh-huh. And you attended a meeting with the Secretary of
17 State at one point and asked them about the purged voter list?

18 A Yes. It was at the -- Representative Rolanda Hollis had
19 the meeting at the YWCA over in Roebuck. And we asked him
16:59:12 20 about the list. And he said that they were on the list --
21 purged off the list because they hadn't voted in the last
22 couple of elections.

23 So I asked him, How did you decide who would get purged
24 off the list? Because it looked like all the African-American
16:59:32 25 people were the ones that I have been talking to were the ones

1 that was purged off the list. And I said, How many was purged
2 off the list? And he said that he didn't have the number in
3 front of him.

4 I said, So how can I get it? I wrote his office. They
16:59:45 5 did not give us the list. I -- I talked to him several times,
6 and he would not give me the list. And they said I would have
7 to go to court.

8 And when I actually finally talked to someone up there,
9 they told me they said, Well, I'll lose my job if I give it to
17:00:05 10 you. But I can tell you it's over 700,000 people that's been
11 purged off the list over the last couple of years.

12 Q How do you know that?

13 A Because one of the employees told us that. And they
14 didn't want -- I don't know the person, anyway, because I don't
17:00:22 15 live down there.

16 Q Was it an employee of the Secretary of State?

17 A Yes. In the voting office.

18 Q Let me ask you: Have you either as a candidate or in your
19 capacity as a county commissioner had election day reports from
17:00:39 20 people who say, Hey, I can't vote because I'm not on the list?

21 A We have -- we have a command center set up during each
22 election where they send attorneys, and they give us the number
23 of the attorneys from the Poverty Law Center to call about
24 election complaints.

17:01:00 25 And you hear all day long that, I'm not on the list. They

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1 changed me from Democrat to Republican. They keep changing my
2 polling places. This is the third place I have went to and
3 it -- this is every election.

4 Q Uh-huh.

17:01:20 5 A Every -- every election.

6 Q You mentioned the Poverty Law Center. Is that the
7 Southern Poverty Law Center?

8 A The Southern Poverty Law Center. They give us attorneys,
9 a list of attorneys. And also the national coalition on blacks
17:01:33 10 and participation. They give us a list of attorneys that's in
11 our state.

12 Q Uh-huh.

13 A That we can call with the problems.

14 Q Uh-huh.

17:01:40 15 A That we have in the -- and it's all we can do. And they
16 file -- they can file something, but you won't hear nothing
17 until after the election.

18 Q Uh-huh.

19 A And every answer that we have ever received is that they
17:01:54 20 were purged off the list because they didn't vote on the last
21 election, or they notified them, they moved their polling
22 spots, and they were notified. But for some reason, the person
23 never get the notification. And, well, that polling site was
24 closed. Well, did y'all send out anything? No. They put a
17:02:19 25 note on the door.

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1 So if the people go over there, they would know that their
2 polling site was changed to this place. But everyone said when
3 they went over there wasn't no note on the door.

4 Q Uh-huh.

17:02:32 5 A So they just come up with all types of reasons. But we
6 still are left with this person not having a fair opportunity
7 to vote, not even had an opportunity to do a provisional ballot
8 because they don't even give them a provisional ballot.

9 Q And you have done -- personally done work to try to
17:02:51 10 educate people about their right to vote with the provisional
11 ballot?

12 A Yes.

13 Q That's a violation of federal law to deny somebody a
14 provisional ballot?

17:03:02 15 A They don't tell them that they can do one.

16 Q Okay. And so, Commissioner Tyson, the majority of these
17 reports that you hear in your work as a commissioner or in the
18 voter -- get out the vote work, do they predominantly come from
19 one race or the other?

17:03:21 20 A The majority of the people that I deal with is
21 African-Americans and Latino because of the area that I cover.
22 And those are the ones that's being disenfranchised.

23 Q Have you heard any reports from either any of your
24 colleagues or any -- from anyone else about predominantly white
17:03:47 25 areas having the same kinds of issues?

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1 A No.

2 Q Let me ask you about the polling place. You mentioned
3 polling place, I think, movement and closing. Is that what you
4 were talking about earlier?

17:03:58 5 A Yes.

6 Q Did you actually have a personal experience where your
7 polling place was moved without notification?

8 A Yes. They actually moved my polling place, and I wasn't
9 notified. And I checked my mail every day. And I know when
17:04:13 10 I -- when I -- when I'm ever given a polling slip, I put mine
11 on the refrigerator.

12 Q Uh-huh.

13 A And I was not notified that they moved my polling place
14 from Harrison Park to Hemphill Elementary School.

17:04:31 15 Q Let me ask you: You also -- well, let me ask you one more
16 question about that.

17 And have you -- and have you received or been -- or seen
18 yourself others who have been affected by the same thing in
19 terms of polling place changes without notification?

17:04:48 20 A Yes. Yes.

21 Q And then you mentioned voter ID and the challenges of
22 people when their address changes.

23 Do people in your -- the communities that you represent
24 and that you work in, do they -- do many of them frequently
17:05:08 25 have to move?

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1 A Yes, they do.

2 Q And why is that?

3 A Because of the working poor. They are not able to meet
4 their rent. And they have to end up moving to try to find a
17:05:23 5 cheaper place, you know.

6 I just had one Carla McGee -- I asked her could I use her
7 name. She had to move from Avondale, which is on the south
8 side. They raised her rent to \$750. Now she stay in West End
9 with her daughter until she can find somewhere to stay on her
17:05:48 10 own that's more affordable.

11 Q How often do you receive calls like that of people who are
12 suffering from housing instability?

13 A Every day. Like I told you, I'm a county commissioner,
14 but I just, you know, was elected. And this work I have been
17:06:06 15 doing since I was ten.

16 My mother did it. She ran the commodities for the
17 community.

18 And we have a -- a list of agencies that we can help
19 people get their utilities paid and find them somewhere to
17:06:24 20 stay. And so most people do call me for different things like
21 that. So I get calls like that every day.

22 Q And how have you found -- just going back to the voter ID
23 issue. How does this housing issue relate to the challenges
24 people have to vote?

17:06:41 25 A If you stay -- like Carla stayed in Avondale. Her ID,

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1 which is her driver's license -- license going to have Avondale
2 address on it. So if she change her address on her voting
3 roster to West End, that means she got to turn around and
4 change it on her driver's license in order to vote in March.

17:07:10 5 So if she find a house or somewhere else to live after March,
6 she going to have to turn around, change her voting box in
7 order to vote in November, and turn around again and change her
8 ID. That means she going to have to go back and pay another
9 40-something dollars and get another ID in order for her to
17:07:34 10 vote in November. So that's right there is like almost a
11 hundred dollars in order to do that.

12 Q Do some of your constituents work two and three jobs in
13 order to try to make ends meet?

14 A The majority of the people I know work two to three jobs.
17:07:53 15 And I -- I do too. So I -- I'm -- I fall right in that
16 category.

17 Q You worked more than two or three jobs, Commissioner. I
18 think we established that.

19 A Yes. So I understand it and I get it. That's why in the
17:08:13 20 area I live in, I don't know -- I don't know anyone I know
21 don't work two and three jobs, really, just thinking about it.
22 Just thinking about it. I -- let me see. I really don't
23 unless they are older.

24 Q Right. Well, let me ask you: So do the people that you
17:08:31 25 know that work two, three jobs, do they have a lot of time to

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1 go and change their address every time they move?

2 A No. They don't have a lot of times. We actually do a
3 campaign on different social media outlets. If you need an
4 address change, we try to give them the form they can fill out
17:08:54 5 online in order to change their address.

6 But with the ID, you can get a free ID, but you can't get
7 a free ID if you already have one.

8 Q Uh-huh.

9 A And with the homeless community, you can get free IDs, but
17:09:09 10 you have to actually be homeless and have no income coming in,
11 in order to qualify for that ID. So we have two, three places
12 that do that.

13 THE COURT: Mr. Spiva, might this be an okay time to
14 break? I don't think we'll be able to get through cross
17:09:29 15 tonight, so I think Ms. Tyson will need to come back tomorrow.
16 Can you do that?

17 THE WITNESS: I will if I have to.

18 THE COURT: I mean, it's after 5:00, and I just -- I
19 don't see this winding up in time for us to finish cross.

17:09:48 20 MR. SPIVA: That's probably right, Your Honor. And
21 sorry. I think I might have mistimed.

22 THE COURT: That's all right. As my mother always
23 said, things always take longer than they do.

24 All right. So we will be adjourned until in the morning
17:10:04 25 at 9:00 o'clock.

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1 MR. SPIVA: Yes, Your Honor. If the Commissioner's
2 schedule doesn't permit her to start at 9:00, can we start with
3 another witness and then come back to her?

4 THE COURT: Certainly. Certainly.

17:10:17 5 MR. SPIVA: I haven't actually talked to her about it
6 yet, but I'll find out.

7 THE COURT: We can be very flexible, if we need to.

8 (Whereupon, the above proceedings were concluded at
9 5:10 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K. Decker

11-15-19

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF ALABAMA
 3 SOUTHERN DIVISION

4 LAKEISHA CHESTNUT, an individual; *
 5 MARLENE MARTIN, an individual; * 2:18-cv-00907-KOB
 6 BOBBY DUBOSE, an individual; * November 6, 2019
 7 RODNEY LOVE, an individual; KAREN * Birmingham, Alabama
 8 JONES, an individual; JANICE * 9:00 a.m.
 9 WILLIAMS, an individual; RODERICK *
 10 CLARK, an individual; JOHN HARRIS, *
 11 an individual, *
 12 Plaintiffs, *
 13 vs. *
 14 JOHN H. MERRILL, in his official *
 15 capacity as Alabama Secretary of *
 16 State, *
 17 Defendant. *
 18 *****

13 TRANSCRIPT OF BENCH TRIAL
 14 VOLUME III
 15 BEFORE THE HONORABLE KARON O. BOWDRE
 16 CHIEF UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(In open court.)

THE COURTROOM DEPUTY CLERK: I would like to remind you that you are still under the same oath you took yesterday.

THE WITNESS: Okay.

MR. SPIVA: Is it all right to proceed, Your Honor?

THE COURT: Yes, it is.

DIRECT EXAMINATION OF COMMISSIONER TYSON CONTINUED

BY MR. SPIVA:

Q Good morning, Commissioner Tyson.

A Good morning.

Q I just have a few more questions for you this morning. I know yesterday you kind of described a number of organizations that you're involved with. And is there one -- let me ask

you -- I think it was the Black Women's Round Table is one of those?

A Yes. Yes, sir.

Q With that organization, do you ever go to Washington, D.C. to try to visit with Congress people?

A Yes. We've been going -- this -- 2020 will be our -- I think our ninth year. We leave March the 4th through the 8th.

Q Uh-huh.

A Next year.

Q And who do you meet with when you go there?

A This organization is nationwide, so it's several states

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1 there. And you actually meet with your Congress and senators.

2 So we call -- like right now we are sending e-mails for
3 March the 4th. And that's the day on the Hill. We pick
4 between March the 4th and March the 8th. We pick one or two of
09:11:47 5 those days to go out -- to go up on the Hill and talk to your
6 Congress and our senators. And so we notify them, you know,
7 way ahead enough time where they can give us an answer, and we
8 meet with them. So out of all the states, Alabama gets the
9 less meetings.

09:12:12 10 Q Okay. So let me ask you: Who from Alabama goes, in terms
11 of -- what types of people -- younger people, older people, a
12 mix?

13 A We take high school students, majority of mine are 12th
14 grade, college students, regular citizens from all over the
09:12:30 15 state of Alabama.

16 Q And about how many people go up?

17 A From --

18 Q Just approximately.

19 A 40.

09:12:39 20 Q Uh-huh.

21 A We trying to get more next year because it's -- the
22 finances is the reason we take -- we have a limited amount.

23 Q Sure. And is it a nonpartisan group?

24 A It's a nonpartisan group.

09:12:51 25 Q And in -- how many years did you say you've been doing

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1 this?

2 A Next year I think will be the ninth year.

3 Q When you go there -- when you've gone there in the past,
4 have you attempted to schedule meetings with all of the Alabama
09:13:07 5 congressional delegation and each of Alabama senators?

6 A Yes, we have.

7 Q And have you been able to meet with the -- each of the
8 congressional members and each of the senators?

9 A No.

09:13:22 10 Q Who have you been able to meet with?

11 A Congresswoman Sewell and Doug Jones, Senator Doug Jones.

12 Q And why haven't you met with the other members of the
13 congressional delegation?

14 A Because they refuse to meet with us. They don't have
09:13:39 15 time.

16 Senator Shelby, his assistant let us come in the office
17 and meet with us and then gave us a bag of peanuts, but they
18 never give us an answer to the questions. We have folders to
19 present to them with the outline of questions ahead of time.
09:13:58 20 And then we have a packet when we get there with the same
21 questions to go over with them that we gave them ahead of time.
22 They never really have no answers for us when we get there.

23 And one of the senators -- I think it's the one out of
24 Mobile because you never really -- we never see their face, you
09:14:19 25 know. So I really couldn't -- I think it was Bradley Byrne.

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1 It might have been him -- the one out of Mobile. They wouldn't
2 even let us in the office. They made us stand in the hallway
3 and embarrassed us in front of all those states and wouldn't
4 allow us to come in his office. When we went to the door and
09:14:41 5 we said that we sent an e-mail prior to coming to -- prior to
6 coming to actually meet with the senator and we wanted to
7 know --

8 Q This is Congressman Byrne?

9 A Yes.

09:14:55 10 Q Uh-huh.

11 A And the senators in the state of Alabama -- I cannot
12 remember which one of them, but I'm almost positive it's the
13 one out of Mobile.

14 Q Okay. And you have been saying senators. Do you mean the
09:15:12 15 House of Representatives delegates, congressional delegates?

16 A Yes. Congresswoman Sewell and Doug Jones, the ones that's
17 with Doug Jones, Shelby -- Shelby was -- out of all of those --
18 out of the senators, Doug Jones was the only one that
19 personally met with us.

09:15:25 20 Q Uh-huh. Okay.

21 A Shelby let us come in his office and meet with his
22 assistant.

23 Q Uh-huh.

24 A None of the rest of them ever --

09:15:32 25 Q Uh-huh.

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1 A -- replied or -- they -- when we called they talked to us
2 on the phone.

3 Q Uh-huh.

4 A But they never gave us an opening time within the -- that
09:15:43 5 period that we was going to be down there that we could come
6 and see them.

7 Q Uh-huh.

8 A So when we was up there, we just dropped by their office
9 anyway.

09:15:51 10 Q Uh-huh.

11 A And they wouldn't let us in. They made us stand in the
12 hallway.

13 Q That was Congressman's Byrne's office?

14 A I'm almost for sure it was. I can't be absolutely
09:16:01 15 positive.

16 Q Uh-huh.

17 A But I know who met with us and I know who didn't.

18 Q Okay.

19 A And that was Shelby and -- we met with his assistant.

09:16:09 20 Q Okay.

21 A And Doug Jones has always met with us --

22 Q Okay.

23 A -- since he's been there. And Congresswoman Sewell has
24 been the only one on the Congress side that has -- has met with
09:16:21 25 us. None of them -- they do the same thing. They won't even

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1 let us in they office.

2 Q Okay. And so let me ask you: So it sounds like
3 Congresswoman Sewell and Senator Jones meet with you in person
4 themselves personally?

09:16:36 5 A Yes.

6 Q Okay. And has Congresswoman Sewell done that each time
7 you've gone up to Washington, D.C.?

8 A Each time we come up there, she's even given us a luncheon
9 and -- to actually go over some of the bills that they're
09:16:50 10 trying to pass.

11 Q Uh-huh.

12 A And then she also participates in our press conference
13 that we have --

14 Q Uh-huh.

09:16:58 15 A -- on the Hill that's actually covering black women's
16 issues.

17 Q Uh-huh.

18 A So it's just not Alabama up there.

19 Q Uh-huh.

09:17:05 20 A It's several states up.

21 Q Uh-huh.

22 A But after we go to our debriefing, Alabama is the only one
23 that's not able to meet with their Congress people and the
24 senators.

09:17:15 25 Q Okay. And then you mentioned Senator Jones also met with

1 you personally. Has he met with you personally each time
2 you've gone up there since he has been a senator?

3 A Yes, he has.

4 Q Okay. And you mentioned also that -- I think you said you
09:17:29 5 thought it was Congressman Byrne who had had you meet out in
6 the hall. Did he meet with you personally out in the hall
7 or --

8 A No. His assistants. They wouldn't let us in the door,
9 like in the office way.

09:17:42 10 Q Uh-huh.

11 A They told us to step out in the hallway.

12 Q Okay. Have you ever through this organization gotten a
13 personal meeting with any of the Congress people when you've
14 gone to Washington other than Congresswoman Sewell or Senator
09:18:01 15 Jones?

16 A No, I have not. I've never had a meeting with none -- and
17 I go with several organizations. And the same two -- that's
18 the same two we always meet with.

19 Q And you've requested a meeting, though, with each of the
09:18:16 20 Congress people from Alabama each time you've gone?

21 A Yes.

22 Q Okay. Let me ask you: Have you -- and you mentioned
23 something about a packet that you leave with them. Is that
24 something that where you're asking for answers to questions
09:18:33 25 after the meeting or after your visit to Washington?

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1 A We send them the questions before.

2 Q Uh-huh.

3 A And then we take a packet with us and leave it with them.

4 Q Okay.

09:18:42 5 A In case they say they didn't get it.

6 Q And has Congresswoman Sewell or Senator Jones responded to
7 those questions after you left Washington?

8 A When we get there, they already have the answers, and they
9 go over the packet with us.

09:18:56 10 Q Okay. And do they send you something later in writing, as
11 well?

12 A They send us something later in writing. And now they are
13 getting ready to start doing televised meeting with us.

14 Q Uh-huh.

09:19:08 15 A Out of my office.

16 Q Okay. And have any of the other Congress people that
17 you've requested meetings with, other than Congresswoman Sewell
18 and Senator Jones, ever provided you responses either in person
19 or in writing later to the questions that you posed?

09:19:29 20 A No.

21 Q And you've sent -- have you provided the same package to
22 each of the other Congress people as you provide to
23 Congresswoman Sewell and Senator Jones?

24 A Yes. We look at their committees that they sit on. And
09:19:45 25 that's how we target our questions to each one of the

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1 representatives. We have never gotten an answer from anyone
2 but Congresswoman Sewell and Senator Doug Jones.

3 Q Have you gone to Washington with any other of the
4 organizations that you're involved with?

09:20:04 5 A Yes, I have. I went -- I've went to Washington, D.C. with
6 the national action network. I've went to Washington, D.C.
7 with neighborhood housing services. I've went there with them
8 also. I've went with the NAACP, and the same thing.

9 Q And the ones that you just listed, all of those are
09:20:33 10 nonpartisan organizations?

11 A All of them are nonpartisan organizations.

12 Q And have you been able to secure meetings with any of the
13 congressional delegation or senators other than Senator Jones
14 or Congresswoman Sewell in connection with your visits with any
09:20:52 15 of those other organizations?

16 A No. We have not. But the NAACP was a pastor alliance
17 group that actually went up there, and they wouldn't even
18 hardly they went let us in the building really.

19 Q Uh-huh.

09:21:12 20 A We was out in the hallway. And they had security out
21 there.

22 Q Did Congresswoman Sewell or Senator Jones meet with that
23 group?

24 A Yes, they did.

09:21:22 25 Q Okay. And have they consistently taken meetings with the

1 various groups that -- they being Congresswoman Sewell or
2 Senator Jones -- have they consistently taken meetings with the
3 groups that you have gone to Washington with?

4 A Yes.

09:21:37 5 Q And have those groups also consistently requested meetings
6 from the other members of Alabama's congressional delegation?

7 A Yes.

8 Q And I think you've already said that you have not received
9 those meetings?

09:21:50 10 A Have not received a meeting.

11 Q Let me ask you, Commissioner Tyson, have you -- have you
12 ever seen or -- any racial appeals in campaigns in Alabama?

13 A Yes.

14 Q What have you seen?

09:22:12 15 A I know when the -- it was a judge race with -- I think it
16 was Parker and Vance. I think that's who it was because I go
17 to a breakfast on Sundays with the -- with Vance. I think
18 that's his name.

19 Q Uh-huh.

09:22:38 20 A They had -- had a commercial. And also when Doug Jones
21 was running, I seen some commercials and several other
22 candidates that was running.

23 Q What about when President Obama was either in office or
24 running for office, did you see any racial appeals in

09:23:11 25 connection with President Obama?

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1 A Yes. There were a lot of those with the joker face
2 stretched out like with the joker face and with the turban hat
3 on.

4 Q This is images of President Obama like that?

09:23:23 5 A With the hat on. His wife looked like a monkey. They had
6 her like a monkey and had President Obama like he was in Iraq.

7 Q Uh-huh.

8 A Like that.

9 Q What impact did that have on you personally when you saw
09:23:46 10 those kinds of appeals?

11 A Racist. Racist. And I -- I never really -- I've been
12 dealing with stuff like this all my life. So why would you --
13 if you were running a judge race, or you running for senator,
14 why are you talking about the President?

09:24:12 15 Q Uh-huh. Uh-huh.

16 A So -- and I just -- that bothered me.

17 Q Uh-huh.

18 A A lot. And when you dealing with young people -- because
19 even my daughter, she was -- she was -- she was in a private
09:24:27 20 school. So she went to school with a lot of majority of white
21 kids. And she -- it bothered her --

22 Q Uh-huh.

23 A -- you know, when she seen it. And she said, Now, why
24 would they do that?

09:24:43 25 Q Uh-huh.

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1 A You know. And I really couldn't -- I told her I said,
2 Well, you know, it's racism, but, you know, she really
3 basically didn't understand it.

4 Q Uh-huh.

09:24:53 5 A And I know exactly what it was.

6 Q Uh-huh.

7 A And it was to make sure that every person that disliked
8 people because of their color would come out and vote against
9 any Democrat that would be in office -- that would even run for
09:25:14 10 office.

11 Q Did you see some kind of an ad on social media that had
12 Doug Jones as an overseer of a slave camp?

13 A Yes. I seen that also.

14 Q Okay. And what kind of impact did that -- did that have a
09:25:29 15 similar impact on you?

16 A Pure racism. Racism. Had him with aborting a baby. Had
17 Doug Jones aborting a baby.

18 It -- just -- I have never in my life -- and you will
19 think since it's the 21st century this wouldn't happen. But
09:25:48 20 this state that I live in, that I was raised in, and I served
21 the country for this state and for this country is so racist to
22 it really -- to it -- it makes you look outside-eyed at
23 everybody. So you don't know who to trust because it's so
24 blatant and bold, and they're not trying to hide it.

09:26:17 25 Q Uh-huh.

1 A It's just everywhere.

2 Q Uh-huh.

3 A And it's no one is being punished and nothing is being
4 done about it.

09:26:27 5 Q Uh-huh.

6 A It's -- it's like it's a secret people trying to keep
7 hidden, but it's so far out in the public to where you can't
8 hide it.

9 And I -- I know people right now when I was running they
09:26:46 10 didn't -- they said that I was too dark to be a county
11 commissioner, that I would vote for a black girl, but she needs
12 to be light skinned.

13 THE COURT: Who said things like that to you, that you
14 had to be light skinned?

09:27:08 15 THE WITNESS: Candidates and people who I asked to
16 vote for me.

17 I went to Princeton Towers, and there was some white
18 senior citizens there, and I was trying to get them to vote for
19 me. She said, Well, I guess I can vote for you, even though
09:27:21 20 you a nigger. And I just -- I told her, Well, thank you, and
21 just walked off.

22 THE COURT: My question was: Who said that you had to
23 be light skinned?

24 THE WITNESS: Candidates.

09:27:37 25 THE COURT: Okay. Were those white or black

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1 candidates?

2 THE WITNESS: They were white. They felt like I
3 needed to be a lighter complected.

4 I was trying to raise funding for my election. They said,
09:27:51 5 Well, we really can't really support you because we don't feel
6 like you stand a chance. Maybe if you was lighter skinned and
7 an African-American you would stand a chance to run for this
8 seat and win.

9 BY MR. SPIVA:

09:28:10 10 Q Do you think that there's less racism in Alabama than
11 there was 40 years ago?

12 A No. It's just -- they just use that in another way, you
13 know. It's just being covered up, and it's being displayed in
14 another way.

09:28:32 15 And I see it every day because I'm a person that be out in
16 the community a lot. I see it every day. It's not a day that
17 I don't see it. And a lot of times I ignore it.

18 You know, I see it from the way they charge me with my
19 water and sewer bill, from my light bill. I see it from the
09:28:58 20 way they take care of the community that I live in. And they
21 take care of the community on the other side of town that I
22 represent. I see it in my health care. I see it in my child's
23 school, my grandbabies. I see it in her school.

24 So it's there. It's just in another form. You know,
09:29:20 25 because they allow us to live in -- in their communities, don't

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1 mean that it's not there.

2 Q Thank you, Commissioner Tyson. I have no further
3 questions.

4 THE COURT: Cross?

09:29:37 5 MS. HOWELL: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. HOWELL:

8 Q Good morning, Commissioner.

9 A Good morning.

09:30:13 10 Q You've talked a little bit this morning, but I want to go
11 back to some of the things that you were talking about
12 yesterday afternoon. You -- we discussed the composition of
13 the district that you represent as a Jefferson County
14 Commissioner?

09:30:30 15 A Uh-huh.

16 Q And you said that that includes both some poor black
17 citizens and some wealthier white citizens, correct?

18 A Right.

19 Q And you consider yourself a representative for all of your
09:30:41 20 constituents, don't you?

21 A Absolutely.

22 Q Okay. So that's for your white constituents, as well?

23 A Yes.

24 Q That you are a representative for them?

09:30:47 25 A Right.

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1 Q Do you think it's any different for a congressperson?

2 A They supposed to represent all of us.

3 Q And that's all of their constituents, right?

4 A Every last one of them.

09:30:58 5 Q And that's regardless of their race, correct?

6 A Yes. That's what they supposed to do.

7 Q Okay. You also talked about problems that there had been

8 with the people that -- I think you were saying specifically

9 the people that you've represented as commissioner and then

09:31:24 10 before that when you were on city council, I believe?

11 A Yes.

12 Q Not trusting the system, and so they wouldn't go and vote;

13 is that right?

14 A Right.

09:31:32 15 Q So is that happening in -- that is happening in Jefferson

16 County, correct?

17 A Yes, it is.

18 Q And that's all happening in Congresswoman Sewell's

19 district?

09:31:42 20 A It's --

21 Q I'm not saying it happens only there, but it does happen

22 there, as well?

23 A Yes. It happens all over the state.

24 Q Okay. You also talked some about polling places being

09:31:54 25 moved around without any prior notice, and you gave a specific

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1 example of that that had happened to you, correct?

2 A Absolutely.

3 Q And when you figured out that your polling place had been
4 moved, you went and found the correct polling place, right?

09:32:06 5 A Yes; after I went to three polling places. But I had a
6 car.

7 Q Okay. But you did eventually find the correct polling
8 place?

9 A Yes.

09:32:12 10 Q Okay. And you were able to vote when you got there,
11 right?

12 A Yes.

13 Q Okay. And you said that there had been a lack of notice
14 involved in not -- let me strike that.

09:32:25 15 You said that part of the problem had been you hadn't
16 received any notice that your polling place had been moved,
17 right?

18 A Right.

19 Q And you got there, and the doors were closed, and there
09:32:33 20 was just a sign?

21 A Yes.

22 Q Okay.

23 A No. No. I didn't say that.

24 Q Oh, I'm sorry.

09:32:40 25 A When I got there, I gave them my ID. They said that, You

1 don't vote at this box. I said, So what box do I vote at? She
2 said, I can't tell you. I don't know which box you vote at.

3 Q Okay. So the polling place was still open, but it was no
4 longer your polling place?

09:32:54 5 A It wasn't my polling place. But some more people went to
6 a polling place in their -- there was a note on the door saying
7 that it was moved to More Than Conquerors.

8 Q Okay. So just going back for a second to just your
9 polling place. Do you know who's in charge of giving the
09:33:13 10 notice about when a polling place has been moved?

11 A Yes.

12 Q Who is that?

13 A The clerk's office.

14 Q Okay. And that's the clerk for Jefferson County, correct?

09:33:19 15 A The clerk for Jefferson County. And if it's a city
16 election, it's the city clerk.

17 Q Okay. And the clerk for Jefferson County is an elected
18 official, correct?

19 A Yes.

09:33:31 20 Q Do you know if they're a Republican or Democrat in
21 Jefferson County?

22 A It's a Democrat in there now.

23 Q Okay. You had also mentioned just in passing now that you
24 had been speaking to other people, and they had encountered
09:33:49 25 similar problems to you?

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1 A Yes.

2 Q Was that in your capacity as a county commissioner for
3 Jefferson County?

4 A No. I've been a community activist since I was ten years
09:34:00 5 old. I have only been a county commissioner for a year. So it
6 did -- it has happened within this year, but I've always did
7 voting. So it has always have happened.

8 Q Okay. And so when people have told you these stories,
9 have you had any way of verifying whether what they're telling
09:34:18 10 you is true or correct? You've just taken them at your word,
11 haven't you?

12 A No, huh-uh. I actually take them around to the polls and
13 make sure they vote.

14 We take -- we pick people up and take them and vote. This
09:34:33 15 is every election. We have an election coming up on November
16 the 19th. We will be there transporting people to the polls.

17 Q But when people tell you, for example, that they have a
18 problem with their ID?

19 A Uh-huh.

09:34:45 20 Q You take them at their word that what their problem --
21 whatever their problem is, it is actually their problem?

22 A No.

23 Q No.

24 A I give them the 1-800 number for the attorneys that was
09:34:59 25 given to us to help us with voting fraud. I call Judge King.

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1 I take them back to the poll and find out what their problem
2 was; why this person cannot vote. And they tell me it's
3 because the address do not match up with the address that's on
4 this voting roster.

09:35:18 5 Q Okay. And the attorneys tell you that?

6 A No. We report it to the attorneys from NAACP.

7 Q Uh-huh.

8 A We report it to those attorneys, and I ask them can they
9 vote provisional ballot. And then they let them vote

09:35:35 10 provisional ballot.

11 But they never tell them that they can vote provisional
12 ballot. They have to ask for a provisional ballot.

13 Q So I think you have said two things; that, first, you were
14 talking to the attorneys; is that correct?

09:35:48 15 A We report it to the attorneys.

16 Q Okay. But then you're going to the polling places?

17 A I'm going to the polling place. And I don't do it by
18 myself.

19 Q Okay.

09:35:56 20 A It's a lot of us out there.

21 Q Okay.

22 A It's not just me.

23 Q But you're talking to the local election officials?

24 A Yes.

09:36:03 25 Q Okay. And getting them to give provisional ballots?

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1 A Yes.

2 Q Have you ever had any problems getting them to give
3 someone a provisional ballot once you've asked for it?

4 A Yes. They run out.

09:36:15 5 Q But they have given them to you anytime there have been
6 some available?

7 A Yes. But they shouldn't run out of provisional ballots.

8 Q Okay. You also talked some about racial appeals in
9 campaigns. And you actually listed some racial appeals in, I
09:36:37 10 believe, President Obama's possibly re-election campaign?

11 A Yes.

12 Q That was a national contest, right? President is a
13 nationwide office?

14 A Yes. But it was a local election, and that's what I never
09:36:50 15 understood. It was a local election, and the whole -- the
16 whole campaign was talking about Obamacare, and we're going to
17 abolish Obamacare, and we are going to make sure that we get
18 rid of this with Obama, and this with Obama.

19 And I'm like, what does that have to do with the person
09:37:14 20 that's running? That's not -- we're not voting for President.
21 But everything was targeted toward the President.

22 Q But you considered that a racial appeal, as opposed to an
23 issue-based appeal?

24 A Yes. If your face stretched like a joker and you got a
09:37:33 25 turban hat on and you in a tank with a rifle.

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1 Q Okay. Do you know who made those ads?

2 A No. I remember one of them -- I know all of them was
3 dealing with either judge elections or Congress -- dealing --
4 something dealing with Congress, or some type of election like
09:38:03 5 that.

6 Q Okay.

7 A That had to go -- that they had to go to and hold a seat
8 in D.C.

9 Q Okay. But it sounds like you don't remember which
09:38:12 10 specific election it was?

11 A No. It had to be when he was in office. I do remember
12 that.

13 Q Okay. So going back for a second, you talked about
14 different problems that people had experienced with the laws
09:38:37 15 and with getting health care, and other things. Do you know if
16 white people have also experienced those same sorts of
17 problems?

18 A I doubt it. No. I haven't had one to actually tell me
19 that.

09:38:51 20 Q Okay. But just because they haven't told you that doesn't
21 mean that they've never experienced the problem, right?

22 A Well, yeah. Yeah.

23 Q And I apologize. I'm jumping around a little bit.

24 A That's fine.

09:39:17 25 Q Going back to those racial appeals you heard about in

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1 campaigns. You talked about a particular ad that I believe you
2 have seen on Facebook during Doug Jones' campaign for Senate?

3 A Uh-huh.

4 Q You said that you saw it on Facebook. Do you know if that
09:39:32 5 was made by one of his opponents, or by just a private
6 individual posting something like that?

7 A It was by one of his opponents.

8 Q Okay. Do you recall which one?

9 A It was the -- it was the cowboy with the one -- what's his
09:39:47 10 name that ride the -- the child molester. What is that man --
11 I cannot remember his name. The one that ride the horse.

12 Q Are you referring to Roy Moore?

13 A Oh, yeah. That's who it is.

14 Q Okay. And Roy Moore did, in fact, lose that election,
09:40:07 15 didn't he?

16 A Yes, he did.

17 Q Which is how you came to be visiting with Doug Jones as
18 Senator in Washington, D.C.?

19 A Right.

09:40:15 20 Q And you -- you talked a lot about going with an
21 organization -- and forgive me if I missed the name of the
22 organization that you go up with every year. Can you remind me
23 again what organization that's with?

24 A It's the National Coalition on Black City Participation,
09:40:34 25 and the Black Women's Round Table is the conference that we go

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1 to.

2 Q Okay. And that conference is in Washington, D.C.?

3 A It's in Washington, D.C. Yeah. Our home office is in
4 Washington, D.C.

09:40:44 5 Q And you talked about trying to meet with, I believe,
6 Congressperson Byrne, who represents the Mobile area at
7 present?

8 A Uh-huh.

9 Q And you said that -- well, you said that they had been
09:40:54 10 unable to meet with you in the first place, right?

11 A Right.

12 Q And that when you arrived, you went and tried to visit his
13 office anyway and were unable to get in; is that right?

14 A Yes. They made us stand in the hallway.

09:41:05 15 Q Okay. And when you went to visit Congresswoman Sewell,
16 did she meet with you in her actual office?

17 A Of course. And fed us lunch, and gave us lunch, and gave
18 us tours.

19 Q But let me take a step back. Did you meet with her in her
09:41:20 20 actual office office?

21 A In her office office.

22 Q Okay. And it wasn't in some other room in the building?

23 A We have met with her -- each time we meet with her in her
24 office and we take a picture around her desk with all of the
09:41:34 25 people that we bring down. And --

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1 THE COURT: How many people is that?

2 THE WITNESS: Sometimes we -- most of the time we
3 bring -- now, last year I took 15. The year -- that was 2018.
4 2017 we took 40.

09:41:53 5 So it's depending on how much money we raise. We take
6 different amount of people.

7 BY MS. HOWELL:

8 Q Okay. But those offices are fairly small, aren't they?

9 A Yes. But we all pack up in there. I have a bunch of
09:42:04 10 pictures because they souvenirs for the students. And how many
11 people actually get a chance to go to D.C. to meet their
12 congressperson?

13 Q That is a good point. But if you had other people
14 visiting your office, perhaps it would be difficult to fit
09:42:20 15 everybody into the office; is that fair?

16 A Yeah. But she know we want a picture of that seal that
17 she has. And that's why she stuff us all in her office to make
18 sure we get -- and she give us a pin, also.

19 Q That was nice.

09:42:44 20 Just one last question. You were elected to city council
21 in 2013; is that right?

22 A I was appointed in 2013.

23 Q Appointed to city council. But in 2013; is that right?

24 A Yes.

09:42:58 25 Q Were you politically active in 2011?

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1 A Of course.

2 Q Sorry. Let me clarify. Were you an elected official in
3 2011?

4 A No. I was a neighborhood officer. I guess that would --
09:43:11 5 I'm still -- yeah. I was elected by the citizens for that,
6 too.

7 Q Okay. And you've considered yourself an activist since
8 you were ten, right?

9 A Yes.

09:43:19 10 Q Did you play any role in the redrawing of the
11 congressional districts back in 2011?

12 A I tried to, but I actually protested the drawing of the
13 one that was back in 2011.

14 Q Okay. When did you protest it?

09:43:38 15 A At the Five Points West library when they was drawing it.

16 Q Okay.

17 A And that's when Carole Smitherman was the city council
18 person. That was the drawing of the city council district now.
19 I ain't talking about the Congress district.

09:44:08 20 THE COURT: Wait a minute. I want to make sure I
21 understand. What did you protest?

22 THE WITNESS: The drawing of District 6, city council.

23 THE COURT: The city council?

24 THE WITNESS: The city council district.

09:44:18 25 THE COURT: I think Ms. Howell was asking you about

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1 the congressional district map that we're here talking about
2 this week.

3 THE WITNESS: Oh, I'm sorry.

4 BY MS. HOWELL:

09:44:26 5 Q That's quite all right. My question might not have been
6 clear. So did you participate in redrawing the congressional
7 map in 2011?

8 A Oh, no, ma'am.

9 Q That's what I wanted to clarify. You also mentioned that
09:44:40 10 some very hurtful things were said to you when you were running
11 for county commissioner about your complexion being too dark;
12 is that right?

13 A Yes.

14 Q Can you tell me -- who were you trying to raise money from
09:44:52 15 when you ran for commissioner?

16 A Well, it definitely my neighborhood -- I stay in a poor
17 neighborhood, and the people that I know are poor people. So I
18 was branching out going to different people that -- the
19 candidate that I was running from, I got their fund-raiser list
09:45:13 20 because it has to be turned in. And so I was calling some of
21 the people that -- the donors that gave them money, and they
22 are the ones that told me that.

23 Q Okay. Do you -- do you know what race those people were
24 of that you were calling?

09:45:27 25 A They were white.

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1 Q How do you know that they were white when you were calling
2 them?

3 A Just like I would know if you was white if I called you;
4 your voice, your tone of your voice.

09:45:37 5 Q Okay. Do you know whether the people that you were trying
6 to raise money from were with Democratic organizations or
7 Democratic voters, as opposed to Republican voters?

8 A I really didn't -- I really don't know whether they were
9 democratic or Republicans, but I requested some funding from
09:46:02 10 them, and I didn't get it, so...

11 Q You did get it?

12 A I didn't.

13 Q Didn't. Okay.

14 MS. HOWELL: Could I have a moment, Your Honor?

09:46:13 15 THE COURT: Certainly.

16 BY MS. HOWELL:

17 Q Ms. Tyson, I think that's all I have for you. Thank you
18 for coming in this morning.

19 THE COURT: Any redirect?

09:46:31 20 MR. SPIVA: Yes, Your Honor. Just briefly.

21 REDIRECT EXAMINATION

22 BY MS. HOWELL:

23 Q Commissioner Tyson, you recall you were asked on
24 cross-examination whether Congress people are supposed to
09:46:43 25 represent all of their constituents, whether they're black or

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1 white. Do you recall that?

2 A Yes.

3 Q And other than Senator Jones, do you think that the
4 Congress -- do you think that the Congress people in Alabama
09:47:04 5 actually represent all -- excuse me. Let me step back.

6 Other than Representative Sewell and Senator Jones, do you
7 think that the other -- the rest of the congressional
8 delegation in Alabama represents both black and white
9 interests?

09:47:22 10 A No, they do not.

11 Q And why do you say that?

12 A It's no compromise with the Republicans. It's either --
13 Congresswoman Sewell and Doug Jones, they always talk about
14 compromising and working across the aisle trying to get
09:47:43 15 benefits and bills passed for the citizens in their district.

16 Republicans, it's either their way or no way, or you are
17 going to get run over.

18 It's no reason we shouldn't have health care expansion
19 here in this state with illness that's popping up from back in
09:48:02 20 the '60s that they've really thought they had cleared. And if
21 you don't want to pass a law to make sure we can get that,
22 you're definitely not representing everyone.

23 And if you don't want to increase minimum wage, and you
24 know for a fact that the working poor is not surviving and
09:48:25 25 thriving in the state that you are supposed to love, it's no

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1 way that you can represent all of the people in your district.

2 And if you're not putting money in education that you know
3 that we need these young people in order to take care of us
4 when we get old, you're not representing all of us.

09:48:43 5 They know the condition of this state. They know that
6 the -- the condition of the rural areas in the state of Alabama
7 are like a third-world country. They are very aware of it, and
8 they are not passing any bills or laws or doing anything to
9 make sure that that population is all taken care of.

09:49:07 10 Q Thank you, Commissioner Tyson. I have no further
11 questions.

12 MS. HOWELL: Your Honor, just one question.

13 THE COURT: Okay.

14 RE CROSS-EXAMINATION

09:49:23 15 BY MS. HOWELL:

16 Q Ms. Tyson, do you personally feel that a congressman has
17 to support Democratic initiatives to represent everyone in his
18 constituency?

19 A Yes, I do.

09:49:34 20 Q Okay.

21 MS. HOWELL: Thank you very much.

22 THE COURT: Anything else?

23 MR. SPIVA: No, Your Honor.

24 THE COURT: Thank you, Commissioner. You may step
09:49:45 25 down. Thank you for coming back today.

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1 Plaintiff may call your next witness.

2 MS. MADDURI: Plaintiffs call Senator Hank Sanders, or
3 Henry Sanders.

4 HENRY SANDERS,

09:50:12 5 having been first duly sworn by the courtroom deputy clerk, was
6 examined and testified as follows:

7 THE COURTROOM DEPUTY CLERK: Please state your name in
8 the microphone for the record.

9 THE WITNESS: Sure. My name is Henry Sanders, but
09:50:40 10 nobody knows me as Henry Sanders. Everybody knows me as Hank
11 Sanders.

12 DIRECT EXAMINATION

13 BY MS. MADDURI:

14 Q Good morning, Mr. Sanders. I forgot to mention this to
09:50:50 15 you before we started, but if you can try to speak into the
16 microphone just for the court reporter's ease of taking down
17 your testimony today.

18 A I will do that.

19 Q Thank you. Senator Sanders, where do you live?

09:51:03 20 A Selma, Alabama.

21 Q And how long have you lived there?

22 A 48 years.

23 Q Selma has a unique place in Alabama Civil Rights history,
24 doesn't it?

09:51:18 25 A It does.

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1 Q Can you tell us a little bit about that?

2 A Well, in the '60s, there were tremendous efforts to try to
3 get the right to vote for African-Americans, and it was
4 happening all over the south. But it came to a head in Selma.

09:51:39 5 So Selma became a symbol not only in Alabama, and not only
6 in this country, but in other places.

7 And it had to do with during those struggles in Selma and
8 surrounding areas, Jimmy Lee Jackson got killed -- well, he got
9 shot in Perry County. He died in Selma.

09:52:06 10 And out of that came the "Bloody Sunday" where people were
11 beaten on the bridge. Out of that came the Selma -- the
12 Montgomery March and other attempted marches called Turnaround
13 Tuesday.

14 All of those gave Selma a unique place. And so you not
09:52:34 15 only run into Selma being recognized as a symbol here. But in
16 many other countries, I've run into it. So it certainly has a
17 unique place.

18 Q And what is your current occupation?

19 A I'm an attorney.

09:52:51 20 Q What's the name of your firm?

21 A Chestnut, Sanders & Sanders, LLC.

22 Q And what type of law do you practice?

23 A I practice Civil Rights law. I practice governmental law,
24 because we represent a couple of small commissions, a couple of
09:53:11 25 small boards of education, small town.

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1 I've practiced -- the truth is when you're in a small
2 town, you really have a general practice. So I've done some
3 personal injury, some contract. You might say sometime
4 whatever comes through the door.

09:53:36 5 Q Okay. What type of Civil Rights law have you practiced?

6 A I have -- I have practiced -- I've done some voting
7 rights. I've done some police brutality. I've done some black
8 farmer issues. I was one of three key council persons in the
9 Black Farmers Litigation. And I was an attorney in the other
09:54:15 10 one. They were two national nationwide class action dealing
11 with issues where the United States Government had
12 discriminated against black farmers, in terms of loans and
13 programs and other kinds of things.

14 Q When was that case filed originally approximately?

09:54:39 15 A The first case was filed in 1997. The second case was
16 filed in 2008.

17 Q And what was the -- what was the monetary -- was there a
18 monetary award in the case?

19 A Yes. In the first case, over a billion dollars was
09:55:03 20 distributed to black farmers across the country.

21 In the second case, \$1.25 billion was distributed.

22 Q Were any of the farmers in the case from Alabama?

23 A Yes.

24 Q And where are you originally from?

09:55:26 25 A I'm from Baldwin County, Alabama. I'm -- and I rush to

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1 say that I'm from north Baldwin, which is Tensaw River, those
2 kinds of areas. Most people think of Orange Beach and Gulf
3 Shores. But I'm from north Baldwin, Alabama.

4 Q When did you first leave Alabama?

09:55:49 5 A I first left Alabama in 1961.

6 Q Where did you go?

7 A I went to New York City.

8 Q How did New York City compare to Alabama for you?

9 A It was a world of difference. I -- in New York City, I
09:56:17 10 was no longer afraid that when I left home I may not come back.

11 In New York City, I still got the lowest jobs on the
12 lowest rung, but they were not as hard, and they didn't -- and
13 pay as little as in Alabama.

14 In New York City, I must say that people treated people
09:56:52 15 from the south as kind of like immigrants. You were on the low
16 end of the totem pole, but it was still so much better than it
17 was in Alabama.

18 In New York City, I graduated high school without taking
19 any math course. And I was able to go to William Cullen Bryant
09:57:17 20 High School at night and be able to get math. I was able to go
21 to RCA school in electronics and eventually get a skill.

22 So it was a world of difference. But the most striking
23 thing, though, is when you can talk to a white person and not
24 have to be afraid that you may say the wrong thing. You may
09:57:47 25 say it the wrong way, or you may look at them in the eyes a

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1 wrong way.

2 So that -- it's hard for people to understand how -- what
3 a weight that is, that if something happened to somebody you
4 love and care about you can defend them or you can defend
09:58:11 5 yourself. So...

6 Q Did you have any interactions in Alabama with white folks
7 where you didn't feel like you could do that?

8 A Yes.

9 Q Can you tell us about those or one of those?

09:58:24 10 A Well, I was a -- I was a terrible child. I always in
11 fights and struggles and stuff with folks in my family. So
12 when my mother was going to the grocery store, she would often
13 take me. I was the second of 13 children. But she would often
14 take me so I wouldn't get in fights with my sisters and
09:58:57 15 brothers.

16 And on one occasion, I was sitting outside in the car. I
17 had the door open. I had my feet outside the door. And a
18 white woman came along and -- and I just looked up and looked
19 right back down. It was only seconds. And it might not even
09:59:19 20 have been a good second. And a white man came over to me and
21 said, I saw you looking at that white woman, and I'm going to
22 teach you a lesson. And I said -- I told him, I just looked up
23 and I just looked right back down. And said he was going to
24 teach me a lesson.

09:59:38 25 So I snatched my feet back in the car and closed the door.

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1 And I was trying to wind up the window, and he was struggling
2 there.

3 And my mother came out, and my mother was probably what
4 you would call a cursing Christian. She started cursing him
10:00:00 5 and telling him to get away. And he kept insisting that he was
6 going to teach me a lesson. And she told him that she was
7 going to teach him a lesson. And eventually he -- he walked
8 away slowly. So...

9 So that's one example.

10:00:26 10 Q What did that --

11 A My brother.

12 Q What did that experience mean to you?

13 A It -- what it did was reenforced the concept that I was
14 not free to even look up and look down; that you always in a --
10:00:50 15 in danger of being beaten, or being killed, or being oppressed
16 in some other way.

17 It's just a heavy weight to know that if you have the
18 wrong facial expression, if you have the wrong tone in your
19 voice, that that's enough to have you harmed or even killed,
10:01:22 20 so...

21 THE COURT: Senator Sanders, approximately when was
22 that?

23 THE WITNESS: Okay. That was -- would have been in
24 the late 1950s.

10:01:40 25 BY MS. MADDURI:

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1 Q Senator, did you read a lot when you were growing up?

2 A Yes. I loved to read, but we didn't have -- we didn't
3 have much things to read. So when I would -- on the school
4 bus, I not only read all of my books all the way to the end,
10:02:00 5 but I read books from students in higher levels.

6 And when you -- when you living in a house that's a
7 three-room house and you got -- and you got 11 people living in
8 a three-room house -- and I don't mean a three-bedroom house.
9 I mean a kitchen, middle room, and front room. And you really
10:02:32 10 don't have things to read. So...

11 So when opportunity come up to read something, I would
12 read it. In fact, reading stuff was what caused me to be a
13 lawyer.

14 When I was -- my mother worked for a large landowner in
10:03:00 15 Baldwin County named Thomas Earl, who not only owned
16 thousands -- well, I don't know. He owned at least a thousand
17 acres. But she worked in the house. And she would bring
18 magazines and newspapers and things that were -- after they no
19 longer wanted them. But she didn't bring them home for us to
10:03:24 20 read. She brought them home for us to use as toilet paper.
21 And I read about Thurgood Marshall.

22 And every Friday the teachers would have us say what we
23 were going to be when we grow up. And they did that on
24 Fridays. So on the weekend we would stay focused.

10:03:43 25 And so the next Friday, I stood up and said I was going to

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1 be a lawyer when I grow up. And the whole class started
2 laughing at me. And the boy right next to me before they
3 started laughing, he started snickering under his breath. And
4 the boy next to him started snickering, and it wasn't under his
10:04:12 5 breath. And after a while, the whole class was just laughing.
6 And the teacher tried to get them to stop. And she couldn't
7 get them to stop. She tried to get me to sit down. And I was
8 in too much of a shock.

9 So the more I cried, the more they laughed. The more they
10:04:32 10 laughed, the more I cried. And finally she came over and put
11 her left arm around me and put her right hand on my stomach and
12 got me to sit down.

13 When I sat down, I -- I said, If they going to laugh at
14 me, I ain't going to be nothing. And then I thought about it
10:04:53 15 and said, They don't expect me to be nothing anyway. And I
16 decided that if it was the last thing I did, that I was going
17 to be a lawyer if it killed me.

18 But I also decided I wasn't going to tell nobody because I
19 didn't want to be laughed at. And I didn't -- it took me years
10:05:14 20 to understand why they were laughing at me.

21 I'm sorry.

22 Q That's okay, Senator. Thank you for sharing that story
23 with us.

24 THE COURT: Senator Sanders, just to be clear, your
10:05:45 25 classmates who were laughing at you, were they

1 African-American?

2 THE WITNESS: Yes.

3 THE COURT: I know it doesn't matter what color your
4 classmates are when they're laughing at you. It's not
10:06:01 5 pleasant.

6 THE WITNESS: I understand.

7 But what you -- the first thing I thought about, I said,
8 They laughing at us because we're from this big family which
9 eventually grew to be 13 children, a mother, and a father. And
10:06:14 10 then I said, but, you know, they knew that all along.

11 And then I thought that they were laughing at us because
12 we were real poor because food would sometimes run out on a
13 Wednesday, and we would just have grits, no butter, no egg nor
14 anything for the rest of the week.

10:06:34 15 And then I thought that they were laughing because I
16 stuttered. And it took me years to understand that they were
17 laughing because not only could they not visualize me as a
18 lawyer, they couldn't visualize them or anybody in that room as
19 a lawyer. It was beyond their experiences.

10:06:57 20 It was only my experience because my mother brought home
21 those things, and I read about Thurgood Marshall. So -- but it
22 took years to understand that. Because I hadn't seen a lawyer.
23 Nobody in there hadn't seen a lawyer. And we certainly hadn't
24 seen a black lawyer. And it was hard to conceive of that.

10:07:23 25 BY MS. MADDURI:

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1 Q And where did you go on to go to law school?

2 A Okay. I went to -- I went to Harvard Law School. But
3 before that, I came back south from New York and went to
4 Talladega College.

10:07:37 5 Q Is Talladega College a historically black college?

6 A Yes.

7 Q And do you identify as an African-American?

8 A Yes.

9 Q When did you return to Alabama following law school?

10:07:51 10 A I returned in 1971. When I graduated from law school in
11 1970, I went to Africa for a year on a fellowship. And so I
12 returned in 1971.

13 Q And you said, I think, that you have been living in Selma
14 for 48 years?

10:08:13 15 A Yes.

16 Q So you moved there around 1971?

17 A Yes.

18 Q Are you involved in community work?

19 A Yes.

10:08:21 20 Q What groups are you involved with?

21 A I'm involved with a number of organizations. I'm involved
22 with 21st Century Youth Leadership Movement. We have started
23 McRae Learning Center, which I still support.

24 THE COURT: You started what kind of learning center?

10:08:44 25 THE WITNESS: McRae Learning Center. It's a

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1 preschool.

2 THE COURT: Okay. Thank you.

3 THE WITNESS: I've been involved with the Alabama
4 Lawyer's Association. I've been involved with Alabama New
10:09:03 5 South Coalition and Alabama New South Alliance.

6 I've been involved in SOS, which is Save Ourselves
7 coalition for justice and democracy.

8 I've been involved in National Voting Rights Museum. I've
9 been involved in the what they call a slavery museum, but the
10:09:38 10 name of it -- ancient Africa and enslavement museum.

11 I've been involved in a lot more.

12 BY MS. MADDURI:

13 Q What type of issues are these organizations focused on?

14 A Nearly all of them in one way or another involve efforts
10:10:01 15 to include those who are left out and lift those who are down.
16 All of those organizations are a nonpartisan except for the
17 Alabama New South Alliance. All of them are -- they just try
18 to fight on each front to try to include those who left out --
19 lift those who are down.

10:10:30 20 Q Are voting rights one of the issues that --

21 A Yes.

22 Q -- organizations?

23 A Yes.

24 Q Does your work as a lawyer and as a very active community
10:10:41 25 member take you -- result in you traveling around Alabama a

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1 lot?

2 A Yes.

3 Q Are there particular --

4 A And some -- and my practice of law.

10:10:51 5 Q Of course. Are there particular parts of the state that
6 you have traveled to the most?

7 A Well, I guess it would be across the Alabama black belt,
8 particularly the west Alabama black belt.

9 Q Anywhere else?

10:11:12 10 A Well, I've traveled to Mobile. I've traveled to
11 Birmingham. I've traveled to Tuscaloosa. I've traveled to
12 Montgomery. I've traveled to Dothan. I've traveled to Auburn.

13 Before, when I first began the practice of law, much of my
14 practice was dealing with helping black people and poor people

10:11:40 15 save their land because the land was being taken going and
16 coming. So I -- I traveled all over Alabama from Huntsville to
17 Mobile, from Auburn to Sumter County.

18 Q A better question might have been: Where have you not
19 traveled in Alabama?

10:12:02 20 A I think I've been to virtually every county in Alabama.

21 Q And have you held elected office?

22 A I have.

23 Q What office have you held?

24 A I was a member of the Alabama State Senate.

10:12:18 25 Q When did you first run for Senate?

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1 A I first ran for Senate in 1982, and I was not elected.
2 But I was elected the year afterward in 1983 but came back.
3 And they declared -- the jurors declared those districts as
4 unconstitutional. So we had an election a year later, and I
10:12:43 5 was elected.

6 Q When you were elected, was the district -- had the
7 district become a majority black district?

8 A Yes.

9 Q Did you run affiliated with a political party?

10:12:59 10 A I did.

11 Q Which one was that?

12 A Democratic party.

13 Q Do you still consider yourself a Democrat today?

14 A Yes.

10:13:08 15 Q When did you first begin to identify with the Democratic
16 party?

17 A I -- my best guess on that would have been in the 1970s.

18 Q And why did you start identifying with the Democratic
19 party?

10:13:29 20 A Well, I -- it seems that that the people who were in the
21 Democratic party, at least some of them, certainly want me to
22 be there.

23 The Republican party seemed to have been greatly
24 identified with Senator Barry Goldwater who had been against
10:14:03 25 the -- I believe the 1963 Civil Rights Act. So I -- somewhere

1 in there, I began to identify with the Democratic party.

2 Q You said that it seemed like the Democratic party wanted
3 you. Do you mean you as a black man?

4 A As a black person, yes.

10:14:22 5 Q Based on your experience, do you have an opinion on
6 whether African-Americans in Alabama affiliate more with the
7 Democratic party or the Republican party?

8 A I have an opinion.

9 Q What is that?

10:14:36 10 A Nearly all African-Americans affiliate with the Democratic
11 party if they affiliate with a party.

12 Q Does that general preference among African-Americans for
13 the Democratic party have anything to do with race?

14 A Yes.

10:14:55 15 Q Can you tell us more about that?

16 A Well, when you have been excluded all your life, like I
17 have been much of my life, it becomes important to feel that
18 you are wanted by somebody within the context of that group.

19 And although the Democratic party certainly back in the
10:15:33 20 '60s and the part of the '70s had plenty of people who were not
21 exactly welcoming to black people, the Republican party seemed
22 that it was not only not welcome, but it was adverse to the
23 interests of black people.

24 When I ran in 1982 and '83, that was right after
10:16:11 25 President -- he wasn't President at the time, but President --

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1 I'm having trouble pulling up the name. President Reagan.
2 They kicked off his campaign in Philadelphia, Mississippi. And
3 Philadelphia, Mississippi was burned into not only my memory,
4 but my very being because that's where those three -- three
10:16:40 5 boys, three young men had been killed.

6 And so there was those kinds of things that helped me to
7 run as a Democrat.

8 Q Do you think the same things are true today? Do
9 African-Americans in Alabama have a general preference for the
10:17:05 10 Democratic party today because of race?

11 A Yes.

12 Q And do you see the same issues with the Republican party
13 today in Alabama?

14 A Yes. You know, but the way it's expressed is different.
10:17:32 15 For example, you know that -- the role that the
16 Confederate monuments and all of those kinds of things and
17 played -- which to me have strong racial implications. And it
18 always says to me that I'm not -- I'm not just wanted, but I'm
19 expected to be on the bottom.

10:18:07 20 So it manifests itself in various kinds of way.

21 Q You mentioned that when you first joined the party or
22 started to affiliate with it there was still a number of white
23 folks who held, perhaps, racially charged views. When did you
24 observe that start to change?

10:18:46 25 A I think it -- I observed it starting to change in the

1 '70s.

2 In 1965, I participated in the last leg of the Selma to
3 Montgomery March. In 1966, I came -- I was still a student at
4 Talladega, and I came back to Lowndes County to work to try to
10:19:18 5 get African-Americans elected. And the county was like
6 nearly -- nearly 80 percent African-American, 70, 80 percent.
7 I don't remember. But we weren't able to elect a single
8 person.

9 And the Democratic party at that time was still very much
10:19:40 10 anti-African-American voters. And they -- it was -- the
11 candidates were on NDPA. But starting in the '70s, it became a
12 different kind of situation.

13 THE COURT: Wait a minute. You said NDPA.

14 THE WITNESS: Yes. That was National Democratic Party
10:20:02 15 of Alabama.

16 THE COURT: Okay.

17 THE WITNESS: It was a -- see, the Democratic party
18 had the white rooster, and it had been excluding
19 African-Americans.

10:20:17 20 So a political party was started, and it was called NDPA,
21 which is National Democratic Party of Alabama.

22 BY MS. MADDURI:

23 Q And so when did the transition happen when white folks
24 left the Democratic party in Alabama approximately?

10:20:45 25 A Well, it's a funny kind of thing. Because in 1964, that's

1 when it began. But it took many years to come to full
2 fruition.

3 Because when I went in the Senate in 1983, if I remember
4 correctly, there was -- I remember one Republican that might
10:21:19 5 have been three. But I -- so it was a slow process.

6 And the more active African-Americans became in the
7 Democratic party, the more whites began to go to the Republican
8 party.

9 So it took a long time. But it was a constant growing
10:21:49 10 movement.

11 Q What areas did you represent when you were a senator?

12 A The first time I ran, I represented Dallas -- I mean, the
13 first time I -- the first time I was in Alabama Senate I
14 represented Lowndes, Dallas, Wilcox, Perry, Hale, Greene,
10:22:24 15 Sumter, Choctaw, and Marengo, all or parts of those counties.

16 Q And would you consider your district part of the Black
17 Belt?

18 A Yes.

19 Q What is the Black Belt?

10:22:37 20 A The Black Belt is an area of Alabama where the soil is
21 very black. And it was very conducive to raising cotton. So
22 that also meant a lot of enslaved people were in those areas.

23 And even though it's tied to the soil, the designation,
24 most of those counties will be either majority African-American
10:23:09 25 or have high percentage of African-American. So a lot of

1 people think that somehow it's the Black Belt because black
2 people are there. And black people are there because the soil
3 was black.

4 Q And how long did you serve in the Alabama Senate?

10:23:27 5 A I served 35 years. But after -- after 1992, the district
6 changed substantially.

7 Q And what committees did you serve on over the years?

8 A I served on education. I served on the finance and
9 taxation committee. I've served on -- and when the committee
10:24:00 10 was divided, I became chair of the finance and taxation
11 education committee, which handled the Alabama budget, the
12 budget -- education budget. But I served on judiciary.

13 I've served on banking and insurance. I've served on -- I
14 can't pull it up now, but the -- the committee that would deal
10:24:28 15 with utilities, whether that was Alabama Power, Alabama Gas,
16 those kind. The name changed from time to time. And they
17 would put transportation in there.

18 I've served on the local legislation committee. And I
19 can't pull up the others at this moment.

10:24:49 20 Q Did you ever serve on the reapportionment committee?

21 A Not that I recall. I don't think I did.

22 Q When you first returned to Alabama after attending law
23 school, I think we said it was 1971?

24 A Yeah.

10:25:11 25 Q At that time, do you believe that there was official

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1 discrimination in Alabama against African-Americans related to
2 voting?

3 A Yes.

4 Q How about since that time? Has that discrimination gone
10:25:25 5 away?

6 A No. It's -- it has changed forms. It has diminished in
7 some kinds of ways.

8 But when I came to Alabama, we agreed to stay just
9 five years. And that was partly because my wife never wanted
10:25:50 10 to -- to go to Selma. But we thought that somehow in
11 five years the Voting Rights Act would be fully implemented,
12 and, therefore, you know, we wouldn't -- we -- the burden
13 wouldn't be so heavy to stay in Alabama because she really
14 wanted to live in Harlem, New York. She had -- as a student,
10:26:19 15 she had gone there in the summer.

16 But, and here it is 40 -- 48 years later since we went to
17 Selma, we still have to struggle for the right to vote.

18 I mean, in 2011, I worked hard because we had a
19 referendum. And I -- and they was going to provide some money
10:26:50 20 for help. And I -- so when I got to the polls -- I had been in
21 the Alabama State Senate then for 24 years. I got to the poll,
22 and my name was not on the list.

23 And so the polling official said, Well, we know you vote
24 here all the time. Let us call the Board of Registrars. They
10:27:13 25 called the Board of Registrars, and I could hear the one end of

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1 the conversation. And they would not agree for me to vote in a
2 place I had voted all the while.

3 So then they put me on the phone with one of the voting
4 registrars. They told me -- she told me -- he told me that
10:27:36 5 I -- that I couldn't vote. He said, You haven't been voting.
6 I said, Well, I'm in the Alabama State Senate. I got -- I know
7 I had to vote for myself.

8 Then he said, Well, you must have moved. And I said, I
9 haven't been moved. I've been in the same house since 1978,
10:27:54 10 '79. And then he said -- he kept coming up with reasons why I
11 wasn't on -- on the voting list.

12 And finally he told me I needed to go to other voting
13 places to try to see if my name was on the list. He was there
14 in the -- in the Board of Registrars. He could've looked. So
10:28:24 15 I told him I wasn't going to do that.

16 And then I decided I wasn't -- I wasn't going to go vote
17 as a protest. But then I thought the referendum might lose by
18 one vote, and I would have contributed to that. So I voted in
19 a provisional ballot.

10:28:47 20 And here I was the highest elected official there in that
21 county, and I knew him, and he knew me because I was working
22 with economic development, and his brother was the head of
23 that. So, of course, that also had something to do with my --
24 my wife because they had appointed all whites in the Board of
10:29:19 25 Registrars. And she had led protests against that. And

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1 eventually they took off one white and put one black on in a
2 county that's 70 percent African-American.

3 And I think that they just -- my assumption was that they
4 wanted to show -- show me if they could do that to me, they
10:29:49 5 could do it to anybody.

6 Q Have you ever observed other African-Americans finding
7 that they are no longer on the voting rolls when they've gone
8 to vote?

9 A Yes. When I would -- part of my service was when -- on
10:30:15 10 election day was when there was election problems was to try to
11 deal with them.

12 So even before election day, when the people would be
13 taken off voting rolls, and many times they didn't know it --
14 so we would designate people in various counties to -- to look
10:30:42 15 at those lists because our experience had told us that most of
16 the folks who were on there by far would be African-American.

17 So they would look at the lists. And sometimes I would
18 look at them. But most of the time, I coordinated people
19 looking at them so that they could -- we could try to find ways
10:31:04 20 to get them back on.

21 Q What -- can you clarify just for the Court what were the
22 lists you were looking at?

23 A Well, when they would remove people off the list, they
24 would run something -- before an election, they had to print
10:31:26 25 the lists of all the voters in a particular county. So that's

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1 one of the lists we looked at.

2 And also, there were -- when -- when -- it was my
3 understanding that when people were removed, they were supposed
4 to let folks know. But we -- that was an ongoing effort across
10:31:54 5 the communities to try to make sure that people were not
6 excluded from voting by being taken off the list, or whatever.

7 Q So did they also create a list of voters who had been
8 removed?

9 A Yes.

10:32:14 10 Q And did you review those lists, as well, or you or the
11 people that you coordinated with?

12 A Yes. When -- yes. There were times.

13 Q Did you get a sense when you were reviewing these lists or
14 when you were working with the folks reviewing these lists,
10:32:35 15 could you tell if more African-Americans were being removed
16 from the rolls, or if it was white folks?

17 A It was nearly always black people in those counties.

18 Q And approximately when did you observe these issues?

19 A I have observed those issues over the years.

10:33:00 20 In the 70s, the '80s, the '90s, 2000, 2010. It's been a
21 constant struggle.

22 Q Did you raise this particular issue with anyone in the
23 state government, or Secretary of State, or anyone like that?

24 A No, because I -- I didn't think that they would do
10:33:21 25 anything about it.

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1 When I was taken off, I went to the local probate judge,
2 and he went over there and dealt with it.

3 I thought it was real sad that I was an elected official
4 all these years, and I had to go to the local white probate
10:33:44 5 judge to try to get my name straightened out on the voting
6 list.

7 THE COURT: Did he take care of that for you?

8 THE WITNESS: Yes, he did.

9 BY MS. MADDURI:

10:34:00 10 Q When you -- sorry.

11 A No. He took care of me -- for me. But I couldn't help
12 but think of all the people who had that problem who couldn't
13 go to him or who couldn't be treated the same way.

14 I had the status of an elected official. I had the status
10:34:20 15 of a lawyer. I had the status of a person who had worked in
16 the community across lines. And I had to have help.

17 Q Are you familiar with, in the 1980s, any prosecutions that
18 occurred relating to voter fraud?

19 A Yes.

10:34:48 20 Q Can you tell us about those?

21 A Yes. In the '70s in these majority black counties, we
22 had -- white people voted huge number of absentees. And we
23 would document that many of them were actually deceased. You'd
24 go to the graveyard and be able to do it.

10:35:19 25 And so we went to -- we sent a delegation to the U.S.

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1 Justice Department to complain. And the Justice Department
2 said, We can't do anything about it. Y'all need to learn to
3 use absentee ballots.

4 And so we came back. And I looked up the law. And I
10:35:47 5 taught classes in Perry County on how to follow the law and to
6 do absentee voting.

7 And so in 19 -- the election in 1984 had sprung out about
8 211 different indictments for what's called voter fraud. And
9 we called it voter persecution cases. So it was something we
10:36:26 10 were extremely concerned about. And I was the only lawyer
11 initially, but then I recruited other lawyers. And we had to
12 fight it on -- felt like we had to fight it on every ground.
13 Because we felt legally you could fight and you could lose and
14 you could still have the community so afraid to vote. We
10:36:47 15 needed to fight it on political ground, as well, and public
16 relation grounds. And it was just a tremendous struggle. And
17 we had to fight on all those fronts.

18 Q I think you said there were 211 charges filed?

19 A Yeah.

10:37:04 20 Q Were those filed primarily against African-Americans or
21 white folks?

22 A No. All of those were against African-Americans, except
23 there was a white lady in Greene County who worked closely with
24 African-Americans on voter registration, voter mobilization. I
10:37:23 25 think her name was Bobbie Simmons.

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1 Q And do you remember who the prosecuting attorneys were?

2 A Well, I remember the prosecuting attorney in Perry County
3 in the Southern District was Jeff Sessions. And I don't recall
4 who the prosecuting attorney was in Greene County at the time.

10:37:50 5 But it was all a coordinated effort.

6 Q Were any of those cases tried?

7 A Yes.

8 Q And what happened?

9 A I think one case I think somebody pleaded -- might have
10:38:03 10 pled guilty to a misdemeanor. But all 210 other cases, they
11 were found not guilty.

12 Q I think you said you had to fight these -- when this
13 happened, you had to fight on another different ground. I
14 think you said legal --

10:38:28 15 A Different levels.

16 Q -- legally, politically, et cetera.

17 What are some of the impacts of cases like this or
18 instances like this where something happens that feels targeted
19 towards the African-American community? What kind of impact
10:38:47 20 does that have on the community?

21 A It has a powerful impact. Because when you have been
22 prevented from voting for these hundreds of years, or hundreds
23 and some years and then all of a sudden these charges are
24 brought in the federal -- I mean in -- brought by federal
10:39:12 25 officials, which we thought ought to have been, you know,

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1 helping us to expand the voting right -- fear is such a
2 powerful thing in the black community based upon all of what
3 has happened over the years. So and people -- even after we
4 won, people were afraid to vote.

10:39:41 5 And so particularly with absentees, but they were afraid
6 in general. And we had to work year after year to try to --
7 try to overcome that.

8 Q Does that fear that results from things like this, does
9 that have an impact on whether African-Americans actually go
10:39:59 10 out to vote?

11 A Yes.

12 Q Have you seen any instances more recently where this kind
13 of fear has prevented African-Americans from voting?

14 A Yes. I think it was 2017 a group of us met in Montgomery
10:40:29 15 to -- people who worked to try to mobilize and encourage people
16 to vote. We have all of these theories about why people do
17 not -- not vote.

18 And so we decided that it wasn't enough for us just to
19 make those assumptions. So we gathered in Montgomery. And we
10:41:01 20 were -- all of us had to bring some people who did not vote so
21 we could listen to them, as well.

22 And we just assumed that it was because they didn't think
23 it was going to be -- was going to do any good because you
24 would hear that. And we were amazed at the number of people
10:41:29 25 who talked about fear.

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1 And much of that fear was tied to the criminal justice
2 system in some kind of way. They thought -- well, they said,
3 Well, they probably ain't going to do something to me. But
4 they'll do something to my son, or my daughter, or my children,
10:41:50 5 or my grandchildren.

6 Fear is still a very powerful factor in the
7 African-American community that suppresses the vote.

8 Q Do you think those fears are rational?

9 A Yes. They're rational when you know that they've lynched
10:42:20 10 people in the past for trying to vote. When you know that
11 people off their land for trying to vote. When you know that
12 people have lost their jobs for it. It's absolutely rational
13 in my opinion.

14 Because people -- this might not make any sense. But
10:42:48 15 every time I drive and I get stopped by a policeman, I don't
16 know whether I will drive away from there.

17 So fear doesn't have to be rational in the sense that it's
18 going to happen every time. Fear is rational if it can happen
19 any time.

10:43:16 20 So I -- and I've had -- my wife is an attorney. And they
21 stopped her from voting in Selma. So I had to go down there
22 and start cursing just for her to be able to vote.

23 So it's real in the black community.

24 Q Senator Sanders, are you familiar with the law that's
10:44:03 25 passed in the last ten years that's limited how political --

1 limited how political organizations can contribute money to
2 each other?

3 A Yes.

4 Q Can you tell us about that?

10:44:14 5 A It was -- I think it was passed in the -- in December of
6 2010 right after the election. And it was called PAC-to-PAC
7 transfer. That bill came up in the legislature over the years,
8 and we had always been able to defeat it.

9 PAC-to-PAC transfer says that if you are a PAC, you can't
10:44:45 10 transfer money to other PACs except to a particular elected
11 official.

12 And one of the ways to deal with that was -- before the
13 law came along was if I ran and I did not have a strong
14 opponent and I had extra money, I could transfer it and help
10:45:10 15 out to different organizations. I could transfer it to other
16 elected officials and stuff. And so when PAC-to-PAC transfer
17 came in, I was one of those who went to Washington, D.C. to try
18 to fight against the preclearance of that.

19 We didn't succeed. But that meant that organizations that
10:45:44 20 usually get out to vote in various kinds of ways, it was much
21 harder for them to get funds or resources to be able to do
22 that.

23 THE COURT: So was this a federal law?

24 THE WITNESS: No. It was a state law.

10:45:57 25 THE COURT: Okay. But I thought you said you went to

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1 Washington, D.C to fight against it.

2 THE WITNESS: We asked them to preclear -- not to
3 preclear it.

4 THE COURT: Okay.

10:46:08 5 THE WITNESS: We went to the U.S. Justice Department.

6 THE COURT: Okay.

7 THE WITNESS: Okay.

8 BY MS. MADDURI:

9 Q I think you said that these organizations helped get out
10:46:17 10 the vote and do other -- other sorts of things like that.

11 Do African-Americans depend disproportionately on those
12 kinds of organizations?

13 A Yes.

14 Q In what ways?

10:46:29 15 A Well, because of the history of African-Americans not
16 voting, it's not enough to say, well, this candidate is better
17 than the other one, or to look at television, or to listen to a
18 radio. You really have to get out and be able to do that
19 partly to overcome the fear, partly to overcome a range of
10:47:00 20 things. So it takes resources to do that.

21 So with the PAC-to-PAC transfer, it just made it very
22 difficult to be able to get resources to do that kind of
23 mobilization.

24 THE COURT: Let me see if I can clarify. When you
10:47:22 25 refer to PAC-to-PAC transfers, are you referring to a law that

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1 allows PAC-to-PAC transfers or a law that prohibits PAC-to-PAC
2 transfers?

3 THE WITNESS: A law that prohibits PAC-to-PAC
4 transfers.

10:47:38 5 THE COURT: You were just referring to it at
6 PAC-to-PAC transfers. So I wanted to make sure that it was
7 clear that it was a law that precluded that.

8 MS. MADDURI: Thank you, Your Honor.

9 THE WITNESS: I really appreciate that.

10:47:50 10 BY MS. MADDURI:

11 Q Do you remember if there were justifications given for why
12 this law was being passed?

13 A I'm sure there were, but I -- I don't -- I'm trying to
14 pull up in my mind now exactly what those justifications were.

10:48:14 15 But I don't -- I don't. I don't -- I can't pull it up. That
16 happens to you when you're 77 years old.

17 THE COURT: It also happens to you when you're in your
18 60s.

19 BY MS. MADDURI:

10:48:31 20 Q Senator Sanders, are you familiar with how judges are
21 elected to the Alabama Supreme Court and the Alabama Courts of
22 Appeals?

23 A Yes.

24 Q How is that?

10:48:43 25 A They are elected statewide, and they're elected from what

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1 they call place. On the ballot, it will be statewide. But
2 you'll be Place 1 or, Place 2, or Place 3, or 4.

3 Q Is that system also referred to as at-large elections?

4 A Yes.

10:48:56 5 Q In your experience, do at-large elections for these
6 positions enhance the opportunity for discrimination?

7 A Yes.

8 Q How so?

9 A Well, Alabama is about 25 percent, 26 percent
10:49:14 10 African-American. And you have a number of positions in court.
11 If they ran from district, African-Americans would have a very
12 good chance of being represented on those -- on the Alabama
13 Supreme Court, Alabama Court of Criminal Appeals, Alabama Court
14 of Civil Appeals. But since they're elected at large and
10:49:43 15 elected from place -- if they were elected at large and you
16 could just vote for one, then it wouldn't be so oppressive.
17 But the way it's set up, you don't stand a real chance of
18 winning.

19 Q Is it important to you that there are African-Americans
10:50:02 20 elected to those courts?

21 A Absolutely.

22 You know, there are times when people don't start out
23 trying to do something that's -- that's racial. But then they
24 don't understand all of the different dynamics, the in and out,
10:50:28 25 how this particular act is going to have that kind of impact.

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1 It's just not in their experience.

2 And so if you had one person or two persons on that
3 Alabama Supreme Court, they could help the other court members
4 to see the different kinds of ramification.

10:50:47 5 But when the way they're elected, you don't get anybody on
6 there to talk about those ramifications, so...

7 Q So you think it would be important to have that range of
8 perspective from the African-American experience in the justice
9 system?

10:51:04 10 A Absolutely.

11 Q Do you know how many African-Americans have been elected
12 to statewide office in Alabama?

13 A Yes.

14 Q How many is that?

10:51:13 15 A Two.

16 Q Do you remember roughly when the last time an
17 African-American was elected to a statewide office?

18 A My best guess is like '94 or '96, somewhere -- now, three
19 African-Americans have served statewide and -- that I can
10:51:37 20 recall. But one was appointed. All of them were appointed
21 before they were elected, which makes a lot of difference, you
22 know. Because people say, well, you know, they -- they all
23 right. They were appointed. They have the stamp of approval,
24 you know, from -- from the higher-ups.

10:51:56 25 So Oscar Adams was appointed in the late '70s, early '80s.

1 I can't remember. And then Ralph Cook. I should say Justice
2 Oscar Adams and Justice Ralph Cook was appointed. And then
3 Justice John England was appointed like 2000, or something like
4 that.

10:52:24 5 But the last ones all went out in, I think, 2002, or
6 something in that time frame.

7 Q How does the lack of African-Americans elected statewide
8 affect the African-American community?

9 A It has a profound impact. Because in the political system
10:52:56 10 in Alabama and in this country, a great number of decisions are
11 made all the time. They're made when people act in their
12 elected position. Then they appoint people who do regulations
13 and other kinds of stuff.

14 So literally, every aspect of our life is affected one way
10:53:27 15 or another by government. And from the air we breathe to the
16 food we eat to the water we drink to birth and death, all of
17 these things. It's impacted there.

18 And so when -- when anybody's left out, it's a problem.
19 But if you have been historically left out down through for
10:53:58 20 hundreds of years, then it's even more important that you be
21 represented -- that that particular group be represented in
22 government.

23 Because all of these decisions have that kind of impact.

24 MS. MADDURI: Your Honor, would this be a good time to
10:54:27 25 take a break?

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1 THE COURT: It's fine with me if it's good for you.

2 We will come back at 11:10.

3 MS. MADDURI: Thank you.

4 (Recess.)

11:11:23 5 THE COURT: Ms. Madduri, you may proceed.

6 MS. MADDURI: Thank you, Your Honor.

7 BY MS. MADDURI:

8 Q Senator, in your time in the legislature, in the Senate,
9 did you ever introduce any voting rights legislation?

11:11:42 10 A Yes.

11 Q Can you tell us about that?

12 A I introduced legislation that would allow people to
13 register to vote up until -- up until the day of voting. I
14 introduced legislation to -- I may have -- I'm trying to -- I
11:12:20 15 know I had legislation drawn up. I think I introduced it
16 through -- I have -- to try to make it easier to register. It
17 might have been automatic registration.

18 I -- over the --

19 THE COURT: What do you mean by automatic
11:12:42 20 registration?

21 THE WITNESS: There are some states that have
22 legislation have -- that when you become 18, you automatically
23 are registered. You don't have to go through the process.

24 I was trying to pull up -- trying to pull up, but -- to
11:13:11 25 have it -- to have people make it much easier for folks to

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1 vote. And there were others, but I can't pull them up right
2 now. They may pop up in a minute.

3 BY MS. MADDURI:

4 Q Okay. And approximately how many times would you say
11:13:33 5 you've introduced legislation related to either automatic
6 registration, or same day, or late registration, I think as you
7 said?

8 A I don't know how many. Because when you've been around
9 35 years, you can't pull it up.

11:13:54 10 Q Any efforts in the last five years that you were in the
11 legislature?

12 A Yes. I know I -- I know there were two bills. It might
13 have been as late as 2018.

14 Q And did any of those bills ever pass?

11:14:15 15 A No. No. I never expected them to pass. I simply
16 introduced them because it was a statement that was important
17 that we address those issues.

18 But, no, they -- no.

19 Q When we were going over the committees that you had served
11:14:49 20 on, you mentioned the finance, taxation, and education
21 committee, right?

22 A Yes.

23 Q How long did you serve on that committee?

24 A I was chair of the committee for 16 years. I think the
11:15:02 25 most anybody chaired a single committee. But that committee

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1 was only in existence from '95 until starting in '95.

2 So I was -- but the dealing with the budget committee, I
3 think I was on the budget committee before '95. But that
4 particular committee started in '95.

11:15:34 5 Q Okay. Do you believe that African-Americans in Alabama
6 bear the effects of discrimination in education?

7 A Yes.

8 Q In what way?

9 A When I -- when I became chair of finance and taxation, the
11:15:53 10 first thing I tried to do was change the formula for
11 educating -- for allocating funds to try to make it easier for
12 poor areas, make it easier for rural areas. And there were
13 changes, but it was not enough.

14 The way Alabama fund education is much of it from the
11:16:24 15 state but some of it from the local level. And so if you're in
16 an area that's got a lot of poverty, a lot of lower income
17 people, then you end up with less money to educate when the
18 problems are, in fact, are greater and need more.

19 So it's -- I think time after time you see education
11:17:01 20 struggling a lot more in African-American communities. And
21 that's, you know, one of the things that I think that strike me
22 the most is that the farther you down on the status pole, the
23 farther you're down on the education pole, the farther you're
24 down on the economic pole, the less you see where your
11:17:44 25 education is going to make a difference.

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1 When you higher on the status pole, you can see where more
2 education going to help you. You can see where more education
3 going to help you when you higher on the job, or higher on the
4 economic scale, higher on the social scale.

11:18:03 5 When you down at the bottom, it's hard for students to be
6 able to see that. And, therefore, all of those things come
7 together in a way that you have a vast number of people getting
8 less education. They need more resources, but they're getting
9 less resources.

11:18:25 10 Q And are those people primarily African-American in
11 Alabama?

12 A Yes.

13 Q Or more often than not?

14 A Yes. Primarily.

11:18:33 15 Q And how does being lower on the totem pole or the status
16 pole in education and income, how does that impact whether or
17 not African-Americans are able to vote?

18 A When you have to jump through hoops to be able to vote,
19 then you have to see where it's going to make a difference in
11:19:02 20 your life if you are able to vote.

21 And so if you are -- if the polling place is a problem, if
22 you have to have transportation to get there, then you need
23 more encouragement to vote.

24 But, in fact, you're encouraged less because it's harder
11:19:31 25 for you to see how this is going to make a difference.

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1 I -- one time there was a lady, she was -- I can't think
2 of her name. But she was traveling over the country trying to
3 encourage young people to vote. And she came to Selma. And so
4 we went out to the 21st Century Youth Leadership camp. And we
11:20:02 5 did a demonstration. We asked her -- we asked the students --
6 we had some students. And so we asked them name something that
7 voting does not impact. That's what we asked the students.

8 And then they would start out with things like air. And
9 then we would explain that people put all kind of things in the
11:20:24 10 air, and you have the Environmental Protection Agency trying to
11 stop it. So the very air that you breathe.

12 And then they'd say food. And we'd talk about the Food
13 and Drug Administration.

14 And they'd talk about water. And we'd talk about how
11:20:42 15 water, whether it's local or federal, all of that --

16 So they went on down to talk about religion. And then we
17 will say, point out -- how we ask them can they organize in the
18 schools.

19 So what we were doing was demonstrating that every single
11:21:01 20 thing is affected by voting. And you don't see that when
21 you're poor. You don't see that when you're low on the
22 education pole -- totem pole. You don't see that when you're
23 low on the education and economics, and all of that.

24 So the higher you are on those totem poles, the more
11:21:27 25 likely you are able to see where voting would make a

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1 difference. The lower you are on there, you worried about
2 whether you're going to be able to get food to eat. You're
3 worried about -- whether you're going to be able to get to and
4 from to work, to and from school, all those kinds of things.

11:21:50 5 And the one of the things that people really don't
6 understand that if you have one of those, that that's a burden.
7 If you have one of them, that's an obstacle. If you have two
8 of them, that's a burden. If you have three of those, then
9 it's prohibitive.

11:22:08 10 You know, we see them separately. But the impact of them
11 is collective.

12 Q Would you say that conditions for African-Americans in
13 Alabama today are better than they were in the 1960s or '70s?

14 A Yes. Things are definitely better than they were in the
11:22:40 15 1960s and 1970s. Because in the 1960s, there were times when I
16 had to get off the sidewalk if a white person was coming in the
17 opposite direction. So I had to get off and let them go.

18 And every single thing was segregated. And every single
19 thing was holding us down in ways. So it's definitely better.

11:23:15 20 In the 1970s, things improved some. But it was in 1972
21 that I went -- my wife was pregnant, and she didn't know she
22 was pregnant, but she wanted fudge. And she does not like
23 fudge. But all of a sudden she wanted fudge. So --

24 THE COURT: You should have known something was
11:23:42 25 getting right with her.

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1 THE WITNESS: I should have when I looked back.

2 So I took her to this place. It was called Dairy Queen,
3 or Dairy Dream, or something. It was right there in Selma on
4 80 and Lapsley Street or Summerfield Road.

11:24:01 5 And I pulled up, and she got out and went to stand in
6 line. And when they stood in line, all of a sudden this white
7 man came up and pushed her down. And he was standing over her.

8 So I jumped out and ran over there and hit him and he fell
9 down. And I started trying to get her up. And she -- and he
11:24:22 10 got up, and he stabbed me in the left side. To even today, I
11 have a reduced kidney where I was stabbed.

12 So I swore out a warrant against him. She swore out a
13 warrant against him. He swore out a warrant against us --
14 against me. And the judge dismissed all the charges against
11:24:45 15 him even though he had stabbed me and even though he had
16 knocked her down.

17 The judge did give a \$20 fine against him for pushing her
18 down. And so I -- I was just absolutely shocked. But then he
19 sentenced me to jail.

11:25:06 20 So when I went to jail, I refused to make bond. I said,
21 you know, this is so unfair. I'm going to just stay here in
22 jail. My wife and I talked, and we agreed she was not going to
23 bond me out or let nobody bond me out.

24 Then the probate -- I mean, after a few hours, the police
11:25:27 25 chief came and he said, Somebody's bonded you out. And I said,

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1 Well, we agreed that we weren't going to be bonded out. So --
2 he said, But you were bonded out. I said, Well, who bonded me
3 out? He said, I'm not going to tell you. I said, People --
4 that's public information. He said, Not in this jail.

11:25:48 5 So then I told him I said, Well, I'm going to just stay
6 right here. And he said, You're not going to stay right here.
7 You're getting out of here.

8 I got out. I appealed the case. And then when it didn't
9 show up in circuit court, I went over -- eventually went over
11:26:07 10 to find out what happened to it. All of the records had
11 disappeared. All of the arrest records, all of the court
12 records, everything. And I haven't been able to find them to
13 this day. I keep thinking that that's going to show up at the
14 bar association any time.

11:26:27 15 So I mean, that was -- that was in 1972. And you had had
16 the Civil Rights Act in 1963. You had the Voting Rights Act in
17 1965. But it was just so powerful.

18 Even so, things have gotten better. Whenever I look at
19 it, things got better from the '60s, got better in the '70s,
11:26:56 20 got better in the '80s.

21 And in the '90s, I -- things seemed to be slowing down.
22 And eventually, in 2010, whatever things -- my impression was
23 things were going back.

24 So when you say are they better today than they were? And
11:27:19 25 when I look at that, they were getting better. Now, there's a

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1 serious question about whether they're getting worse.

2 BY MS. MADDURI:

3 Q I think at the beginning of your testimony you mentioned
4 that you marched part of the Selma to Montgomery, the last leg
11:27:42 5 of it?

6 A Yeah.

7 Q What was that like?

8 A It was -- it was such a powerful experience because we
9 didn't -- well, only 300 people marched all the way.

11:27:58 10 But we were so far back down the line because it was like
11 25, 35,000 people there. But you couldn't see -- you could see
12 the outline of Dr. King, but you couldn't see his face. You
13 could hear him because he had those big speakers.

14 And whenever he got into this rhythm where he would say,
11:28:20 15 How long? And initially, when we would say, How long? He
16 would say, Not long. But then after while when he would say,
17 How long? The crowd responded saying, Not long.

18 And I left there thinking that it really won't be long
19 before we have the right the -- the full right to vote. And
11:28:46 20 then the Voting Rights Act was passed in August and was signed
21 on August the 6th, 1965, I could never conceive of the idea
22 that 50 years later I would still be struggling and fighting to
23 implement it. I should have known that "how long" was
24 Biblical, not months, not years.

11:29:16 25 In 1966, when we couldn't elect a single person, I should

1 have known that it took until 1988 -- two incumbents that had
2 60 and 70 percent -- black people to be able to elect to county
3 commission and board of education -- a majority. I should have
4 known. I didn't know. I just kept thinking that "how long"
11:29:43 5 meant 5 years, then 10 years, then 20 years, then 30 years.

6 But it was one of the more powerful experience to see all
7 those people -- black and white, old and young, fighting,
8 marching for the right to vote.

9 Q Why have you chosen to stay so involved and done so much
11:30:11 10 work for the right to vote?

11 A I think that President Johnson may have put it best
12 whenever he was talking about the right to vote in 1965.

13 First, the vote is the only thing where everybody starts
14 out even. You get one vote. So everybody starts out equal.

11:30:43 15 Second, there's the vote is the only thing that can
16 stop -- that can protect every other right. It's not an
17 accident that the right to vote was the last major bill -- the
18 last major Civil Rights legislation to pass.

19 Even in 1963, when they did public accommodation, when
11:31:11 20 they then did employment discrimination, whatever. But the
21 right to vote came last because it protects every other right.

22 And the right to vote, the only vote that you can use --
23 the thing you can use to change things without resorting to
24 violence and other kinds of things. So it's the most powerful
11:31:39 25 right that we have because it protects every other right.

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1 Q Thank you, Senator. That's all my questions for you right
2 now.

3 THE COURT: Any cross?

4 MR. WALKER: Yes, ma'am, Your Honor.

11:31:53 5 THE COURT: Mr. Walker?

6 CROSS-EXAMINATION

7 BY MR. WALKER:

8 Q Good morning, Senator Sanders. Nice to see you.

9 A It's good to see you again.

11:32:07 10 Q I'd like to start by asking you some questions about what
11 you've already testified about today, sir.

12 A Sure.

13 Q And I think you -- you testified about the *Pigford* case?

14 A Yes.

11:32:30 15 Q Was that the former class action case?

16 A Yes. That was the first one.

17 Q And who was the defendant, or what was the defendant in
18 that case, if you recall?

19 A The defendant was the United States Department of
11:32:44 20 Agricultural, USDA.

21 Q Do you recall the second case, the style of that case?

22 A Yes. It was discrimination litigation. It was a black
23 farmers discrimination litigation.

24 Q And the defendant in that case was also the United States
11:32:59 25 Department of Education?

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1 A Yes -- no. United States Department of Agriculture.

2 Q Sorry. Thank you.

3 A Yeah.

4 Q You mentioned some voter fraud prosecutions that occurred
11:33:22 5 in west Alabama, and I believe you associated those with Jeff
6 Sessions?

7 A Yes.

8 Q And he brought those as U.S. Attorney for the Southern
9 District of Alabama; is that correct?

11:33:33 10 A Yes.

11 Q Do you know whether or not --

12 A He brought some of them, yeah.

13 Q And then the U.S. Attorney for the northern district
14 brought some?

11:33:41 15 A Yes.

16 Q Okay. Do you know whether or not those U.S. Attorneys
17 were required to get approval from main Justice before they
18 filed those lawsuits?

19 A No. I do not know. But I think we were -- we were just
11:33:56 20 shocked that we -- that we complained and nothing happened.

21 Q I understand.

22 A And they told us to learn to use absentee ballots.

23 Q You talked with some sense about -- some sense of
24 frustration about bills that you've not been able to get passed
11:34:27 25 in the legislature. And it would be true that every legislator

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1 has bills that they strongly believe in and can't get passed;
2 is that correct?

3 A That's correct.

4 Q And I want to give you an opportunity to be clear about
11:34:45 5 something. Were you saying that all Republican members of the
6 legislature were racists?

7 A No.

8 Q Okay.

9 A But what I am saying is that race is such a powerful
11:34:59 10 factor.

11 I don't use the term racist because it cuts off
12 conversation. The moment you say somebody's a racist, you
13 don't have any conversation.

14 But race is a very powerful factor.

11:35:11 15 Q You talked about some bills that you wished you had been
16 able to pass. And one of them -- let's see if I can find my
17 notes. And I apologize, sir.

18 One of them was to allow voting registration up to the day
19 of voting?

11:35:43 20 A Yeah.

21 Q And the other one I think was to allow automatic voting or
22 require automatic voting when you register for a driver's
23 license?

24 A Automatic? No.

11:35:52 25 Q Did I misunderstand?

1 A I think it was automatic registration.

2 Q Automatic -- I said voting, and I meant registration. And
3 I apologize.

4 So to be clear since I've muddled things up, one was to
11:36:05 5 allow people to register to vote up to the day -- up to
6 election day?

7 A Yeah.

8 Q And one of them was to allow automatic registration when
9 people went to get a driver's license?

11:36:18 10 A No. No.

11 Q Just --

12 A When they became 18.

13 Q When they became 18?

14 A Yeah.

11:36:23 15 Q Just automatic registration?

16 A Yeah.

17 Q Okay. Is there any reason you could not have proposed
18 those bills before 2010 when the Democrats were in power in the
19 legislature?

11:36:38 20 A No. I don't think there was any reason -- it simply
21 didn't come up at that time.

22 Q And --

23 A And --

24 Q I'm sorry.

11:36:53 25 A Go ahead.

1 Q No. Please go ahead, sir.

2 A Well, see, the thing you have to understand was there

3 was -- even when Democrats were in control, there were

4 tremendous limitations on things that affected

11:37:15 5 African-American. So it was -- it became to a much greater

6 degree. But there were -- I don't want to suggest that race

7 was only an issue with Republicans.

8 Race became more of an issue because we were not in that

9 structure. But there were many Democrats who had reservations

11:37:42 10 to -- they grew up in the system, as well.

11 Q And just to be clear, from let's say 1901 until 2010,

12 state government in Alabama was controlled by the Democratic

13 party; is that correct?

14 A From?

11:38:02 15 Q 1901 or 1900?

16 A Yeah. Well --

17 Q No.

18 A From 1819 --

19 Q Until?

11:38:11 20 A No. No. Yeah. From 1819 except for maybe a brief

21 period.

22 Q During Reconstruction?

23 A Reconstruction.

24 Q Okay. The state was controlled by Democrats until 2010?

11:38:25 25 A Yes.

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1 Q Thank you.

2 A Well, I wouldn't say until -- the legislature was
3 controlled by Democrats until 2010. But the governor and a lot
4 of other office some happened before 2010.

11:38:41 5 Q So before 2010, the legislature was controlled by
6 Democrats. And after 2010, it became controlled by
7 Republicans?

8 A Yes.

9 Q Thank you, sir.

11:39:08 10 Senator Sanders, you testified about reasons why
11 African-Americans may be afraid to vote. And I understand
12 that. And we both understand that our state has a very sorry
13 history as we go back of Civil Rights. And I don't mean to
14 minimize that.

11:39:31 15 But you said three things: That people were afraid to
16 vote because in the past African-Americans have been lynched
17 for voting, and people have lost their jobs for voting, and
18 people have lost their land for trying to vote.

19 A Put off the land.

11:39:58 20 Q Different from --

21 A The reason I say put off the land -- in 1966, when I went
22 to Lowndes County, every black person who would try to register
23 to vote, they were put off the land. They -- so they had tent
24 city right there on 80 between Selma and Montgomery because all
11:40:20 25 these people were put off the land. And so they would live in

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1 tents and stuff, yeah.

2 Q I understand that. And you and I grew up roughly --

3 you're a little bit older than me, but we --

4 A A few years on the front end and on the back end make a

11:40:38 5 lot of difference. In the middle, it's not much.

6 Q It's been a long time since any of those things happened

7 to a black person who tried to vote, has it not?

8 A It's been a long time since a person was lynched who was

9 trying to vote. It's been a long time since people were put

11:41:05 10 off the land. And it's been a long time.

11 But the memory of those in our collective memory is so

12 powerful. And it's handed down from generation to generation.

13 So it's still there in a very powerful way.

14 Q I understand that. Thank you.

11:41:32 15 There's been testimony throughout this trial that I would

16 generally summarize as saying that -- and I think you were

17 sitting in the courtroom today when the commissioner who

18 preceded you testified. And it may be fair -- and if you feel

19 like I'm misstating her testimony, let me know, because that's

11:41:58 20 not my intent.

21 But some of what she said was that it would be good to

22 have another African-American congressperson because the white

23 people in Congress don't represent their black constituents,

24 and that there should -- for that reason, there should be a --

11:42:24 25 an area drawn with majority a black district that could elect a

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1 majority black -- I mean, that could elect the African-American
2 candidate of choice who, in most cases, would probably be
3 African-American.

4 Does that -- I'm not sure she said all of that --

11:42:42 5 A Neither am I.

6 But let me address it this way. No white person can fully
7 understand all of the ramifications and manifestations that
8 race impact on things. So even the ones who try very hard
9 can't do it because it affects everything in one way or
11:43:19 10 another. So -- so since that's the case, if you -- and in
11 Alabama if you don't get a majority district, you don't get
12 black people elected.

13 As far as I can recall on the state level, there was only
14 one black person elected in a majority white district. And
11:43:49 15 that was up in Cullman County. I forget his name. And he only
16 served one term.

17 So the only way that black people -- since the state is
18 majority white, the only way black people get in office
19 essentially is through district. And that's true in Congress,
11:44:08 20 as well.

21 And the county -- the state is 25 percent, 26 percent
22 African-American. And there's no doubt in my mind that the
23 county representation will end up being different because they
24 have different experiences that they went through things.

11:44:32 25 I think Congresswoman Terri Sewell, she was among -- as I

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1 recall, she may be -- she might not have been among the ones
2 who desegregated schools, but she -- part of her experience
3 would have been that.

4 So all of that informs how you understand issues and,
11:44:53 5 therefore, how you respond to issues.

6 When -- if somebody thinks everything is hunky-dory, then
7 they're not going to respond the way you want -- you may want
8 them to respond. So I -- it just makes a big difference.

9 One of the things that I have noticed when I -- in the
11:45:19 10 Senate -- maybe I said this. But when white people came to see
11 me -- and a lot of white people came for representation -- they
12 always came with a proposal to advance them being in the
13 system. And most of the time when black folks came to see me,
14 they came with ideas of how black people as a group can get
11:45:52 15 within the system.

16 So that was a completely different thing because white
17 people usually came with a proposal saying specifically, Here's
18 what I want you to do for me or for my group that's a small
19 group. And black people came saying, how do we get in
11:46:11 20 economically? How do we get in educationally? How do we get
21 in all of these other kinds of ways?

22 So it was just a profound difference. I was willing to
23 see all of them. I was willing to work with all of them. But
24 they came differently.

11:46:24 25 Q I asked my question perhaps poorly and maybe misdirected

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1 you in where I meant to go.

2 Let me ask you the question this way: You talked about
3 fact that we have at-large elections for the Supreme Court and
4 the Court of Civil Appeals.

11:46:41 5 A Yeah.

6 Q And I think both of us agree that the state is better
7 served when we have people from all backgrounds on those
8 courts. I don't in any way disagree with you on that.

9 But did you mean to say that the use of the state -- that
11:46:57 10 the state's reliance on statewide at-large elections is
11 necessarily race based?

12 And let me ask that question a little bit differently.
13 Doesn't the state have a legitimate argument -- you may not
14 agree with it -- but at least one that reasonable people could
11:47:16 15 think was valid, that if people are elected from districts,
16 they may feel like they're supposed to represent their
17 districts, as opposed to other voters, and that we don't want
18 our judges on the Supreme Court and the Court of Criminal and
19 Civil Appeals to feel like they have a constituency other than
11:47:39 20 all the people of the state as a whole.

21 And so my question is: Would you at least agree that that
22 is not necessarily a racially motivated point of view, even if
23 it's not one you would agree with?

24 A It may not be racially motivated. It certainly has
11:47:58 25 powerful racial impact.

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1 And by your argument, then they all are elected by the
2 Republican party. So that means that by your argument, that
3 that he would -- they are likely to serve the interests of the
4 Republican party.

11:48:20 5 So to me, it makes sense to end up having inclusion where
6 everybody's at the table. Even though you are in a minority,
7 you are still at the table. So you have a chance to try to
8 educate others who are there making a decision.

9 Q Would you agree with me that the manner in which we fund
11:48:41 10 schools in Alabama is very complicated, perhaps needlessly very
11 complicated?

12 A Very complicated, yes.

13 Q And that since I've been an adult, at least, for the last
14 30 years, at least, a lot of people, black and white, have been
11:49:01 15 working very hard with not as much success perhaps as we would
16 hope, but working very hard to change the way that we fund our
17 schools and to create better schools that are better funded?

18 A I don't know about a lot of people. Some people have
19 worked hard to try to have better funding of education.

11:49:26 20 Q And that would be black people and white people?

21 A Yes. Some whites and some black.

22 Q And do you know whether or not the poverty rate among
23 African-Americans in Alabama has gone up or down since 2000?

24 A I don't know that for a fact.

11:49:49 25 Q Do you know whether the lifespan of African-Americans in

1 Alabama has gone up or down since 2000?

2 A I don't know.

3 Q Do you know whether the per capita income of

4 African-Americans in Alabama has gone up or down in 2000?

11:50:07 5 A Per capita? I think so. But I don't know for a fact. I
6 haven't looked at these figures.

7 Q Do you know if the rate of Internet access among

8 African-Americans in Alabama has gone up or down since 2000?

9 A I'm sure it's gone up. There wasn't hardly any Internet
11:50:28 10 before 2000 among black people. I'm sure it's gone up.

11 Q I think maybe you have me there.

12 What about 2010? Do you know whether or not the rates of
13 Internet access among African-Americans in Alabama has gone up
14 since 2010?

11:50:41 15 A I don't know for a fact, but I believe it has.

16 Q And do you know whether health outcomes for
17 African-Americans on average have gone up since 2010?

18 A I don't know that for a fact, but I hope and pray it has.

19 Q And I do too.

11:51:00 20 Let me change subjects just a little bit, Senator Sanders.
21 You mentioned earlier two things, one of which kind of caught
22 my ear because I didn't know the difference.

23 You mentioned the Alabama New South Coalition, and I'd
24 like to ask you some questions about that. But you actually
11:51:20 25 also -- I thought I heard -- and the acoustics in this

1 courtroom are not good. But I thought I heard you mention the
2 Alabama New South Alliance.

3 A Alliance, yeah.

4 Q What's the difference between the New South Coalition and
11:51:30 5 the New South Alliance?

6 A Well, when Alabama New South was created, it not only did
7 voter registration, voter mobilization, and voter
8 participation, voter education, but it also endorsed
9 candidates.

11:51:48 10 And after the -- after the PAC-to-PAC transfer of things
11 came in, that that created all kinds of problem. So Alabama
12 New South Coalition ceased to endorse candidates. And
13 candidates are actually endorsed by Alabama New South Alliance.

14 Q Oh, so you did that because of the PAC-to-PAC problem?

11:52:13 15 A Yeah.

16 Q I see. By the way, you mentioned the PAC-to-PAC
17 legislation. And did you say that was in 2010 or 2011?

18 A I thought it was in 2010. I thought it was passed in
19 December -- the election was in November, and then there was a
11:52:30 20 special session in 2010 in December.

21 Q I think you're right. And you mentioned that you were
22 part of the delegation of people who went -- excuse me, sir --
23 to Washington to lobby the Attorney General not to preclear
24 that bill; is that correct?

11:52:47 25 A Yes.

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1 Q Did y'all meet with the Attorney General at that time?

2 A I don't -- I don't know whether we met with the Attorney
3 General on that occasion. We met with some people in the Civil
4 Rights Division.

11:53:04 5 Q And, ultimately, I guess they concluded that the
6 PAC-to-PAC transfer would not have a retrogressive effect on
7 the opportunities for African-Americans to elect the voters of
8 their choice and participate in elections; is that correct?

9 A No. No. What they decided was somehow this kind of
11:53:25 10 legislation does not come within the purview of Section 5.

11 Q So they said was not preclearable, not within their
12 jurisdiction?

13 A Yes.

14 Q Who was the Attorney General at that time? Do you recall?

11:53:42 15 A Yes. As I recall, it was -- because he was there during
16 most of the Obama administration. I can't think of his --

17 Q Let me tell you that I believe the Attorney General from
18 2009 to 2015 was Eric Holder?

19 A It was Eric Holder.

11:53:59 20 Q Thank you.

21 A See, that's that 77 years again.

22 Q I'm right there with you. If I hadn't looked it up on
23 Google while you were talking, I wouldn't have known.

24 Can you tell us what the Alabama Democratic Conference is?

11:54:13 25 A Yes. The Alabama Democratic Conference is a caucus within

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1 the Democratic party.

2 Q And is it fair to say for a long time -- I don't know if
3 it still is -- but that by and large, that was created and led
4 by a man named Joe Reed?

11:54:31 5 A Yes -- well, it wasn't created, but it was led by him for
6 many years.

7 Q Okay. And many people would call Joe Reed the dean of
8 Alabama redistricting. Have you ever referred to him -- heard
9 him referred to in terms like that?

11:54:49 10 A No, but -- but we give him a lot of credit for his work in
11 redistricting.

12 Q And do you know whether or not he has played a role since
13 at least 1980 in drawing the state legislative and
14 congressional districts when they were passed by the
11:55:19 15 legislature?

16 A I know for a fact that he played a significant role in
17 legislative districts. I'm not sure about exactly what
18 happened. But I think that he may have been involved when the
19 one black district was created in 1991-'92.

11:55:39 20 Q Are you a member of the ADC?

21 A No.

22 Q And you haven't been a member of the ADC since you were
23 one of the cofounders of the New South Coalition; is that
24 correct?

11:55:51 25 A Yes. I haven't been a member of the ADC since 1980 --

1 well, it started a little before -- it was created in '86. But
2 I went out in, I think, in '80 -- '84.

3 Q And why did you cofound the Alabama Democratic Coalition?

4 A Okay --

11:56:15 5 Q Excuse me. Alabama Democratic Conference. Sorry.

6 A Ask the question --

7 Q Excuse me. Let me ask my question again. I got all
8 messed up.

9 Why did you, Senator Sanders, co-found the New South
11:56:27 10 Coalition?

11 A There were two major things that led to it. We were in
12 the seventh district, and the ADC elected chairs -- elected the
13 chair of each district.

14 And we -- some of us got together and elected Judge Branch
11:56:54 15 from Eutaw. He was probate judge over there as the seventh
16 district chair.

17 Dr. Reed did not want him as chair. So the election got
18 set aside. And then they called another meeting. He wanted
19 the mayor of Uniontown, and the meeting was in Uniontown. So
11:57:16 20 they called a second meeting. And when the second meeting was
21 called, we gathered again, and we elected Judge Branch again,
22 and it was set aside again.

23 And then the meeting was set in Chilton County. And we
24 didn't bother to go. That was -- that was one thing that had a
11:57:36 25 very profound impact.

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1 The other one was when Jesse Jackson was running in 1984.
2 And so we all went to Mobile to participate. And most folks
3 there were supportive of Jesse Jackson.

4 And there was a motion put on the floor and second and
11:58:12 5 passed in very -- like seconds. And so people were very upset.

6 And the last part of that was in 1985, I received word
7 that Dr. Reed was opposed to me in the Senate, although I was
8 already in the Senate.

9 And so all of those things came together. And we said we
11:58:56 10 wanted to create an organization that was not limited to one
11 race or it was open to whites, as well as blacks. We wanted to
12 create an entity that was not tied to the Democratic party or
13 any other party.

14 And we -- if I'm going on too long, let me stop.

11:59:17 15 Q No. I think you've answered my question, sir.

16 THE COURT: May I ask, is that the same Dr. Reed that
17 seems to be at outs with other members of the Democratic party
18 in Alabama right now?

19 THE WITNESS: It's the same Dr. Reed that's been in a
11:59:33 20 struggle with some other members of the Democratic party.

21 THE COURT: Okay.

22 BY MR. WALKER:

23 Q Senator Sanders, ever since I've been voting, I have been
24 seeing yellow ballots handed out outside of polling places
11:59:47 25 where I vote. And what would those be?

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1 A That yellow ballot is the ADC ballot. The blue ballot is
2 the Alabama New South Alliance ballot.

3 Q And --

4 A Of course, other organizations will sometimes put out a
12:00:02 5 yellow ballot or a blue ballot.

6 Q Yeah. But the ADC routinely outside of polls hands out
7 ballots that tells people who are interested in the ADC's
8 position how to vote.

9 And the New South Coalition, of course, does the same
12:00:20 10 thing, and other groups may do the same thing too. I'm not
11 saying there's anything wrong with that.

12 A Yeah.

13 Q And is the position that the New South Coalition takes
14 always the same as the position that ADC takes?

12:00:30 15 A No.

16 Q Okay. Are they mostly different, or do you know?

17 A When you say mostly different, you have a number of
18 positions on the ballot. Sometimes you have 30-something --
19 30-something positions. And I would -- if I had to answer
12:00:54 20 that, I would say most of the positions are probably the same
21 person --

22 Q Let me rephrase my question. Do the ADC and the New South
23 Coalition independently come up with who they decide to endorse
24 and support?

12:01:12 25 A Yes.

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1 Q And sometimes it's not the same person?

2 A Yes.

3 Q Okay. And, in fact, I'm not sure if it was the first
4 time, but I think it was the first time that Ms. Sewell ran for
12:01:26 5 District 7, the New South Coalition endorsed, I believe, Earl
6 Hilliard, did it not?

7 A It --

8 Q In the primary?

9 A In the primary, it endorsed Earl Hilliard. In the runoff,
12:01:44 10 it endorsed Congresswoman Sewell. ADC endorsed, I think,
11 Sheila -- from Jefferson County. Sheila...

12 Q I can't think of her last name right now.

13 A She was on the county commission at that time.

14 Q Sheila Smoot?

12:02:00 15 A Sheila Smoot. Yeah. If I remember correctly. That's
16 been a while.

17 Q Well, that's what my research showed.

18 You were in the legislature -- your -- when did you give
19 up your seat, sir?

12:02:15 20 A I went out in November.

21 Q Of this November or last November?

22 A This -- no. I went out in November of 2018.

23 Q Okay.

24 A I've been out a year.

12:02:25 25 Q And you've been succeeded by your daughter -- one of your

1 daughters, rather, at any rate, I believe?

2 A Yes.

3 Q And she was elected without opposition?

4 A No. She was elected. An independent ran against her who
12:02:43 5 was a -- who was a Republican member of the Dallas County Board
6 of Education. But he ran as an independent, so...

7 Q And did she win by a landslide?

8 A She won by a very good margin.

9 Q I'll take that. And congratulations.

12:03:06 10 A Thank you.

11 Q But you were in the legislature in 2011 when the
12 legislature took up congressional redistricting, were you not?

13 A Yes.

14 Q So I'd like to ask you about that, please, sir.

12:03:15 15 A Okay.

16 Q Do you need some water or anything?

17 A I'm fine.

18 Q Okay. Did you ever talk with Ms. Sewell about her
19 district?

12:03:24 20 A In the 2011?

21 Q Yes, sir. When the new plan came up, did you ever talk to
22 her about her district?

23 A I didn't have a conversation with her.

24 Q Do you know whether or not she designed her district
12:03:37 25 herself or with her staff?

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1 A No, I do not know.

2 Q Do you know whether or not she approved that district?

3 A I do not know. But I -- I know it was very common for
4 people to be consulted about their particular district, but I
12:03:53 5 do not know that.

6 Q If Senator Dial were to testify that she told him she
7 approved that district, you would not disagree with that, would
8 you?

9 MS. MADDURI: Objection. Calls for speculation.

12:04:05 10 THE COURT: Overruled.

11 THE WITNESS: If Senator Dial said it, I don't know
12 whether I would agree with it, but I could envision that
13 possibility.

14 BY MR. WALKER:

12:04:17 15 Q Okay. Did you, at the time the legislature was taking up
16 the 2010 congressional districts, suggest to anybody that there
17 should be two majority black districts?

18 A I don't know whether I suggested it, but I know there was
19 discussion of that.

12:04:39 20 Q Was that discussion with any of the chairs of the
21 redistricting committee so far as you know?

22 A I didn't have any discussion with the chairs of the
23 redistricting commission.

24 Q Was that discussion among members of the Alabama
12:04:55 25 legislative black caucus?

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1 A I know it was discussions among members of -- yeah,
2 members of the black caucus. Yeah. Yes. Among
3 African-Americans in the legislature.

4 Q Do you know if they --

12:05:13 5 A Which it may be different from the black caucus.

6 Q Uh-huh. Do you think when the legislature is looking at a
7 redistricting plan, one of the considerations is whether or not
8 that's a plan that can be passed? Is that a legitimate
9 consideration?

12:05:32 10 A Yes.

11 Q Okay.

12 A Because I know that there are things that we think would
13 certainly be fair or better, but we also know that they are not
14 likely to pass, so...

12:05:59 15 Q I understand. Do you recall coming to a hearing that we
16 held when we were doing the legislative -- not congressional
17 redistricting -- in Selma?

18 A I recall.

19 Q And I think it was at the Saint James Hotel?

12:06:20 20 A I recall that.

21 Q And do you recall that at that time you testified that you
22 believed that a majority black district should have about
23 62 percent African-American population?

24 A A majority black legislative district.

12:06:38 25 Q Yes, sir.

1 A Yes.

2 Q Okay. About 62 percent is what you told the committee; is
3 that correct?

4 A Yes.

12:06:43 5 Q And was that a decision that you had just made that day,
6 or was it based on your experience over time as a legislator?

7 A Well, it was a decision that I had arrived to over time
8 because there was a time when I thought it should be higher --

9 Q Uh-huh.

12:07:08 10 A -- than been 62. But as time went along, that continued
11 to change. And the percentage continued to go down because
12 there are so many different factors that are involved.

13 Q That would not be your opinion today, would it?

14 A 62 percent?

12:07:27 15 Q Yes, sir.

16 A No.

17 Q But it was -- that was your opinion at the time based on
18 your experience as a successful African-American politician?

19 A Well, I don't know whether it was based on my experience,
12:07:43 20 but that was my position at that time.

21 In fact, it was commonly thought back at that time that
22 you needed 65 percent.

23 Q Uh-huh.

24 A But that just kept going down because you would see
12:08:00 25 developments that indicate that you could win with less than

1 62 -- less than 65, less than 60 percent.

2 Q And what were those developments?

3 A Well, when you are looking at whether somebody can be
4 elected in addition to the number of African-Americans, you are
12:08:16 5 also looking at what kind of organization exists in that. You
6 are also looking at what's the education level of people. You
7 are looking at how many people have criminal records. You're
8 looking at what kind of -- what's the economic kind of
9 situation.

12:08:41 10 Because in those districts -- and I've run in them enough
11 to know -- that the smaller the district is the more difficult
12 it is to elect an African-American. You would think it would
13 be the other way around.

14 So because when local people decide they don't want you,
12:09:01 15 they can come together and bring things together. So when you
16 are talking about a bigger district, then it makes a
17 difference.

18 So all of those factors come there, and they have
19 continued to evolve over the years.

12:09:18 20 Q When you have a -- and when you have a -- an experienced
21 and successful politician with good name recognition, like
22 Ms. Sewell is in District 7, can you have a lower black
23 population and still think of that as a majority black district
24 than if you have an unknown black candidate?

12:09:45 25 A Well, I wouldn't -- I wouldn't recommend deciding a

1 district based upon the person that's in that office because
2 they're not going to always be there. So I wouldn't recommend
3 that.

4 You know, I ran for that district once. I ran in 1992.

12:10:11 5 There were 76,000 votes. And I lost by 400, 500 votes. So
6 I'm -- I was familiar with that district from that experience.

7 Q One last question.

8 When you --

9 THE COURT: Well, before we leave that, may I ask one?

12:10:32 10 MR. WALKER: Yes, ma'am.

11 THE COURT: Okay. So from that -- I think the records
12 show that in the last election Representative Sewell carried
13 the vote by 70-something percent? I'm asking the attorneys if
14 I'm wrong.

12:10:58 15 MR. WALKER: I don't have that in front of me, Your
16 Honor.

17 THE COURT: Seems like I can remember 74, something
18 like that.

19 Would the fact that she has had such a large majority of
12:11:10 20 the votes in that district -- should that fact affect the way
21 the redistricting commission looks at the percentage of
22 African-American population in that district in deciding to add
23 to or shrink that district, or should other factors come into
24 play?

12:11:39 25 THE WITNESS: I wouldn't base that at all because the

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1 candidates who have run against her have not been strong
2 candidates.

3 So if strong candidates was out there, it might be a very
4 different thing. So I -- I would say you have to look at all
12:11:57 5 of those factors and all of those dynamics.

6 THE COURT: And as much as we all love Representative
7 Sewell -- I do -- she may not run for that district forever,
8 right?

9 THE WITNESS: That's right. She may run for U.S.
12:12:15 10 Senate.

11 THE COURT: I didn't say anything. I didn't --
12 anyway.

13 But the next candidate may not have it as easy as she has
14 had it, I guess is what I'm trying to get around to.

12:12:32 15 So...

16 THE WITNESS: Well --

17 THE COURT: I mean, in looking at the voting trends in
18 that district, it seems to me -- and these attorneys are going
19 to educate me on it -- that the mere fact that she's been able
12:12:49 20 to carry it with such a strong high percentage doesn't mean
21 that it would necessarily be as easy for the next candidate to
22 run without her presence there to be elected, I guess is what
23 I'm trying to say.

24 THE WITNESS: Well, she --

12:13:09 25 THE COURT: When you have a good candidates, it's

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1 easier to get a more cohesive base for election than if you
2 have one that's not as well known in the district even though
3 that candidate may be a good one, too.

4 THE WITNESS: Well, if I remember correctly, most of
12:13:25 5 the people who have run against her have been other
6 African-Americans. So I don't think you can tell anything
7 from -- from that.

8 It may -- there may have been -- I was trying to think if
9 I'd known of any white who ran against her. There may have
12:13:48 10 been one, but I don't know. It depends on who the candidates
11 are. It depends on the resources that they have. It depends
12 on what's the makeup of that district, but all of those other
13 kinds of things.

14 So I can't -- I can't say -- because I considered running
12:14:14 15 in 2010 when she was elected. But people strongly encouraged
16 me to stay in the Alabama Legislature.

17 So all of those kinds of things, it doesn't mean that -- I
18 don't think you can tell anything about that because it's so
19 many factors and so many dynamics.

12:14:38 20 THE COURT: Thank you.

21 BY MR. WALKER:

22 Q Senator Sanders, you're a lawyer, too, and you know when a
23 lawyer says I have one more question...

24 A That's the exact thing that ran through my mind. In all
12:14:55 25 my 48 years of practicing law, I have not known one single

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1 lawyer who to say that and it was just one more question.

2 Q Well --

3 THE COURT: I actually had one.

4 THE WITNESS: One.

12:15:06 5 THE COURT: In a case a tried two weeks ago.

6 THE WITNESS: Oh.

7 THE COURT: Said one question and only had one.

8 THE WITNESS: That's was your first time.

9 THE COURT: I made note of that -- one of the rare
12:15:15 10 times.

11 BY MR. WALKER:

12 Q I'm not going to be that lawyer today. I've got more than
13 one now.

14 You talked about when you have a good candidate. And what
12:15:25 15 makes a good candidate?

16 A For me, a good candidate is a person who understands what
17 the district is like, who understands all of the dynamics in
18 the committee, who has a personality that connects with people,
19 who can raise a minimum amount of resources.

12:15:58 20 And I say a minimum amount because when I ran for -- I was
21 always underfunded compared to other committees until the last
22 few years.

23 But a good candidate has a vision that he or she can share
24 with the people and can tell them how they can plug into that
12:16:26 25 vision.

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1 Q Does name recognition, is that one of the factors that
2 relates to electoral success?

3 A That can be a factor. But there have been times when
4 people didn't have name recognition at the beginning, but
12:16:47 5 various organizations supported them and helped in spite of the
6 fact they didn't have name recognition.

7 Q Senator Sanders, I now want to put you on the spot a
8 little bit, and I'm sorry to do that.

9 A I would be disappointed if you didn't.

12:17:04 10 Q Okay. Well, thank you.

11 I want to ask you about something that happened in 2010,
12 and I'm going to ask you about the robocall and give you a
13 chance to explain that, please.

14 A Sure.

12:17:14 15 Q And here is the text of the robocall that I understand you
16 made in 2010.

17 A Yes.

18 Q It was, quote, This is Hank Sanders, Alabama State
19 Senator, and I'm still mad as hell. I say, hell, no. I ain't
12:17:35 20 going back to the cotton fields of Jim Crow days. I'm going
21 forward with Ron Sparks, Jim Folsom, and others who would do
22 right by all of us. I hope you're mad as hell and will not go
23 back. And you have the power to choose. I will stand until
24 hell freezes over.

12:17:58 25 Was that the text from the robocall, sir?

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1 A Yes.

2 Q And I have to say to me and to a lot of people -- and you
3 were questioned by Anderson Cooper about this -- I thought that
4 was a racist appeal. So I want to give you a chance to explain
12:18:14 5 that.

6 A It was not racist at all. What -- there were a lot of ads
7 saying that we have to take our country back. All of those ads
8 about taking our country back. And I was responding to that by
9 this ad.

12:18:33 10 And I was saying -- because I viewed them as saying take
11 our country back as talking about going back to segregation,
12 going back to that. And I was saying, Hell, no. We ain't
13 going back. And I didn't consider that racist.

14 In fact, that was a response to a racist ads and racist
12:18:54 15 statements.

16 Q Well, did -- I believe that the people who were running
17 against Ron Sparks and Jim Folsom were the person who became
18 Governor Bentley and Kay Ivey. Am I correct on that?

19 A I think so.

12:19:13 20 Q Did either Mr. -- or Dr. Bentley -- Bentley or Kay Ivey
21 run any ads that you thought were racist or say, let's take
22 something back, with regard to Civil Rights?

23 A What -- there were -- I don't know whether they ran an ad
24 specifically. But ads were being run saying, Let's take our
12:19:38 25 country back.

1 Q Okay.

2 A And the people who were saying that was supporting them.

3 And I was saying, no, we need to fight. We can't go back.

4 That -- it's like Make America Great Again. And you asked

12:19:53 5 when was America great again? And then they say, well, during

6 slavery or during segregation. So I was responding to that

7 concept.

8 Q Thank you, Senator Sanders, for letting me ask you

9 questions.

12:20:09 10 A Thank you.

11 THE COURT: Any redirect?

12 Senator, it's getting into the lunch hour. Are you

13 okay to go on a for a little while?

14 THE WITNESS: Oh, yes. I hope to finish and they'll

12:20:23 15 let me go. I need to be in Greene County for a legal matter.

16 THE COURT: Okay. We'll see if we can finish and get

17 you out. I just didn't want you to be sitting there starving.

18 THE WITNESS: No. I'm fine.

19 THE COURT: Okay.

12:20:38 20 THE WITNESS: Maybe she will say one more question and

21 mean it.

22 MS. MADDURI: I'm not going to promise one more

23 question. But it won't be very many questions.

24 THE WITNESS: Okay.

12:20:49 25 THE COURT: Just about every time a lawyer says that,

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1 you can pretty well be assured they're telling a story, can't
2 you?

3 THE WITNESS: Yes.

4 REDIRECT EXAMINATION

12:21:00 5 BY MS. MADDURI:

6 Q Senator, Mr. Walker talked to you about the comment you
7 made about 62 percent in a legislative district about ten years
8 ago.

9 On that occasion, were you speaking about legislative --
12:21:10 10 sorry -- you were speaking about legislative districts?

11 A Yes.

12 Q Were you offering any opinion about the level of black
13 voting age population that was required in a congressional
14 district?

12:21:20 15 A No.

16 Q Are you familiar with the fact that state legislative
17 races have a much lower rate of participation than
18 congressional races?

19 A Yes.

12:21:32 20 Q Are you familiar with the fact that state legislative
21 races are typically far less well publicized than congressional
22 races?

23 A Yes.

24 Q Are you familiar with the fact that state legislative
12:21:50 25 races have much lower levels of fund-raising and spending than

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1 congressional races?

2 A Yes.

3 Q Are you familiar with the fact that far fewer people as a
4 percentage vote in the state legislative races than
12:22:07 5 congressional races?

6 A Yes.

7 Q In your opinion, would all of these factors impact the
8 level of black voting age population that would be needed to
9 ensure that African-Americans have an opportunity to elect
12:22:20 10 their candidates of choice?

11 A Yes.

12 Q When you gave testimony at that hearing, did you also
13 offer testimony about the fact requesting that
14 African-Americans do not be packed into districts in the
12:22:34 15 legislature -- in legislative districts?

16 A I don't recall at the moment what I -- whether I did or
17 not. I know that's a concern. But I can't recall whether I
18 testified on that or not.

19 Q Okay. Have you ever been involved with redistricting for
12:22:53 20 congressional districts?

21 A Not really. There was a -- when the district was created,
22 the seventh district was created, I remember interacting with
23 some people in discussions and stuff. But I've never been
24 really involved in the creation of congressional district.

12:23:25 25 Q Isn't it true that Terri Sewell won 72 percent of the vote

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1 the first time she ran for Congress?

2 A I don't recall.

3 Q What do you understand the opportunity to elect to mean?

4 A Opportunity to elect means that you have a reasonable
12:23:50 5 chance to elect. Reasonable chance doesn't mean that you will
6 be elected. It doesn't mean that the odds are with you. It
7 simply means that you -- that you -- you have an opportunity,
8 you have a chance. You have a reasonable chance. It may be
9 40. It may be 50. It may be 60. But it means that all of
12:24:15 10 these different factors could come together, and you have a
11 reasonable chance to prevail.

12 Q Thank you, Senator. That's all for me.

13 THE COURT: Any recross, Mr. Walker?

14 MR. WALKER: Yes, ma'am. A short recross.

12:24:32 15 THE COURT: We gave him an opportunity to think a
16 little bit before.

17 RE CROSS-EXAMINATION

18 BY MR. WALKER:

19 Q Senator Sanders, just a few more questions, please, sir.

12:24:42 20 A I notice you avoid one more question.

21 Q I did deliberately avoid one more question.

22 If you had been asked in 2010 what the African-American
23 population of District 7 should be, the minimum
24 African-American population, what would you have told the
12:25:05 25 legislature, given that in 2011 you thought it should be about

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1 62 percent?

2 A Well, first, I don't know what I would have told them
3 because I know it's a very different situation with a
4 congressional district than it is with legislative district.

12:25:28 5 So I don't know what I would have told them.

6 But I would have said -- you know, there are so many
7 different factors, and you have to take them all into
8 consideration. I'm sure I would have said that it needed to be
9 at least 50 percent.

12:25:39 10 Q Do you know Terri Sewell?

11 A Yes.

12 Q Do you believe that she has the best interests of
13 African-Americans at heart?

14 A I think that she has -- that she's a good representative.

12:25:55 15 Q Okay. Do you believe --

16 A For the state of Alabama, whether that's black people,
17 white people.

18 Q Fair enough.

19 Do you think that she would agree to a plan if she
12:26:11 20 understood that it packed or cracked African-American
21 populations?

22 MS. MADDURI: Objection. Calls for speculation.

23 THE COURT: Overruled.

24 THE WITNESS: I know -- I know elected officials --
12:26:27 25 and I know every elected official wants the best district for

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1 their election. They're not thinking about what's the best
2 district for all black people, or all white people, or all
3 other people. They want the best district for them.

4 That's -- I've seen it over and over and over again that
12:26:52 5 people want a district that's going to assure their
6 re-election. And that's a reasonable response for their
7 interest. That's not a reasonable response for the interest of
8 the people who have been excluded.

9 BY MR. WALKER:

12:27:14 10 Q Thank you very much, Senator Sanders. I appreciate it.

11 A Thank you.

12 THE COURT: Anything else, Ms. Madduri?

13 MS. MADDURI: No, Your Honor.

14 THE COURT: Okay. Well, I think we can let Senator
12:27:23 15 Sanders go so he make his other commitment. And we will take
16 lunch and be back at 1:30.

17 THE WITNESS: Thank you, Judge.

18 MR. WALKER: Thank you, Your Honor.

19 (Recess.)

13:34:32 20 THE COURT: Okay. Where is our next witness?

21 MR. SPIVA: The plaintiffs have no further witnesses,
22 Your Honor.

23 THE COURT: Does defense have any witnesses? Let's
24 get your witness up here.

13:34:47 25 GERALD DIAL,

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1 having been first duly sworn by the courtroom deputy clerk, was
2 examined and testified as follows:

3 THE COURTROOM DEPUTY CLERK: Please state your name in
4 the microphone.

13:35:23 5 THE WITNESS: My name is Gerald Dial.

6 THE CLERK: Thank you.

7 THE COURT: We're waiting on you, Mr. Walker.

8 MR. WALKER: Thank you, Your Honor.

9 DIRECT EXAMINATION

13:36:26 10 BY MR. WALKER:

11 Q Senator Dial, would you state your name for the record?

12 A My name is Gerald Dial.

13 Q I'm calling you Senator Dial. Are you still in the
14 Alabama Legislature?

13:36:37 15 A No. I retired in November of 2018.

16 Q And were you in the Alabama Legislature?

17 A Yes. I served in the legislature two terms in the House
18 from '74 to '84. And I was elected to the Senate in '83,
19 served until 2006, was defeated, and then ran again in 2010,
13:36:58 20 and served until November of 2018.

21 Q What was your Senate district, please, sir?

22 A Senate District 13, which was mostly east Alabama.

23 Q Does that include Lineville and Clay County?

24 A Yes.

13:37:12 25 Q And is Lineville where you're from in Clay County?

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1 A Yes.

2 Q What do you do for a living?

3 A I'm retired at this time. I retired in 2018.

4 Q What are you retired from?

13:37:25 5 A I retired from the legislature, and I was in the real
6 estate development business.

7 Q And during the time, did you have any elected office other
8 than member of the House or member of the Senate?

9 A I had other jobs, but not elected job. But I -- that's
13:37:45 10 the only elected job that I had.

11 Q Okay. Would you tell the Court a little bit about your
12 educational background, please?

13 A I graduated with a B.S. degree from West Alabama
14 University, and I got my education requirement degree from
13:38:01 15 Jacksonville University.

16 Q And I believe you coached for a while?

17 A I -- after graduation, I returned to Lineville, Alabama,
18 where I coached football, basketball, and taught American
19 history and political science.

13:38:16 20 Q What civic activities were you involved in, in Lineville
21 in Clay County over the course of your life?

22 A Oh, well, I've been involved in quite a few things. I was
23 elected to the school board once I retired from education.

24 When I got out of education, I was elected to the school board.

13:38:36 25 I was elected to city council. I served two years on the local

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1 city council after that. And I was elected to the legislature.

2 I was a member of the Baptist church there for 50 years.

3 And I was also a member of the Clay County exchange club, and
4 the quarterback club, which you have got to be a member of the

13:38:53 5 quarterback club if you live in Clay County.

6 Q When you were first elected for office, what party were
7 you in?

8 A I was a Democrat.

9 Q Okay. Did you at some point become a Republican?

13:39:07 10 A Yes. In 1983, I ran and was elected as an independent.

11 And then in 2010, I had briefly joined the Republican party and
12 elected as a Republican in 2010.

13 Q Why did you join the Republican party?

14 A Well, at that time, in 2010, Governor -- who was later
13:39:32 15 elected Governor Riley. Bob Riley was running for Governor was
16 a Republican. He was from my home county, and so I endorsed
17 him.

18 I felt like the philosophy and ideas of the Republican
19 party were much more aligned to my beliefs and ideas than the
13:39:49 20 Democratic party. When I went to the legislature, it was only
21 Democrats, but there's always been a two-faction member of the
22 legislature. And there was a conservative pro-business side of
23 the legislature, and there was the -- the more liberal side
24 than the -- basically the teacher union side.

13:40:07 25 And so the legislature's always -- even though we had one

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1 party, there were two divisions in that, and my division was
2 more of a conservative business-oriented side.

3 And as the Democratic party continued to lean in the other
4 direction, then basically, it was not with my philosophy, so I
13:40:26 5 became a Republican.

6 Q Did becoming a Republican have anything to do with race or
7 racial concerns?

8 A None.

9 Q You've also been active in the military, have you not?

13:40:39 10 A Yes, sir. I served 36 years in the Alabama National
11 Guard.

12 Q Okay. And what was your rank when you retired?

13 A I retired as a brigadier general.

14 Q Will you tell the Court something about boards and other
13:40:54 15 things like that that you've served on?

16 A I presently serve on the university -- Troy University
17 board of trustees. I served for eight years chairman of that
18 and rotated off just in November this past year because we have
19 term limits of years years. And I still serve on the board.
13:41:10 20 I'm just not the chairman.

21 I serve as the chairman of the Southern Union Community
22 College Foundation Board. I serve as the chairman of the
23 International Motor Sports Hall of Fame and Museum board.

24 Q Is that in Talladega?

13:41:24 25 A In Talladega at the race track. I passed the legislation

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1 that created that. I have been the chairman ever since. I
2 serve as the chairman of the space board authority board. And
3 I'm probably leaving out a couple. But that's a pretty good
4 full-time job that I have got doing those since I've retired.

13:41:44 5 Q There's a Rosa Parks Museum in Montgomery. Are you
6 familiar with that?

7 A Very much so. Troy University owned the property where
8 Rosa Parks boarded the bus in Montgomery. And as we began to
9 look at expanding Troy University, we wanted to build a new
13:42:09 10 facility on that piece of property. And the board did not want
11 to diminish or do anything to take away the attention of what
12 Rosa Parks had done. So we created the Rosa Parks Museum
13 there.

14 That's something we're very extremely proud of. And as
13:42:26 15 Troy University, it's world renowned and one of the largest
16 tourist attractions in Alabama and something we're very proud
17 of.

18 And Mr. Lamar Higgins, who works on my board, was able
19 to -- he had connection with Ms. Rosa Parks before she passed
13:42:41 20 away, and she was able to approve us for doing that and using
21 her name. And today it's part of Troy University and one of
22 our flagship operations that we're most proud of at Troy.

23 Q During your time in the legislature, did Alabama celebrate
24 its Civil Rights history, in terms of creating Civil Rights
13:43:04 25 trails or funding Civil Rights tours to Alabama?

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1 A I would say yes. And if you'll just look at what's
2 happened in Montgomery and Selma with the -- of course, now
3 it's federally recognized the Selma to Montgomery marches.

4 And then just recently, our tourism department under Mr.
13:43:24 5 Sentell has been the leader in creating the heritage trail
6 for -- the black heritage trail, which begins in Montgomery and
7 goes all the way out to the midwest. And we were the leaders
8 in that. We've supported other endeavors that have gone on in
9 Montgomery, as well.

13:43:43 10 Q Let's talk about things you did when you were in the
11 legislature. What committees did you serve on?

12 A Well, the most recent committee -- and if I went back
13 40 years, we'd be here until next week.

14 Q Let's not do that.

13:43:57 15 A In the last session, I served as a chairman of the local
16 legislation. I served as chairman of the health committee. I
17 served on the education committee. I served on the education
18 and finance committee. And I served on the long-range
19 transportation committee. And I chaired the reapportionment
13:44:17 20 committee.

21 Q I'm going to get back to the reapportionment committee in
22 just a second. But can you tell the Court about some of the
23 bills that you've sponsored that you're most proud of?

24 A Well, I've -- in my tenure, I've been fortunate to sponsor
13:44:32 25 a number of bills. And I guess one of the bills that receives

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1 very little attention, but that it's important to me because
2 the legislative political office said it saved the taxpayers a
3 billion dollars. I created the five-year tag bill.

4 Most of us in this room are too old to remember. But you
13:44:51 5 used to have to get a new tag every year and you had to put it
6 on your car, and you had to take the old one off and put it on
7 the barn.

8 I came up with the idea years ago to do a five-year tag,
9 keep at that tag for five years and just put a decal on it. So
13:45:03 10 the savings on the cost of not having to reproduce that tag
11 which costs about \$1.10 of metal each year is -- over the term
12 that I passed that bill, it saved the state over a billion
13 dollars to the taxpayers.

14 I've been real active in education. I passed the Alabama
13:45:25 15 Ahead Act.

16 Q Our court reporter wants you to slow down some.

17 THE COURT: You're getting too excited about those
18 bills.

19 THE WITNESS: I am. I am, Judge, because I spent a
13:45:34 20 lot of time and effort in that arena.

21 THE COURT: I understand.

22 THE WITNESS: And it's something exciting to me. And
23 the Alabama Ahead Act is one that I'm very excited about.

24 THE COURT: Okay. Are you saying Hat Act?

13:45:46 25 THE WITNESS: Alabama Ahead Act.

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1 THE COURT: Ahead. Okay.

2 THE WITNESS: The Ahead Act. That bill is designed to
3 replace all textbooks with digital devices. And we're well on
4 the way to doing that. So I'm very proud of that.

13:46:03 5 Other bills -- I was instrumental in passing a bill that
6 regulates sports agents. And you say, well, that's not
7 important. Part of that, when our college athletes would leave
8 college and sign with the pros, the sports agents would get
9 most of their money. You're talking about dealing with mostly
13:46:24 10 minorities who had very little education and very little
11 financial knowledge. They would sign with the agents, and the
12 agents would sign them massive contracts, and the agents would
13 get most of the money.

14 I passed a bill that limited -- put a cap that they could
13:46:40 15 not get but 10 percent. That was the first time ever in
16 America, and that bill is has now been adopted with every
17 state. And it saves our athletes that go into the professional
18 sports, whatever, the opportunity to retain most of the money
19 that they earn and not give to it sports agents. I'm very
13:46:58 20 proud of that. It's not something that is a growing thing on
21 my resume, but it has saved millions and millions of dollars
22 and put it back into the athletes' pocket rather than to the
23 agents' pocket.

24 Other bills -- I worked diligent on the transportation
13:47:15 25 bill. And laid the foundation for the bill that we just --

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1 they just passed this past session, which provides adequate
2 funding to redo our roads and bridges, make them safe.

3 I was the father of the seat belt bill. I was the person
4 who passed the bill that required you to wear a seat belt. And
13:47:35 5 when you look at statistics, they tell me that bill has saved
6 thousands and thousands of lives this year in Alabama.

7 I could go on, but I know we've got a time limit.

8 BY MR. WALKER:

9 Q That's a good illustration. Now, you just got back from
13:47:51 10 Korea, did you not?

11 A Yes.

12 Q What was the purpose of your trip to Korea?

13 A I started an organization years ago called ACEEP --
14 Alabama Career Economic and Education Plan. And we partner
13:48:05 15 with people in Korea to bring Korean students to Alabama
16 two weeks and learn about our culture. We, in turn, sent 20
17 kids to Korea each year and let them learn the Korean culture
18 because Korea is a vital part of Alabama's economy.

19 ACEEP worked well for many years until the Korean
13:48:32 20 government withdrew their funding. So we kept ACEEP together.
21 And now we're working on a plan to try to recruit qualified
22 math and science teachers from Korea to Alabama.

23 Today, we have about 52 vacancies with qualified math
24 teachers in Alabama, mostly rural Alabama. We have P.E.
13:48:55 25 teachers teaching math, and that's just not good. So if we can

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1 work a program --

2 THE COURT: It would be worse if it was lawyers
3 teaching math.

4 THE WITNESS: I cut you a little slack, ma'am.

13:49:09 5 But we hope to recruit -- and we worked out an MOU with
6 the education commissioner that they will help us as we do this
7 to pay the cost for those teachers to come and get acclimated
8 into Alabama. We think this may be a solution.

9 I wish we could grow our own, but a student today
13:49:30 10 finishing college with a math degree can make three times more
11 in the private sector than they can in the public sector, and
12 they're just not willing to go into education.

13 And if you're any what familiar with the recent report on
14 Alabama education, we're at the bottom in math and science. At
13:49:47 15 the bottom of all 50 states. So we've got to think outside the
16 box. And I don't get paid for this. It's just something I
17 have an interest in.

18 I went to Korea with a state superintendent, six
19 legislators, and six superintendents to view their colleges,
13:50:05 20 their schools so that the superintendents who will eventually
21 hire those people will feel comfortable in being able to retain
22 them and bring them to America. And we hope this will be an
23 example for us and other states to follow.

24 BY MR. WALKER:

13:50:18 25 Q Thank you. Let's talk about the legislature now, and in

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1 particular, the reapportionment committee. That's referred to
2 as the joint committee. What does that mean?

3 A Means you have equal number from the House and the Senate.

4 Q And how are they appointed?

13:50:31 5 A The lieutenant governor appoints in the Senate. The
6 lieutenant governor and the speaker pro tem appoints members.
7 And in the House -- the Speaker of the House appoints members.

8 Q And in years when the legislature is doing redistricting,
9 I believe the committee has more people than in other years; is
13:50:51 10 that correct?

11 A That's correct. They have one from each congressional
12 district. In the off years, when you're not doing the
13 redistricting or re -- then you have three members from each
14 House.

13:50:59 15 Q And do the members of the committee include members of
16 both parties?

17 A Correct.

18 Q And that was the case when the committee was looking at
19 congressional redistricting in 2011?

13:51:11 20 A Correct.

21 Q Who was the other cochair?

22 A In 2011, it was Senator McClendon, who was a House member.

23 Q At that time, he was a Representative McClendon?

24 A Yeah. Now, he's in the Senate today.

13:51:25 25 Q And what plans is the reapportionment committee

1 responsible for giving to the legislature?

2 A We have to do both the legislative, the House, and the
3 Senate, the congressional plans and the state board of
4 education plan.

13:51:42 5 Q Might be losing that last one, the state board of
6 education plan?

7 A Well, it may be. That's to be seen.

8 Q Does the reapportionment committee have a staff?

9 A Yes.

13:51:55 10 Q And what does the staff do?

11 A The staff keeps records. They keep all the -- they
12 collect all the census data. They program it into their
13 computers. They keep all the maps and the directions.

14 Not only do they work for us in the legislature, but they
13:52:12 15 also assist cities and counties in doing their redistricting
16 while they're doing theirs in the years that we're not. But
17 they're basically responsible for producing the maps.

18 Because any piece of legislation dealing with
19 reapportionment has to first go to the reapportionment
13:52:36 20 committee and be programed into their system so that any
21 amendment, or any changes, or any substitutes would be
22 susceptible to having the correct boundaries and correct
23 numbers in them.

24 Q So are you saying that the reapportionment committee has
13:52:45 25 the state's redistricting system?

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1 A Correct.

2 Q And they operate that?

3 A Correct.

4 Q So can any member of the legislature go in and draw a
13:52:52 5 plan?

6 A They can draw it, but they first have to go to the
7 legislative redistricting reapportionment committee and work
8 with them to make sure that they are within the guidelines, and
9 then it has to be put into their system.

13:53:06 10 Q I didn't ask my question well. If I'm a member of the
11 legislature, and I think I wanted to draw let's say a
12 congressional plan, do I have the ability or the right to go to
13 the reapportionment office and say, work with me to draw a
14 plan?

13:53:21 15 A Yes, you do.

16 Q And will that plan be kept confidential until I say so?

17 A Yes.

18 Q Okay. And I can also draw a plan outside of the
19 reapportionment office; is that correct?

13:53:36 20 A You can draw one, but you can't present it because it's
21 first got to go to the reapportionment committee and be put
22 into their system to ensure that what you have drawn does not
23 lie outside the boundaries of where it should operating.

24 Q Okay. So there are two ways to have a plan drawn; one is
13:53:55 25 on the state's redistricting system, and one is on some other

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1 system. But then it has to be imported into the state's
2 redistricting system before it can be introduced?

3 A Correct. If it has errors when it's presented to the
4 redistricting committee, it would have to be corrected before
13:54:11 5 they can put it into the system.

6 Q And the legislative session of 2011, do you remember the
7 dates of at that session? Let me refresh your memory if I can.

8 Do you remember if that was March 1 to June 9 to 2011?

9 A Sounds close to being correct.

13:54:28 10 Q Okay. Was the legislature passing plans --
11 reapportionment plans during that 2011 legislative session?

12 A We were only passing congressional plans.

13 Q Were you also passing state board of education?

14 A Yes.

13:54:42 15 Q Okay. And why weren't you passing legislative plans that
16 year?

17 A We were not passing legislative plans that year.

18 Q Right. And my question is: Why were you only passing the
19 first two?

13:54:55 20 A Oh, okay. I'm sorry.

21 Q I'm sorry.

22 A The reason we were passing those was two reasons: One was
23 the election was pending because congressional districts run
24 every two years. So we had to get that plan finished so that
13:55:08 25 those people seeking office in those congressional districts,

1 not only the incumbents, but anyone seeking office would know
2 they were living -- what district they lived in. So it was
3 imperative we get that done within the time frame that we had.

4 And also we had certain members of the school board who
13:55:24 5 would be running in that same cycle. We have eight school
6 boards, and they are on staggered terms. Some of the -- some
7 of them were running, as well. We had to get those ready, too,
8 so that at the upcoming election they would know the districts
9 and where to qualify and where to run from.

13:55:40 10 Q So if the members of Congress, that is, members of the
11 House of Representatives were going to be running for their
12 seats again in 2012, when would they start campaigning for
13 those and raising funds for those seats?

14 A Well, they would start -- they would start in early -- in
13:56:01 15 the early spring -- January, February, March, April time
16 frame -- in the time frame in which we were working.

17 Q And so was that one of the reasons that you were concerned
18 to make sure that the bill was passed during that legislative
19 session so you wouldn't interfere with congressional elections?

13:56:15 20 A That was one of the main ones. And had we not gotten it
21 finished in that session, we would not have another session
22 before the election, so we would were faced with the Governor
23 having to call a special session and costing the taxpayers a
24 tremendous amount of money just to address that issue. So the
13:56:33 25 idea was to save the taxpayers money to get them a district

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1 drawn where they know their boundaries. And they began
2 campaigning on the time frame that would meet the schedule in
3 which the election would be held.

4 Q So did the legislature pass new congressional districts in
13:56:49 5 2011?

6 A Yes.

7 Q And those are the districts that we're talking about
8 today, in fact.

9 Do you know how the districting plan that was ultimately
13:56:59 10 passed by the legislature came to be?

11 A Yes.

12 MS. MADDURI: Objection, Your Honor. We object to
13 this entire line of questioning for lack of relevance.

14 THE COURT: Overruled.

13:57:11 15 MS. MADDURI: May I explain my objection?

16 THE COURT: This whole case is about the redistricting
17 in 2011, is it not?

18 MS. MADDURI: It is, Your Honor. But what actually
19 happened in 2011, the understandings of the intentions or the
13:57:26 20 beliefs or even the information available to the legislators
21 who drew the map are not relevant to the Section 2 results base
22 plan.

23 THE COURT: Overruled.

24 BY MR. WALKER:

13:57:42 25 Q Senator Dial, can you please tell the Court how the plan

1 that came to be passed as a 2011 Alabama congressional plan,
2 came into existence?

3 A The plan that we eventually passed was developed by a
4 gentleman named Randy Hinaman, was retained by the
13:58:02 5 congressional delegation. All the congressional delegation
6 members I understand retained him to begin to work and draw a
7 plan that they would agree upon.

8 He brought to me a plan and told me that they had agreed
9 upon this plan, the seven sitting congressional members, and
13:58:19 10 this was the plan they wanted to go with. I, in turn, to be
11 assured that there was no dissension among the members of
12 Congress, asked him to get a conference call together for all
13 the congressional members.

14 That conference call was conducted with me in my office in
13:58:37 15 Montgomery. All the congressional delegates were --
16 congressional members on that call, I think, except one. I
17 can't be sure. But I'm almost sure that there may have been
18 one that was not.

19 I went down the line. And each one of those assured me
13:58:57 20 that --

21 MS. MADDURI: Objection, Your Honor. Hearsay.

22 THE COURT: Overruled.

23 THE WITNESS: They assured me on the phone that they
24 were okay and the plan was something that we could pass.

13:59:12 25 And so with that amount of information and that

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1 confidence, I introduced the plan, and the plan was eventually
2 passed.

3 BY MR. WALKER:

4 Q Did Representative Sewell participate in that conference
13:59:24 5 call?

6 A Yes.

7 Q Did you ask her if she supported the plan and supported
8 her district as drawn?

9 A I asked her. I said, is there any objection to this plan,
13:59:32 10 and she said no.

11 Q Okay. And I'll ask you to look at the map which -- I mean
12 to look at the screen in front of you, which is showing
13 Plaintiffs' Exhibit 15, which is the 2011 plan. And I will ask
14 you is that the congressional plan that was enacted and passed
13:59:55 15 into law?

16 A Yes.

17 Q Thank you.

18 Do you recall at the start of redistricting process --
19 there are, of course, population shifts that occurred over the
14:00:13 20 decades since the last census. That's the whole reason for
21 redistricting?

22 A Yes.

23 Q Do you recall how many people needed to be moved into
24 Representative Sewell's district in order to comply with the
14:00:28 25 one person one vote equal population requirement?

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1 A Approximately 70,000. I don't know the exact number, but
2 I remember it was somewhere near 70,000.

3 Q Was that -- I actually think it was 700 -- almost 80,000.
4 Do you recall?

14:00:45 5 A Okay. I knew it was in the 70s, somewhere in that
6 neighborhood, maybe.

7 Q Do you recall if that was the largest deviation of all the
8 plans?

9 A Yes.

14:00:55 10 Q Okay. Did you rely on Representative Sewell to develop a
11 district that she could be reelected in?

12 A I was certain that she had reviewed the plan and felt
13 comfortable with it and that she could be reelected in that
14 district.

14:01:22 15 Q What were you and members of the committee concerned that
16 the legislature had to pass a plan that could get precleared by
17 the Attorney General under Section 5 of the Voting Rights Act?

18 A Correct.

19 Q Why was that important?

14:01:39 20 A Well, if it's not precleared, we've got to go back and do
21 a new plan if it fails to be cleared.

22 So I had two objectives: One was I had to have a plan I
23 could pass through both houses of the legislature, because this
24 is a bill just like any other bill, and it has to receive
14:01:58 25 them -- it has to be introduced. It has to go to committee,

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1 has to get favorable report in the committee, has to come back
2 to the floor of the legislature, has to pass both houses in the
3 same form. That was my first objective. If I can't pass it
4 there, then I'm not going any further.

14:02:13 5 And the second was I had to have a plan that we felt
6 comfortable would pass the scrutiny of the Justice Department
7 and get precleared so it could move on with the election.

8 Q What would have been the consequence if Justice had not
9 precleared that plan?

14:02:27 10 A I would assume that they would send it back and ask us to
11 draw another plan, and we would go to a special session.

12 Q And that would -- that would interrupt the schedule for
13 congressional elections, would it not?

14 A It certainly would have -- it would have changed the
14:02:46 15 process in which -- of course, it depends on how soon they did
16 and if we can get an another special session and get another
17 bill through.

18 But it certainly would disrupt the plans that -- where
19 they had already starting money, where they knew where the
14:03:01 20 district lines were, and they knew what people they would be
21 representing. So it would certainly disrupt the plan for many
22 congressional members standing. And anyone who had intentions
23 of running against one of those people would be certainly --
24 their intentions would be delayed, as well.

14:03:16 25 Q And if the legislature had had to pass a new plan, that

1 plan also would have had to be precleared by the Attorney
2 General, correct?

3 A Correct.

4 Q And there was no guarantee that a second plan would be
14:03:29 5 precleared, was it?

6 A Correct.

7 Q So it was important to get it done right the first time?

8 A Correct.

9 Q During that process, when the -- when the proposal from
14:04:02 10 the representatives of their districts was under consideration,
11 did -- and until the bill was passed, did any member of the
12 legislature tell you that they thought it was possible to draw
13 a congressional plan with two majority black districts?

14 A During the session?

14:04:23 15 Q Yes, sir.

16 A No.

17 Q Do you know Joe Reed?

18 A Very well.

19 Q There was some testimony earlier, and I think you may have
14:04:32 20 been in the court when I asked Senator Sanders about Joe Reed.
21 And I asked him if he was considered or at least sometimes
22 referred to as the dean of redistricting in Alabama. Do you
23 recall that?

24 A Correct. And you were correct. You were on spot.

14:04:46 25 Q He has been involved in every redistricting effort in a

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1 significant way since at least 1980; would that be correct?

2 A That's correct.

3 Q Has Joe Reed over the course of his career been an
4 effective advocate for the interests of African-Americans in
14:05:05 5 the legislature?

6 A Absolutely.

7 Q Have you ever known him to leave a lot on the table, in
8 terms of his negotiated positions?

9 A No. Never. And I've negotiated with him many times.

14:05:17 10 Q Did Joe Reed ever come to you and say, Senator Dial, I
11 think we can draw two majority black districts, and I want that
12 to do?

13 A No.

14 Q Did any other African-American leaders come to you and say
14:05:32 15 that?

16 A No. Not until the session was over when I was advised of
17 a plan that had been drawn after -- after we'd already passed
18 this bill.

19 Q Was that a plan drawn by Mr. McClammy -- excuse me -- by
14:05:53 20 Representative McClammy?

21 A It was presented by Representative McClammy. It was
22 presented to the reapportionment office. And the clerk of the
23 committee called me and said, We've just got a new plan in.
24 And so I went down to review the plan. And she said, It's a
14:06:07 25 congressional plan, and it creates a second minority district,

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1 and that was the intent of it. That was as far as I went
2 because we'd already passed the other plan. It had already
3 been signed by the Governor and gone forward. So that was the
4 extent of that.

14:06:23 5 The only conversation I had later on with Representative
6 McClammy was in the hall where he said to me, I've introduced a
7 plan. I said, Well, you know it's too late. We've already
8 passed this plan.

9 Q When he said introduced, did he mean introduced into the
14:06:37 10 reapportionment office or introduced into the legislature?

11 A Introduced in the reapportionment office.

12 Q I will ask you to look, Senator Dial, at what's on your
13 screen now. And I will represent that this is Defendant's
14 Exhibit 3, page 194, and ask you if that is the plan that
14:06:58 15 Representative McClammy submitted to the reapportionment office
16 with two majority black districts?

17 A I understand it is. I didn't review it that close at that
18 time in the office. But since that time, I've reviewed it, and
19 this is the McClammy plan.

14:07:15 20 Q Senator Dial, would you describe District 7 as drawn in
21 the McClammy plan to the Court?

22 A Well, District 7 extends all the way up into what we call
23 the Tennessee Valley area. It goes all the way over into
24 Madison, Huntsville area. It gets Limestone and up all the way
14:07:43 25 in and picks up part of Lauderdale, which is totally removed

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1 from the basic foundation of District 7, which was in Dallas
2 and Jefferson and Tuscaloosa.

3 Q So District 7 extends all the way from Washington County
4 in south Alabama up to Madison County in north Alabama?

14:08:10 5 A Correct.

6 Q Does it keep together communities of interest?

7 A Definitely not.

8 Q Does it preserve the cores of existing districts?

9 A No.

14:08:20 10 Q Is it compact?

11 A No.

12 Q Look at District 2. And would you describe District 2 for
13 the Court, please?

14 A District 2 is the congressional district I live in. And
14:08:36 15 it goes from -- it almost extends the whole length of the
16 state. And it takes away community of interest.

17 It takes away -- it's just a district that's totally
18 disconnected in three or four different areas because there's
19 not even a major highway you can go from one end of that
14:08:56 20 district to the other without crossing into other districts.
21 It's just not compatible with anything that -- that Congressman
22 Rogers or anybody running that district would be -- be happy at
23 all with.

24 Q I'm sorry. Go ahead, sir.

14:09:11 25 A Go ahead.

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1 Q Has there ever been a District 2 that looked anything like
2 that?

3 A Never; not that I've seen.

4 Q And I ask you one more time, Senator Dial, to look at
14:09:23 5 District 3 and describe where that begins and where that ends,
6 please.

7 A It appears that District 3 begins in Calhoun County and
8 goes almost to Mobile meandering through the eastern part of
9 the state through Talladega County and then down part of the
14:09:45 10 Black Belt and on into -- it even gets a part of Clarke County.

11 So that's totally -- when you talk about communities of
12 interest and governmental identity that associates with each
13 other, that's totally disconnected.

14 Q Is it compact?

14:10:06 15 A No.

16 Q Does it preserve the core of any existing districts?

17 A No, sir.

18 Q Let me ask you the same questions about District 2 as
19 presented in this plan.

14:10:16 20 Does it respect any community of interests that you can
21 identify?

22 A Which district?

23 Q District 2.

24 A Well, there are some. But when you get south of the
14:10:29 25 interstate, you have moved into a totally different area of

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1 interest political subdivisions or -- as I said in the
2 deposition, you even get -- you divide the state, and you take
3 away that interest, and you take away those areas that have
4 universities that people coalish around that become a very
14:10:53 5 important part of those communities that keep them together.
6 And it divides that up, as well.

7 Q And would you consider District 2 compact?

8 A No.

9 Q If this plan had been introduced into the legislature in a
14:11:14 10 timely manner, could you have passed it?

11 A No.

12 Q Now, how can you say that, Senator Dial?

13 A I can say first is I don't believe any of the members of
14 the sitting congressional delegation would have supported this.

14:11:28 15 Q Why would that matter?

16 A That matters in the fact that they mobilize their
17 legislators, their House members, and their senators to be
18 opposed to it and make amendments to it, and, therefore, my
19 opportunity to pass it through and get a majority is greatly
14:11:44 20 diminished.

21 Q Any other considerations?

22 A That would be the main one. And I'm not too sure -- of
23 course, I can't answer for Justice, but I'm not too sure you
24 can get this precleared with Justice because my understanding
14:12:02 25 it regresses District 7 in the minority population to a point

1 of about 51, 50 percent.

2 Q Let me ask you about -- oh, I'm sorry.

3 A Go ahead.

4 Q Let me ask you about the people up in Madison County.

14:12:18 5 Independent of what any congressperson wants, do you think
6 that, for example, the legislators across north Alabama would
7 have supported this plan?

8 A No. The -- as you know, geographically the TVA area is
9 always considered the north part of Alabama, and they always
14:12:36 10 have so much of common interest because of the TVA area and
11 that portion of economic development that they are very -- very
12 attuned to what goes on there, and that gets them a
13 congressman, who would be basically from Dallas County who
14 would not be acceptable to them not because it's a minority,
14:12:56 15 but because it's geographically.

16 They would not accept it if District 2 ran into the
17 Tennessee Valley area because they want a congressman from that
18 area because you have Huntsville and NASA and all the things
19 that's going on up there. And they're very attuned to having
14:13:13 20 someone who is really supportive of that concept of what's
21 being developed in the Huntsville area.

22 Q And the same question for south Alabama. Independent of
23 what the members of the congressional delegation might want or
24 not want, would the senators and representatives from south
14:13:33 25 Alabama have supported this plan?

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1 A No. They would have been very similar to the people in
2 the north Alabama and the people in east Alabama. I don't
3 see -- I don't see any -- any group of -- there might be some
4 individual legislators with some ideas that they like this plan
14:13:53 5 because it would put them in a district that they might run for
6 Congress from, but I don't see any group of legislators
7 supporting this in any manner.

8 Q Thank you.

9 Earlier I put up on the table in front of you a copy of
14:14:25 10 the reapportionment guidelines. Do you see those?

11 A Yes.

12 Q And that's part of exhibit -- Defendant's Exhibit 3, pages
13 260 through 275. And I'd like to ask you, please, sir, to turn
14 to page 267 and let me know when you get there. I've got it up
14:14:54 15 on the screen if you want to look there.

16 A Okay. I see it.

17 Q Okay. And this is the paragraph that defines communities
18 of interest. Are you familiar with that?

19 A Correct. Yes.

14:15:04 20 Q And it talks about governmental and regional interests?

21 A Yes.

22 Q And it talks about boundaries of county municipalities and
23 voting precincts.

24 Let me ask you this: Has the legislature consistently
14:15:24 25 understood this guideline to include the concept of preserving

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1 the cores of existing districts?

2 A Yes. And that's pretty well pointed out in governmental
3 regions.

4 Q Okay.

14:15:36 5 A And the core in which you work from. You -- in
6 reapportionment congressional district, you take the core from
7 which you are already existing and work from there rather than
8 try to create new districts and create havoc among the system.

9 Q You've talked about the importance of being able to pass a
14:15:58 10 bill. And I think is it fair to say, if you can't pass a bill,
11 you can't do anything? Could you pass a legislative
12 redistricting bill -- excuse me -- a congressional
13 redistricting bill that does not preserve the cores of existing
14 districts?

14:16:16 15 A No.

16 Q Is that just a reality of life --

17 A It is.

18 Q -- in the legislature?

19 A It is. And it boils down to those legislators within that
14:16:23 20 district and those constituents that they are going to have
21 that's going to impact upon how their vote is and why they
22 should or should not vote for it. It's not going to be simply
23 left up to that individual legislator.

24 But the constituency, the governmental identities within
14:16:42 25 his district is going to have a big influence on how he or she

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1 votes on any redistricting plan.

2 Q Look again, if you will, Senator Dial, at Plaintiffs'
3 Exhibit 15, which is the 2011 plan that you have testified was
4 created by the members of the House of Representatives of
14:17:01 5 Congress and passed by the legislature.

6 And look in particular at District 7, which you've
7 testified was drawn by the consultant hired by the members of
8 Congress, including Representative Sewell and approved by her.

9 And let me ask you this: What if you had gone back to
14:17:26 10 Representative Sewell and said, Representative Sewell, we
11 don't -- we don't like your district. We've got this
12 alternative map with two minority districts, or with some other
13 alternative map, and we're going to pass that instead. What do
14 you think would have happened?

14:17:43 15 MS. MADDURI: Objection, Your Honor. Calls for
16 speculation.

17 MR. WALKER: Your Honor, I'm asking for his --

18 THE COURT: Overruled.

19 THE WITNESS: I think that it -- of course, it depends
14:17:54 20 a lot. But if we're going to change her district from what
21 she's agreed to, then she's immediately going to go to the
22 other members of the congressional delegation and say we had an
23 agreement. You're breaking our agreement.

24 And she would begin to ignite or get her people who are
14:18:13 25 close to her and in her delegation, senators and

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1 representatives begin to do an alternative plan to either put
2 it back like she had it or get them to try to kill the bill on
3 the floor.

4 BY MR. WALKER:

14:18:27 5 Q In other words, is it -- was it your judgment at the time
6 that if you had tried to change her district materially, it
7 would have resulted in a bill that could not be passed?

8 A Let's be practical. The first thing we knew we had to do
9 was make sure that she was happy with her district. If she's
14:18:43 10 not happy with her district, then we're going to have
11 difficulty, tremendously difficulty in getting any kind of plan
12 through the legislature.

13 Q Did you also have some concern that she had friends in
14 Washington that she could call?

14:18:55 15 A Well, you know, I understand that she was Ms. Obama's
16 roommate in college certainly would have an impact on her, and
17 then the U.S. Attorney General, who was a classmate of hers at
18 Harvard, was certainly someone she could call on.

19 So, you know, basically as we said, we understood the
14:19:16 20 practicality that she had to be okay with any plan that we
21 passed.

22 Q Let me show you -- and I believe I put up before you the
23 four alternative maps proposed by the plaintiffs. Do you see
24 those, sir? And I'll show you right here --

14:19:48 25 THE COURT: What's the exhibit number, please?

1 BY MR. WALKER:

2 Q Plaintiffs' Exhibit 61, which is Revised Plan 1; and
3 Plaintiffs' Exhibit 67, which is Revised Plan 2; Plaintiffs'
4 Exhibit 73, which is Revised Plan 3; and Illustrative Plan 4,
14:20:11 5 which is Plaintiffs' Exhibit 40. Do you see those, sir?

6 A Yes.

7 Q Now, all of those have District 1 that extends from Mobile
8 County to Houston County. So I'll just use Plaintiffs'
9 Exhibit 61, Revised Plan 1, as an example.

14:20:31 10 Do you see that, sir? It's on the screen in front of you?

11 A Yes.

12 Q Okay. Now, let me ask you: Is that the plan that was
13 passed by the legislature?

14 A No.

14:20:44 15 Q Is that the plan that was agreed upon by the members of
16 Congress?

17 A No.

18 Q Does District 1 respect well-established communities of
19 interest in Alabama?

14:20:57 20 A No.

21 Q Can you explain your answer, please?

22 A Mobile and Baldwin County are very closely connected, only
23 separated by the river and the bay flowing between them, and
24 they have a very strong economic ties between those two areas.

14:21:16 25 When you go over to eastern Alabama, you've got Dale and

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1 Coffee, and Geneva, and Henry, and Houston, which is part of
2 the Wiregrass area, which has the military base there at
3 Enterprise, and it also is very closely connected in the
4 Wiregrass. They have the Wiregrass Chamber of Commerce. They
14:21:34 5 have the Wiregrass Economic Development Council. And so all of
6 those identities are totally separated.

7 And, again, you have no major road to get from Baldwin.
8 If you are congressman, you've got to go into Florida to get to
9 your district. Mainly, there's no major thoroughfare through
14:21:54 10 there. You could go I-10 and then get off and go up to
11 Houston, I guess. But you'd have to travel a long way through
12 Florida to get to your district.

13 So it's just not practical. And there's no economic ties
14 between those two geographical areas.

14:22:08 15 Q Let me show you Plaintiffs' Exhibit 15 again, which is the
16 plan that was passed, and ask you about District 2 as passed.

17 Is there a community of interest or communities of
18 interest between the Wiregrass area and the Montgomery area?

19 And I will start by asking you: Where are the military
14:22:38 20 bases?

21 A Well, the military bases at Maxwell and Gunter in
22 Montgomery and the military base in Enterprise down in Coffee
23 County. And that's the two major military facilities in our
24 state, and they're very closely related.

14:22:53 25 If you're going to represent the military -- and that's

1 why that congressman from that district has always been on the
2 military affairs committee, because it has the two major
3 military operations within their congressional districts. And
4 it gives them a bond and a common interest in supporting the
14:23:10 5 military in that district.

6 Q And do you happen to know -- where is Maxwell Air Force
7 Base?

8 A It's in Montgomery.

9 Q And does Maxwell Air Force Base, as we use that term, now
14:23:22 10 include what we used to call Gunter Air Force Base?

11 A Yes.

12 Q Two separate locations within the city of Montgomery?

13 A Yes.

14 THE COURT: On two different sides of town, too.

14:23:31 15 THE WITNESS: Correct. Two different sides of town.

16 BY MR. WALKER:

17 Q And do you know whether or not people who live and work
18 and are stationed at Maxwell and Gunter live in Montgomery,
19 Autauga, and Elmore counties?

14:23:44 20 A Many of them live in the Prattville area and the Elmore
21 area and drive into -- and the way you can verify that is be on
22 the interstate at 7:30 in the morning and at 5:30 in the
23 afternoon.

24 Q I'm on my bike on Bell Street at about 6:00 o'clock in the
14:24:05 25 morning. I can tell you they're all coming in from Elmore

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1 County.

2 And within the Wiregrass, where is the Army base?

3 A It's in Coffee at Enterprise.

4 Q Okay. And are the counties around Coffee and between --

14:24:19 5 A It's in Dale. I'm sorry. Enterprise is in Dale.

6 Q Are the counties that surround Dale, do they have
7 defense-related industries located in those counties?

8 A They do. And between that and Montgomery and Troy, you
9 have -- you have two major military suppliers in those two --
14:24:40 10 in that area alone. And a lot of the support for military in
11 that area has grown up around the base.

12 Q And do the people who -- I'm having a senior moment. I
13 can't think of the name of the base down there.

14 A Fort Rucker.

14:24:57 15 Q Fort Rucker. Thank you.

16 Do the people who live and work at Fort Rucker live in
17 Dale County and the counties that surround that?

18 A Yes. And Houston and -- Dothan and Houston counties are
19 major larger area of where they go to do most of their trade.
14:25:12 20 It's the largest Metropolitan area in that area. And that's
21 their center of trade for that area.

22 Q That's also where they go for their health care unless
23 they go on to --

24 A Yeah. On base. Yeah.

14:25:29 25 THE COURT: Are there major roads between -- what were

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1 we looking at -- Montgomery and Houston County?

2 THE WITNESS: Yes, ma'am. 431 is the major highway,
3 and 280 -- I believe 280 is another one. And then the 2 --
4 it's -- oh, it's the Montgomery to Panama City.

14:25:52 5 THE COURT: 231?

6 THE WITNESS: It's 231. Yes, ma'am. I was just on it
7 Saturday.

8 MR. WALKER: Your Honor, may I approach Senator Dial
9 to give him this?

14:26:04 10 THE COURT: Yes, you may.

11 BY MR. WALKER:

12 Q Senator Dial, I'm going to give you what's marked as
13 Defendant's Exhibit 1, and I will ask you to look at it,
14 please. Take a moment and look at it while I walk back to the
14:26:14 15 podium.

16 And I will represent to you that it shows Alabama's
17 congressional districts on -- this is Defendant's Exhibit 1,
18 and it's page 3017. On 3017, are the congressional districts
19 that were passed in 2011; is that correct?

14:26:41 20 A Correct.

21 Q And then if you'll look at the next page, 3018, and I'll
22 ask you if you know whether or not those are the congressional
23 districts from 2020?

24 THE COURT: From what?

14:26:58 25 BY MR. WALKER:

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1 Q Excuse me. From 2002?

2 A 2002.

3 Q I'm a little dyslexic. 2002.

4 A Yes.

14:27:05 5 Q And I will represent to you that the next page, 3019, is
6 the 1992 congressional districts. Do you see that?

7 A Yes. Yes.

8 Q And the next page I will represent to you is the 1980
9 congressional districts. That's page 3019.1?

14:27:27 10 A Yes.

11 Q And then let's take it back to 1970, page 3020, the 1970
12 congressional districts. Do you see that?

13 A Yes.

14 Q From looking at these maps, can you form a conclusion as
14:27:43 15 to whether or not the Alabama Legislature has consistently
16 sought to preserve the cores of existing districts when it
17 reapportioned or redrew the Alabama congressional districts?

18 A Yes. It's quite obvious that they used the same core and
19 only extended where they had to extend the boundaries because
14:28:00 20 of gain or loss in population.

21 Q Do you know Terri Sewell, sir?

22 A Yes.

23 Q Do you believe that Terri Sewell would ask the legislature
24 to pass a plan that discriminated against African-Americans?

14:28:16 25 A No.

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1 Q Do you believe it's appropriate when you're conducting
2 redistricting to rely on the advice of an African-American
3 Congress person as to what she needs based on her experience to
4 win in her district?

14:28:33 5 A Yes.

6 Q Did she ever tell you that you should reduce the number of
7 African-Americans in her district?

8 A No.

9 MS. MADDURI: Objection. Hearsay, Your Honor.

14:28:47 10 THE COURT: Overruled.

11 BY MR. WALKER:

12 Q Were you aware that in the past the Department of Justice
13 had refused to preclear plans where the percentage of black
14 voters had been lowered?

14:29:03 15 A Yes.

16 Q Did you have an understanding at the time the
17 congressional plan was being passed from talking to other
18 African-American politicians of what their belief -- of their
19 belief of what was necessary, in terms of percentage of the
14:29:30 20 black population for them to have an opportunity to be
21 reelected?

22 A Well, the only -- as Senator Sanders testified is his
23 testimony to the legislative delegation, as we were drawing
24 legislative districts in his district, when he informed us that
14:29:47 25 he thought it needed to be at least 65, 62 to 65 percent.

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1 Q Thank you very much, Senator Dial.

2 A Thank you.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

14:30:01 5 BY MS. MADDURI:

6 Q Good afternoon, Senator Dial.

7 A Good afternoon.

8 Q I don't know if you know that we've met, but I was on the
9 other side of the video conference when we took your
14:30:32 10 deposition.

11 A Okay.

12 Q So I could see you, but I don't think you could see me.

13 A I could.

14 Q Senator, Mr. Walker showed you some of the illustrative
14:30:52 15 plans that plaintiffs have proposed in this case, correct?

16 A Correct.

17 Q And I understand that you have certain criticisms of the
18 proposed plans, correct?

19 A Correct.

14:31:01 20 Q And one of those criticisms is that it breaks up
21 communities of interest, correct?

22 A Correct.

23 Q Is it fair to say that you view the meaning of a community
24 of interest as focused on economic ties?

14:31:15 25 A Not solely, but that's part of it, yes.

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1 Q Senator, do you recall having your deposition taken in
2 this case?

3 A Yes.

4 Q And you were asked about that issue, I think?

14:31:31 5 A Yes.

6 MS. MADDURI: Heather, can you pull up page 49?

7 BY MS. MADDURI:

8 Q Senator, I will direct your attention to line 18.

9 A Yes.

14:32:15 10 Q You were asked: Is it fair to say that a community of
11 interest is based on economic factors, then? And you said,
12 Very much economic interests, yes.

13 A Yes. I said very much. I didn't say that was all.

14 Q And Mr. Walker also asked you about the reapportionment
14:32:50 15 committee's guidelines on redistricting, correct?

16 A Correct.

17 Q And you were involved in drafting and adopting those
18 guidelines, correct?

19 A Correct.

14:33:00 20 Q And you adopted a set of guidelines in 2011 prior to
21 passing the plan that we're talking about here, correct?

22 A Correct.

23 MS. MADDURI: Heather, can you pull up Plaintiffs'
24 Exhibit 84 at page 4? Actually can you stay on the first page
14:33:26 25 for a moment? Sorry.

1 BY MS. MADDURI:

2 Q Are these those guidelines, Senator, to the best of your
3 knowledge?

4 A Best of my knowledge, yes.

14:33:33 5 Q And then we can turn to page 4.

6 Is it fair to say that the reapportionment committee
7 worked to comply with these guidelines when enacting the 2011
8 plan?

9 A Yes.

14:33:53 10 Q Is it fair to say the reapportionment committee also
11 worked to comply with these guidelines when enacting the state
12 board of education plan?

13 A Yes.

14 Q And the guidelines, they outline a number of factors that
14:34:11 15 should be considered when redistricting, correct?

16 A Correct.

17 Q And one of those factors is communities of interest, yes?

18 A Correct.

19 Q And I will draw your attention to paragraph -- it looks
14:34:26 20 like paragraph B on this page towards the top.

21 A What page?

22 Q Oh, it's actually on your screen, or would you prefer a
23 hard copy?

24 A That's okay. I can see it.

14:34:36 25 Q Are these the -- is this the definition that the committee

1 enacted in 2011?

2 A Correct.

3 Q And does that definition -- that definition does not
4 include economic interests, correct?

14:34:53 5 A Well, it would come under recognized similar --
6 similarities of interests would be economic.

7 Q But it does not recognize economic interests, correct?

8 A Well, it -- if you're -- it's not spelled out there, but
9 when you talk about recognizing similarities of interests,
14:35:20 10 certainly would be economics.

11 Q Would you agree that it's not always possible to protect
12 communities of interest?

13 A I agree.

14 Q And Mr. Walker, I think, showed you another set of these
14:35:41 15 same guidelines.

16 MS. MADDURI: So, Heather, would you mind putting up
17 Defendant's Exhibit 3 at page 267 in addition to this?

18 BY MS. MADDURI:

19 Q Senator, I think Mr. Walker talked to you about the page,
14:36:29 20 the page 267 of Defendant's Exhibit 3 that's on the right side
21 of your screen. And I want to draw your attention to letter D
22 at the bottom of that page. So these guidelines were in place
23 prior to the ones you adopted in 2011, correct?

24 A Correct.

14:36:49 25 Q And these plans noted that the plan, the redistricting

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1 plan, whichever one it was would attempt to preserve the cores
2 of existing districts, correct?

3 A Correct.

4 Q And the guidelines the committee passed when you were the
14:37:04 5 co-chair in 2011 did not contain that requirement, correct?

6 A I'm -- I can't answer that.

7 Q I can draw your -- excuse me. Senator Dial, in 2011, you
8 were co-chairman of the reapportionment committee, correct?

9 A Correct.

14:38:03 10 Q And you were responsible for helping to prepare the
11 congressional district map that was adopted, correct?

12 A Correct.

13 Q But you were not actually involved in drawing the map,
14 correct?

14:38:12 15 A Correct.

16 Q The congressional delegation hired an outside consultant
17 for that, correct?

18 A Correct.

19 Q And that consultant his name, I believe, was Randy
14:38:23 20 Hinaman, correct?

21 A Correct.

22 Q And Mr. Hinaman was not hired by the reapportionment
23 committee, correct?

24 A Correct.

14:38:29 25 Q And Mr. Hinaman did not consult with the reapportionment

1 committee in preparing the 2011 plan, correct?

2 A Correct.

3 Q Mr. Hinaman brought you the congressional plan he
4 prepared, correct?

14:38:42 5 A Correct.

6 Q And that plan was adopted with minimal changes; is that
7 correct?

8 A Correct.

9 Q And Mr. Hinaman was hired by the congressional -- sorry.
14:38:56 10 I already asked you that.

11 You also discussed during your testimony a call that you
12 had with the congressional delegation regarding the 2011 plan.
13 That call involved, I think you said six of the seven members
14 of the delegation, correct?

14:39:14 15 A Correct. I'm not sure if one of the congressmen was on
16 it, Congressman Aderholt. I think he was, but I'm not sure. I
17 think he was on and had to leave. But I just can't be certain
18 on that.

19 Q Understood. That call was quite brief, correct?

14:39:32 20 A Relatively brief, yes.

21 Q And, Senator, you've never had any other communication
22 with Congresswoman Sewell regarding the 2011 plan, correct?

23 A Correct.

24 Q Congresswoman Sewell never told you anything about how to
14:39:54 25 comply with the Voting Rights Act on that call, correct?

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1 A Correct.

2 Q And she never told you that she thought the black voting
3 age population in her district needed to comply with Section 2
4 of the Voting Rights Act, correct?

14:40:09 5 A Correct.

6 Q And she never told you her thoughts on what the Black
7 Voting Age Population would need to be to comply with Section
8 2, correct?

9 A Correct.

14:40:25 10 Q And, Senator Dial, the committee did not do any analysis
11 to determine whether a second black congressional district --
12 black majority congressional district could have been created
13 in 2011, correct?

14 A Correct.

14:40:39 15 Q The committee did not consider whether it was possible to
16 draw that second majority black district in 2011, correct?

17 A Correct.

18 Q The committee did not actually consider any plans that
19 proposed a second majority-minority district, correct?

14:40:58 20 A Correct.

21 Q And neither you nor anyone else on the committee did any
22 analysis to determine the percentage of black voters that
23 needed to be in CD 7 in order for black voters to be able to
24 elect their candidates of choice, correct?

14:41:12 25 A Correct.

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1 Q And you did not review the election history of
2 Congressional District 7 prior to adopting the plan, correct?

3 A Correct.

4 Q And you're not aware of anyone else on the committee who
14:41:28 5 reviewed the election history of Congressional District 7 prior
6 to adopting that plan, correct?

7 A Correct.

8 Q You also testified earlier that there were a number of
9 voters that had to be -- or citizens who had to be added to CD
14:41:43 10 7 between the -- as a result of the population shifts between
11 2001 and 2011. Do you remember that?

12 A Correct. Yes.

13 Q But you were not actually aware of the racial composition
14 of the voters that were added to CD 7 to meet that gap,
14:42:02 15 correct?

16 A Correct. We just tried to keep counties contiguous as
17 possible.

18 Q You would agree that it would have made sense, if
19 necessary, to extend Terri Sewell's district into Mobile,
14:42:28 20 correct?

21 A Say again.

22 Q You would agree that it would have made sense to extend
23 Terri Sewell's district into Mobile 7 -- into Mobile in CD 7,
24 correct?

14:42:38 25 A It would have made sense -- if she had approved the

1 already plan that we had given, it would not make sense to
2 deviate from what she had already approved and to create
3 opposition to the plan that the seven-member legislative
4 delegation had approved.

14:43:00 5 So to expand anything above what they had given me would
6 have created opposition to the plan as we saw it. And so it
7 made no sense to do anything other than what they had agreed
8 upon.

9 Q Senator, you totally support maintaining one
14:43:20 10 majority-minority congressional district in Alabama, correct?

11 A Correct.

12 Q And, Senator, you believe that allowing minorities to have
13 representation that is more than the proportion of the
14 population that they make up would violate the ideas and
14:43:38 15 philosophy of the state and would violate the state
16 constitution, correct?

17 MR. WALKER: Objection, Your Honor. The part of
18 Senator Dial's deposition that is being referred to now was
19 when he was being asked questions about the 2020 six-district
14:43:59 20 plan which the Court has ruled is irrelevant.

21 MS. MADDURI: May I respond?

22 THE COURT: All right.

23 MS. MADDURI: I am not going to ask him any questions
24 about a future district or 2020 district.

14:44:14 25 MR. WALKER: But that's what these questions were

1 about.

2 MS. MADDURI: I haven't actually -- I'm asking him a
3 question right now, Your Honor.

4 THE COURT: Right.

14:44:25 5 MR. WALKER: She wants to ask him about testimony that
6 he gave when he was being asked about the 2020 six-district
7 plan.

8 THE COURT: Okay. In other words, set the context for
9 your question or allow him to answer a different question than
14:44:42 10 what was asked at the deposition.

11 Do you understand what I'm saying? In other words, don't
12 be taking his testimony at a deposition out of context with a
13 question you're asking now.

14 MS. MADDURI: May I confer for a moment?

14:44:59 15 THE COURT: Yes, you may.

16 MS. MADDURI: Thank you, Your Honor.

17 BY MS. MADDURI:

18 Q So, Senator, I just want to ask you: Do you believe that
19 allowing minorities to have more representation than their
14:46:51 20 proportion of the population would violate the ideas and
21 philosophies of the state of Alabama?

22 A Do I believe that having a district with more than a
23 majority members of a minority population would violate the
24 Constitution?

14:47:11 25 Q No. I asked if you believe that allowing minorities to

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1 have representation that exceeds their proportion of the
2 population in Alabama would violate the ideas and philosophies
3 of the state?

4 A Yes.

14:47:27 5 Q Alabama currently has one majority black district,
6 correct?

7 A Correct.

8 Q And that's about 14 percent of the districts. Does that
9 sound right to you? One of seven? I know we're not good at
14:48:04 10 math in here. But I can represent to you that that's about
11 14 percent.

12 A Okay.

13 Q Is that right?

14 A You want me to get my calculator out? We need math
14:48:17 15 teachers in Alabama.

16 THE COURT: We sure do.

17 THE WITNESS: I am sure you're probably correct.

18 BY MS. MADDURI:

19 Q I used a calculator. I didn't do it in my head. I'm also
14:48:30 20 very inept in that field.

21 So right now, would you agree that African-Americans in
22 Alabama have a lower proportion of representation than their
23 share of the population?

24 A At 14 percent?

14:48:44 25 Q They currently have 14 percent of the seats in the

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1 delegation. And I can represent to you -- would you -- let me
2 back up.

3 Would you agree with me that African-Americans right now
4 in the state of Alabama make up about a quarter of the
14:48:54 5 population?

6 A Correct.

7 Q So would you agree with me that African-Americans in
8 Alabama have a lower proportion of the representation out of
9 the seats in the congressional delegation than their share of
14:49:07 10 the population?

11 A Yes.

12 Q And currently six of the seven congressional districts are
13 majority white, correct?

14 A Correct.

14:49:28 15 Q And would you -- do you have any reason to dispute that
16 67 percent of the state's population right now is white?

17 A I'm not -- I don't have those statistics, but -- I can't
18 answer that. I don't know.

19 Q Do you have any reason to disagree with me that that's --

14:49:51 20 A I have no reason to disagree or agree.

21 Q And -- I can represent to you that the population right
22 now in Alabama is about 67 percent non-Hispanic white.

23 A Before this census?

24 Q Correct. As of 2010 census data, correct.

14:50:12 25 A Okay.

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1 Q And we're going to keep doing math. Would you agree with
2 me six out of seven is about 86 percent? I can represent to
3 you that it is.

4 A Okay.

14:50:27 5 Q So is the fact that there is a greater proportion of
6 majority white districts in the population in Alabama, is that
7 consistent with the ideas and the philosophies of the state in
8 your opinion?

9 A Say again.

14:50:41 10 Q Is the fact that there's a greater proportion of majority
11 white districts right now in Alabama than the white population,
12 is that consistent with the ideas and philosophies of the state
13 of Alabama?

14 A No. I don't -- but -- you're boxing me in. I can't
14:51:00 15 create two districts and reach what you want to. And so
16 neither one of the numbers will work for me.

17 If we want to get into a numbers game, you're talking
18 about the population. You're talking about what the six
19 congressional districts are, and then what the seventh district
14:51:24 20 are. And then if I'm going to create two, then I'm going to
21 create a disproportionate on the other side.

22 Q No, sir. I'm not asking you about a situation where
23 there's six districts. I'm asking you about the current map
24 that has seven districts.

14:51:37 25 THE COURT: He was talking about seven.

1 BY MS. MADDURI:

2 Q Yes?

3 A I'm talking about seven. I'm saying if you are going to
4 make me take one of my six and make a minority, then I'm going
14:51:45 5 to disproportion the other way.

6 The question -- you're boxing me in if I answer yes or no
7 either way it's -- it's no easy answer to that question.

8 Q Sure. Would you agree with me that two out of seven is
9 about 28 percent?

14:51:59 10 A Probably 20, a little over 28, probably, yeah.

11 Q And I can represent to you that the African-American
12 population right now as of the 2010 census in Alabama is over
13 26 percent?

14 A Okay.

14:52:12 15 Q That's all I have.

16 THE COURT: Redirect?

17 MR. WALKER: Just a little bit, Your Honor.

18 THE COURT: Or do you want to take a break?

19 MR. WALKER: I think just one or two questions.

14:52:27 20 THE COURT: Okay. We never say one; but one or two.

21 MR. WALKER: I didn't say one. I said one or two.

22 REDIRECT EXAMINATION

23 BY MR. WALKER:

24 Q Senator Dial, you were asked whether or not the committee
14:52:46 25 assessed whether or not you could draw two majority

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1 African-American -- two majority minority -- minority-majority
2 districts. Do you recall that?

3 A Yes.

4 Q When you accepted the plan, were you relying on the
14:53:05 5 expertise of Terri Sewell as a successful African-American
6 politician to tell you what she needed for her district?

7 A Yes.

8 Q And were you also relying on the experience of Randy
9 Hinaman to tell you what was needed?

14:53:22 10 A Yes.

11 Q And did you also rely on what you understood from your
12 conversations from Senator Sanders or other members of the
13 African-American legislative delegation to be necessary for a
14 successful minority-majority district?

14:53:43 15 A Yes.

16 Q And let me clear this up. You're not against
17 African-American members of the Congress, are you?

18 A No.

19 Q If all seven districts elected African-American congress
14:53:56 20 people, you would be fine with that?

21 A I certainly would.

22 MR. WALKER: I have nothing else. Thank you, sir.

23 THE COURT: Any cross?

24 MS. MADDURI: No, Your Honor.

14:54:08 25 THE COURT: Okay. All right. Thank you. Thank you,

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1 Senator Dial. We appreciate you educating us about this
2 process.

3 (Discussion off the record.)

4 MR. WALKER: Your Honor, that's the last witness we
14:54:42 5 have today.

6 THE COURT: Okay. All right.

7 (Discussion off the record.)

8 (Whereupon, the above proceedings were concluded at 2:55
9 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K. Decker

11-13-19

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LAKEISHA CHESTNUT, an individual; *
MARLENE MARTIN, an individual; * 2:18-cv-00907-KOB
BOBBY DUBOSE, an individual; * November 8, 2019
RODNEY LOVE, an individual; KAREN * Birmingham, Alabama
JONES, an individual; JANICE * 9:00 a.m.
WILLIAMS, an individual; RODERICK *
CLARK, an individual; JOHN HARRIS, *
an individual, *
Plaintiffs, *
vs. *
JOHN H. MERRILL, in his official *
capacity as Alabama Secretary of *
State, *
Defendant. *

TRANSCRIPT OF BENCH TRIAL
VOLUME V
BEFORE THE HONORABLE KARON O. BOWDRE
CHIEF UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(In open court.)

THE COURT: Will the defendant call your next witness?

MR. DAVIS: Your Honor, the defendant calls Dr. Trey
Hood.

M. V. Hood, III,
having been first duly sworn by the Courtroom Deputy Clerk, was
examined and testified as follows:

THE COURTROOM DEPUTY CLERK: Please state your name
for the record.

THE WITNESS: M. V. Hood, III.

THE CLERK: And spell your first and last name for the
record.

THE WITNESS: M, period, V, period, H-O-O-D, I-I-I.

THE COURTROOM DEPUTY CLERK: Thank you.

MR. DAVIS: Ready?

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Good morning, Dr. Hood.

A Good morning.

Q You go by Trey, do you not?

A That's fine.

Q Okay.

A Yes, I do.

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1 Q Dr. Hood, you've been retained by the defendants as an
2 expert in this case, correct?

3 A Correct.

4 Q And what is your field?

09:04:27 5 A I'm a political scientist at the University of Georgia.

6 Q In front of you, Dr. Hood, you'll see a copy of
7 Defendant's Exhibit 11. And is that a copy of the report that
8 you submitted in this case?

9 A Yes.

09:04:43 10 Q And did you attach a copy of your CV to that report?

11 A Yes.

12 MR. DAVIS: Your Honor, we submit Dr. Hood as an
13 expert in political science and for the matters discussed in
14 his report.

09:05:03 15 MS. KHANNA: No objection, Your Honor.

16 THE COURT: Thank you. Recognized as an expert.

17 BY MR. DAVIS:

18 Q Dr. Hood, I'll refer you to page 4 of your report, please.

19 And as part of your analysis in this case, did you assess
09:05:26 20 the level of African-American majorities in the districts in
21 plaintiffs' illustrative plans?

22 A I did.

23 Q And how did you perform that analysis?

24 A I had block-level data that had census data attached to it
09:05:44 25 relating to the racial makeup of each census block. And I

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1 simply aggregated them into the districts as presented by
2 Mr. Cooper's plans.

3 Q And what measurement did you use for African-American
4 voting strengths?

09:06:00 5 A So I used single-race black non-Hispanic as my metric.

6 Q What measurement do you commonly use in your academic
7 research, Dr. Hood?

8 A That would be the exact same measure I would use in my
9 academic research.

09:06:14 10 Q Single-race black?

11 A Single-race black non-Hispanic.

12 Q Are you aware of any research, Dr. Hood, in this case or
13 elsewhere which shows that persons who identify as any-part
14 black vote cohesively with persons who identify as single-race
09:06:31 15 black?

16 A I'm not. Again, I typically separate individuals in that
17 subset into another category.

18 Q And, Dr. Hood, I've put on the screen a copy of your Table
19 1. Would you walk us through and tell us about the results of
09:06:48 20 your analysis?

21 A Sure. These -- the first column to the left is simply
22 Mr. Cooper's calculations based on his report for CD 7 and 2
23 for his hypothetical plans. And you can also see the enacted
24 districts as they stand right there.

09:07:09 25 Q Okay.

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1 A And then the columns to the right are for CD 2 and 7 for
2 my racial calculations for those districts for each one of the
3 four hypothetical plans Mr. Cooper drew.

4 Q Okay. And when you performed the analysis using the
09:07:28 5 single-race measurement, were African-Americans a majority of
6 voting age population in Districts 2 and 7 in each of
7 plaintiffs' illustrative plans?

8 A No.

9 Q Where were they not?

09:07:42 10 A Hypothetical 1 and 2. Excuse me. Sorry. Hypothetical 3
11 and 4 there's at least one of the districts in Mr. Cooper's
12 plan that's not majority black voting age population.

13 Q Now, Dr. Hood, there was testimony earlier in this case
14 from one of plaintiffs' experts, Dr. McCrary, who referred to
09:08:06 15 the so-called one-drop rule. Are you familiar with that?

16 A Yes.

17 Q And what is the one-drop rule?

18 A Well, I mean, it was -- it was a metric put in place by
19 the state a long time ago for racial discrimination
09:08:25 20 essentially. So if you were any-part black, you were
21 essentially considered to be black.

22 Q And that rule was -- was that rule discriminatory in
23 origin?

24 A Yes. Certainly.

09:08:37 25 Q Would it be appropriate to adopt such a policy for use in

1 the social sciences?

2 A Well, I wouldn't adopt that rule, no.

3 Q I refer you now, Dr. Hood, to page 5 of your report,
4 which, again, is Defendant's Exhibit 11.

09:09:01 5 Did you perform a core retention analysis of plaintiffs'
6 illustrative districts?

7 A I did, yes. For each one of the hypothetical plans.

8 THE COURT: And by hypothetical plan, is that the same
9 as the plaintiffs' illustrative plan number-wise? I mean, I'm
09:09:26 10 trying to make sure that I understand that we're comparing
11 apples and apples. And Hypothetical 1 is not what --

12 MR. DAVIS: I can answer your question, Judge, and I
13 think the answer is yes. But let me ask a question of Dr. Hood
14 to make sure it's appropriately in the record.

09:09:43 15 THE COURT: Okay.

16 BY MR. DAVIS:

17 Q Dr. Hood, when you say hypothetical plans, do you mean the
18 four plans that Bill Cooper has submitted in this case as a way
19 of suggesting how Alabama might draw two majority black
09:09:54 20 districts?

21 A Yes.

22 Q Okay.

23 THE COURT: And are we talking about the original
24 plans or the revised plans from Mr. Cooper?

09:10:06 25 BY MR. DAVIS:

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1 Q Did you assess the plans as submitted in Dr. Cooper's
2 original report, Dr. Hood, or did you assess the plans that he
3 had tweaked in a supplemental report?

4 A I don't know that I had access to the supplemental report.
09:10:24 5 I believe these are the original.

6 MR. DAVIS: The revised illustrative plans, Your
7 Honor, had not been prepared at the time of our expert
8 designations.

9 THE COURT: Okay.

09:10:36 10 BY MR. DAVIS:

11 Q Dr. Hood, is it your understanding that when Mr. Cooper
12 revised three of the four illustrative plans that he was making
13 minor adjustments in Jefferson County?

14 A That's my understanding, yes.

09:10:47 15 Q And that was to ensure, was it not, that Congresswoman
16 Terri Sewell's residence was, in fact, included in District 7?

17 A That was my understanding, yes.

18 Q Would that materially change your analysis in any way?

19 A I don't believe so, no.

09:11:02 20 Q Now, tell us what a core retention analysis is, Dr. Hood.

21 A So a core retention analysis asks the question for a given
22 congressional district or a district of any kind how many of
23 the residents in the new district were carried over from the
24 previous district? So in this case, I'm comparing the
09:11:23 25 illustrative for hypothetical plans Mr. Cooper drew to the

1 enacted plan that was put in place in 2011.

2 Q Okay. And are you assessing -- I think you just said
3 this, but I want to be clear. Are you assessing how much
4 geography of District 1 in this plan is included in the
09:11:40 5 geography of District 1 in that plan, or how many of the
6 people?

7 A This is population based.

8 Q Population?

9 A Voting age population to be more specific.

09:11:51 10 Q And how did you perform this analysis? What data did you
11 use?

12 A Well, again, I had block-level census data files, and I
13 had the district allocation numbers for each block for the
14 hypothetical or the illustrative plans and the enacted plans.

09:12:01 15 Q Okay.

16 A So I just compared each one of the blocks -- of course, I
17 didn't do this manually. But I'm looking to see where Block 1
18 was in the enacted plan and where it ended up in the
19 hypothetical or the illustrative plan.

09:12:19 20 Q Okay. So let's look at your Table 2, Dr. Hood. And I see
21 there District 1. And if I go along that row under the heading
22 Hypothetical 1, I see the number 58.42. What does that number
23 58.42 tell us about District 1 in Hypothetical Plan 1?

24 A Well, it means specifically that 58.42 percent of the
09:12:43 25 population in Hypothetical District 1 resided in Enacted

1 District 1 previously.

2 Q Okay. So Mr. Cooper's plan includes 58.42 percent of the
3 persons who reside within District 1, or at least who did as of
4 the 2010 census?

09:12:59 5 A Correct.

6 Q Okay. And did you draw any conclusions from performing
7 this analysis?

8 A Well, district core retention levels are fairly high for
9 six of the seven districts. For District 2, though, district
09:13:16 10 core retention levels for these illustrative plans are fairly
11 low; 28.34 percent in Hypothetical 1; 39.50 percent
12 Hypothetical 2; 29.19 in Hypothetical 3; and 28.46 in
13 Hypothetical 4.

14 Q Okay. So would it be fair to say, if you look, say, at
09:13:44 15 District 5, that if the Alabama Legislature switched from its
16 enacted plan to one of Mr. Cooper's plan, it would be
17 preserving almost entirely the core of District 5?

18 A Virtually, yes.

19 Q Okay. And it would be preserving a very small amount of
09:14:01 20 the core of District 2?

21 A Correct.

22 Q Okay. So does this suggest to you, Dr. Hood, that in
23 order to enact one of Mr. Cooper's hypothetical or illustrative
24 plans, that that -- that would require losing a lot of the core
09:14:21 25 of District 2?

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1 A Yes. From this analysis, that would be the conclusion.

2 Q That would suggest that it would not take merely minor
3 tweaks in the plan in order to draw a second majority black
4 district?

09:14:33 5 A Fairly large population movements would be required.

6 Q Now, look at page 6 of your report, Dr. Hood. And you
7 performed, did you not, an analysis of population shifts?

8 A Yes.

9 Q How is that different from the core retention analysis?

09:14:51 10 A Well, in some ways, it's similar. But here I'm looking at
11 racial groups that are being moved in and out of particular
12 districts.

13 If you were to draw a hypothetical plan, say, 1, as
14 compared to the enacted plan, it's a little more detail here.

09:15:10 15 Q Okay. And actually, on the next page, on page 7 of your
16 report, I see Table 3. And first off, use this if you want to
17 answer this question, but just tell us how you did the
18 population shift analysis.

19 A Okay. Well, again, I'm using the same block-level
09:15:28 20 population data. Again, this has racial data appended to these
21 files. So it's the same set of files I'm using for the
22 analysis.

23 And here I'm just looking to see, again, racially speaking
24 where people are being moved in and out of these districts in
09:15:49 25 order to create one of these hypothetical plans.

1 THE COURT: Okay. So Table 2 just looked at the shift
2 of -- or the maintaining of the core for population in general?

3 THE WITNESS: Yes. Yes, Your Honor.

4 THE COURT: And then Table 3 is breaking it down by
09:16:06 5 race?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Okay.

8 BY MR. DAVIS:

9 Q Okay. Did you see any relationship, Dr. Hood, in who
09:16:15 10 Mr. Hood was moving in and out of districts and race?

11 A Yes. There is definite patterns here. And I did some
12 statistical testing, as well, for these tables. And that's
13 reported in the footnotes.

14 Q Yeah. You know, I want to try asking that last question
09:16:34 15 again. You understood what I meant and you answered it well,
16 but it was a horrible question.

17 Was there a pattern, Dr. Hood, in your opinion, between
18 race and the people that Mr. Hood -- that Mr. Cooper was moving
19 in and out of the districts?

09:16:47 20 A Yes. There's definitely a pattern.

21 Q Okay. And what is that pattern?

22 A Well, it varies, but, for instance, if you look at Table
23 3, so this would be illustrative or Hypothetical Plan 1, as
24 compared to the benchmark plan.

09:17:03 25 So, again, I just did this for Districts 2 and 7 for each

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1 one of these plans.

2 If you look at District 2, if you look at the column that
3 says moved out of district, 20 percent of those residents in
4 the current District 2 that were moved were black residents
09:17:24 5 versus almost 75 percent of those that were moved out of the
6 district who were white residents.

7 Of those moved into the district, the majority,
8 53.1 percent, were black versus 42.8 percent who were white.

9 Again, I applied a very simple and straightforward
09:17:44 10 statistical test to these tables. It's called the chi-square
11 test. It's very old. It's been around a long time. And it
12 asks the questions -- in this case, are race and population
13 movement independent of one another? I can definitively reject
14 that null hypothesis in this case and say that race and
09:18:07 15 population movement are related.

16 Q Okay.

17 A Statistically speaking.

18 Q Now, you said the chi-square test?

19 A Chi-square.

09:18:14 20 Q And that's C-H-I like the Greek letter Chi?

21 A C-H-I dash square.

22 And it's footnoted in the report.

23 Q And you did a similar analysis, did you not, for all of
24 the hypothetical plans?

09:18:28 25 A I did.

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1 Q Yes. And those are presented -- well, did you find a
2 similar pattern or a connection between race and population
3 movements in each of Mr. Cooper's illustrative plans?

4 A Yes. The overall patterns there, the degree to which it
09:18:46 5 may be present, varies by hypothetical plan.

6 Q Dr. Hood, on page 11 of your report, you looked, did you
7 not, at turnout rates in Alabama?

8 A I did.

9 Q How did you perform that analysis?

09:19:08 10 A This was a set of data I received from the Alabama
11 Secretary of State's office. So these are voter registration
12 and history files.

13 So I'm looking at turnout as a percentage of registrants
14 in this case. And I had data for the 2010 through 2018
09:19:28 15 election cycles.

16 And, again, in Alabama, it's requested that registrants
17 record their race. And so we're not estimating that. I'm
18 using this from the voter file again -- race of registrant,
19 that is. So we can compare turnout rates by race -- white,
09:19:48 20 black in this case.

21 Q I'll refer you to Table 7, Dr. Hood, which is on page 11
22 of your report. And tell us about your conclusions.

23 A Well, a little bit about the table. Again, these are
24 white and black turnout rates for Alabama. Again, these are
09:20:06 25 statewide turnout rates, I want to emphasize, for the 2010,

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1 '12, '14, '16, and '18 election cycles. So I have it broken
2 down for each cycle. And then I have a difference measure over
3 there. And then at the bottom I have some different mean
4 figures, the average across all elections cycles, the average
09:20:25 5 for midterm election cycles, and the average for presidential
6 election cycles.

7 So with the exception of one election cycle, which was
8 2012, there is a gap between black and white turnout rates in
9 Alabama. Maybe it's best to look at the mean numbers down at
09:20:41 10 the bottom.

11 Across all elections that I analyze election cycles, the
12 black white turnout rate gap is 4.8. For midterm elections
13 it's 5.6, and for presidential elections it's 3.6.

14 THE COURT: And that gap goes which way?

09:21:02 15 THE WITNESS: There's more white turnout than black
16 turnout, Your Honor, with the exception of the 2012
17 presidential election.

18 THE COURT: I want to make sure that -- we've had a
19 lot of jokes this week about how lawyers aren't mathematicians
09:21:17 20 or not good at math -- and I want to make sure I'm looking at
21 these numbers correctly.

22 THE WITNESS: Okay.

23 THE COURT: The percentage you have for -- for
24 example, we'll just take 2010. The 52.4 percent white, is that
09:21:34 25 the 52.4 percent of the white registered voters turned out to

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1 vote? Is that what that number reflects?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Okay. I just wanted to make sure that my
4 very non-math mind was following that and understood that.

09:21:50 5 Thank you.

6 THE WITNESS: And it is the -- I usually footnote the
7 calculations in the report. So if you have any questions, it's
8 usually footnoted.

9 THE COURT: All right. Thank you.

09:22:00 10 THE WITNESS: I think it's footnote 21 in this case.

11 THE COURT: Okay. Thank you.

12 BY MR. DAVIS:

13 Q Dr. Hood, if there is a gap between white turnout and
14 black turnout in a particular election, is that relevant
09:22:17 15 information when you're assessing whether a district that is
16 close to 50 percent black voting age population will, in fact,
17 result in the election of the candidate of choice of the
18 African-American voters?

19 A Yes. And certainly in this case in Alabama I think it's
09:22:34 20 been established probably that there are high levels of
21 racially polarized voting. To the extent to which that's the
22 case, it's very important to look at the racial composition of
23 the district.

24 Q And to be clear, again, you're not saying this is the gap
09:22:51 25 in turnout in any particular congressional district?

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1 A These are statewide turnout numbers.

2 Q Statewide results?

3 A Yes.

4 Q I am going to refer you now to page 14 of your report.

09:23:17 5 There's a section in your report, Dr. Hood, that's headed
6 Black Voting Patterns. What analysis were you performing here?

7 A I was asked to analyze black voting patterns in Alabama
8 and in other states, as well. And in order to do that, I
9 chose, of course, Alabama, and I also looked at 20 other states
09:23:41 10 that had a black population of at least 10 percent or greater.
11 And those states are listed on page 14 under Section 6.

12 Q Okay. Did the states that you reviewed include southern
13 states?

14 A All the southern states.

09:23:57 15 Q Okay.

16 A Or at least the way I defined the south.

17 Q And did it include northern states?

18 A Yes.

19 Q So there I see under black voting patterns about the third
09:24:07 20 line under this district you say these states are Arkansas,
21 Connecticut, Delaware, Florida, et cetera. And that's a
22 listing of all the states that you reviewed?

23 A Yes.

24 Q And these are states where African-Americans are
09:24:21 25 10 percent or more of the total population?

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1 A Yes.

2 Q Okay. And what did you find when you looked at these
3 voting patterns?

4 A Well, I guess a little more background. I looked at two
09:24:32 5 different data sources for this -- the national exit polls that
6 occur on election day typically after general election cycles
7 in the U.S.; and also another data source, the CCES, the
8 Cooperative Congressional Election Study, which is a very
9 common form of -- which is a very common survey that's used in
09:24:55 10 a lot of research in political science.

11 So I'm not estimating these voting patterns. I'm using
12 these survey data to make these inferences.

13 And, again, I think I went -- it looks like I went from
14 2008 to 2018 on this analysis.

09:25:15 15 Q Let's look at the results when you were reviewing the
16 national exit polls, Dr. Hood. I'll refer you to Table 9 on
17 page 15 of your report.

18 A So there were three different offices that I was able to
19 analyze using the national exit polls -- President, Governor,
09:25:41 20 and Senate again for 2008 through 2018. And those figures are
21 compiled in Table 9. There are more detailed tables for each
22 year in office by state in the appendix of the report. So this
23 is sort of a summary table here.

24 What you find consistently are very high levels of black
09:26:06 25 support for Democratic candidates both in these comparison

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1 states and in Alabama. So Table 10 is the same thing just for
2 Alabama.

3 Q Okay. So looking at the top table, Table 9, I see in the
4 year 2008 under President, 95.6 percent?

09:26:18 5 A Correct.

6 Q What does -- 95.6 percent of what? And what does that
7 mean?

8 A 95.6 percent of African-Americans in these comparison
9 states voted for the Democratic candidate for president in
09:26:32 10 2008.

11 Q Okay. So that's of the 21 states where African-Americans
12 are 10 percent or more of the population, Table 10 singles out
13 Alabama, and Table 9 is averaging up the results from the other
14 20 states?

09:26:46 15 A Correct. Right. So Alabama is not part of the average in
16 Table 9, just to be clear.

17 Q Right. Overall, what's the result for all races,
18 Dr. Hood?

19 A Across -- again, this is 135 different races in different
09:27:06 20 states. The black support rate for Democratic candidates from
21 this data set was 91.1 percent.

22 Q And what did you find for the state of Alabama again when
23 you looked at the national exit polls?

24 A Again, there are far fewer comparison points just simply
09:27:22 25 for Alabama. But the support rate in Alabama was 94.3 percent

1 for Democratic candidates.

2 Q Now, if you will turn the page, Dr. Hood, I'm going to put
3 Tables 11 and 12 up on the screen.

4 These are on page 16 of the report, Defendant's
09:27:48 5 Exhibit 11. And are these the results from the CCES data?

6 A Yes.

7 Q And what did you find?

8 A Very similar patterns; very high rates of support for
9 Democratic candidates among African-Americans either in the
09:28:07 10 comparison states or in Alabama.

11 Q Okay.

12 A It's 91.5 percent in the comparison states across all
13 these races versus 90.9 percent in Alabama.

14 Q Okay.

09:28:20 15 A And in this particular analysis, I was able to include
16 some data from U.S. House races, as well, in addition to
17 President, Senate, and Governor.

18 Q Is there any significant difference that you saw,
19 Dr. Hood, in African-American support for Democratic candidates
09:28:39 20 in Alabama and African-American support for Democratic
21 candidates in other states?

22 A It's very similar.

23 Q And that includes states outside the south?

24 A Correct.

09:28:51 25 Q Throughout the country?

1 A Right. As long as they have an African-American
2 population of 10 percent or greater.

3 Q Dr. Hood, this actually goes back to some of the
4 population shift analysis, and I forgot to ask this: You
09:29:06 5 mentioned at one point when you're looking at the relationship
6 between race and the people that Mr. Cooper was moving in and
7 out of districts, and you say that the relationship is
8 statistically significant, correct?

9 A Correct, in that case.

09:29:20 10 Q What does that mean, statistically significant?

11 A Well, using the specific Chi-square test that I was
12 talking about, statistically significant in that case means
13 that there's a relationship between population movement and
14 race. Now, that's where it ends with that particular test. I
09:29:40 15 can't make any inferences beyond that.

16 The null hypothesis in that case would be that there's no
17 relationship between race and population movement, that those
18 factors are independent of one another. But that's not what I
19 found.

09:30:00 20 Q I'd like to go back now, Dr. Hood, to page 13 of your
21 report.

22 I've put Table 8 on the screen from page 13 of your
23 report. Can you tell me what you were looking at here?

24 A So I'm looking at population in Mr. Cooper's study area as
09:30:34 25 he defined it. Again, these are whole counties. I'm not using

1 partial counties for this particular analysis. But I'm looking
2 at what's happening with the black voting age population in
3 2010 as compared to 2017, which is the last year that I had
4 data that was usable for this comparison.

09:30:55 5 MS. KHANNA: Objection, Your Honor. I believe this
6 goes to the post-2020 considerations that we've already agreed
7 are not relevant in this case.

8 MR. DAVIS: Your Honor, it is in the section of his
9 report titled Post-2020 Considerations, but we think the fact
09:31:12 10 that there are shifts in population is relevant to our mootness
11 argument.

12 We're not suggesting that -- we're only suggesting that
13 the fact -- I think as Dr. Hood would testify if you allow it,
14 that there's loss of population in some areas and gain of
09:31:28 15 population in others that would show that the illustrative
16 districts could not, in fact, be passed as they are after 2020,
17 meaning in our view it's moot.

18 THE COURT: Well, that's not the question of the
19 mootness that I've asked to be briefed. There's more of a
09:31:49 20 legal issue that we discussed yesterday.

21 I think that we all can acknowledge, or at least I hope we
22 can, that the 2020 census may well be very different from the
23 2010 census, and that it will be the 2020 census that will
24 determine how districts will be drawn in reapportionment or
09:32:17 25 redistricting then.

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1 So I didn't let the plaintiffs get into the -- I think
2 2018 was when I stopped them. So I think I'll stop you with
3 2017.

4 MR. DAVIS: I will move on.

09:32:31 5 THE COURT: Okay. Thank you.

6 MS. KHANNA: Thank you, Your Honor.

7 BY MR. DAVIS:

8 Q Dr. Hood, when you looked at the black support of
9 Democratic candidates, did you find overall that
09:32:55 10 African-Americans supported Democratic candidates over
11 90 percent in every state you reviewed?

12 A Well, it wasn't always over 90 percent. That was the
13 average figure.

14 Q The average overall, of all the elections you reviewed was
09:33:09 15 over 90 percent?

16 A Yes. Yes.

17 Q And that's in Alabama and outside Alabama?

18 A Right. So black support for Democratic candidates is
19 fairly monolithic is the way I would put it, which is not a
09:33:21 20 surprise, given -- I hadn't studied all these states, but
21 certainly I studied the south quite a bit, and these patterns
22 were not a surprise to me. But they are documented here.

23 Q Now, look at page 17 of your report, Dr. Hood. And
24 Section 7 is titled Racial Comparison. Tell me what you were
09:33:44 25 looking at here.

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1 A So I'm comparing black and white citizens on a number of
2 sociodemographic characteristics. I think there were nine in
3 all, if I recall correctly. Most of these data are coming from
4 the Census Bureau, some of it from the Centers For Disease
09:34:03 5 Control, some of it from the Bureau of Labor Statistics. So
6 they're all government agencies.

7 So I'm looking at various disparity rates between black
8 and white citizens in Alabama and again in these 20 comparison
9 states that have a black population of at least 10 percent.

09:34:22 10 Q Okay. So let's look at Table 13, which is from page 18 of
11 your report, Dr. Hood. And we're not going to do this for each
12 category you reviewed, but using this as an example, tell us
13 what data you used, how you assessed this, and what your
14 findings were.

09:34:43 15 A Okay. So these are education levels, and these data come
16 from the American Community Survey, which is the census run by
17 the Census Bureau. And this is from 2017, specifically.

18 So the column to the left I'm looking at the percentage of
19 citizens in each one of these racial categories, blacks and
09:35:06 20 whites, who obtained at least a high school degree or
21 equivalent.

22 And in the column to the right, I'm looking at least a
23 college education -- a B.S. degree or higher.

24 Q And what is the column on the far right, for example, that
09:35:22 25 just says difference?

1 A So literally that's just the subtraction between the white
2 column and the black column.

3 Q Okay.

4 A So to run through an example, maybe, using Alabama high
09:35:34 5 school or equivalent, 87.7 percent of the white population in
6 Alabama has a high school or equivalency degree versus
7 81.6 percent of black citizens in Alabama. So the arithmetic
8 there is just 6.1 percent, the literal difference between those
9 two.

09:35:59 10 Q And what patterns did you find, if any, in the other
11 states that you reviewed?

12 A Well, the difference measure varies by state. Certainly
13 you can just look down the column and see that.

14 And the question I'm not really -- I'm not really asking
09:36:16 15 the question is, is the difference measure larger or smaller in
16 Alabama versus these other states, just whether or not a
17 disparity exists between blacks and whites on these various
18 sociodemographic characteristics in these other states and in
19 Alabama, as well. And the answer is, yes.

09:36:35 20 So in this case, the positive difference measure would
21 mean that there's a disparity between black and white education
22 rates.

23 Q Okay.

24 A And you can see there's a positive number all the way down
09:36:48 25 the column.

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1 THE COURT: Positive number meaning what?

2 THE WITNESS: The disparity rate -- in this particular
3 case, there are more whites who have a high school or
4 equivalency degree than blacks.

09:37:01 5 BY MR. DAVIS:

6 Q So if we're going to summarize your Table 13, you found,
7 did you not, that according to the data you reviewed, which
8 includes census and other data, that there is a gap between the
9 number of white citizens in Alabama or white persons in Alabama
09:37:18 10 who have a high school degree or greater and African-Americans
11 in Alabama who have a high school diploma or equivalent?

12 A Yes.

13 Q Okay. And did you --

14 A There's a similar gap for all these other 20 states.

09:37:28 15 Q You found --

16 A It's not the exact same figure, necessarily, but there's a
17 similar gap.

18 Q Yeah. The amount of the gap may vary, but you found such
19 a gap in each state that you reviewed, did you not?

09:37:43 20 A Correct.

21 Q Okay. Now, we're not going to take up court time,
22 Dr. Hood, going in detail of the other categories you looked
23 at. But if you would, flip through your report and just tell
24 the Court what other categories -- what other socioeconomic
09:37:59 25 categories you reviewed.

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1 A So in addition to education levels, I looked at food stamp
2 provision, median household income, per capita income, poverty
3 rate, home ownership rates, unemployment rates, and infant
4 mortality rates.

09:38:23 5 Q Dr. Hood, was there any category in any state you reviewed
6 where you did not find a gap?

7 A No.

8 Q That's true in Alabama and in all of the states that you
9 reviewed, correct?

09:38:40 10 A Correct. All these factors.

11 Q So that would include states that were below the Mason
12 Dixon line and states above the Mason Dixon line?

13 A Correct.

14 Q Dr. Hood, you mentioned in your report that in 2011
09:39:03 15 Alabama was subject to the retrogression standard of Section 5
16 of the Voting Rights Act, correct?

17 A Correct.

18 Q Dr. Hood, if a district is 65 percent African-American
19 voting age population, would you agree that at least in most
09:39:22 20 cases it is likely that the African-American voters would be
21 able to elect their candidate of choice?

22 A Yes, I would agree with that.

23 Q Is that likelihood 100 percent iron-clad guarantee in
24 every election?

09:39:35 25 A No.

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1 Q Would you agree that if the voting age population is
2 dropped to 50.1 percent, that the likelihood has been somewhat
3 lessened that African-Americans would be able to elect their
4 candidate of choice?

09:39:53 5 A In that case, the probability would have been decreased,
6 yes.

7 MR. DAVIS: Your Honor, may I have a moment?

8 THE COURT: Yes, you may.

9 MR. DAVIS: Your Honor, I pass the witness.

09:40:18 10 THE COURT: Cross-examination?

11 MS. KHANNA: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. KHANNA:

14 Q Good morning, Dr. Hood.

09:40:38 15 A Good morning.

16 Q It's good to see you again.

17 A You, too.

18 Q Dr. Hood, at the top of page 3 of your report, which is
19 marked Defendant's Exhibit 11, you write that, I have been
09:40:55 20 asked by counsel for the defendant to provide a response to
21 reports by plaintiffs' experts, Mr. William Cooper, and
22 Professor Maxwell Palmer. Did I read that correctly?

23 A Yes.

24 Q And you provided no response to the expert report of
09:41:10 25 Dr. Peyton McCrary regarding the history of voting-related

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1 racial discrimination in Alabama; is that correct?

2 A That's correct.

3 Q And while you do respond to Mr. Cooper's expert report, at
4 no point do you offer an opinion that plaintiffs are unable to
09:41:24 5 satisfy the first *Gingles* precondition; is that correct?

6 A Well, I raised questions about that, yes.

7 Q Do you ever opine on whether or not plaintiffs have
8 satisfied the first *Gingles* precondition?

9 A Not directly.

09:41:38 10 Q And you do not dispute Mr. Cooper's conclusion that there
11 are racial disparities across key indicators of socioeconomic
12 well-being in Alabama generally and in the Black Belt region
13 specifically?

14 A Well, I document those myself. I may have used different
09:41:56 15 variables, but I can't argue with that.

16 Q Now, you mentioned in the scope of your report that you
17 were asked by counsel to provide a response to Dr. Palmer's
18 initial report, as well; is that right?

19 A Yes.

09:42:08 20 Q And Dr. Palmer's initial report concluded that voting is
21 racially polarized in Congressional Districts 1, 2, 3, and 7
22 individually and combined; is that right?

23 A Well, I'll take your word for that.

24 Q Is that your recollection?

09:42:25 25 A Yes, that's my recollection.

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1 Q And you provide no opinion regarding the existence of
2 racially polarized voting in Alabama, correct?

3 A Correct.

4 Q And, in fact, you performed no analysis at all of racially
09:42:38 5 polarized voting in Alabama generally or in any region of
6 Alabama?

7 A That's correct.

8 Q Are you familiar with ecological inference, which is the
9 method that Dr. Palmer used to evaluate racially polarized
09:42:51 10 voting?

11 A Yes.

12 Q And you have used that method before in other cases in
13 order to analyze racially polarized voting; is that right?

14 A Yes.

09:42:58 15 Q And, in fact, in one of your previous reports in a
16 different case you stated that, It is my contention that of the
17 current statistical tools that can be employed to aid in vote
18 dilution analyses, the EI technique provides the most reliable
19 and realistic estimates of voter choice; is that correct? Do
09:43:19 20 you recall that?

21 A I recall saying something like that, yes.

22 Q And you stand by that?

23 A Yes, of course.

24 Q But you offer no EI analysis here?

09:43:27 25 A I do not.

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1 Q And at no point in your report do you refute Dr. Palmer's
2 conclusion that African-Americans in the areas he examined are
3 politically cohesive; is that right?

4 A Correct.

09:43:41 5 Q And at no point in your report do you refute Dr. Palmer's
6 conclusion that African-American voters and white voters in the
7 areas he examined consistently prefer different candidates?

8 A Correct. I mean, that's just another way of saying
9 there's racially polarized voting.

09:43:58 10 Q That's right.

11 A Right.

12 Q And at no point in your report do you refute Dr. Palmer's
13 conclusions that the candidates preferred by white voters in
14 the areas he examined usually defeat the candidates preferred
09:44:10 15 by black voters?

16 A Right. They don't offer an opinion on that.

17 Q So also in the background section on page 3 of your
18 report, you provide a review of redistricting in Alabama; is
19 that right?

09:44:31 20 A A paragraph, yes.

21 Q And you note in that section that, In 2011 the map drawers
22 in Alabama saw to ensure that the proposed plan would not be
23 rejected under the retrogression standard enunciated in Section
24 5. Did I read that correctly?

09:44:49 25 A Yes.

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1 Q And you did not participate in Alabama's redistricting
2 process following the 2010 census, correct?

3 A That's correct.

4 Q And it's fair to say that any documents or data that you
09:44:59 5 relied upon in drafting your report is listed in your report in
6 the footnote usually; is that right?

7 A Certainly, yes.

8 Q And at no point does your report indicate that you
9 received information from the map drawers of the 2011 plan,
09:45:12 10 correct?

11 A That's correct.

12 Q And, in fact, you never conferred with the map drawers of
13 the 2011 plan in preparing your report?

14 A That is correct.

09:45:18 15 Q And you reviewed the state's preclearance submission in
16 preparing your report?

17 A Yes.

18 Q And isn't it a fact that you can't recall any sort of
19 analysis from the preclearance submission of whether an
09:45:38 20 increase in black voting age population from 58.33 to 60.55 in
21 CD 7 was necessary in order to maintain the ability of minority
22 voters in CD 7 to elect their preferred candidates?

23 A I believe I said at deposition I could not recall any kind
24 of specific statistical analysis.

09:45:58 25 Q And you don't recall any today, as well?

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1 A Right. That's not changed. I was just clarifying.

2 Q Thank you.

3 And certainly you have performed no analysis to determine
4 whether an increase in the black voting age population in CD 7
09:46:12 5 was necessary in order to comply with Section 5 and maintain
6 the ability to elect for African-Americans?

7 A That's correct.

8 Q So in the next section, in Section 4 of your report, you
9 discuss Mr. Cooper's illustrative plans; is that right?

09:46:34 10 A Yes.

11 Q And the first aspect you examined is the racial
12 composition of Mr. Cooper's illustrative districts, correct?

13 A Correct.

14 Q And on page 4, you state that it is your understanding
09:46:50 15 that the Alabama reapportionment office defines black as only
16 those individuals who identify as single-race non-Hispanic
17 black?

18 A That's my understanding, yes.

19 Q And that understanding is based solely on information you
09:47:06 20 received from counsel for the defendant in this case; is that
21 right?

22 A As recorded in the report, yes.

23 Q In what -- oh, in your own report.

24 A Yes, as recorded in my report, yes.

09:47:16 25 Q And you received no document from counsel confirming that

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1 the Alabama reapportionment office, in fact, defined black in
2 that manner; is that right?

3 A That's correct.

4 Q Are you aware that Dr. Johnson has referenced a different
09:47:31 5 metric for calculating who should count as African-American in
6 this case?

7 A I'm aware of that, yes.

8 Q And you've seen Mr. Cooper's reply report or rebuttal
9 report in this case; is that right?

09:47:45 10 A Yes.

11 Q And you're aware that Mr. Cooper has stated his
12 understanding that, in fact, the Alabama Legislature had relied
13 on a single-race black category that includes Hispanics in the
14 2011 redistricting documents and previous Alabama litigation.

09:48:02 15 Do you recall seeing that?

16 A Yes. I mean, that's what he states. I guess there's a
17 dispute about who used what at this point. That wasn't the
18 information I received.

19 Q Fair enough. Yeah. I wasn't asking if you --

09:48:14 20 A Okay.

21 Q -- agreed with it. I just wanted to make sure that you
22 recalled that.

23 You have no specific information other than what your
24 counsel told you -- or rather what defendant's counsel told you
09:48:26 25 that contradicts the statements made by Mr. Cooper; is that

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1 right?

2 A Except for that information I received through counsel,
3 no.

4 Q So -- you said you reviewed Alabama's preclearance
09:48:41 5 submission in drafting your report; is that right?

6 A Yes.

7 Q And on page 3 of your report, you cite to page 424 of that
8 preclearance submission when discussing the black voting age
9 population of CD 7; is that right?

09:48:59 10 A According to footnote 3, yes.

11 Q All right. Can we please call up Plaintiffs' Exhibit 83,
12 page 424?

13 So Plaintiffs' Exhibit 83 is the exhibits to Alabama's
14 preclearance submission. And I believe this is the page that
09:49:19 15 you were referring to in -- in footnote 3 of your report; is
16 that right?

17 A It's been quite a while, but this looks familiar.

18 Q Okay. Now, you note on page 3 of your report that in the
19 2011 plan the map drawers increased the BVAP of CD 7 from
09:49:39 20 58.33 percent to 60.55 percent. Am I reading that correctly
21 from page 3 of your report?

22 A Yes.

23 Q And those are the same numbers reflected here on the
24 screen on PX-83 page 424 in the submission drafted by the state
09:49:55 25 of Alabama to the U.S. Department of Justice; is that right?

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1 A Correct.

2 Q But you used the definition obtained by counsel in
3 calculating the percentages in Table 1 of your report, which is
4 on page 4 of your report; is that right?

09:50:12 5 A Correct. So as I've said, the definition in Table 1 is
6 single-race non-Hispanic black, which is also the definition I
7 used in social science research.

8 Q So if we look at your Table 1 on page 4 of your report,
9 based on your calculation, using single-race non-Hispanic
09:50:43 10 black, you report the black voting age population of District 7
11 under the 2011 plan as 60.34. Do you see that?

12 A Yes.

13 Q And that's a different BVAP number than reported in the
14 state of Alabama's preclearance submission for that same
09:51:02 15 district under the 2011 plan; is that right?

16 A Yes. Slightly different. Yes.

17 Q And, in fact, it's different than the BVAP reported by you
18 in just the previous page of your report, in the background
19 section of your report?

09:51:20 20 A Right. Which is taken from the preclearance submission.

21 Q There's about a two-tenths of a percentage point between
22 those two metrics, right?

23 A Correct.

24 THE COURT: And where did you get your data for the
09:51:35 25 BVAP of District 7 in 2011?

1 THE WITNESS: Well, those -- that was from
2 calculations I made, Your Honor. I think I was using
3 Mr. Cooper's data files, the block equivalency files.

4 Now, I may have -- I'm trying to reconstruct what I did.
09:51:54 5 I may have added to those block equivalency files. I may have
6 gone back to the census and merged the demographic data back
7 in, from what I remember.

8 BY MS. KHANNA:

9 Q And just to clarify, Dr. Hood, I'm not asking about any of
09:52:10 10 Mr. Cooper's illustrative plans right now. I'm talking solely
11 about the enacted 2011 plan and your calculation of the BVAP in
12 that plan. And if I understand you correctly, your calculation
13 of the BVAP in that plan is lower than the BVAP reported by the
14 state of Alabama; is that right?

09:52:30 15 A Yes.

16 Q Does the fact that that number is lower, does it give you
17 reason to believe that Mr. Cooper's statement that the state of
18 Alabama actually used black Hispanics in its count of
19 African-Americans for preclearance purposes, does it give you
09:52:46 20 reason to believe that that statement is true?

21 A Not on its face. I would have to look into it.

22 Q But there's some discrepancy there that would require some
23 further investigation; is that right?

24 A I think that's fair.

09:52:56 25 Q And you did not perform any analysis to determine why the

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1 number reported in the preclearance report is different than
2 the number reported on Table 1 of your report; is that right?

3 A That's correct.

4 Q Dr. Hood, I believe you testified on direct that you're
09:53:28 5 not aware of any evidence or studies that would show that
6 African-Americans who are single-race non-Hispanics black vote
7 cohesively with African-Americans who might have other minority
8 affiliations as well; is that right? I apologize if I
9 misstated that. You can correct me.

09:53:50 10 A I think that's pretty close. I mean, what I am trying to
11 say is that typically -- at least in the social sciences when
12 I'm doing this type of research, you know, we look at people
13 who have identified by one racial category who are non-Hispanic
14 to do the analysis, if that makes sense.

09:54:10 15 THE COURT: So you rely on self-identification of race
16 by people in -- when you're doing your studies of them?

17 THE WITNESS: Yes. I mean, certainly any census data
18 is self-identification. We have allowed -- the Census Bureau
19 is allowing the individual to identify with the racial and
09:54:31 20 ethnic categories that they want to.

21 THE COURT: Okay. And if -- I don't know if this is
22 true or not -- but if the voter registration document only
23 allowed a choice of -- I don't know -- hypothetically, white,
24 black, other, would you be using those who identified as black?

09:55:00 25 THE WITNESS: Yes. Yes, Your Honor.

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1 THE COURT: Okay.

2 THE WITNESS: Yes.

3 BY MS. KHANNA:

4 Q And if I understand your position correctly, before you
09:55:13 5 would countenance the inclusion of, for example, black
6 Hispanics, someone who is both black and Hispanic at the same
7 time in the metric of black voting age population, you would
8 need to see some kind of evidence of cohesion between blacks
9 and Hispanics; is that right?

09:55:31 10 A Well, I would just say that if -- again, just to back up
11 for a second. Black is a racial category. Hispanic is an
12 ethnicity. So you can be both black and Hispanic.

13 Now, in my own research in political science, anyone that
14 identifies themselves as Hispanic, I count as Hispanic, whether
09:55:54 15 they identify as white, black, Asian, American Indian. However
16 they identify racially, I identify them as Hispanic because
17 they have said ethnically they're Hispanic. So I think that --
18 hopefully that answers that.

19 I would not categorize someone who said they were a black
09:56:13 20 and Hispanic as black. I would categorize them as Hispanic.

21 Q I understand.

22 A And I have done that consistently for more than 20 years I
23 think, so...

24 Q And I believe you testified both in your report and on
09:56:26 25 direct that before you would ever categorize or consider

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1 categorizing someone who is both black and Hispanic as
2 African-American, you would need to see some evidence of
3 cohesion between those racial and ethnic groups; is that right?

4 A Well, I think that's one reason you don't classify -- or I
09:56:43 5 don't classify them as black versus Hispanic. Again, I would
6 keep them in the Hispanic category. Now, you can do an
7 analysis and say, How are Hispanics voting? You know, that's a
8 different question, though.

9 Q Dr. Hood, you are aware that Dr. Palmer's study of
09:57:03 10 racially polarized voting relied on voting registration data,
11 right?

12 A Yes.

13 Q And you provide no basis in your report to refute
14 Dr. Palmer's analysis of the extent to which African-Americans
09:57:16 15 vote cohesively; is that right?

16 A That's correct.

17 Q You would agree that unlike the census form, Alabama's
18 voter registration form specifically instructs individuals to
19 choose only one race or ethnicity; is that right?

09:57:26 20 A That is correct.

21 Q They're not -- they can't check both black and Hispanic on
22 that form, or they're not instructed to?

23 A They're not supposed to, I guess is the way to put it.

24 Q So it's entirely possible that someone who is both black
09:57:38 25 and Hispanic would mark both boxes on the census form, and then

1 when following the instructions on Alabama's voter registration
2 form, would choose only black?

3 A It's possible.

4 Q And the same goes for someone who self-identifies as both
09:57:55 5 black and white on the census form, that person may well choose
6 just black on their voter registration form following a
7 different set of instructions; is that right?

8 A It's possible, yes.

9 Q And you would agree that there's really no way to figure
09:58:09 10 out what percentage of individuals self-identified as bi-racial
11 or black and Hispanic on the census form also self-identified
12 as black on their voter registration form; is that right?

13 A I think we can agree on that, yes. There's no way to
14 determine that.

09:58:24 15 Q So as I just mentioned and as we already discussed, you
16 state on page 4 of your report that you're unaware of any
17 research that would indicate that black citizens exhibit
18 cohesive voting patterns with people who are both black and
19 Hispanic, correct?

09:58:41 20 A Correct.

21 Q Are you aware of any analysis presented by plaintiffs
22 indicating that Alabama's relatively small Hispanic and
23 multi-race population exhibits cohesive voting patterns with
24 black citizens?

09:58:55 25 A I am not aware, no.

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1 Q Could we please pull up Dr. Palmer's report, which is
2 Plaintiffs' Exhibit 79 on page 17?

3 Now, Dr. Hood, you reviewed Dr. Palmer's report before
4 drafting your own report; is that right?

09:59:11 5 A That is correct.

6 Q In fact, you were specifically tasked with responding to
7 Dr. Palmer's report; is that right?

8 A That is correct.

9 Q Now, this is Table 1 of Dr. Palmer's report reflecting his
09:59:21 10 county-wide racially polarized voting analysis. And Dr. Palmer
11 explained in his report that the other category on the very far
12 right-hand side includes Hispanics, Asians, native Americans,
13 and people who did not identify race on their voter
14 registration forms. Do you recall that?

09:59:41 15 A Yes.

16 Q And that -- he also noted in his report that approximately
17 3 percent of the population fell into that other category?

18 A I mean, I believe that's right. It's been quite a while
19 since I looked at it.

09:59:53 20 Q Okay. Now, you would agree that according to Dr. Palmer's
21 analysis, the point estimates of the other vote share here
22 indicate that a majority of the other category votes in favor
23 of the African-American preferred candidate; is that right?

24 A Well, the point estimate, yes. If you look at the
10:00:10 25 credible interval, though, it drops below 50 percent. For

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1 instance, U.S. President, the point estimate is 62.7, but the
2 range is 30.6 to 91.8.

3 Q And you were -- sorry.

4 A So we're really not sure.

10:00:27 5 Q And you weren't in the courtroom when Dr. Palmer
6 testified, were you?

7 A I just got here yesterday.

8 Q I know. For the record.

9 And so Dr. Palmer agreed that in the county-level analysis
10:00:41 10 there was just too few data points, too few numbers to make the
11 confidence interval more narrow.

12 If we could turn to Table 3 of this same report on page
13 19. This is Dr. Palmer's precinct-level analysis of
14 Congressional District 1. You see here that according to
10:01:04 15 Dr. Palmer's analysis over 70 percent of the other category
16 votes in favor of the African-American preferred candidate in
17 CD 1?

18 A Yes.

19 Q And all of the confidence intervals exceed 50 percent; is
10:01:19 20 that right? Except for, looks like one, which is 49.3?

21 A For lieutenant governor, yes.

22 Q Could we please turn to Table 4 on the next page?

23 And here we see even a higher percentage of the other
24 category voting in favor of the African-American preferred
10:01:37 25 candidate in CD 2; is that right?

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1 A Yes.

2 Q And here the point estimates are well above 60 percent at
3 the very least; is that right?

4 A Yes.

10:01:49 5 Q Let's go to Table 5 on the next page.

6 We see a similar story in Congressional District 3, where
7 the vast majority of people in the other category are voting
8 alongside the African-American group for the African-American
9 preferred candidate. Would you agree with that?

10:02:08 10 A Yes.

11 Q And can we please turn to Table 6 on the next page?

12 Similar story in CD 7. Would you agree? We see --

13 A Well, except for Governor, it looks like. Otherwise,
14 similar story, yes.

10:02:28 15 Q Okay. If we turn to Table 7 on the next page.

16 This table reflects Dr. Palmer's precinct level-analysis
17 of racial voting patterns in the focus area as a whole. You
18 would agree, Dr. Hood, wouldn't you, that according to
19 Dr. Palmer's analysis, over 86 percent of the other category
10:02:48 20 votes cohesively with African-Americans for the

21 African-American preferred candidate?

22 A According to that table, yes.

23 Q And you provide no response to Dr. Palmer's analysis of
24 racial voting patterns in this table or any other pattern; is
10:03:04 25 that right?

1 A Correct.

2 THE COURT: We're still talking about the population
3 that -- or voting age population that's roughly 3 percent,
4 correct?

10:03:15 5 MS. KHANNA: Yes, Your Honor.

6 THE COURT: Okay.

7 BY MS. KHANNA:

8 Q Dr. Hood, is it your position that anyone who is both
9 black and Hispanic should not be considered African-American?

10:03:35 10 A Well, they can personally identify however they want to.
11 I'm just talking about the way I conduct social science
12 research.

13 Again, I take anyone who's identified ethnically as
14 Hispanic and consider them to be Hispanic in my own research.

10:03:54 15 Q And you take a similar approach to anyone who
16 self-identifies as both black and another race; is that right?

17 A Yes.

18 Q If they identify as both black and white, they are
19 neither? What are they, as far as --

10:04:09 20 A Well, they would be in the other category --

21 Q Okay.

22 A -- like Dr. Palmer had.

23 Q Now --

24 A I would create another category for those individuals.

10:04:17 25 Q Okay. So in your own academic literature, you have

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1 referred to President Barack Obama as this country's first
2 black president, haven't you?

3 A I'm sure I have at some point.

4 Q And you would agree that President Obama had a black
10:04:34 5 father and a white mother; is that correct?

6 A Yes.

7 Q But according to your definition that you advance in your
8 report in this case, as a statistical matter, President Obama
9 would not qualify as an African-American in your studies; is
10:04:47 10 that right?

11 A Not according to that definition, no.

12 Q Dr. Hood, you would agree that at least one of the reasons
13 that African-Americans vote cohesively is because they share a
14 common history of discrimination; is that right?

10:05:01 15 A Yes, that's part of it.

16 Q Dr. Hood, you are aware that Mr. Cooper used the AP black
17 category from the census to determine the black voting age
18 population in his illustrative district; is that right?

19 A Yes.

10:05:24 20 Q And it's fair to say that you are not aware of what metric
21 courts use in voting rights cases to determine who is
22 considered black when looking at illustrative districts; is
23 that right?

24 A I guess it could vary potentially.

10:05:39 25 Q Are you aware one way or the other what metric courts tend

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1 to use?

2 A No.

3 Q And you have no reason to dispute Mr. Cooper's statement
4 that courts in Section 2 cases generally use the AP black
10:05:55 5 metric; is that right?

6 A Well, I don't necessarily know that that's true or false I
7 guess is what I would say.

8 Q You have no reason to dispute it one way or the other?

9 A I don't have any information one way or the other.

10:06:07 10 Q So, Dr. Hood, you would agree that even using your
11 preferred definition of black to mean single-race non-Hispanic
12 black, Districts 2 and 7 are both over 50 percent black voting
13 age population in Mr. Cooper's illustrative plan 1; is that
14 right?

10:06:27 15 A That is correct.

16 Q And even using your definition of black, you would agree
17 that Districts 2 and 7 are both over 50 percent black voting
18 age population in Mr. Cooper's Illustrative Plan 2; is that
19 right?

10:06:41 20 A That is correct.

21 Q We'll move on to your discussion of district core
22 retention.

23 Now, you defined core retention as the percentage of a
24 district's population that is held over from the previous
10:07:01 25 version of that district, correct?

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1 A Correct.

2 Q And you note in your report that core retention is one of
3 the stated redistricting criteria in the legislature's adopted
4 guidelines governing the redistricting process. Do you see
10:07:16 5 that?

6 A Yes.

7 Q And you relied on those guidelines in drafting your
8 report?

9 A I certainly looked at them, yes.

10:07:20 10 Q And I believe on page 6, footnote 10 of your report, you
11 cite to the document marked Chestnut Defense 0267 in referring
12 to those guidelines; is that right?

13 A Yes.

14 Q And you write there that, This criterion was a stated
10:07:40 15 objective of the 2011 congressional plan; is that correct?

16 A Yes.

17 Q Can we please call up Plaintiffs' Exhibit 83, page 267,
18 and you'll see here that the Bates number here is Chestnut
19 Defense 0267.

10:08:03 20 Is this the page that you're referring to when you were
21 drafting your report?

22 A Well, that is the page number that's listed there.

23 Q And there you'll see at the bottom in 7D it says, The plan
24 will attempt to preserve the cores of existing districts. Do
10:08:27 25 you see that?

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1 A Yes.

2 Q I also want to call out paragraph 7 at the top. Here it

3 says, The following redistricting policies are embedded in the

4 political values, traditions, customs, and usages of the state

10:08:40 5 of Alabama and shall be observed to the extent that they do not

6 violate or subordinate the foregoing policies prescribed by the

7 Constitution and laws of the United States and of the state of

8 Alabama. Did I read that correctly?

9 A Yes.

10:08:56 10 Q And we can delete those out now.

11 And also included in Section 7 is avoiding contests

12 between incumbents. You see that in 7A?

13 A Correct. Correct.

14 Q Right? And we also see another paragraph about

10:09:16 15 communities of interest in 7B, is that right?

16 A Correct.

17 Q Could we turn back a few pages to the first page of

18 this -- of this part of the document, to page 260 of

19 Plaintiffs' Exhibit 83?

10:09:29 20 This is the -- the first page of the guidelines that you

21 were referring to, Dr. Hood. Would you agree with me that

22 based on the first paragraph that these guidelines actually

23 apply to the 2000 redistricting cycle and not the 2010

24 redistricting cycle?

10:09:47 25 A That's what it says.

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1 Q Were you aware of that at the time you wrote this report?

2 A No.

3 Q Can we please pull up Plaintiffs' Exhibit 84?

4 So, Dr. Hood, have you -- did you review this document in
10:10:16 5 preparing your report?

6 A I may have. I'm not certain.

7 Q You don't cite to this document in any of the footnotes in
8 your report; is that right?

9 A I believe that's correct.

10:10:27 10 Q And I'll represent to you that these are the
11 reapportionment committee's adopted guidelines for the 2011
12 cycle.

13 If we can please turn to page 3 of Plaintiffs' Exhibit 84.
14 There at the bottom we see the same language from Section 7
10:10:46 15 that we saw in the previous version; is that right?

16 A Yes.

17 Q If we could turn to the next page.

18 Here we see the criterion for avoiding incumbent contests?

19 A Right.

10:11:02 20 Q We see a paragraph on communities of interest. Do you see
21 that?

22 A Yes.

23 Q And it's actually a different paragraph, a different
24 definition than the previous version.

10:11:16 25 But nothing in that section mentions core preservation; is

1 that correct?

2 A I don't see it.

3 Q And if I told you that the word core did not appear once
4 in the guidelines that governed the 2011 redistricting process,
10:11:31 5 would that affect your opinion of whether that criterion, in
6 fact, was a stated objective of the 2011 congressional plan?

7 A Well, if it wasn't stated, it wasn't stated.

8 Q Dr. Hood, you would agree that whether based on the
9 guidelines or anything else, the attempt to preserve cores of
10:11:52 10 existing districts may not trump compliance with the Voting
11 Rights Act, correct?

12 A Well, in footnote 10, I state that essentially.

13 Q In footnote 10 you say, quote, I am not arguing that this
14 criterion overrides all redistricting criteria, as it certainly
10:12:12 15 does not; is that right?

16 A Right. That's what I am referring to.

17 Q Right. And so specifically I'm saying it does not -- you
18 would agree that it does not and cannot trump compliance with
19 Section 2 of the Voting Rights Act, correct?

10:12:23 20 A That's correct.

21 Q In determining the district core retention of plaintiffs'
22 illustrative plans, you compare each of those illustrative
23 plans to the enacted 2011 plan; is that right?

24 A Yes.

10:12:38 25 Q And you report how each illustrative district fares on

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1 your measure of core retention?

2 A Yes.

3 Q But you did not report how the 2011 plan fares on your
4 measure of core retention relative to the previous districts,
10:12:55 5 correct?

6 A That's correct.

7 Q And you performed no analysis of the core retention of the
8 2011 plan, as compared to the previous 2001 plan?

9 A That's correct.

10:13:02 10 Q So you determine on page 5 of your report that plaintiffs'
11 illustrative plans to a large extent do, in fact, preserve the
12 cores of districts under the enacted plan with the exception of
13 one district; is that right?

14 A Yes.

10:13:19 15 Q I believe you testified on direct, as well, that district
16 core retention is fairly high for six of the seven districts;
17 is that right?

18 A Yes.

19 Q And that includes District 1, correct?

10:13:31 20 A Yes.

21 Q The only exception to that -- your conclusion in that
22 regard was District 2, according to your report; is that right?

23 A Correct.

24 Q Dr. Hood, you're familiar with the *Gingles* preconditions,
10:13:46 25 are you not?

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1 A Yes.

2 Q You would agree that the first *Gingles* precondition
3 requires Section 2 plaintiffs to actually draw a new
4 minority-majority district where previously there was not one;
10:13:57 5 is that right?

6 A Yes.

7 Q And you understand that plaintiffs here claim that the
8 Alabama congressional plan should contain a second
9 majority-minority district, as opposed to its current
10:14:07 10 configuration, which includes only one such district?

11 A Correct.

12 Q And you understand that plaintiffs' illustrative plans
13 propose that District 2 be transformed from a non
14 majority-minority district into a majority-minority district,
10:14:24 15 correct?

16 A Yes.

17 Q So by your own calculation in Table 1, CD 2 under the
18 enacted plan had a BVAP of 28.26 percent, correct?

19 A Yes.

10:14:38 20 Q And it's fair to say that is decidedly not a majority
21 black district?

22 A I think my calculation was 27.76.

23 Q Fair enough. 27.76?

24 A Yes.

10:14:52 25 Q Under your metric?

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1 A Right.

2 Q Still not a majority-minority district, correct?

3 A Correct.

4 Q And by your calculation, at least three of plaintiffs'

10:15:07 5 illustrative plans redraw CD 2 to have a BVAP of over

6 50 percent; is that right?

7 A Yes.

8 Q And you have performed no analysis whatsoever to determine

9 whether it would be possible to draw an additional

10:15:25 10 majority-minority district in the congressional plan while

11 retaining a higher percentage of the core of the 2011 version

12 of the district than plaintiffs' illustrative plans do,

13 correct?

14 A I did not perform that analysis.

10:15:37 15 Q And you would agree that you can't create a second

16 majority-minority district, as *Gingles 1* requires plaintiffs to

17 do, without shifting a fair bit of population in that district

18 as compared to the 2011 plan, correct?

19 A There would have to be quite a bit of population shifting,

10:15:55 20 yes.

21 Q You've been involved in Section 2 cases before?

22 A Yes.

23 Q Isn't it true that you can't recall a single case in which

24 a proposed majority-minority district has been rejected because

10:16:08 25 it was considered to inadequately retain the core of the

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1 enacted plan?

2 A I think that's a fair statement, yes.

3 Q And you expressed no opinion in your report about whether
4 the African-American population is, in the 2011 plan, cracked
10:16:25 5 among CDs 1, 2, and 3, do you?

6 A No, I don't.

7 Q And you express no opinion in your report about whether
8 the African-American population is packed within CD 7 under the
9 2011 plan, correct?

10:16:37 10 A Correct.

11 Q Moving on to your analysis of population shifts.

12 Now, here you provide an analysis of population shifts in
13 plaintiffs' illustrative plans relative to the 2011 plan,
14 correct?

10:17:03 15 A Correct.

16 Q You provide no analysis of population shifts in the 2011
17 plan relative to the 2001 plan, do you?

18 A No.

19 Q So it's fair to say that the reason you performed this
10:17:21 20 particular analysis comparing the illustrative plans to the
21 2011 plan is because if a remedy map were granted in this case,
22 the Court would be starting from the 2011 enacted plan; is that
23 right?

24 A I think that's fair. I thought that was the best
10:17:38 25 comparison point.

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1 Q And are you aware, Dr. Hood, that the Court has already
2 decided that it will not be issuing a remedy plan regardless of
3 whether the current plan violates Section 2?

4 A I am aware of that, yes.

10:17:49 5 Q So you calculate that in plaintiffs' illustrative plans a
6 majority of the individuals that moved into District 2 are
7 African-American, correct?

8 A Yes.

9 Q And a majority of the individuals moved out of District 2
10:18:09 10 are white?

11 A Yes. As compared to the enacted plan.

12 Q And District 2 is plaintiffs' proposed new
13 majority-minority district, correct?

14 A Correct. When you say -- can I ask a clarification?

10:18:25 15 Q Oh, absolutely.

16 A So when you a majority-minority, are we saying majority
17 black? Is that fair?

18 Q I'm using those terms interchangeably. Thank you for
19 clarifying.

10:18:33 20 A Okay.

21 Q But is it your understanding that Mr. Cooper's
22 illustrative plans propose that District 2 be drawn as a
23 majority BVAP district?

24 A Okay. I'm -- I just wanted to make sure we had the same
10:18:55 25 terminology.

1 THE COURT: And she changed the terminology on you --

2 BY MS. KHANNA:

3 Q I changed it on you.

4 THE COURT: -- didn't she?

10:19:01 5 BY MS. KHANNA:

6 Q Majority-minority district in this context refers to a
7 majority black district --

8 A Okay.

9 Q -- as far as my questions are concerned.

10:19:08 10 A Okay. That's fine.

11 Q And maybe you already answered this, but section --
12 District 2 is, in fact, that proposed majority-minority
13 district as far as plaintiffs' maps are concerned, correct?

14 A Correct.

10:19:22 15 Q And, as we've already discussed, Section 2 plaintiffs are
16 required to propose a new majority-minority district under the
17 first *Gingles* precondition, correct?

18 A Correct.

19 Q Dr. Hood, you do not know whether it would be possible to
10:19:37 20 draw a second majority-minority district without the racial
21 pattern you observe, correct?

22 A Well, there are many permutations that might be possible.
23 I was looking at the four permutations provided by the
24 plaintiffs -- by Mr. Cooper specifically.

10:19:55 25 Q But you do not know, as you testified today or in drafting

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1 your report, whether it would be possible to draw a second
2 majority-minority district without the racial pattern that you
3 observe; is that right?

4 A I don't know definitively, because, again, there are many,
10:20:11 5 many possibilities out there.

6 THE COURT: That wasn't your job, was it?

7 THE WITNESS: No, Your Honor.

8 BY MS. KHANNA:

9 Q You also don't know whether it would be possible to draw a
10:20:33 10 second majority-minority district in a manner in which race and
11 population movements are entirely unrelated; is that right?

12 A Again, I'll say it hypothetically could be possible.

13 Q But you didn't perform any such analysis here?

14 A No.

10:20:48 15 Q You didn't even attempt such an analysis here, correct?

16 A Well, I wasn't asked to do that.

17 Q Okay. I'm going to -- let's hypothetically assume we have
18 a district with 100 voting age individuals.

19 A Okay.

10:21:06 20 Q Let's assume that 28 of those voting age individuals are
21 black and 72 of those individuals are white. So far so good?

22 A Okay. I'm with you.

23 Q Now, that's time one. That's District 1 time one, right?

24 Let's assume that time two, we have that same district, that
10:21:29 25 district has now been redrawn, and the redrawn version has the

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1 same number of voting age individuals -- still 100 -- except
2 now 51 of those individuals are black and 49 are white.

3 A Okay.

4 Q You with me?

10:21:44 5 A I'm -- so far.

6 Q Now, let's assume that the process -- how you got from
7 between time one and time two, let's assume the process was
8 perfectly consistent with traditional districting principles.

9 It's a perfect circle of a district, there was no counties
10:22:03 10 split, everything at the end -- everything is as clean as it
11 ever can possibly be in any hypothetical world. But it just so
12 happens at the end of this process, 51 of the voting age
13 individuals are black and 49 are white. Sound good?

14 A Okay.

10:22:21 15 Q Is there any mathematical way for this transformation from
16 a 100-person district with 28 black voters to a 100-person
17 district with 51 black voters to occur without having a
18 majority of the voting age population move into the district be
19 black?

10:22:40 20 MR. DAVIS: Your Honor, before he responds, I would
21 like to object. Thank goodness my expert's a lot smarter than
22 I am. There would be too many numbers for me to follow without
23 there being something up on the board.

24 If Dr. Hood is comfortable answering, I will sit down and
10:22:54 25 withdraw my objection. But this is an awful lot of numbers to

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1 try to keep in a person's head.

2 THE COURT: Can you answer that question?

3 THE WITNESS: Can you say it one more -- the
4 question -- the question part one more time?

10:23:08 5 BY MS. KHANNA:

6 Q So let's assume that the districts are always 100 people?

7 A I'm with you.

8 Q You're with me on that?

9 A Just read the --

10:23:14 10 THE COURT: I think he may have the numbers.

11 BY MS. KHANNA:

12 Q Is there any mathematical way for this district -- for
13 this transformation from a district with 28 black voters to a
14 district with 51 black voters to occur without having a
10:23:29 15 majority of the individuals moved into the district be black?

16 A Well, I would say in answer that, to some degree, there
17 would have to be blacks citizens shifted into that hypothetical
18 district to create a black majority. And there would have to
19 be white citizens shifted out of that district to, again,
10:23:52 20 create that black majority.

21 I mean, that's the way I would answer that.

22 Q There's no mathematical way for it to be otherwise,
23 correct? If you are going to go from a district where 28 out
24 of 100 black voters to a district with 51 out of 100 black
10:24:06 25 voters?

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1 A In terms of whose -- so are we asking -- are we at the
2 point now where we are having to say you would have to shift in
3 more black voters and shift out more white voters?

4 Q Yes.

10:24:22 5 A Something like that would have to occur to reach those
6 numbers.

7 Q Now, you conclude in your report that race and population
8 movement are related in plaintiffs' illustrative plans; is that
9 right?

10:24:37 10 A Correct.

11 Q You would agree that in order to draw a majority-minority
12 district in Alabama one is -- one would have to consider race
13 to some extent, correct?

14 A Correct.

10:24:46 15 Q And you expressed no opinion as to whether race actually
16 predominated in the drawing of any of the illustrative plans,
17 correct?

18 A That is correct.

19 Q Now, in the next section of your report regarding district
10:25:11 20 functionality, you expressed concern about whether plaintiffs'
21 proposed majority-minority districts will actually provide
22 African-Americans the opportunity to elect their preferred
23 candidates, correct?

24 A That's fair.

10:25:26 25 Q And you've heard the term functional analysis before as it

1 applies to majority-minority districts?

2 A Yes.

3 Q And a functional analysis determines whether a
4 hypothetical district could function as a minority opportunity
10:25:39 5 to elect district if it were put into place; is that right?

6 A That's the idea behind it, yes.

7 Q So if a district could, in fact, function as a minority
8 opportunity district, then that means, while there's no
9 guarantee that it's possible, that the minority group in the
10:25:55 10 district that comprises the majority would be able to elect
11 their candidate of choice?

12 A There's no guarantee. It's a hypothetical.

13 Q It's an opportunity is what it is, correct?

14 A Right. But the functional part is a hypothetical.

10:26:10 15 Q It's a hypothetical -- a functional analysis is, in fact,
16 an actual analysis that experts can perform to help answer this
17 question of what the opportunity to elect would be?

18 A Well, I'm not saying that the analysis is hypothetical.
19 I'm saying it's based on a hypothetical set of circumstances.

10:26:26 20 Q Because nobody can look in the future and tell you exactly
21 what will happen in the next election, right?

22 A Exactly. That's what I am saying.

23 Q And you did not perform any functional analysis of any of
24 the illustrative districts in Mr. Cooper plan, correct?

10:26:40 25 A Correct.

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1 Q So what you did do in on page 11 of your report is analyze
2 voter turnout statewide in Alabama; is that right?

3 A Correct.

4 Q And you say that you did this to draw some inferences
10:26:53 5 about the functionality of plaintiffs' illustrative districts,
6 correct?

7 A Correct.

8 Q So you note that the implication of your statewide look at
9 voter turnout is that a bare voting age majority of a racial
10:27:07 10 group may not be able to actually function as such electorally
11 speaking. Did I read that correctly?

12 A Yes.

13 Q You never actually examined turnout in plaintiffs'
14 illustrative districts, do you?

10:27:18 15 A No.

16 Q You just look at the state as a whole?

17 A That's correct.

18 Q And you look at the percentage of each racial group's
19 registered voters who turned out, correct?

10:27:29 20 A That is how turnout is measured, yes.

21 Q You did not look at each racial group's percentage of the
22 voters who turned out as a whole?

23 A No.

24 Q So you note on Table 7 that five of the six elections this
10:27:57 25 decade -- for five of those six elections that you analyzed,

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1 white registrants turned out in higher proportions than black
2 registrants; is that right?

3 A Yes.

4 Q By an average of around 5 percent?

10:28:10 5 A Yeah. 4.8. Yes.

6 Q There was one election for which that was not true,
7 correct?

8 A That is correct.

9 Q That was the 2012 presidential election?

10:28:19 10 A Yes.

11 Q In which black turnout was .9 percentage points higher
12 than white turnout?

13 A That is correct.

14 Q So in that instance, not only was the margin between white
10:28:32 15 and black voting narrowed, it was flipped?

16 A That's correct.

17 Q And that was the presidential election between
18 Presidential Obama and Mitt Romney; is that right?

19 A Correct.

10:28:42 20 Q You would agree that it's possible that having a viable
21 black candidate on the ballot would, in fact, drive higher
22 black turnout?

23 A Certainly possible, yes.

24 Q You would agree there are many factors that can affect
10:28:55 25 turnout rates in given district in a given election, correct?

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1 A There are a multitude of factors that affect turnout.

2 Q That would include enthusiasm for the election, correct?

3 A Correct.

4 Q And it would include the possibility that one's preferred
10:29:05 5 candidate might actually have a chance at winning, correct?

6 A The perception of that, yes.

7 Q Now, at the beginning of this section of your report, you
8 note that none of plaintiffs' experts have produced any
9 analysis to determine if these illustrative districts could,
10:29:24 10 indeed, function as black opportunity to elect districts. Do
11 you see that?

12 A Right.

13 Q And you are aware that subsequently Dr. Palmer in his
14 reply report did provide such an analysis; is that right?

10:29:36 15 A Correct.

16 Q And Dr. Palmer calculated black turnout as a percentage of
17 total turnout in plaintiffs' illustrative Districts 2 and 7; is
18 that right?

19 A From what I remember, yes.

10:29:47 20 Q And he also measured the racial breakdown of the actual
21 voters in the 2018 election in plaintiffs' illustrative
22 Districts 2 and 7. Do you recall that?

23 A Yes.

24 Q You would agree the issue you raised earlier in your
10:30:02 25 report regarding how to determine who gets counted as black

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1 does not apply to any of Dr. Palmer's analyses, correct?

2 A Right. I believe he is using black as defined by those
3 who check the box "black" on the voter registration form.

4 Q And you don't have any qualms with Dr. Palmer's
10:30:20 5 calculations in his functionality analysis, correct?

6 A No.

7 Q You would agree that Dr. Palmer's analysis and his
8 rebuttal report shows that the African-American preferred
9 candidates are winning and would win in both Districts 2 and 7
10:30:35 10 in all the illustrative plans, correct?

11 A According to his calculations, yes.

12 Q And you would agree that, based on what he's reported in
13 his rebuttal report, Dr. Palmer's analysis shows that Districts
14 2 and 7 in the illustrative plans would function as
10:30:48 15 African-American opportunity districts, correct?

16 A According to his calculations, yes.

17 Q Now, on page 14 of your report, you discuss -- you have a
18 section entitled Black Voting Patterns that you also discussed
19 with counsel on direct, correct?

10:31:09 20 A Correct.

21 Q And, basically, what you do here is you examine survey
22 data to see the levels at which African-Americans vote for the
23 Democratic party both inside and outside of Alabama?

24 A That's correct.

10:31:21 25 Q And you agree, based on your findings here, that

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1 African-Americans in Alabama vote cohesively, correct?

2 A Yes.

3 Q And you provide no analysis of the extent of white
4 crossover voting in any of these jurisdictions, correct?

10:31:38 5 A That's not what I was asked to do.

6 Q You would agree --

7 A But the answer is, yes, I didn't.

8 Q You would agree that the extent to which white voters vote
9 for or against minority preferred candidates likely varies
10:31:50 10 across all of the jurisdictions that you looked at?

11 A There's variance, yes.

12 Q In many cases significance variance?

13 A Well, I didn't perform that analysis.

14 Q You didn't look at white crossover voting at all?

10:32:02 15 A That is correct.

16 THE COURT: Would this be an okay time for a break, or
17 are you almost finished?

18 MS. KHANNA: I can finish with this section on black
19 voting patterns and then maybe take a break, if that's all
10:32:20 20 right.

21 THE COURT: Okay.

22 MS. KHANNA: Actually, no, I apologize, Your Honor. I
23 think now we can take a break. Thank you.

24 THE COURT: Okay. We will come back at 10:50.

10:32:29 25 (Recess.)

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1 THE COURT: You may continue with cross.

2 MS. KHANNA: Thank you, Your Honor.

3 BY MS. KHANNA:

4 Q Dr. Hood, before the break, we were talking about the
10:53:58 5 section of your report entitled Black Voting Patterns, correct?

6 A Correct.

7 Q And you conclude in the section that African-American
8 voters both inside and outside of Alabama have almost
9 monolithic voting patterns; is that correct?

10:54:16 10 A Yes.

11 Q You offer no opinion based on this analysis as to why
12 these voting patterns exist, do you?

13 A No.

14 Q Dr. Hood, as a political scientist, wouldn't you agree
10:54:27 15 that groups tend to vote for candidates that they perceive to
16 be protective of their interests?

17 A I think that's certainly a part of it, yes.

18 Q In fact, there's research that suggests that
19 African-Americans tend to vote for Democratic party candidates
10:54:40 20 because they perceive that party to be aligned with their
21 interests, correct?

22 A Yes.

23 Q And white voters similarly tend to vote for candidates
24 they believe to be protective of their interests, correct?

10:54:51 25 A I think that's part of the calculus.

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1 Q And, in fact, research has shown that there was an
2 association between resentment of minority races and voting for
3 President Trump; is that correct?

4 A Yes.

10:55:12 5 I mean, now, if we want to go off into that area, we can.
6 Racial resentment's a pretty complicated construct. What
7 you're saying is correct.

8 I've also seen people that have high racial resentment
9 scores be more than apt to vote for black conservative
10:55:29 10 candidates. So it can cut both ways. In fact, my own research
11 says that.

12 Q Speaking of your own research, on page 2 of your report,
13 you state you are an expert in American politics, specifically
14 in the area of electoral politics, racial politics, election
10:55:48 15 administration, and southern politics; is that right?

16 A Yes.

17 Q And one of the articles listed in your CV, I believe it's
18 on page 51 of Defendant's Exhibit 11, but we don't have to call
19 it up.

10:56:09 20 It's called "Black mobilization and Republican growth in
21 the south. The more things change, the more they stay the
22 same." Do you recall that article?

23 A Okay. What page on my vitae is it on, if you can tell me
24 that?

10:56:40 25 THE COURT: Are you referring to his CV?

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1 MS. KHANNA: Yes, Your Honor. I'm just trying to find
2 the right page.

3 Q Looks like it's on page 10 -- Roman numeral X at the very
4 top of your CV.

10:57:11 5 A Okay.

6 Q Do you recall that article?

7 A That's a conference paper.

8 Q It's a conference paper that you wrote?

9 A Yes.

10:57:16 10 Q And is it fair to say that in that paper you discuss
11 partisan change in the south after enactment of the Voting
12 Rights Act?

13 A Well, I would really refer to the book I wrote rather than
14 a conference paper -- on the same topic.

10:57:30 15 Q But are there any opinions in that conference paper that
16 you don't stand by today?

17 A I wouldn't say that, but I haven't looked at that
18 conference paper in eons.

19 Q Okay.

10:57:42 20 THE COURT: When was that paper presented, for the
21 record?

22 THE WITNESS: Was it presented at a conference?

23 THE COURT: When?

24 THE WITNESS: Oh, when? 2010 is what it says, Your
10:57:52 25 Honor.

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1 THE COURT: Thank you. And was that kind of an
2 excerpt out of a book you had written?

3 THE WITNESS: Well, that work grew into a book.

4 THE COURT: Grew into a book, okay. What is the book?

10:58:05 5 THE WITNESS: So the book is listed -- it should be on
6 the first page of my vitae. *The Rational Southerner*.

7 BY MS. KHANNA:

8 Q Dr. Hood, in the course of both the article and the book,
9 you discuss partisan change in the south after enactment of the
10:58:27 10 Voting Rights Act; is that correct?

11 A I certainly do.

12 Q And you specifically discuss the partisan realignment that
13 happened in the south among black and white voters after the
14 Voting Rights Act, correct?

10:58:36 15 A That is correct.

16 Q Isn't it correct that once African-Americans were re-
17 enfranchised in the mid-1960s due to the Voting Rights Act,
18 African-American southerners fairly quickly realigned to the
19 Democratic party in the south?

10:58:51 20 A I think that's almost a quote from me.

21 Q It is, in fact, a quote.

22 A Okay. I'm glad I'm not going crazy.

23 Q No. You're paying attention.

24 They were an almost uniformly Democratic electorate from
10:59:04 25 the time they were re-enfranchised, correct?

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1 A From what my research shows, yes.

2 Q Prior to that realignment, white southerners had
3 overwhelmingly preferred or voted for the Democratic party; is
4 that right?

10:59:15 5 A In the south, yes. Now, again, there was only one
6 party --

7 Q And you --

8 A -- the Democratic party.

9 Q That's right. Before that time.

10:59:24 10 A Correct.

11 Q And you observe in your research that after the Voting
12 Rights Act white southerners subsequently realigned to
13 affiliate with the Republican party; is that right?

14 A A very slow secular -- when I say the word "secular," I
10:59:38 15 mean slow overtime change. I'm not talking about religion
16 there.

17 A very slow secular realignment began in the mid-1960s
18 among white southerners, yes.

19 Q And you also observe in your research that this
10:59:55 20 realignment is primarily a function of racial and political
21 dynamics, is that correct?

22 A Yes.

23 Q And that is the story from 1960s through today; is that
24 right?

11:00:01 25 A I think we went through 2008.

1 Q So you would agree that prior to the Voting Rights Act of
2 1965, many African-Americans couldn't participate in elections,
3 period, right?

4 A In the south, yes.

11:00:15 5 Q They were disenfranchised?

6 A That's correct.

7 Q And you observed in your article that the transformation
8 we just discussed was in part due to the Voting Rights Act,
9 correct?

11:00:23 10 A Certainly, yes.

11 Q Specifically, your research states that the increasingly
12 liberal orientation of the National Democratic Party on the
13 issue of Civil Rights affected white southerners, correct?

14 A Correct.

11:00:37 15 Q And you also state that, in fact, the VRA was a milestone
16 in the development of the Republican party in the south; is
17 that correct?

18 A Correct.

19 Q There was also a transition at the national level at this
11:00:54 20 time where the Democratic party became more liberal on the
21 issue of civil rights for African-Americans, and the Republican
22 party became more conservative on that same issue during that
23 time; is that correct?

24 A That's correct.

11:01:09 25 Q Specifically, the Republican party was increasingly viewed

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1 as the party of racial conservatism; is that correct?

2 A Yes.

3 Q Black mobilization led directly to the transition of
4 whites in the Republican party -- into the Republican party in
11:01:25 5 the south; is that correct?

6 A That's what our research finds, yes.

7 Q And your research also finds that Republican party growth
8 also resulted in black mobilization; is that correct?

9 A In the deep south. It's countercyclical. Not in the rim
11:01:42 10 south.

11 Q In fact, President Johnson said after the passage of the
12 1964 Civil Rights Act, that the Democratic party had lost the
13 south for a generation; is that right?

14 A I believe that's correct. I don't -- I don't know that we
11:01:54 15 quote that in the book.

16 Q Okay. And you would agree that that has -- seems to have
17 come to fruition?

18 A Seems to, yes.

19 THE COURT: Is there any particular part of the Voting
11:02:15 20 Rights Act that seems to have more of an effect than another?

21 THE WITNESS: Well, I would say we're not really
22 imputing motives necessarily in terms of why someone decides to
23 join one party or the other.

24 I mean, what the Voting Rights Act did, though, was to
11:02:32 25 re-enfranchise African-Americans in the south. So now there's

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1 a new political power block, and that's what started this
2 change, if that makes -- that makes sense.

3 THE COURT: Okay. Thank you.

4 THE WITNESS: Literally the mobilization of
11:02:48 5 African-Americans into the electorate.

6 THE COURT: Uh-huh.

7 THE WITNESS: So...

8 BY MS. KHANNA:

9 Q Dr. Hood, the final section of your report is entitled
11:02:58 10 Racial Comparisons. And you testified about that section on
11 direct; is that right?

12 A Yes.

13 Q And you note on page 17 of your report, The key question
14 being examined is not whether disparity rates in Alabama are
11:03:12 15 higher or lower than the comparison states, but whether the
16 same pattern of black and white disparities also exists in
17 other states. Did I read that correctly?

18 A Yes.

19 Q This key question as you put it, that was a question posed
11:03:29 20 to you by counsel for the defendant, correct?

21 A The defendant -- counsel for the defendant asked me to
22 analyze this question, yes.

23 Q You would agree that, based on your understanding of
24 Section 2, that is not the key question under Section 2; is
11:03:44 25 that correct?

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1 A Correct.

2 THE COURT: Was that the key question of your entire
3 report?

4 THE WITNESS: No, Your Honor; just this section.

11:03:53 5 THE COURT: Thank you.

6 BY MS. KHANNA:

7 Q In fact, as of the time that you wrote your report, you
8 didn't know what relevance this question had to the Section 2
9 case; is that right?

11:04:03 10 A Again, I answered this question because I was asked to
11 answer the question.

12 Q You did not know the relevance to Section 2 at the time
13 you wrote your report?

14 A Well, I'm aware of the Senate factors and such. Again, I
11:04:17 15 was asked to answer this question, and I did.

16 Q When you were asked about, well, how is this relevant to
17 Section 2 during your deposition, you did not know; is that
18 correct?

19 A I believe so, yes.

11:04:28 20 MR. DAVIS: Your Honor, we haven't designated Dr. Hood
21 as an expert on the law or Section 2 requirements.

22 THE COURT: I understand.

23 BY MS. KHANNA:

24 Q Dr. Hood, you mentioned earlier that you have been
11:04:41 25 involved in Section 2 cases before; is that correct?

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1 A Yes.

2 Q You've never provided an analysis -- of similar to this
3 racial comparison's analysis in any other expert report you
4 have written in any other Section 2 case; is that right?

11:04:55 5 A That's correct.

6 Q You would agree that there is, in fact, a significant
7 racial disparity in the socioeconomic indicators you looked at
8 in Alabama, including education, employment, and health; is
9 that right?

11:05:09 10 A Yes.

11 Q You'd also agree that the fact that racial disparities may
12 exist in one state does not mean that the racial disparities
13 present in Alabama do not impact the ability by
14 African-Americans to participate in the electoral process; is
11:05:25 15 that correct?

16 A That's correct.

17 Q Regardless of whether those disparities exist in other
18 states, it does not suggest that the racial disparities in
19 Alabama don't impact the opportunity to elect for
11:05:41 20 African-Americans; is that correct?

21 A Correct.

22 Q Dr. Hood, on page 2 of your report you list all of the
23 cases in which you offered expert testimony during the past
24 four years; is that right?

11:05:57 25 A Yes.

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1 Q And one of those cases you list is the *Bethune Hill vs*
2 *Virginia State Board of Elections* case, correct?

3 A Correct.

4 Q And isn't it right that the court rejected your analysis
11:06:08 5 in that case as vague and unsubstantiated?

6 A I will certainly let the Court's opinion speak for itself.

7 Q You do recall that, though, correct?

8 A Something like that.

9 Q You also list the *Northeast Ohio Coalition vs. Husted*,
11:06:23 10 correct?

11 A Correct.

12 Q And isn't it a fact that the Court in that case found your
13 testimony, in large part, irrelevant to the issues before the
14 Court, and also reflected methodological errors that undermined
11:06:38 15 your conclusions? Do you recall that?

16 A If you're representing that's what the Court said, then
17 yes.

18 Q You also listed *V.C. vs. Perry*, correct?

19 A Correct.

11:06:44 20 Q And in that case, the Court found your testimony also had
21 significant methodological oversights, correct?

22 A Actually, I don't think it's listed here, but I did
23 testify in that trial.

24 Q Now, you've testified in other cases other than those
11:07:04 25 listed on page 2; is that right?

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1 A Right. This is the last four years.

2 Q Okay. You testified in a case called *Common Cause vs.*
3 *Billups*. Do you recall that?

4 A Yes. Yes.

11:07:14 5 Q And your testimony was, in fact -- you were excluded from
6 testifying as an expert in that case because the Court deemed
7 your method as not reliable; is that right?

8 MR. DAVIS: Your Honor, I object. I know it's fine to
9 play gotcha with another witness. But the sides have
11:07:33 10 stipulated to each other's expertise. He's already in as an
11 expert.

12 MS. KHANNA: Your Honor, I'm not questioning whether
13 or not he should be excluded under *Daubert*, but I do believe
14 that his history, including the testimony that he says is
11:07:42 15 relevant to his expertise in this case, does go to the weight
16 and credibility that this Court should afford the expert.

17 THE COURT: I think I am capable of making that
18 decision.

19 MS. KHANNA: Thank you, Your Honor.

11:07:55 20 Thank you, Dr. Hood.

21 THE WITNESS: Thank you.

22 MS. KHANNA: No further questions.

23 THE COURT: Any redirect, Mr. Davis?

24 MR. DAVIS: Yes, Your Honor.

11:08:02 25 REDIRECT EXAMINATION

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1 BY MR. DAVIS:

2 Q Dr. Hood, when you're retained as an expert, do you just
3 show up and submit a report on any topic you want, or do you
4 wait for guidance from the attorneys who hire you?

11:08:33 5 A I usually wait to see what they want me to look into.

6 Q So if a court did find something irrelevant, that's
7 probably -- you're just submitting a report on what you were
8 asked to address, correct?

9 A Correct.

11:08:44 10 Q You've been around a lot of redistricting cases, is it
11 fair to say?

12 A Some, yes.

13 Q Some. In your experience, do they often involve a lot of
14 districts, and a lot of maps, and a lot of reports, and a lot
11:09:15 15 of charts?

16 A I'd say too many.

17 Q I would, too.

18 Would it be surprising to you if, in fact, there were
19 sometimes inconsistencies in the way the same party measured
11:09:33 20 demographics? They might in this chart cite to one category,
21 in this cite to another?

22 A That can happen, yeah.

23 Q What I've put on the screen, Dr. Hood, is Table 3 from
24 Dr. Max Palmer's report.

11:09:54 25 MR. DAVIS: Your Honor, since I brought up this page,

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1 I don't recall the exhibit number for that.

2 THE COURT: Uh-oh. We need to have the exhibit
3 number.

4 MS. KHANNA: Plaintiffs' Exhibit 79.

11:10:05 5 MR. DAVIS: Plaintiffs' Exhibit 79.

6 THE COURT: Thank you. Plaintiffs' Exhibit 79. And
7 this is Table 3. Do we know what page it might be on?

8 MR. DAVIS: It is page 19 of his report, Your Honor.

9 THE COURT: Okay. Thank you.

11:10:17 10 BY MR. DAVIS:

11 Q This is one of the tables that you were asked about,
12 Dr. Hood. You see the reported for different elections, the
13 percentage voting for black candidate of choice, a black,
14 white, and other, correct?

11:10:34 15 A Correct.

16 Q Okay. If a person identifies as Native American, which
17 category would they appear on?

18 A I'm assuming they're going in the other category here.

19 Q And Hispanic?

11:10:44 20 A Other.

21 Q And Asian?

22 A Other.

23 Q And someone who doesn't check anything because they don't
24 think it's anybody's business?

11:10:50 25 A Other.

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1 Q So can you look at this other category and conclude that
2 one of these racial categories votes a particular way?

3 A Not necessarily.

4 Q You -- and it's not your fault, Dr. Hood, if the state
11:11:13 5 back in 2011 included the wrong version of the guidelines in
6 their preclearance submission.

7 Were you aware that Senator -- former Senator Gerald Dial
8 testified in this trial that even though the new guidelines may
9 not include the words preserve core of districts, that, in
11:11:30 10 fact, the language does reflect that philosophy?

11 A Yes.

12 Q I want to put this on the screen first. This is Exhibit
13 D-1, Dr. Hood.

14 THE COURT: Defendant's Exhibit 1, page...

11:11:53 15 MR. DAVIS: Defendant's Exhibit 1 -- it's a ten-page
16 -- and the version I have does not have the page numbers.

17 But this particular map is a 2000 --

18 THE COURT: Can you pull it down so we can see how
19 it's identified at the top? Okay.

11:12:09 20 MR. DAVIS: It's the 2011 districts.

21 THE COURT: Okay.

22 MR. DAVIS: And what I am going to hand --

23 THE COURT: For the record, that is 3017.

24 MR. DAVIS: Thank you. And I'm going to hand
11:12:22 25 Dr. Hood, with Your Honor's permission, the similar maps for

1 the 2002 districts, the 1992 districts.

2 THE COURT: Are these all from Exhibit 1?

3 MR. DAVIS: All from Defendant's Exhibit 1.

4 MS. KHANNA: And, Your Honor --

11:12:39 5 THE COURT: And with your permission, I will try to
6 make sure we have the page numbers referenced as he discusses
7 each one.

8 MR. DAVIS: Thank you.

9 THE COURT: Okay.

11:12:47 10 MS. KHANNA: Your Honor, I would just object because
11 it's beyond the scope of his report. At no time did Dr. Hood
12 ever consider this in -- his expert analysis in his report.

13 THE COURT: You questioned him about whether he did.
14 So I think having raised some question about the completeness
11:13:10 15 of his report because he didn't, that he should be allowed to
16 at least respond to that.

17 MS. KHANNA: Yes, Your Honor.

18 THE COURT: I assume that's --

19 MR. DAVIS: Your Honor, this is the question I would
11:13:23 20 like to ask him. He was asked by plaintiffs' counsel if
21 Alabama seemed to have abandoned the traditional district
22 principle of preserving the core of districts since -- if there
23 was some problem with that.

24 I'd like him to look at a few plans and to see if it
11:13:40 25 appears, just from the shape of the districts, if in his

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1 opinion, Alabama has disregarded the traditional districting
2 principle of reserving the core of districts.

3 THE COURT: Okay.

4 MR. DAVIS: So I have been helpfully handed a better
11:13:53 5 version that includes page numbers.

6 THE COURT: Good. Thank you.

7 MR. DAVIS: Defendant's Exhibit 1, 2011 congressional
8 districts, Chestnut Defense 3017; 2002 congressional districts,
9 3018; '92 congressional districts, 3019; 1980 districts,
11:14:45 10 3019.1; and 1970 districts, 3020.

11 And may I hand these to the witness, Your Honor?

12 THE COURT: You may.

13 BY MR. DAVIS:

14 Q And, Dr. Hood, as you look at these districts going back
11:15:21 15 to the '70s, do you have an opinion as to whether Alabama
16 appears to care about the traditional districting principles of
17 preserving the core of districts?

18 A Well, again, population has to be equalized across
19 redistricting cycles. That's the chief goal always.

11:15:45 20 But with that in mind, looking at these districts from
21 1970 to 2011, they're fairly remarkable in the sense that they
22 have, for the most part, stayed in the same place. Of course,
23 the boundaries are shifting some. But they look remarkably
24 similar.

11:16:03 25 Q They have to shift some, do they not?

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1 A Certainly. I mean, you have to equalize population.

2 Q So does the pattern seem to hold, even going from the
3 2000 cycle to the 2010 cycle?

4 A Well, yes. There's a lot of geographic congruity between
11:16:23 5 those two.

6 Q Thank you.

7 Now, you did not replicate or test Dr. Palmer's polarized
8 voting analysis, did you?

9 A Correct.

11:16:34 10 Q You weren't asked to?

11 A Correct.

12 Q And when Dr. Palmer says that African-American voting
13 appears -- that African-Americans appear to vote cohesively in
14 Alabama, your own research suggests the same, does it not?

11:16:48 15 A Correct.

16 Q You were asked if a history of -- a shared history of
17 discrimination is a factor that may lead to African-American
18 vote cohesiveness, correct?

19 A Correct.

11:17:05 20 Q Aren't there a lot of issues that lead to a voter
21 supporting a particular political party?

22 A There can be quite a few, yes.

23 Q Now, your research that showed ties to the Voting Rights
24 Act, does that tell us why any voter today supports the
11:17:23 25 Democratic or the Republican party?

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1 A Not necessarily.

2 Q Okay.

3 A Again, that goes back 50 years now.

4 Q Right. Some of us -- some voters weren't alive at the
11:17:38 5 time or weren't voting at the time the Voting Rights Act was
6 passed, were they?

7 A Some voters literally weren't alive either.

8 Q Have you seen research that suggests that religion and
9 matters of faith may drive political choices in some
11:17:54 10 circumstances?

11 A Yes. I mean, there was another realignment among white
12 southerners in the late '70s, early '80s, along religious
13 lines. So that's another component. Economic issues, as well.
14 Foreign policy.

11:18:09 15 So there are a lot of things that can figure into the
16 calculus of which party to support or not support.

17 Q And you were asked if groups -- if African-Americans vote
18 as a group or who is perceived to be in their interests.
19 Actually, groups don't vote, do they? Individuals vote.

11:18:32 20 A Right.

21 Q And as a social scientist, can you say that any individual
22 or collection of individuals are voting the way they do today
23 because of the passage of the Voting Rights Act?

24 A I think that would be a difficult causal inference to
11:18:47 25 draw.

1 Q And you said that your research didn't address motives at
2 all?

3 A We do not look at motives, no, just what happens.

4 Q Are you familiar with the language that's often used
11:19:02 5 dividing states into red states, blue states, and purple
6 states?

7 A Yes.

8 Q What do they mean?

9 A Well, typically what they're talking -- I can't remember
11:19:11 10 what election cycle this grew out of. But some media group
11 adopted this. So a red state would be a Republican state, a
12 blue state a Democratic state, and a purple state sort of a
13 swing state, a battleground state.

14 Q What's Alabama?

11:19:28 15 A I would say it's red.

16 Q A lot of --

17 A Maybe here I would say crimson.

18 THE COURT: You're right. He is so right. Thank you.

19 I have wondered why all along Alabama wasn't designated as
11:19:42 20 a crimson state instead of a red one, but I guess there are
21 some folks that like the blue and orange that might argue with
22 that.

23 Sorry. I haven't said much today. I had to perk up a
24 little bit here.

11:19:57 25 BY MR. DAVIS:

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1 Q Would you agree that a lot of voters in Alabama, like
2 other southern states, are fairly conservative in their
3 political philosophy?

4 A Certainly white voters are, yes.

11:20:08 5 Q And would you agree that a voter's views on issues, a
6 variety of issues and not just those related to race, can lead
7 a person to support a particular political party?

8 A Certainly. In the current party alignment, of course, the
9 Republican party is the home for conservatives, and the
11:20:28 10 Democratic party is the home for liberal adherence, so...

11 Q And, of course, you're not casting judgment on anyone's
12 choice of which party to support, are you?

13 A No.

14 Q Would you agree that the major political parties are more
11:20:46 15 polarized today than they were in previous decades?

16 A Well, from political science research, yes, certainly so.

17 Q Is that only on issues related to race?

18 A No. It's all issues essentially.

19 Q Have you seen any evidence in this case from the charts
11:21:15 20 the way Alabama reported districts, that Alabama uses the
21 any-part black category routinely?

22 A I haven't seen evidence of that, no.

23 Q Would you agree, Dr. Hood -- well, let's take a
24 hypothetical district. And I'm not going to cite numbers
11:21:46 25 because I can't keep up in my head.

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1 But let's say Alabama drew a congressional district, and
2 it turned out to be close to 50 percent African-American. And
3 then it could, by switching one county for another, result in a
4 district that was over 50 percent African-American. In that
11:22:06 5 event, Alabama might be able to switch from a one
6 majority-minority district plan to a two majority-minority
7 district plan without major shifts in population. Would you
8 agree with that?

9 A Probably so under that hypothetical scenario.

11:22:22 10 Q Okay. Did your analysis show that, at least in this case,
11 going from one majority black district to two would require
12 some pretty major restructuring in the southern half of the
13 state?

14 A Yes.

11:22:39 15 Q It would require putting entirely different areas of the
16 state together that haven't traditionally been put in the
17 districts?

18 A Right. The districts geographically would like quite a
19 bit different, especially in the southern part of the state.

11:23:08 20 MR. DAVIS: May I have a moment, Judge?

21 THE COURT: Certainly.

22 MR. DAVIS: That's all, Your Honor.

23 Thank you, Dr. Hood.

24 THE WITNESS: Thank you.

11:23:18 25 THE COURT: Any recross?

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1 MS. KHANNA: One moment, Your Honor. Briefly, Your
2 Honor.

3 RECROSS-EXAMINATION

4 BY MS. KHANNA:

11:23:37 5 Q Dr. Hood, I believe you testified on redirect that a lot
6 of issues -- there are a lot of issues that lead to a voter
7 supporting a political party; is that correct?

8 A There could be more than one, yes.

9 Q Based on your research, can you say that race is not one
11:23:51 10 of them?

11 A No, certainly not.

12 Q And, in fact, in the book that you discussed when we
13 talked earlier, you state, We argue that a complete
14 understanding of southern party politics requires a full
11:24:08 15 appreciation for the role that race has played and continues to
16 play in the region; is that correct?

17 A Yes.

18 MS. KHANNA: Thank you, Dr. Hood.

19 THE WITNESS: Thank you.

11:24:19 20 FURTHER REDIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q And in that statement, were you assessing what it took to
23 understand southern history over time, or how to address the
24 reason a particular voter votes the way they do today?

11:24:37 25 A That was a historical analysis.

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1 MR. DAVIS: Thank you.

2 THE COURT: Anything else?

3 MS. KHANNA: No, Your Honor. Thank you.

4 THE COURT: All right. Thank you.

11:24:46 5 Thank you, Dr. Hood. You may step down.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Do you want to start on your next witness
8 now, or do you want to break for lunch early and then come back
9 and start? I'm at y'all's mercy today.

11:25:02 10 MR. WALKER: I'd be just as happy to break so that he
11 can be presented in one go, if that suits Your Honor.

12 THE COURT: That suits me fine. So we'll come back at
13 12:30.

14 (Recess.)

12:33:36 15 THE COURT: You may be seated and you may call your
16 next witness.

17 MR. WALKER: Your Honor, I am going to use with this
18 witness some larger pictures that are more clear of what he has
19 in his report, and I would like to give you a copy of it.

12:34:01 20 THE COURT: Okay. Thank you.

21 DOUGLAS JOHNSON,
22 having been first duly sworn by the courtroom deputy clerk, was
23 examined and testified as follows:

24 THE COURTROOM DEPUTY CLERK: Please state your name
12:34:13 25 for the record.

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1 THE WITNESS: Douglas Mark Johnson.

2 THE COURTROOM DEPUTY CLERK: And spell your first and
3 last names for the record.

4 THE WITNESS: D-O-U-G-L-A-S; and J-O-H-N-S-O-N.

12:34:40 5 DIRECT EXAMINATION

6 BY MR. WALKER:

7 Q Good afternoon. It's Dr. Douglas Johnson, is it not?

8 A Yes.

9 Q Okay. And I've got -- I placed in front of you a copy of
12:34:50 10 Defendant's Exhibit 13, which is a copy of your report. Would
11 you look at that, please?

12 A Yes.

13 Q Okay. And please turn to paragraphs 2 through 9, and I'll
14 ask you: Are those the -- your qualifications to testify as a
12:35:10 15 political scientist and your experience as a political
16 scientist?

17 A Yes.

18 Q Okay.

19 MR. WALKER: Your Honor, the parties have stipulated
12:35:19 20 that the experts in this case are qualified to testify to the
21 matters in their reports, and so I tender Dr. Johnson.

22 MS. KHANNA: No objection.

23 THE COURT: He's received as an expert.

24 BY MR. WALKER:

12:35:32 25 Q Look at paragraph 11, please, and tell the Court what you

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1 were asked to do in this report, please.

2 A I was asked to review Mr. Cooper's work and to show my
3 opinions of them; in particular, looking at whether the
4 illustrative maps follow traditional redistricting principles
12:35:53 5 or whether race predominated in the drawing of those maps.

6 Q You used the term "traditional redistricting principles,"
7 and I, by habit, may sometimes lapse into the term I use, which
8 is "traditional redistricting criteria."

9 But can we understand that we're referring to the same
12:36:12 10 thing by those two terms?

11 A Yes.

12 Q Okay. Thank you.

13 Dr. Johnson, there's been a lot of testimony throughout
14 this trial about whether it's appropriate to use -- which
12:36:27 15 measure of the black population is appropriate to use when
16 drawing single-member districts such as Mr. Cooper has done.
17 And one is single-race black, and the other is any-part black.

18 And would you explain to the Court, please, the
19 differences between those and which one is appropriate to use
12:36:49 20 when you're drawing single-member districts such as Dr. Cooper
21 has done? And you may wish to refer to paragraphs 11 and 12 of
22 your report for that purpose.

23 THE COURT: And just for clarification, the report has
24 two paragraph 11s, I believe.

12:37:04 25 MR. WALKER: It does have two paragraph 11s. And this

1 would be the paragraph 11 -- thank you, Your Honor -- after
2 Roman Numeral III, Opinions and Analysis.

3 THE WITNESS: So the challenge is that the census
4 allows people to choose multiple categories. It started with
12:37:24 5 introduction of the Hispanic ethnicity question, and then a
6 separate race question.

7 And then starting with the 2000 census, the Census Bureau
8 now allows people to mark in the decennial census as many
9 ethnic and racial categories as they want.

12:37:43 10 BY MR. WALKER:

11 Q For example?

12 A For example, they can mark Hispanic, black,
13 African-American, Asian American, white, as many of those as
14 they self-identify as being a part of.

12:37:52 15 Q How many of them are there?

16 A Well, when the -- all the different combinations come
17 together, the Census Bureau reports a data for each individual
18 combination. And there are 255 possible racial categories that
19 the census tabulates.

12:38:08 20 And, of course, 255 or so is, you know, far too many to be
21 useful in any kind of analysis. If you're breaking out, you
22 know, voting cohesion studies, or anything like that, 255
23 fields would be useless.

24 Q Yeah.

12:38:28 25 A So what people debate, what economics debate is whether to

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1 look -- what grouping of those to put together.

2 If you go with the any-part black, it counts as black, as
3 Mr. Cooper tends to focus on, although he uses different
4 measures, as well, in his report. But if anyone marks any
12:38:49 5 black or African-American category, regardless of what else
6 they put, do you count them? Or do you only count what we call
7 the single-race black where they only mark black, and we just
8 focus on those.

9 So when the Census Bureau decided to -- was directed by
12:39:11 10 Congress to allow people to choose multiple categories, the
11 Department of Justice got together with the Office of
12 Management and Budget and put out guidelines for the purpose of
13 redistricting. And, technically, it's mainly focused on the
14 jurisdictions that were preclearance jurisdictions back then,
12:39:29 15 but, of course, it became guidelines for everyone because
16 everyone's covered by Section 2.

17 They put out guidelines saying how to group these
18 different groups. And they said the primary way to look at
19 them is -- it's controversial. It was fought over, but their
12:39:45 20 guidance was if someone marks Hispanic, you count them as
21 Hispanic. It doesn't matter what else they mark. They go down
22 as Hispanic. And for the primary groupings, you would ignore
23 anything else they would mark.

24 If someone marks white in one of the other categories
12:40:01 25 other than Hispanic, then they are counted as that other

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1 category -- African-American, Asian American, whatever it is.
2 And the white is ignored.

3 If they mark African-American and Asian American, or any
4 other combination of non-white non-Hispanic groups, then they
12:40:17 5 go into a multi-race category.

6 So once you follow those different guidelines, you end up
7 with the groupings listed on page 5 that -- so we're taking
8 those -- the giant pool of categories and narrowed it down to
9 eight essentially useful categories.

12:40:37 10 They also gave guidance saying kind of secondarily that
11 they will -- you know, where they find it relevant, they will
12 also look at single-race or any-part black, and they kept the
13 door open to that. But this is their primary data, which was
14 also reflected when Department of Justice went to the Census
12:40:59 15 Bureau and said, We need citizen voting age population data
16 broken down by a census block group.

17 So the Census Bureau releases the citizens voting age data
18 by a tract, which are units that roughly have about 4,000
19 people in them. So they're not very small. There are big
12:41:18 20 neighborhoods.

21 And the Department of Justice -- oh, and when people like
22 me ask the bureau to give us more detailed data, the bureau
23 said, no, it's not statistically reliable at smaller
24 geographies. We can't put out that data.

12:41:31 25 When people like me asked, they said, no. When the

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1 Department of Justice asks, they do it. And so they did put it
2 out at the block group level.

3 And in that case, they only followed the primary method.
4 You can't get single-race black data that includes Hispanics in
12:41:41 5 the citizen voting age special tabulations from the Department
6 of Justice. It only has non-Hispanic black and non-Hispanic
7 black and African-American combined.

8 Q For the CVAP?

9 A For the CVAP, yes.

12:42:02 10 So it's both the primary focus and their guidance, and the
11 only data available in the Department of Justice's citizen
12 voting age population.

13 And I went to -- and I spoke at multiple conferences of
14 the National Conference of State Legislatures where DOJ would
12:42:17 15 be there, and the Census Bureau would be there. And we would
16 have these debates in 2010 and going into early 2011. And the
17 DOJ was very clear about their primary guidance.

18 THE COURT: Okay. So just to make sure I am clear on
19 the DOJ's primary guidance. It is what?

12:42:34 20 THE WITNESS: It is --

21 BY MR. WALKER:

22 Q Dr. Johnson, look at the eight categories.

23 A Right.

24 Q And please let the Court which one is the correct
12:42:42 25 category.

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1 A Yeah. So in -- for the focus here where we're looking at
2 black or African-American in these districts, the DOJ guidance
3 would be non-Hispanic black, plus non-Hispanic black and white.
4 So very close to single-race black non-Hispanic with a -- the
12:43:02 5 people who marked black and white also included in there.

6 THE COURT: Okay. So --

7 THE WITNESS: So single race is the closest.

8 THE COURT: So you're looking at these eight
9 categories that are in paragraph -- second paragraph 11, and
12:43:18 10 it's on page 5 of your report; is that right?

11 THE WITNESS: Correct.

12 THE COURT: Okay. And so the category to use in
13 determining the African-American/black population is
14 non-Hispanic black plus non-Hispanic black and white?

12:43:40 15 THE WITNESS: Correct. Yeah.

16 In the Maptitude data that Mr. Cooper and I both use, or
17 the software that we use for mapping, the company actually
18 processes the census data for all their clients, and they
19 actually call this category DOJ black.

12:43:56 20 THE COURT: DOJ black. Okay.

21 What is CVAP? I missed that.

22 THE WITNESS: It's citizen voting age population.

23 THE COURT: Okay. All right. I got that.

24 THE WITNESS: Yeah.

12:44:06 25 THE COURT: I'm sorry.

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1 THE WITNESS: It's not as prominent in this case as it
2 generally is. I suspect given the growth of the Latino
3 population in the next round of redistricting, it will be much
4 more prominent.

12:44:17 5 BY MR. WALKER:

6 Q That's prominent in California where you do a lot of work,
7 I suppose?

8 A Yes. Anywhere that has large non-citizen populations,
9 that tends to be more of the focus.

12:44:26 10 Q Dr. Johnson, looking at the list of the eight categories
11 in the second paragraph 11 on page 5, which category did
12 Mr. Cooper use to populate his districts?

13 A The numbers he reports are not in this list. He used the
14 all-part or -- I'm sorry -- any-part black. So if someone
12:44:47 15 marked black and anything else, he counted them when he
16 compiled his data for the illustrative maps.

17 And he talks about his view, that's the historic way and
18 could very well be true. I haven't looked back.

19 But as his data points out, 20 years ago in 1990, even in
12:45:04 20 2000, the number of Hispanics and Asian Americans in the state
21 was really small. So that difference between any-part black
22 and the single-race black was probably minuscule.

23 Now, of course, as Mr. Cooper himself puts out in the
24 data, the Latino population has grown very fast. The Asian
12:45:27 25 population has grown. And now we see it in the two reports.

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1 The margins on these illustrative districts are so narrow
2 that those few people who mark African-American and Asian
3 American, or African-American and white, they make the
4 difference by whether or not you cross that 50 percent
12:45:46 5 threshold.

6 Q Well, let me ask you about that. And I will represent to
7 you that I am showing you a chart --

8 MR. WALKER: Your Honor, this is a chart from
9 Document 102, page 8. It happens to be --

12:46:00 10 THE COURT: Plaintiffs' or defendant's?

11 MR. WALKER: It's the plaintiffs' pretrial brief.

12 The reason I'm using it is I came with my own charts, but
13 Mr. Cooper had made some adjustments that didn't get carried
14 over to my charts. So there were minor adjustments, and we
12:46:16 15 didn't contest them. But there is a correct chart. So I'm
16 using it for that purpose.

17 THE COURT: Wait. This is from plaintiffs' brief?

18 MR. WALKER: Yes, ma'am.

19 THE COURT: Okay.

12:46:27 20 MR. WALKER: I'm just using the chart.

21 THE COURT: For the record, do we know the CMECF
22 document number?

23 MR. WALKER: 102.

24 THE COURT: Okay. All right. Thank you. Just wanted
12:46:39 25 to make sure we've got it straight.

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1 And whose chart is that? And where did it come from?

2 MR WALKER: They've cited it to some of their exhibits
3 there just below the chart, Your Honor.

4 THE COURT: Okay.

12:47:01 5 MR. WALKER: And we don't contest these numbers.

6 THE COURT: All right.

7 MR. WALKER: Except that we do, but for different
8 reasons.

9 THE COURT: Okay.

12:47:20 10 BY MR. WALKER:

11 Q Dr. Johnson, if you'd look at the chart, and tell me if
12 Mr. Cooper had used what you said Maptitude refers to as DOJ
13 black, would all of Mr. Cooper's plans have two majority black
14 districts? And you may want to look at your paragraph 14 of
12:47:44 15 your report.

16 A No, they would not.

17 Q What would happen?

18 A Revised Plans 3 and 4 drop below -- it's weird to see your
19 hand up here next to me.

12:48:02 20 Q Oh, I'm sorry. Go ahead.

21 A So the Revised Plans 3 and 4 would no longer have a second
22 majority black district.

23 Q So explain that with regard to each plan, please.

24 A So I have the numbers here. So in paragraph 14, I talk
12:48:18 25 about -- that's on page 6 of my report -- the voting age

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1 population in District 7 of Illustrative Plan 3.

2 So we're here on the chart he's reporting 50.34 percent.

3 It drops down to 49.9. And the voting age population District

4 2 in Illustrative Plan 4 is only 49.8.

12:48:42 5 So even though they're really small numbers of people
6 marking multiple categories in these areas, the margins on how
7 he's drawing these districts are so razor thin that it trips
8 them below the 50 percent threshold.

9 MR. ROUCO: I thought it said 49.8.

12:49:13 10 THE WITNESS: Correct.

11 MR. ROUCO: Not 49.08.

12 MR. WALKER: Oh. 49.8. I'm sorry.

13 THE COURT: It's that math again.

14 BY MR. WALKER:

12:49:20 15 Q And the other one was 49?

16 A .9.

17 Q .9. I wrote them down both wrong. My bad.

18 Let's take the numbers that Mr. Cooper used at face value,
19 okay? And assume that those are -- were the correct numbers to
12:49:48 20 use. Would you still have any problems with the districts that
21 he drew, in terms of demonstrating the possibility of complying
22 with the *Gingles* 1's requirement?

23 A Yes. The Census Bureau loves the fact that census data
24 often gets treated as perfect and cited as being perfect. But,
12:50:08 25 you know, when we all step back and think about it, we know

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1 it's not, you know.

2 There's no margin of error in the decennial census because
3 of the way math works. You can't calculate a statistical
4 margin of error. But we've all heard about, you know, every
12:50:23 5 census has an undercount. Let's discuss every census it that
6 has an over count of different groups.

7 And so even at the point the census is taken, there's
8 error in it. And when the data comes out eight months later,
9 you know, people have moved. That area has grown.

12:50:42 10 So we know that there's changes. And we know that things
11 change over time. So whenever I see just, you know, 50.1 or
12 bare, bare majority numbers, it always makes me nervous that --

13 Q And by bare majority numbers, are you referring to the
14 numbers that are displayed -- that Mr. Cooper put into his

12:51:03 15 Districts 2 and 7 in Plans 1 through 4?

16 A Exactly. They're an example. And I see this fairly often
17 as people talk about -- in my work in redistricting.

18 But like him claiming 50.3, that's an awful big reliance
19 on the data being perfect with almost no margin for error.

12:51:24 20 Q And is it your testimony that the margins that Mr. Cooper
21 has given to his Districts 2 and 7 in Plans 1 through 4 are
22 well within the probable error of the census?

23 A Certainly.

24 Q Yeah.

12:51:40 25 A You know, there's no doubt, you know, and especially

1 nine years later. But when we're looking at the time of
2 adoption, we want to be sure that the district's going to meet
3 the threshold and perform, both when it's adopted and in the
4 elections that are going to take place over that decade.

12:51:54 5 And so having a .3 margin is razor thin. And it's kind of
6 a coin toss whether that city is actually majority
7 African-American or not.

8 Q In your work with redistricting, would you be comfortable
9 representing to a court districts with margins such as these as
12:52:14 10 evidence of compliance with the *Gingles* 1 requirement?

11 A No. It would be -- maybe it's not 50/50. Maybe it's
12 52/48 percent that it is or isn't in compliance. But those are
13 very narrow margins for a court to rely on.

14 Q If a district is drawn with a 60 percent -- let's say
12:52:37 15 about 60 percent BVAP, would that guarantee black success every
16 time?

17 A No. There's -- nothing guarantees success every time in
18 any election.

19 Q Does that give you a reasonable opportunity that a
12:52:53 20 minority will be able to elect a candidate of their choice as a
21 district -- as that district changes over the decade?

22 A It gives a much more solid belief that it is going to stay
23 majority African-American, or meet that threshold throughout
24 the decade, and certainly at the time of adoption.

12:53:18 25 Q Let's move from population numbers to compactness. And

1 I'll show you a map or actually a figure. This is from
2 Defendant's Exhibit 13 on page 7, and it's four views of
3 District 1; that is, it's each one of the District 1s drawn by
4 Mr. Cooper.

12:53:46 5 And, first of all, what are the ways in which compactness
6 can be measured?

7 A There are lots of measurements out there of compactness.
8 I think there's now eight of them built into the redistricting
9 software that we use.

12:54:03 10 A couple of years ago, actually, the U.S. Mathematics
11 Association had a whole panel at their annual conference on new
12 mathematical ways to measure compactness and redistricting.

13 And all of the math formulas have strengths and
14 weaknesses. And really what they're all trying to do is

12:54:26 15 numerically measure what we can all see in the maps.

16 The famous phrase in redistricting literature, as someone
17 wrote, The best compactness test remains the interocular test,
18 which is just a professor saying, I'll know it when I see it.
19 And each one has its own focus, and each one has its own flaws.

12:54:46 20 What really we're trying to measure, and what all of them
21 are trying to measure is are we bypassing one group of people
22 to get to another group of people? Are we wrapping around one
23 area and not putting them in because we don't like them in our
24 district for some reason in order to get to another group of
12:55:02 25 people that we prefer to have in our district? And that really

1 is the heart of what people really mean when they say
2 gerrymandering.

3 Q So the more you bypass one group of people to get to
4 another group of people, the less compact the district becomes?

12:55:17 5 A Exactly.

6 Q Okay. And would that be a description of the original
7 Shaw District?

8 A Yes, exactly.

9 Q Could you describe, if you could, the shape of the
12:55:28 10 original Shaw District?

11 THE COURT: First, what is the Shaw District?

12 BY MR. WALKER:

13 Q Sorry. Sorry. Would you explain to the Court what the
14 original Shaw District was?

12:55:36 15 A Sure. So there were a string of U.S. Supreme Court cases
16 about the -- really defined racial gerrymandering in a going
17 too far approach; decide the voting rights where we didn't go
18 far enough in cases.

19 And so the Shaw cases came out in North Carolina where one
12:55:57 20 of the plaintiffs I think are -- one of the parties was named
21 Shaw. And this is where Justice O'Connor wrote that
22 appearances matter.

23 And the Shaw District was a freeway. It was literally the
24 four lanes or eight lanes of the freeway. And then at
12:56:14 25 different off ramps, the district would stretch out and grab

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1 African-American pockets of population. And then it would go
2 back to the freeway up to the next town and stretch off. And
3 so they --

4 Q And that went on for quite some distance, did it not?

12:56:29 5 A Yeah, it did. It was going through kind of rural North
6 Carolina and picking up different towns along the way until it
7 got to the necessary population and percentages.

8 And what the Court said was -- that's where the rule that
9 race can't be the predominant factor came from. Is looking at
12:56:45 10 appearances -- this looks really weird. Is it a sign that
11 something's wrong? Do we need to investigate this and see was
12 race a predominant factor, or does something else explain this?

13 I actually was part of drawing one of the ugliest
14 districts ever drawn which was Arizona's first district in 2001
12:57:07 15 that literally used the Colorado River through the Grand Canyon
16 to connect two parts of the district. It was ugly. We made a
17 lot of posters after that where people said gerrymandering.
18 But the reality was -- and that was ugly and that totally met
19 Justice O'Connor's rule of if this looks ugly, we need to
12:57:26 20 investigate.

21 Well, what it was, was the Hopi Nation was completely
22 surrounded by the Navajo Nation. And we had hours and hours
23 and thousands of pages of testimony from both groups saying
24 they didn't get along. And the Hopi wanted to be in a
12:57:41 25 different district so that they could get federal funding. So

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1 that neck had a purpose that was very community of interest
2 driven.

3 So lack of compactness isn't a conviction. It's a trigger
4 for a deeper investigation to see is there some other factor,
12:57:58 5 traditional criteria or traditional principle that would
6 justify this district.

7 Q And I want to ask you whether or not you see a lack of
8 compactness in these maps. But I realize I forgot to ask you
9 something when we were talking about numbers and percentages
12:58:12 10 and the risk presented by relatively low percentages of
11 African-Americans in a district that purports to be a *Gingles*
12 1 district. And can you give a recent example from Mississippi
13 of that?

14 A Yes. This was just actually in the news this morning is
12:58:29 15 that Mississippi had a state senate district that was drawn to
16 be 51 percent African-American in 2011, and it consistently
17 elected a white Republican.

18 Q So it was drawn to be a majority African-American
19 district, and it consistently elected the Republican candidate?

12:58:51 20 A Exactly.

21 Q And in Mississippi, do African-Americans identify
22 typically with the Republican party?

23 A No. Their voting patterns are very similar to what has
24 been set up in the record in this case.

12:59:00 25 Q So there's a very high degree of congruence between race

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1 and party identification in Mississippi as in Alabama?

2 A That's my understanding.

3 Q And African-Americans in Mississippi --

4 Ms. KHANNA: Objection, Your Honor. This is beyond

12:59:09 5 the scope of his report. I don't remember him testifying about
6 Mississippi at all.

7 BY MR. WALKER:

8 Q I will withdraw those questions and ask if you just want
9 to tell us about the example of the risk of a low margin as
12:59:24 10 illustrated in Mississippi?

11 A Sure.

12 MS. KHANNA: Objection, Your Honor. Again, that
13 example is not provided anywhere in his report.

14 THE COURT: I believe that's because it was something
12:59:34 15 in the news today; is that correct?

16 THE WITNESS: Right. I had not followed the case
17 closely until the election was just held. But it was a lawsuit
18 that overturned the 51 percent seat as not sufficient and
19 imposed a remedy district that's 57 percent. And then just
12:59:49 20 today the news came out that the African-American won that seat
21 by 4 percent, so moving it from 51 -- when the lawsuit moved it
22 from 51 to 57, that gave a 4 percent --

23 THE COURT: Do you remember the name of that lawsuit?

24 THE WITNESS: I'm horrible with lawsuit names. I'm
13:00:05 25 sorry.

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1 THE COURT: I can relate.

2 THE WITNESS: It's the Mississippi State Senate.

3 THE COURT: Okay.

4 THE WITNESS: Case.

13:00:09 5 THE COURT: Thank you. *Thomas V. Bryant?*

6 MR. WALKER: I believe that's it, Your Honor.

7 THE COURT: Let the record reflect that Alex Davis
8 came forward with that name. I've hired smart law clerks.

9 BY MR. WALKER:

13:00:33 10 Q So you have before you this page that has all four
11 districts together on it. And then behind those, you have
12 expanded views of each district. And what I would like for you
13 to do, please, Dr. Johnson, is look at each one of these, and
14 I'll show you -- this is illustration 1, the Illustrative Plan
13:00:55 15 1, the District 1 from that, and that that's Defendant's
16 Exhibit 13 on page 25, and ask you if you see any problems with
17 this district, in terms of compactness and your definition of
18 compactness?

19 A Yes. So as you look at this map, the pink is District 1.
13:01:12 20 The white area is the other districts. And over in Mobile on
21 the left-hand side, the white is Mr. Cooper's new proposed
22 district coming into Mobile County.

23 And the kind of brownish lines on there are the county
24 borders, obviously. You have Henry and Houston. And where you
13:01:30 25 don't see a thick black line, the district border is following

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1 the county border.

2 And so we come across the south, and when you get into
3 Mobile County, you can see the thick black line appear with all
4 the zigs and zags and jigs and jogs as the district crosses
13:01:48 5 using the I-10 bridge as it's contiguity, and then comes down
6 in essentially the smallest geographic edge he could along --

7 Q Am I pointing to the right place? The slender neck?

8 A Yes. Yes -- along the bay side of the city of Mobile.

9 Because he's avoiding picking up the Mobile voters in District

13:02:11 10 1. He's keeping all those voters in the heart of Mobile out.

11 Q What voters?

12 A The voters in the heart of Mobile who are mostly
13 African-American.

14 Q Okay.

13:02:20 15 A He's keeping them -- he's going around them and keeping
16 them out of the district to then get around and pick up the
17 south and west parts of the city of Mobile and the areas -- the
18 outlying areas to the west and south of the city, which are,
19 again, largely white voters he's putting into District 1.

13:02:39 20 Q Does it appear to you that he has gone around one group of
21 people to get to another group of people in drawing this
22 district?

23 A Exactly. He's going around one group to get to another.

24 And the only apparent justification that he can give for that
13:02:56 25 is race.

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1 Q Let me show you an expansion of Illustrative Plan 2 and
2 ask you: Does this also illustrate that Mr. Cooper went around
3 one group of people to get to another group of people?

4 A Yes. In Illustrative Map 2 that we're looking at now,
13:03:15 5 he's actually cutting through both Baldwin and Mobile counties.
6 He's picking up -- or he's picking up almost all of Baldwin
7 County except for some far north areas that are actually
8 relatively heavily African-American, and then, again, coming
9 down and using the Interstate 10 bridge and a very, very narrow
13:03:36 10 connector along the bay on the east side of the city to go
11 around those African-Americans in Mobile in another very jagged
12 zigs and zags approach that has no, you know, basis or reason
13 other -- given other than the race of the residents in those
14 areas in order to get around Mobile and again pick up the
13:04:00 15 southwest city residents and the rural residents who are
16 largely white in District 1.

17 Q He could have put all of Mobile County into District 2,
18 could he not have?

19 A I presume.

13:04:15 20 Q What would be the consequence of that?

21 A District 2 would not have been majority African-American.

22 Q Let me show you Illustrative Plan 3 and ask for your
23 opinion of District 1 in that plan. Does it also illustrate
24 that he went around one group of people to get to another group
13:04:33 25 of people?

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1 A Exactly. Again, it's the kind of hooking around the city
2 using the I-10 freeway bridge across. And then at the bay
3 front edge of the city -- again, he's getting as little
4 territory of the city as possible on the bay front, and then
13:04:52 5 wrapping around picking up the south and west parts of the city
6 which are more white after going around that more
7 African-American parts of the area.

8 Q And, finally, Illustrative Plan 4, again, your testimony,
9 please?

13:05:06 10 A I give him points for creativity on this one. In this
11 case, he's using more of a fishhook. Instead of coming across
12 and going around the population with District 1, in this case,
13 it's his remedy district coming around and fishhook around
14 District 1 aiming at the same population of heavily
13:05:28 15 African-Americans in the Mobile area.

16 But in this case, he's connecting them -- instead of
17 coming down along the county line, he's coming down along the
18 state line. In those areas, they look whiter out in the rural
19 areas, but that's just one VTDY. He's just picking the minimum
13:05:48 20 number of VTDs with as few people as he can to get around to
21 the populated area in the city.

22 Q So just to be clear on this map, which is from the
23 Defendant's Exhibit 13, page 26, within mobile County, the
24 white area is District 2, and that's actually the area where
13:06:02 25 the relatively high concentration of African-American

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1 population?

2 A Yes. The area along the state line is isn't heavily
3 African-American, but he's just getting as few people as he can
4 to hook around and get in to where the population is that that
13:06:16 5 fishhook contains, which is almost entirely in the
6 African-American neighborhoods of Mobile.

7 MR. WALKER: And, Your Honor, just because I wasn't as
8 scrupulous about this -- the maps, the expanded maps that I
9 have shown were from Defendant's Exhibit 13, pages 25 and 26.

13:06:33 10 THE COURT: Got it. Thank you.

11 BY MR. WALKER:

12 Q Not to beat a dead horse, Dr. Johnson, but let's do the
13 same thing with exhibit -- with the proposed District 2s.

14 And I'm showing you Defendant's Exhibit 13, page 8, which
13:06:59 15 are the four views of Defendant's Exhibit 2. And I'll ask you
16 to look at each one of these and say whether or not you think
17 it's compact.

18 And let me stop there. Your testimony was that in all
19 four of the versions of District 1 that we just looked at,
13:07:17 20 Mr. Cooper went around one group of people to get to another
21 group of people; is that correct?

22 A Yes.

23 Q And does it follow that you have an opinion as to whether
24 those districts are compact?

13:07:27 25 A Exactly, yeah. By definition, they would not be compact.

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1 Q And, now, if you would give us your testimony as to
2 Illustrative District 1 version of District 2, please.

3 A Yeah. So these are the mere image or the puzzle pieces
4 that fit into the districts we were just looking at. And they
13:07:51 5 highlight how the map again is coming down into Mobile County.

6 In the case of Illustrative Map 1, it's getting the north
7 end of the county and then coming down into that heavily
8 African-American area mostly in Mobile and the surrounding
9 cities and picking up the African-American neighborhoods; not
13:08:12 10 picking up the whole city, just the African-American parts of
11 those cities and putting them into District 2.

12 And my -- my analysis has all been fairly heavily focused
13 on highlighting what's going on in Mobile. But you can see in
14 this map in Illustrative 1, he's also got these jigs and jogs
13:08:29 15 going through Marengo County. So, again, he hasn't given any
16 explanation or justification other than the --

17 MS. KHANNA: Objection, Your Honor. Outside the scope
18 of his report. There is no analysis on Marengo county.

19 MR. WALKER: I don't recall if -- if Ms. Khanna says
13:08:50 20 there's no analysis on Marengo County, I will go with that.

21 THE COURT: All right.

22 MR. WALKER: I'll withdraw that part of his testimony.

23 BY MR. WALKER:

24 Q Look, if you would, please, at Exhibit -- Defendant's
13:09:05 25 Exhibit 13, page 31, which shows Illustrative Map 2, please.

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1 And does that also, within Mobile County and Baldwin County,
2 illustrate a lack of compactness in the drawing of that
3 district?

4 A Yes. Exactly. It's stretching through the north kind of
13:09:29 5 African-American -- heavily African-American part of Baldwin
6 County, and then the largely unpopulated Delta area in order to
7 use a narrow, narrow neck to get down into the African-American
8 neighborhoods in the Mobile area, in the city of Mobile area
9 that are being added in while bypassing all those populations
13:09:50 10 that they went -- you know, that they narrowly squeezed
11 through.

12 Q And the same with Illustrative Map -- I mean Illustrative
13 Map 3, District 2.

14 A Yes. This is, again, highlighting the area that District
13:10:08 15 2's picking up and forcing District 1 to wrap around as he
16 draws his districts, and just barely gets to that -- by his own
17 numbers, 50 percent, and by my numbers doesn't quite get to
18 that 50 percent number.

19 Q Okay. And, finally, Illustrative Map 4, District 2, a
13:10:28 20 hook or whatever it is?

21 A Rights. Again, this really -- the blue really shows the
22 fishhook through Mobile County. And it really highlights the
23 tip of the fishhook is that very densely, heavily populated
24 part of the city that is the goal that he's trying to get into
13:10:45 25 District 2 in all four of these maps just using various

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1 different creative necks and arms to squeeze in there while
2 bypassing the more white population that he doesn't want to put
3 in there.

4 Q And so do you have an opinion of whether District 2 in all
13:11:03 5 four versions of the districting plan presented by Mr. Cooper,
6 does District 2 meet your definition of compactness?

7 A No, it does not.

8 Q Okay.

9 MR. WALKER: And, Your Honor, those maps were from
13:11:19 10 Defendant's Exhibit 13, page 8 -- excuse me -- and then
11 Defendant's Exhibit 13, pages 31 and 32.

12 THE COURT: Thank you.

13 BY MR. WALKER:

14 Q Mr. Johnson, go through the stack that I have got -- we're
13:11:38 15 going to skip over some of that. I think we have made our
16 point.

17 And go to this map (indicating), which is Defendant's
18 Exhibit 13, page 35.

19 A Okay.

13:11:48 20 Q And I'll ask you to explain this map to the Court, please.

21 A So this is zoomed in on Illustrative Map 2. And this is
22 that neck that comes down to the north part of Baldwin County
23 and down into Mobile County, the neck of District 2.

24 The colors that are shown here are highlighting the
13:12:11 25 African-American percentage. And I'm using the all-part

1 African-American because those are numbers Mr. Cooper said he
2 was looking at or using when he drew his maps.

3 And so the red census blocks are where African-Americans
4 are 75 percent or more of the voting age population. By that,
13:12:31 5 all parts count -- or any parts count. The yellow are 65 to
6 75 percent of the population is African-American. And the
7 green is 50 percent to 65 percent.

8 So the greens, yellows, and reds are where the
9 African-Americans are the majority. And then the blues --

13:12:48 10 Q Let me stop you there and ask you a question.

11 A Oh. Sure.

12 Q Does this tell you the percentage of ethnicity in a given
13 census block? Is that what it tells you?

14 A Exactly.

13:12:59 15 Q Okay. But it doesn't tell you the number of people who
16 live in an area?

17 A Correct.

18 Q Okay. So this area of west Mobile that I'm looking at, as
19 we read this map, what it tells us is that's primarily a white
13:13:14 20 area, but it doesn't tell us anything about the level of
21 population in that area?

22 A Exactly. The only population numbers you can tell are --
23 the areas that are colored in as white, we know those are zero
24 population.

13:13:29 25 Q Okay.

1 A But other than that, we don't know whether it's one person
2 or a thousand people in a given census block.

3 Q So looking at this map from Defendant's Exhibit 13, page
4 35, what, in summary, does it show?

13:13:42 5 A It shows how, in Illustrative Map 2, District 2 is coming
6 through, and you can see the mostly red and yellow and green
7 areas in the north part of Baldwin County, coming through that
8 neck, and then using mostly unpopulated territory to come down
9 south to get into where the -- the dense concentration of red,
13:14:06 10 yellow, and green census blocks are in the city.

11 Q And where you have the word Mobile, does that mean the
12 city of Mobile -- the densely populated city of Mobile is in
13 that area?

14 A Yes. That's that geographic center of the city.

13:14:19 15 Q Let me show you a map that's from Defendant's Exhibit 13,
16 page 36, and ask you to explain this to the Court, please.

17 A So this is the same color scheme and same demographics
18 being shown. In this case though, it's Illustrative Map 4.
19 This is the fishhook map.

13:14:40 20 So you can see District 2 coming along through -- granted
21 the white areas -- the purple meaning less than 25 percent
22 black or African-American. But, again, as we were just
23 discussing, they're very sparsely populated out along the state
24 line hooking down along the south edge and then up into Mobile
13:15:01 25 to capture that same pocket of green, yellow, and red census

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1 blocks.

2 Q One more. This is from Defendant's Exhibit 13, page 34.

3 If you'll explain this one, and then we'll move on.

4 A Yes. So this is that same map we just looked at. This is
13:15:22 5 the tip of the fishhook coming up into Mobile.

6 So the black line is the district border. And, again, you
7 can see the colored-in census blocks. And it really shows how
8 closely aligned the district borders are to those majority
9 black or African-American census blocks.

13:15:46 10 Q Thank you. Excuse me, Dr. Johnson. Next I want to show
11 you this map from Defendant's Exhibit 13, page 14, and ask you
12 what it shows?

13 A So this is showing an overlay of the 2011 adopted map with
14 the 2001 benchmark or predecessor map.

13:16:16 15 So the colors -- the pink, blue, green, yellow, and
16 brown -- are the districts as adopted in 2011. And the thick
17 black lines are the 2001 district lines.

18 So this is showing how kind of at a glance you can see how
19 closely aligned the two districts were -- or I'm sorry -- the
13:16:39 20 two maps were.

21 Q So when the legislature adopted the 2011 congressional
22 map, does it appear that the legislature was conscious of and
23 sought to preserve the cores of existing districts?

24 A Certainly.

13:16:54 25 Q Why would the legislature want to do that? What's the

1 value, in terms of democracy and the functioning of democracy,
2 in preserving the cores of existing districts?

3 A It gets to actually what other districts have talked about
4 already, which is most, if -- certainly a lot, if not most, of
13:17:14 5 the issues that members of Congress and other elected officials
6 deal with are long-term problems; you know, trying to expand
7 the bridge, trying to deal with education issues in a district,
8 trying to bring economic development to an area, trying to
9 build a new freeway.

13:17:34 10 All of these major issues that members of Congress deal
11 with all the time, these are long-term issues. And so by
12 preserving the core of the districts, you keep the
13 relationships that are working on those issues. The member of
14 Congress knows the local officials. They know the, you know,
13:17:52 15 civil servants who are working on these projects. And they
16 have their own expertise on that issue.

17 You have had other witnesses talking about their detailed
18 knowledge of the economic engines of each of their districts
19 and what needs to be done to improve the economic needs in each
13:18:12 20 district.

21 So when we say preserving the cores of a district, or, you
22 know, when the U.S. Supreme Court cites that as a traditional
23 criteria, it's a very -- you know, I'm a demographer -- it's a
24 very generic vanilla demographer's term.

13:18:28 25 But what they're talking about is maintaining all that

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1 history and all that work that's going on in those
2 relationships that exist so that they can continue to work
3 going forward.

4 Q I believe you were in the courtroom -- you may have been
13:18:42 5 in the courtroom yesterday when Representative Byrne testified
6 about the importance of getting a bridge across the Mobile Bay.
7 Is that something that he could handle in a two-year term?

8 MS. KHANNA: Objection, Your Honor. Beyond the scope
9 of his report.

13:18:56 10 THE COURT: Sustained.

11 BY MR. WALKER:

12 Q Look, if you will, at Defendant's Exhibit 13, page 15, and
13 tell the Court what this map is, please.

14 A So the black lines on here are, again, the same as in the
13:19:15 15 previous map. They are the 2001 map lines that were in place
16 before the 2011 redistricting.

17 But the color shadings in this case have been replaced now
18 with the Illustrative Map 3 drawn by Mr. Cooper. So now you
19 can see the difference between those thick black lines, and the
13:19:34 20 colors underneath show much more extensive changes that have
21 been drawn into this map compared to the previous map.

22 Q Does it appear that this -- at least in Illustrative Map 3
23 that Mr. Cooper showed regard for the cores of existing
24 districts?

13:19:57 25 A Definitely not.

1 Q Okay. And do you know whether the Supreme Court has
2 stated that the cores of existing districts is a conditional
3 redistricting principle or criteria?

4 A Multiple times. The best known was in *Karcher v.*

13:20:19 5 *Daggett -- K-A-R-C-H-E-R, V --*

6 Q Which, as I recall, was a congressional redistricting
7 case?

8 A Yes, I believe so. And then that's been cited in
9 subsequent cases, as well.

13:20:29 10 Q I am now showing you Defendant's Exhibit 13, page 20.
11 What does this map show, please, Dr. Johnson?

12 A So, this is Mr. Cooper's map showing the area that he put
13 together into the District 2 and District 7 in his illustrative
14 maps.

13:20:53 15 So the thick black line that you see kind of weaving
16 through the central and south part of the state, that's the
17 outer border of the combination of those two districts combined
18 over all of his maps. And the color shading that I'm pretty
19 sure has been discussed before, this is the African-American
13:21:15 20 percentage of the county as a whole for each of the counties in
21 the state.

22 And then highlighted in the bottom left with the purple
23 arrow is this weird pocket that he includes. And that's the
24 arrow I added. The pocket is in his map. It's the kind of
13:21:35 25 south and west edge of Mobile and the areas outside it which

1 are heavily white that he went around in every one of his maps.

2 So when he overlays all four, that pocket is left out.

3 Q In every one of his maps, that pocket is left out?

4 A Exactly.

13:21:51 5 Q Would that affect the population count for the districts
6 to which that pocket would have been assigned?

7 A Yes. That small area has -- I spelled it out in my
8 report, I think 94,000 people in it. And when you put it into
9 the rest of the outlined area, it's so much more heavily white
13:22:12 10 that it actually drops the African-American percentage of the
11 area as a whole by about 2 percent.

12 Q Thank you.

13 I'd like to show you -- ask you to look at, please,
14 Dr. Johnson, paragraphs 28 and 29 of your report. And I will
13:22:34 15 show you Figure 10 from your report, which is Defendant's
16 Exhibit 13, page 16. Again, Figure 10. And ask you to explain
17 this to the Court, please.

18 A So this is looking at the percentage of the population
19 that was moved into new districts between the -- compared to
13:23:01 20 the 2001 map. So this is numerically showing what we were just
21 looking at in the overlay maps.

22 And you can see the adopted 2011 map at the far left,
23 where it says 10.4 percent, the short bar, shows the state
24 really made minimal changes. You know, the 70-something
13:23:24 25 thousand people had to be added into District 7 because it was

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1 short of what the population needed according to the 2010
2 census.

3 Q Did you say 70,000?

4 A I think it was 70,000 -- yes. Oh, here in paragraph 31 is
13:23:42 5 the specific number. It's 79,467.

6 Q About 500 less than 80,000?

7 A Yes, exactly. So some people had to move. That district
8 was short. Other districts were over. So that's why we
9 restrict is people have to move.

13:24:01 10 So the adopted map kind of was minimal changes you might
11 describe it, and only 10 percent of the state's population
12 moved.

13 Then the other bars you can see how much more population
14 moved. 25 to 31 percent of the state's population were changed
13:24:19 15 from their old district to the new district, which means new
16 relationships, getting to know new representatives, having to
17 educate the new representative on the issue of their areas,
18 and, to some degree, start over in whatever projects each
19 community had going with their old representative, and
13:24:38 20 hopefully convincing the new representative to be just as
21 interested in the project as the old representative was. You
22 use that buy-in that you had before.

23 Q Well, if the state, when it drew the maps in 2011 only
24 needed to move 10.4 percent of the population, and in the
13:24:59 25 process of that had to repopulate Representative Sewell's

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1 district, which was almost 800,000 -- I mean, excuse me --
2 80,000 people short of ideal population, why did Mr. Cooper
3 need to move in his Illustrative Plan 1, 30 percent of the
4 state's population; and in Illustrative Plan 2, 25.3 percent of
13:25:21 5 the state's population; and in Illustrative Plan 3,
6 28.8 percent of the state's population; and in Illustrative
7 Plan 4, 30.9 percent of the state's population?

8 A Well, this is the core of the whole of my report where I
9 kind of walk through all these other criteria of looking for an
13:25:40 10 explanation. Was he trying to make the map more compact? Was
11 he trying to respect cities and other communities of interest
12 better than the adopted map? Was he trying to retain the core?
13 Was he trying to follow any of the traditional redistricting
14 principles in drawing the lines a different way and in moving
13:25:59 15 all these additional people?

16 And, you know, you can't check any of those boxes. None
17 of those traditional criteria explain it. The only thing that
18 explains it is race.

19 Q So Mr. Cooper seemed to indicate in his testimony that it
13:26:15 20 was important to try to keep counties whole. Did he keep
21 Mobile County whole in any of his plans?

22 A No.

23 Q Did he respect communities of interest in Mobile County in
24 his plans?

13:26:27 25 A No.

1 Q Did he respect communities of interest between Mobile and
2 Baldwin County in his plan?

3 MS. KHANNA: Objection, Your Honor. There's no
4 testimony about the communities of interest in his report.

13:26:40 5 MR. WALKER: That's not correct. There is.

6 BY MR. WALKER:

7 Q Dr. Johnson, if you can find the report I'm looking for,
8 feel free to speak up.

9 A Yeah. So on page 22, paragraph 44, where I summarize it,
13:27:43 10 I list -- page 22, paragraph 44, it's subpoint B, as in boy, I
11 list out the traditional redistricting principles I look at,
12 and I find that Mr. Cooper does not justify the changes based
13 on any of them, including respecting communities of interest
14 such as counties, cities, and VTDs.

13:28:02 15 THE COURT: Which subparagraph of paragraph 44 is
16 that?

17 THE WITNESS: B, as in boy.

18 THE COURT: Thank you. You may proceed.

19 MR. WALKER: I beg your pardon?

13:28:32 20 THE COURT: You may proceed.

21 MR. WALKER: Thank you, Your Honor.

22 BY MR. WALKER:

23 Q So you looked at -- we've talked about communities of
24 interest. We've talked about compactness. We've talked about
13:28:45 25 contiguity.

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1 Is his plan any more or less contiguous than -- do all the
2 districts in his plan link up or connect to each other?

3 A Technically, yes. They all are geographic contiguous. Is
4 that the extreme definition? As I mentioned, in three of these
13:29:08 5 maps he's only using the I-10 bridge for contiguity, but...

6 Q Maybe threadbare, but it's contiguous?

7 A Yes.

8 Q Does he have significantly less or even less in all of his
9 plans splits of cities, counties, and VTDs than the state did
13:29:26 10 in its 2010 plan?

11 A I didn't find any disagreements with his counts where he
12 talks about he had the same number -- or I think in some of the
13 maps he said he had one or fewer splits. The one or fewer
14 split claims are a little extreme because what he's counting is
13:29:46 15 up in Jackson County.

16 MS. KHANNA: Objection, Your Honor. Not in his
17 report.

18 BY MR. WALKER:

19 Q Dr. Johnson, do you talk about VTD splits in the reports?
13:29:59 20 I think it's in the same paragraphs that we just looked at that
21 says respecting communities of interest such as counties,
22 districts, and VTDs?

23 MS. KHANNA: Your Honor, Dr. Johnson is providing a
24 lot of color on -- well, he did -- on new criticisms of
13:30:14 25 Mr. Cooper's plans that are just not included in his report.

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1 It's very difficult to rebut something that you are learning
2 for the first time at trial.

3 MR. WALKER: Dr. Johnson was deposed, and they were
4 free to ask any question they wanted about any part of this
13:30:28 5 exhibit.

6 MS. KHANNA: Based on his report.

7 THE COURT: Did you ask him what VTDs did you mean?

8 MS. KHANNA: No. We did not ask him whether or not he
9 had additional criticisms other than what's in his report. And
13:30:42 10 if he did, I think that would still be beyond the scope of his
11 report.

12 THE COURT: Did you ask what VTDs he was referring to
13 on page 22?

14 MS. KHANNA: We certainly discussed VTD at his
13:30:54 15 deposition.

16 THE COURT: Did he discuss Jackson County?

17 MS. KHANNA: Not that I recall.

18 MR. WALKER: I don't actually recall whether he did.
19 We will withdraw the comment about Jackson County if that helps
13:31:05 20 us move forward, Your Honor.

21 THE COURT: Okay.

22 BY MR. WALKER:

23 Q Let me just bring this to a close.

24 Does respect for communities of interest explain the
13:31:15 25 difference in the districts that Mr. Cooper drew and the

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1 state's 2011 districts?

2 A No.

3 Q Does compactness explain that difference?

4 A No.

13:31:28 5 Q Does contiguity explain that difference?

6 A No.

7 Q Does minimizing splits explain that difference?

8 A No.

9 Q Does protecting incumbents explain that difference?

13:31:41 10 A No.

11 Q Or preserving the cores of existing districts?

12 A No.

13 Q So what are we left with?

14 A The only explanation is that race is the predominant
13:31:51 15 factor in Mr. Cooper's maps.

16 Q Thank you much, Dr. Johnson.

17 MR. WALKER: Your Honor, I pass the witness.

18 THE COURT: If we could -- I need to take a short
19 break. I have got a phone call I need to return.

13:32:05 20 We'll come back at -- let's just go on and say 1:45.

21 MS. KHANNA: Yes, Your Honor.

22 MR. WALKER: Thank you, Your Honor.

23 (Recess.)

24 THE COURT: You may proceed.

13:47:40 25 MS. KHANNA: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MS. KHANNA:

3 Q Good afternoon, Dr. Johnson.

4 A Good afternoon.

13:47:44 5 Q Your task in this case was to review the expert report and
6 illustrative maps submitted by Mr. Cooper and to share your
7 opinions of them; is that correct?

8 A Along with looking at the data, yes.

9 Q And you provide no response to Dr. Palmer's initial report
13:48:02 10 on racially polarized voting in Alabama?

11 A Correct.

12 Q And you have no reason to dispute Dr. Palmer's conclusions
13 on functionality in his rebuttal report, correct?

14 A I don't think I even read them.

13:48:15 15 Q And you did not dispute any part of Mr. Cooper's analysis
16 of socioeconomic disparities between blacks and whites in
17 Alabama?

18 A Correct.

19 Q And you have no reason to dispute any of the conclusions
13:48:28 20 in Dr. McCrary's report relating to the history of
21 discrimination in voting?

22 A Correct.

23 Q On page 4 of your report, you discuss what you believe to
24 be the proper metric of African-American; is that right?

13:48:47 25 A Proper in that it's the Department of Justice guidelines,

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1 yes.

2 Q And your preferred metric, as reflected in your report, is
3 made without reference to any understanding you had about what
4 Alabama actually uses when it tabulates black voting age
13:49:10 5 population, correct?

6 A Right. I was not relying on what the state had done.

7 Q And is it fair to say that your metric, metric that you
8 advance is different than the metric that Dr. Hood advances?

9 A Slightly different, yes.

13:49:26 10 Q Is it your opinion that Dr. Hood's position -- sorry. Is
11 it your position that Dr. Hood is using the wrong metric?

12 A Well, depends on his purposes. If he's trying to evaluate
13 the *Gingles* majority test, then, yeah, it would be the wrong
14 metric. It may be the right metric for his purposes.

13:49:49 15 Q But you do not argue that Dr. -- that Mr. Cooper is, in
16 fact, using the wrong metric to calculate BVAP, do you?

17 A I'm sorry?

18 Q How about this: Is it your position that Mr. Cooper is
19 using the wrong metric according to the DOJ guidelines for
13:50:08 20 assessing black voting age population?

21 A Yes; that he's using the wrong measure. And when you use
22 the right measure, the two lesser maps don't meet the
23 50 percent threshold.

24 Q So in your report, don't you say in paragraph -- on page
13:50:26 25 5, footnote 3 that both the DOJ guidance and the OMB guidance

1 provide the option to follow Mr. Cooper's approach?

2 A I don't know about -- I wouldn't describe it as an option.

3 It's a secondary analysis that DOJ reserves the right to do if

4 they find it's justified in using that instead of the original

13:50:51 5 approach. And, again, as I mentioned, when you get into

6 citizen voting age cases, you can't do the secondary method

7 because that data is not available.

8 Q And the cases in which you're talking about that often get

9 into the issues of citizen voting age population, those are

13:51:07 10 cases that are often involving large Latino populations; is

11 that correct?

12 A Some of them are not so large, but, yes, they tend to

13 involve Latino or Asian American communities.

14 Q And oftentimes where the minority group at issue is either

13:51:23 15 exclusively or includes the Latino population; is that correct?

16 A It also comes into play in Asian-America jurisdictions,

17 but in addition to Latinos areas.

18 Q The vast majority of your work has been in California and

19 the American southwest; is that correct?

13:51:37 20 A Yes.

21 Q Where there are significant Latino populations and Asian

22 populations; is that correct?

23 A Certainly Latino in just about all of them, and Asian in

24 many of them.

13:51:46 25 Q Certainly relative to southern Alabama, larger populations

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1 of those minority groups?

2 A Certainly larger in Latino -- you have some pockets of
3 fairly large Asian American population here. But, yes, not --
4 Alabama doesn't have percentages that California does, for
13:52:03 5 example.

6 Q Fair enough. So you refer to the DOJ guidelines in your
7 report; is that correct?

8 A Yes.

9 Q Can we please pull up Plaintiffs' Exhibit 125?

13:52:17 10 So Plaintiffs' Exhibit 125 is the DOJ's guidance
11 concerning redistricting under Section 5 of the Voting Rights
12 Act; is that correct?

13 A Yes.

14 Q And it's dated in February of 2011, right?

13:52:32 15 A Yes.

16 Q And this is the document that you cite in your report
17 discussing how to allocate African-American population?

18 A Yes. There are earlier versions, and there's an OMB
19 guidance too, but they're all essentially the same.

13:52:46 20 Q Well, this is the version that would have governed the
21 redistricting process in 2011, correct?

22 A Yes; along with Department of Justice speeches.

23 Q So does this version refer to Department of Justice
24 speeches?

13:53:04 25 A No.

1 Q It's the written document actually published by the
2 Department of Justice, correct?

3 A Yes. When I refer to speeches, the head of the Section 5
4 unit comes to the National Conference of the State Legislature
13:53:15 5 redistricting seminars, and we talk about these guidelines and
6 how they would be interpreted and implemented.

7 Q So you have heard some speeches from DOJ officials before,
8 right?

9 A Yes, many times.

13:53:25 10 Q So you would agree that the standard for determining
11 racial categories in the Section 5 context is the standard to
12 be applied in the Section 2 case, as well; is that right?

13 A In my experience, they tend to be the same standard.
14 There may be some legal intricacies that are more lawyerly than
13:53:50 15 my work, but, yes, generally, they would correspond.

16 Q If we could turn to page 4 of this document. I won't ask
17 you to read the very fine print on this whole thing. Although
18 I think it's -- there we go.

19 But you do see the heading called The Use of the 2010
13:54:17 20 Census Data --

21 A Yes.

22 Q -- in the middle of the page?

23 And you would agree that that is where the DOJ guidance
24 discusses the various racial categories on the census, correct?

13:54:28 25 A In this register, yes.

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1 Q And at no point in this DOJ guidance does the DOJ list the
2 eight categories of race data that your report lists, correct?

3 A I don't remember if it would be here or in the OMB
4 guidance.

13:54:49 5 Q Okay. But it's not listed here. We will take a look at
6 that in a second.

7 A Okay.

8 Q Is that fair?

9 A I -- it's not listed on the page you're showing. I don't
13:54:57 10 know if it's on another page or not.

11 Q Can I -- can we show the next page, as well?

12 You agree it's not listed in the section called, The Use
13 of 2010 Census Data?

14 A Well, actually in the third column, it does -- it doesn't
13:55:23 15 list them. It describes them.

16 Q In your interpretation, you believe that those eight
17 categories come from the text of this document?

18 A Well, no. Here it's describing them. It's summarizing
19 the OMB guidance.

13:55:38 20 Q Okay. If we can go back to the page 4 of the document.
21 So you did mention that the DOJ guidelines refer to a separate
22 document issued by the OMB, correct?

23 A Yes.

24 Q And that's a lot of acronyms. The OMB, for the record, is
13:56:01 25 what office?

1 A Office of Management and Budget.

2 Q Okay. And in this document toward the -- in the third
3 column toward the bottom, you'll see that DOJ specifically
4 cites to footnote 1 of the *Georgia v. Ashcroft* opinion; is that
13:56:18 5 correct?

6 A Yes.

7 Q And they do that in the discussion of how to allocate
8 multi-race responses, correct?

9 A They're talking about their secondary approach would be
13:56:48 10 allocating those numbers off.

11 Q They're -- you said secondary approach. But I'm just
12 looking at the beginning of the paragraph. The department will
13 then move to the second step in its application of the census
14 data.

13:57:00 15 Are you referring to that second step as a secondary
16 approach?

17 A Yes.

18 Q Okay. Are you familiar with the *Georgia v. Ashcroft*
19 opinion?

13:57:11 20 A I'm aware of it. I couldn't quote it to you.

21 Q Luckily, I can.

22 In fact, Mr. Cooper actually cites to that exact same
23 footnote in *Georgia v. Ashcroft* in his rebuttal report -- or
24 actually in his initial report, correct?

13:57:29 25 A I don't recall off top of my head.

1 Q Do you want me to show you? Do you believe me?

2 A It's up to you. Yes.

3 Q We'll just pull up Plaintiffs' Exhibit 1, please, at page
4 5.

13:57:48 5 And here this is Dr. Cooper's initial -- sorry --
6 Mr. Cooper's -- I just promoted him -- Mr. Cooper's initial
7 report. And you see in his footnote on page 5, he says, It is
8 my understanding that following the U.S. Supreme Court decision
9 in *Georgia v. Ashcroft* that the any-part definition is the
13:58:05 10 appropriate census classification to use in most Section
11 2 cases? Correct?

12 A That's what it says.

13 Q Okay. And --

14 THE COURT: Is that based on a footnote in that
13:58:17 15 *Ashcroft* case -- *Georgia v. Ashcroft* case?

16 MS. KHANNA: Yes. And I'm happy to pull up the
17 footnote, if that's easier.

18 THE COURT: No. But if it's a footnote, that's not a
19 holding or a determination in the case, is it?

13:58:42 20 MS. KHANNA: That may well be, Your Honor. But I
21 believe that the questions that I am posing of Dr. Johnson are
22 what his understandings of the guidelines are. And the
23 guidelines do specifically cite to a footnote in the *Georgia v.*
24 *Ashcroft* opinion.

13:58:55 25 BY MS. KHANNA:

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1 Q In fact, if we can go back to the guidelines, Plaintiffs'
2 Exhibit 125, page 4.

3 And we already saw that the *Georgia v. Ashcroft* opinion is
4 specifically cited here, footnote 1.

13:59:13 5 MS. KHANNA: And actually, Heather, can you pull up
6 the *Georgia v. Ashcroft* opinion?

7 THE COURT: Are we going to look at the holding of the
8 case, or are we going to look at a footnote?

9 MS. KHANNA: We're going to look at the actual
13:59:30 10 footnote to which the DOJ guidelines cite.

11 And if we can scroll down -- I apologize. I don't have
12 the pdf number -- to footnote 1. Here we go.

13 BY MS. KHANNA:

14 Q Footnote 1 here you'll see, Dr. Johnson, the Court notes
13:59:55 15 that Georgia and the United States in this case had different
16 figures depending on, quote, whether the total number of blacks
17 included those people who self-identify as both black and a
18 member of another minority group such as Hispanic.

19 Do you see that?

14:00:12 20 A Yes.

21 Q Okay. And I'll just direct your attention to the kind of
22 second half of that footnote where it says, moreover.

23 Moreover, the United States does not count all persons who
24 identify themselves as black. It counts those who say they are
14:00:32 25 black and those who say that they are both black and white. But

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1 it does not count those who say they are both black and a
2 member of another minority group. Using the United States'
3 numbers may have more relevance if the case involves a
4 comparison of different minority groups.

14:00:51 5 And then it cites to some cases there.

6 Here, however, the case involves an examination of only
7 one minority group's effective exercise of the electoral
8 franchise. In such circumstances, we believe it is proper to
9 look at all individuals who identify themselves as black.

14:01:09 10 Did I read that correctly?

11 A I believe so.

12 Q And that's the footnote cited by DOJ; is that correct?

13 A Yes.

14 Q You also mentioned the OMB guidance, as well. If we could
14:01:25 15 pull up Plaintiffs' Exhibit 126.

16 And this is the OMB bulletin that you cite in your report,
17 is it not?

18 A Yes.

19 Q And if we could please turn to page 3 of this document.

14:01:45 20 Here at the top we see a section entitled, Guidance on
21 Aggregation and Allocation of Multiple Race Responses For Use
22 in Civil Rights Monitoring and Enforcement. Correct?

23 A Yes.

24 Q Okay. And at the bottom we see a section entitled,
14:02:00 25 Allocation Guidance. It's Roman Numeral II.

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1 A Yes.

2 Q And there it is says that, Federal agencies will use the
3 following rules to allocate multiple race respondents for use
4 in Civil Rights monitoring and enforcement. Do you see that
14:02:17 5 paragraph?

6 A Yes.

7 Q And it lists several bullet points underneath that. That
8 third bullet point there says, Responses that include two or
9 more minority races are allocated as follows: If the
14:02:34 10 enforcement action is in response to a complaint, allocate to
11 the race that the complainant alleges the discrimination is
12 based on.

13 Do you see that?

14 A Yes.

14:02:47 15 Q So you would agree that according to the OMB guidance that
16 you cite in your report, if the minority group upon which the
17 complaint is based is African-American, then individuals who
18 identify themselves as black and one or more other minority
19 races should be assigned to the African-American category,
14:03:05 20 correct?

21 THE COURT: Excuse me. Is this an enforcement action
22 in response to a complaint?

23 MS. KHANNA: Is this present case an enforcement
24 action? No, it is a -- but it is the guidance that Dr. Johnson
14:03:25 25 has said is relevant in deciding what the appropriate metric is

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1 in this case.

2 THE COURT: I'm confused. Is this the guidance that
3 you were relying on?

4 THE WITNESS: No. Since this is not the methodology
14:03:38 5 that we use in developing databases for redistricting.

6 THE COURT: All right.

7 THE WITNESS: And it's not -- it's not the methodology
8 that the Department of Justice asked the Census Bureau to
9 follow when it asked the Census Bureau to calculate the
14:03:53 10 citizens voting age population.

11 BY MS. KHANNA:

12 Q I'm going to turn your attention to your report,
13 Defendant's Exhibit 13, page 5, footnote 3.

14 I believe the Court just asked you if that OMB guidance
14:04:08 15 was the guidance you were relying on. Do you not cite that
16 exact OMB document in your footnote 3 on your report?

17 A Yes.

18 Q So it is, in fact, the guidance that your report is
19 relying upon, correct?

14:04:19 20 A Not the sentence you're reading there about the
21 enforcement action.

22 Q Can you -- and you would agree that the DOJ guidelines
23 that you also cite in your report refer to that same OMB
24 document, correct?

14:04:34 25 THE COURT: I don't think he's disputing the document.

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1 I think he's disputing that one sentence that you pointed out
2 to him that appears to apply to an enforcement action.

3 BY MS. KHANNA:

4 Q Can we go back to Plaintiffs' 126? Let's start from the
14:05:07 5 first page. So this is a four-page document, and this is the
6 document that you cite in your report, and it's the document
7 that DOJ relies upon, as far as you're concerned in its
8 guidelines, correct?

9 A That's my understanding.

14:05:20 10 Q Can you take -- and take your time. Take a look at the
11 four-page document and tell me what it is that you cite it for.

12 A Well, I refer to it because it's referred to in the DOJ
13 guidance. And I would note right in that DOJ guidance is their
14 initial method is not the method you're reading here from the
14:05:39 15 OMB process.

16 So their initial method in the DOJ guidance that I'm
17 reading is not what's listed in that enforcement action
18 paragraph. It's to allocate them as I have described.

19 Q So when you cite the OMB guidance, this document in your
14:05:54 20 report, you're actually not citing it for any particular
21 proposition stated in the OMB guidance?

22 A It's -- as you saw in the DOJ guidance, it's all rolled
23 together, so they tend to get cited together. And that's where
24 the data -- the data we compile comes from is that guidance
14:06:14 25 from DOJ, which focuses on what DOJ says is their initial

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1 method of reviewing these cases.

2 And, yes, this is in as a second method as an option. And
3 it really highlights -- you know, this goes to the key point
4 I'm bringing up of Mr. Cooper's plans -- that the debate over
14:06:34 5 whether we include or not include African-Americans who also
6 marked Asian, who also marked Hispanic, who also marked Native
7 American which way that debate goes decides whether his maps
8 work -- if they meet the threshold because his margins are so
9 narrow. And that --

14:06:54 10 Q I appreciate your testimony. That's not exactly what I
11 asked. I'm really just trying to find out what you are relying
12 on for what you determined to be the proper metric of BVAP.
13 That's about three or four pages of report. And so I just want
14 to completely understand. You are relying on the DOJ
14:07:10 15 guidelines that we've already looked at, correct?

16 A Yes.

17 Q And those guidelines cite *Georgia v. Ashcroft*, footnote 1?

18 A In their secondary approach.

19 Q And what you're referring to as the secondary approach is,
14:07:34 20 in fact, DOJ's second step of its approach, correct?

21 A Sure.

22 Q You could see how maybe those are different things, a
23 first step and a second step?

24 A I am not a lawyer, so I'll let you -- I will let the
14:07:48 25 lawyers debate that.

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1 Q Dr. Johnson, you would agree that Mr. Cooper's approach is
2 not wrong under the DOJ guidance read as a whole, correct?

3 A I would say it fails under one approach and barely passes
4 under the other approach.

14:08:34 5 Q Because you are reviewing the DOJ guidance as two separate
6 approaches rather than an initial step and a second step,
7 correct?

8 A I'm not sure I see the difference there.

9 Q You would agree that Mr. Cooper's approach is not wrong
14:08:52 10 under the U.S. Supreme Court's guidance in *Georgia v. Ashcroft*,
11 footnote 1?

12 A From what we've just looked at, it seems to follow that.
13 I have -- I don't know -- I'm not enough of an expert to know
14 how much of the Voting Rights Act reauthorization -- I know it
14:09:14 15 reversed some of the *Georgia v. Ashcroft* precedents, but I
16 don't know if it reversed that part or not.

17 Q On page 5 of your report, in paragraph 5, you state that,
18 Of the Alabama residents who marked black, African-American on
19 their 2010 census form, 11,026 or 1.2 percent of them also
14:09:35 20 marked some either other category. Mr. Cooper counts them all
21 in his BVAP figures, but his report provides no analysis or
22 even anecdotes that these 11,026 people vote cohesively with
23 those who meet the traditional Department of Justice definition
24 of African-American for redistricting purposes.

14:09:55 25 Did I read that correctly?

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1 A Yes.

2 Q And that 11,026 number that you cull out, that includes
3 people who are both black and white, correct?

4 A Yes.

14:10:08 5 Q But according to you, those people should, in fact, be
6 counted as African-American in this Section 2 analysis,
7 correct?

8 A Yes.

9 Q Regardless of whether blacks and whites vote cohesively
14:10:23 10 with one another?

11 A Under the DOJ guidance, correct.

12 Q And, in fact, we know from racial voting patterns in the
13 area that blacks and whites don't vote cohesively with one
14 another?

14:10:35 15 A People who are black and people who are white. We don't
16 have any data on people who self-identified both.

17 Q But regardless, is it your opinion that we should be
18 including both people black and white in that figure?

19 A I follow DOJ's guidance on that.

14:10:53 20 Q I want to make sure, because you talk about an 11,026 that
21 I think you're suggesting Mr. Cooper should have not included,
22 but that number includes people that you think should be
23 included in the determination of BVAP, correct?

24 A I didn't break them out, so I don't know the number in
14:11:13 25 there, but some fraction of 11,000.

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1 And, again, we're back to the margins on these districts
2 are so narrow that 11,000 people swings them over or under the
3 *Gingles* threshold -- G-I-N-G-L-E-S.

4 Q Well, I won't cross-examine you on whether it's pronounced
14:11:42 5 *Gingles* or *Jingles*.

6 THE COURT: I won't either.

7 BY MS. KHANNA:

8 Q Is it fair to say that neither the DOJ guidance that we
9 looked at -- Plaintiffs' Exhibit 125 -- or the OMB guidance
14:12:03 10 ever mentions the word cohesive or cohesion in its discussion
11 about how to allocate the races?

12 A You're right. They don't mention it directly. But
13 obviously it would be part of their review if they're looking
14 to see if a cohesive voting block is experiencing polarized
14:12:25 15 voting. They would want to know if -- by definition they would
16 need to know if it's cohesive.

17 Q You state in your report that, Even if the those
18 multi-race, multi-ethnic voters really do vote cohesively with
19 African-American voters, a 1 percent error in the census
14:13:01 20 numbers would mean that Illustrative Maps 3 and 4 have zero
21 majority African-American districts. An illustrative map would
22 have only one. In pursuit of a stated goal to create two
23 districts where African-Americans could elect their preferred
24 candidates, the illustrative maps could end up with zero such
14:13:19 25 districts.

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1 Did I read that correctly?

2 A Which paragraph are you reading?

3 Q I am looking at -- did I not refer you to a number?

4 A No.

14:13:31 5 Q Paragraph 15, I think, starting on page 6. And I believe
6 I started reading on --

7 A Correct.

8 Q -- the third to the last line.

9 So isn't it a fact that there is no statistical margin of
14:13:51 10 error for the census?

11 A The margin of error can't be statistically measured.

12 There is an error.

13 Q It cannot be calculated?

14 A Correct.

14:14:02 15 Q And you have not provided any estimate that the
16 statistical - or any calculation -- or reason to believe that
17 the statistical margin or error for the census is 1 percent, or
18 .1 percent, or 3 percent, correct?

19 A I have not cited the studies because they're --

14:14:22 20 Q Because the number can't be calculated?

21 A Yeah. There are estimates out there. The Census Bureau
22 itself puts out estimates of what it thinks the undercount is
23 of different groups and what the over count is of other groups.
24 But they're all specific to those studies.

14:14:38 25 There's no statistical number. And this is the key to

1 statistics is we have statistically measurable error, and then
2 we have systematic error. And so we know there's systematic
3 error. We just don't know how big.

4 Q And you have chosen 1 percent not based on any particular
14:14:53 5 study or reason to believe that that would be the right
6 calculation in a world where you could calculate it?

7 A It's an often cited sample number when you're talking
8 about the overall error in the census. Lots of people throw
9 out 1 percent as a general rule, because we know it's pretty
14:15:10 10 good. It better be. We use it for every opinion poll and
11 every other study in the country. But we also know that
12 there's some error.

13 We know that -- for example, for African-Americans and
14 Latinos, most undercount estimates are around 2 or 3 percent.
14:15:29 15 College students are actually over counted.

16 So 1 percent is a fairly reasonable guess. But, again,
17 we're looking at systematic here. We can't confirm it.

18 Q And you don't have any citation for that, correct?

19 A No. I didn't put any in my report.

14:15:43 20 Q Dr. Johnson, you are not aware of any instance in which
21 any type of error in the decennial census was determined to
22 have an effect on whether a district could be considered a
23 majority-minority district, are you?

24 A I'm not aware of any federal case where the remedy
14:16:02 25 district -- or the illustrative district was so close that it

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1 would have mattered.

2 Q It would not surprise you to learn that there are, in
3 fact, a number of majority black districts across the country
4 that are less than 52 percent BVAP, would it?

14:16:17 5 A I mean, there are three in California less than 33 percent
6 BVAP.

7 Q There's three majority-minority districts in California
8 that are less than 33 percent BVAP?

9 A There are three voting rights driven districts in Los
14:16:32 10 Angeles that are less than 33 percent that are -- that
11 consistently elect African-Americans.

12 Q Thank you.

13 So you would agree that there probably are majority black
14 districts that are less than 52 percent minority voting age
14:16:46 15 population, correct?

16 A I know the three from California off the top of my head.

17 Q Which are far less than 52 percent, correct?

18 A Yes. And also don't meet the *Gingles* threshold.

19 Q But as you just testified, they do provide opportunities
14:17:06 20 to elect for minority voters, correct?

21 A Yes. One of them recently failed, but historically they
22 have.

23 Q Dr. Johnson, you are familiar with the *Gingles 1* standard
24 as articulated by the U.S. Supreme Court?

14:17:21 25 A Yes.

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1 Q You applied it in your analysis in this case and others?

2 A And in my work almost daily.

3 Q So you're familiar with the *Bartlett v. Strickland* case
4 defining the numerical threshold for that standard?

14:17:41 5 A Yes.

6 Q Can we please pull up *Bartlett v. Strickland*? If we could
7 turn to page 8 of the document?

8 You'll see the highlighted portion on your screen.

9 Provides the majority my -- actually why don't you read it
14:18:04 10 because I'm tired of reading?

11 A The majority-minority rule relies on an objective,
12 numerical test: Do minorities make up more than 50 percent of
13 the voting age population in the relevant geographic area?

14 That rule provides straightforward guidance to courts and to
14:18:21 15 those officials charged with drawing district lines to comply
16 with Section 2.

17 Q Dr. Johnson, this does not say that the objective
18 numerical test is 50 percent minus an estimate or guess at the
19 level of error in the census, does it?

14:18:37 20 A No. It says what I read.

21 Q And it doesn't say that the objective numerical test is
22 50 percent plus whatever specific percentage in that area would
23 provide a functional opportunity based on analysis of turnout
24 and voter registration in the area? Does it?

14:18:55 25 A No. It says what I read.

1 Q Because you would agree with me that it would hardly
2 provide straightforward guidance to courts and officials
3 charged with drawing district lines if different people were to
4 provide guesses at a supposed error that you just testified
14:19:12 5 can't be calculated, correct?

6 A No. I wouldn't agree with everything wrapped into that
7 statement.

8 Q So I asked whether or not the *Bartlett v. Strickland* test
9 incorporates in this language an error rate in the census, and
14:19:31 10 you, I believe, testified it does not?

11 A No. I said that it did not -- that written in here was
12 not the line that you had read.

13 Q Fair enough. Written in the language that I read --
14 written in the highlighted language. It says nothing about a
14:19:45 15 census error, correct?

16 A It talks about more than 50 percent, a number that has to
17 be measurable, and the Court would have to be confident of that
18 number.

19 An error -- you know, it's not the total population rule,
14:20:04 20 you know. It's not this artificial one person thing.

21 It's pretty clear to me that that language says the
22 50 percent number needs to be a reliable number. We can't be
23 50/50 it is. We can't be -- you know, we can't be 52/48 that
24 it is 50 percent. It doesn't apply to me that we should guess
14:20:27 25 or be that close. When we know there's error in the data, we

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1 want to be safe.

2 Q So your understanding is that this language implies that
3 we should guess at the census error rate which cannot be
4 calculated?

14:20:38 5 A No.

6 Q And that that would be straightforward guidance?

7 MR. WALKER: Your Honor, if I may. This is a matter
8 that we will be glad to brief to the Court.

9 THE COURT: Sustained.

14:20:46 10 MR. WALKER: It's not appropriate to continue to ask
11 this witness about that.

12 THE COURT: It's a legal matter. I think it's
13 appropriate for the Court, not for the witness.

14 MS. KHANNA: Understood, Your Honor.

14:20:57 15 BY MS. KHANNA:

16 Q To be clear, Dr. Johnson, you performed no analysis
17 whatsoever of the effectiveness of the illustrative districts
18 in Mr. Cooper's plans, correct?

19 A Correct.

14:21:12 20 Q You had performed no analysis about the extent to which
21 they would actually provide an opportunity to elect minority
22 preferred candidates?

23 A Correct.

24 Q And you are not asserting any opinion on the effectiveness
14:21:25 25 of those districts, are you?

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1 A Correct. I've seen lots of districts like this drawn and
2 seen what they've done, but I did not write that up in my
3 report.

4 Q You certainly provide no analysis to that effect, correct?

14:21:40 5 A Correct.

6 Q So, Dr. Johnson, I believe you testified on direct that
7 Plaintiffs' illustrative plans fail to comply with the
8 traditional districting criterion of compactness, correct?

9 A Yes.

14:21:57 10 Q And that's based on your visual review of the districts?

11 A And just about any measure of that southern district, in
12 particular.

13 Q So you would agree, wouldn't you, that under *Gingles 1*
14 plaintiffs must establish that the minority community is

14:22:19 15 sufficiently numerous and geographically compact to comprise a
16 majority of the voting age population in a new congressional
17 district, correct?

18 A Yes.

19 Q And you would agree that the compactness aspect of the
14:22:30 20 first *Gingles* precondition refers to the compactness of the
21 minority population, not the compactness of any given district,
22 correct?

23 A No. I disagree with that.

24 Q So your understanding of the *Gingles 1* standard is that it
14:23:12 25 looks at -- it does not look at the compactness of the minority

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1 population, but looks at the compactness of a minority
2 district?

3 A The remedy district -- or the illustrative district --
4 sorry -- the illustrative district would need to be
14:23:28 5 geographically compact to meet the language of the *Gingles*.

6 Q I guess we'll save that legal dispute for another day.

7 You looked at the Reock scores of the illustrative plans
8 on page 10 of your report; is that right?

9 A Yes.

14:24:03 10 Q And in your opinion, there are no thresholds in the Reock
11 score that would classify a district as objectively compact or
12 objectively non-compact; is that correct?

13 A Not built into the test itself. The jurisdictions often
14 set a floor.

14:24:19 15 Q But you don't actually have a threshold that you apply,
16 correct?

17 A Well, it would vary based on the jurisdiction. The scores
18 are heavily driven by the shape of the jurisdiction. So you
19 couldn't set -- it would be impossible to set an effective
14:24:33 20 universal Reock score. It has to be done jurisdiction by
21 jurisdiction.

22 Q I believe you testified on direct about an instance in
23 which the Hopi and the Navajo didn't get along, and, therefore,
24 it made sense they would be drawn into different districts.

14:24:50 25 Did I understand that correctly?

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1 A Yes. That was -- the request given their history was to
2 be drawn in different districts.

3 Q Given their history?

4 A Yes.

14:24:59 5 Q And so if two groups -- your opinion was that in those two
6 Native American nations didn't get along it made sense to draw
7 them in different districts; is that correct?

8 MR. WALKER: Object, Your Honor.

9 THE COURT: Sustained.

14:25:10 10 BY MS. KHANNA:

11 Q Dr. Johnson, you would agree that when you're drawing a
12 plan to add a new majority-minority district, that plan will
13 often look different from the prior plan because of that
14 change?

14:25:28 15 A Are you citing something I said up here or something I
16 wrote?

17 Q I'm asking you a question.

18 A I'm sorry. What was the question?

19 Q You would agree that when you are drawing a plan to add a
14:25:45 20 new majority-minority district, that plan will often look
21 different from the prior plan because of that change?

22 A The degree of difference will vary depending on the
23 situation, but obviously it will be a different plan, so
24 something would be different.

14:26:01 25 Q You would be putting a new district into an area where it

1 wasn't before, so, yes, it would look different from the prior
2 plan, correct?

3 A Not necessarily.

4 Q Do you recall having your deposition taken in this case?

14:26:25 5 A Yes.

6 Q If we could call up Dr. Johnson's deposition page 120.

7 You see at the bottom on line 18 you were asked: When you
8 draw a plan and add a new majority-minority district, does that
9 plan or that district often look different from the prior plan
14:26:42 10 because you're adding a majority-minority district?

11 If you could turn to the next page. Your answer was:
12 Yes. You're putting a new district into an area where it
13 wasn't before, so yes.

14 Is that what you testified to?

14:26:53 15 A Yes. What I was referring to now is that you don't
16 necessarily need to put a new district. It can sometimes be a
17 small adjustment to an existing district.

18 Q Understood. If the plan adds a majority-minority district
19 that wasn't there before, core retention in that district will
14:27:15 20 be less; is that correct?

21 A Usually. Depends on how it's drawn.

22 Q And you would agree that if we were to look at some of the
23 plans that you have drawn over the course of your career, it is
24 likely we would find that in those plans that have added a new
14:27:31 25 majority-minority seat that wasn't there before, the core

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1 retention of the surrounding districts will have decreased,
2 correct?

3 A I am sure there is examples of that. I mean, it all goes
4 back to whether you're having to erase a part of the map and
14:27:49 5 draw something all new or just slightly adjust one of the
6 existing districts, or if you're adding a whole new district to
7 the state, like Arizona when they -- when you add a whole
8 another congressional district.

9 Q I believe you testified on direct to a legal case --

14:28:04 10 THE COURT: Just a minute. Would that also be the
11 same if you're losing a district, as opposed to adding a
12 district?

13 THE WITNESS: You would get very funny core retention
14 numbers because one of the old districts would now go to zero
14:28:20 15 because it doesn't exist anymore.

16 So there you would have to carefully review what you're --
17 what my numbers would say about core retention. And you have
18 to exclude that one piece and only look at the other seven, I
19 guess, or whatever the remaining number are.

14:28:39 20 BY MS. KHANNA:

21 Q And, Dr. Johnson, I believe you testified with counsel on
22 direct about a case called *Karcher v. Daggett*. That's a case
23 you brought up; is that right?

24 A Yes.

14:28:48 25 Q That's a 1983 one person one vote case. Is that what you

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1 recall?

2 A I remember. I cite it for the core constituency. I don't
3 remember the details of it versus another case.

4 Q Well, in that case, the Court cites core retention of the
14:29:03 5 government interest that might justify population deviations.
6 Does that sound familiar?

7 A Yes. That's how the Supreme Court defines all traditional
8 criteria is things beyond the federal laws, obviously, which I
9 intend to separate federal laws are not traditional criteria.
14:29:21 10 They kind of top everything.

11 And then the traditional criteria are essentially things
12 the courts have approved as appropriate justifications for
13 deviation.

14 Q You would agree that a congressional plan cannot have any
14:29:33 15 population deviation outside of one person deviation; is that
16 correct?

17 A There are exceptions to that, but they're pretty rare.

18 Q All right. Dr. Johnson, you present the opinion that race
19 predominated in Mr. Cooper's illustrative plans; is that right?

14:29:53 20 A Yes. In the absence of any other explanation, that's the
21 only remaining explanation left standing.

22 Q So you base your determination on Mr. Cooper's
23 explanations about what he did and did not consider; is that
24 right?

14:30:05 25 A I'm not aware of any other available information to base

1 it on.

2 Q You weren't in the courtroom on Monday when Mr. Cooper
3 testified about what he considered and didn't consider in
4 drawing illustrative plans, were you?

14:30:18 5 A No.

6 Q And you agree that Mr. Cooper says in his report that race
7 was not his predominant consideration?

8 A Of course he does.

9 Q And he testified in open court under oath to that same
14:30:32 10 effect, or I can represent to you that he testified since you
11 weren't here to hear him.

12 A Okay.

13 Q Would you be surprised to learn that no Court has ever
14 rejected Mr. Cooper's Section 2 illustrative plans on the basis
14:30:45 15 of race predominating?

16 MR. WALKER: Objection, Your Honor. She is asking the
17 witness to vouch for Mr. Cooper, which is simply not
18 appropriate.

19 MS. KHANNA: Your Honor, I believe this witness'
14:30:52 20 testimony is based entirely on whether or not Mr. Cooper's
21 explanations are what he deems to be credible. And I think
22 that Mr. Cooper's explanation --

23 THE COURT: I think the question of credibility is
24 left for the Court. I observed and heard Mr. Cooper's
14:31:09 25 testimony. He did not.

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1 BY MS. KHANNA:

2 Q I want to turn to the maps that your counsel showed you.

3 And I am going to have to use the Elmo. I'm not sure if I can.

4 THE COURT: It's not so terribly hard.

14:31:27 5 MS. KHANNA: I just didn't know if I had the power.

6 THE COURT: You've got the power.

7 MS. KHANNA: I've got the power.

8 Thank you, Your Honor.

9 BY MS. KHANNA:

14:31:34 10 Q So this is from Defendant's Exhibit 13, page 35. This is
11 the blowup map that your counsel talked with you about; is that
12 right?

13 A Yes.

14 Q I appreciate my assistant's help.

14:31:54 15 MR. SPIVA: I told her I'd be her Vanna White.

16 THE COURT: All right, good.

17 BY MS. KHANNA:

18 Q And this is a portion -- a blown-up portion of

19 Illustrative Plan 2; is that correct?

14:32:04 20 A Yes.

21 Q And I believe you testified on direct that this, what you
22 call a foot, reflects a racial predominance; is that correct?

23 A Yes.

24 Q You would agree that there are pockets of high density
14:32:27 25 African-American or rather high BVAP populations right outside

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1 this district, say in Citronelle, or at the very bottom of this
2 district, that green square right there (indicating)?

3 A Actually, once you get outside of the core area, the
4 numbers of people per census block get very low. And the other
14:32:50 5 piece is that this map is showing census block by census block.

6 And to his credit, Mr. Cooper was at least staying in the
7 VTD level of geography. So one of the problems of these maps
8 is you can't see how many people are in each block. So I don't
9 know and I have significant doubt that the red and yellow
14:33:09 10 pockets that are a little ways outside the district have any
11 significant number of people in them or that they're in a VTD,
12 they would be majority African-American.

13 Q And you would agree that Dr. Cooper -- sorry -- Mr. Cooper
14 did follow VTD lines in drawing this map, correct?

14:33:24 15 A As he discussed, he had to split the VTDs along the bay
16 front as he squeaked along the edge there. But otherwise, yes.

17 Q In fact, you mentioned that there might not be too much
18 population out here in the rural area like over here
19 (indicating); is that correct?

14:33:41 20 A I'm sorry. I didn't see where you're pointing. You're
21 pointing on the Elmo.

22 Q In the Citronelle area. You said there might not be too
23 much population there?

24 A Well, Citronelle has people. It's a city. But the
14:33:55 25 question is how many people are in that one census block that

1 pops up as red in that field of purple.

2 Q You don't know, correct?

3 A I don't know. But the odds are its not much, or he
4 probably would have grabbed it.

14:34:09 5 Q That's probably true for some of these predominantly white
6 areas that are in the relatively rural part; is that correct?

7 A Yeah. I already discussed the white areas along the state
8 border are very sparsely populated.

9 Now, that's not true in Mobile where we're in the city and
14:34:24 10 actually incorporated areas that are fairly densely populated.

11 Q You would agree that in this portion of District 2
12 Mr. Cooper does include large pockets of white areas as well;
13 is that correct?

14 A There are some that he could not get around.

14:34:42 15 THE COURT: And just to be clear for the record. When
16 we're talking about white areas, what are we referring to when
17 looking at this map?

18 BY MS. KHANNA:

19 Q Well, I can clarify the way I was using the term, and
14:34:59 20 maybe you can clarify if you were using a similar definition?

21 THE COURT: Well, this is his map, so I would like to
22 hear from Dr. Johnson as to what the white portions of the map
23 represent.

24 THE WITNESS: Sure. So I understand the confusion
14:35:14 25 definitely.

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1 The areas shown on the map in the color white are
2 unpopulated areas that have no people in them. I believe what
3 we are discussing is the areas where the demographic of the
4 block is white unless it's shown as purple or dark blue.

14:35:27 5 THE COURT: Okay. And how would we know the
6 difference between a white color on the map that's unpopulated
7 and an area where white people populate the map?

8 THE WITNESS: So where the white people live are shown
9 as purple and blue. And then the area that's colored white
14:35:55 10 is -- it's mainly Delta, but it's -- no one lives there at all.

11 THE COURT: Thank you.

12 BY MS. KHANNA:

13 Q I'm glad to learn that we're both using the same
14 definition of white.

14:36:08 15 THE COURT: I just wanted to make sure that the record
16 reflects that.

17 MS. KHANNA: Yes. I appreciate that, Your Honor. And
18 I realize that there could be some confusion.

19 BY MS. KHANNA:

14:36:15 20 Q You would agree that -- this is Illustrative Plan 2; is
21 that correct?

22 A Yes.

23 Q You would agree that if we were looking at, say,
24 Illustrative Plan 1, that plan would include something along
14:36:27 25 these lines, some things -- a line that is more west than the

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1 District 2 line in Illustrative Plan 2?

2 A Yes. If you go back to the -- the zoomed-in blue maps you
3 can see Exhibit 13, page 31. Oh, I was going to the next one.
4 It's the blue map showing -- yeah.

14:37:03 5 Q Actually, I'm going to look at Defendant's Exhibit 13,
6 page 7, and I believe what we were just discussing was
7 Illustrative Plan 1 and how it actually extends more west into
8 those predominantly white areas. Would you agree with that?

9 A Yes. Instead of coming south to get the rest of the
14:37:29 10 population, it doesn't come as far south, it goes west.

11 Q And in so doing, it has more predominantly white areas in
12 that portion of that extension, correct, into Mobile County?

13 A On the very fringe. I don't know if it's more white than
14 the southern tip of Illustrative 2. I presume in each case --
14:37:53 15 the end of the district tends to be where you're just get
16 getting to the final population count and doing as well as you
17 can.

18 So I presume in the four maps, since the numbers came out
19 fairly similar, the demographics are fairly similar, regardless
14:38:05 20 of whether you took the southern tip of Illustrative 2 or the
21 western edge of Illustrative 1.

22 Q You don't know if this part has more white population than
23 this part, is that what you are saying?

24 A Correct. Again, we're in the density of the population at
14:38:20 25 issue.

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1 Q But you don't actually provide a racial schematic analysis
2 of Illustrative Plan 1 at all; is that right?

3 A No, I didn't. No.

4 Q And you would agree -- sorry. You would agree that
14:38:40 5 looking at your Defendant's Exhibit 13, page 7, those four
6 maps, Illustrative Plan 2 shows perhaps the narrowest and
7 longest extension into Mobile County; is that correct?

8 A It's a hotly contested debate between Illustrative 2 and
9 then the fishhook in Illustrative 4.

14:39:02 10 Q Both of which you present analyses of in your report,
11 correct?

12 A Yes.

13 Q And you provide no analysis -- racial schematic analysis
14 of Illustrative Plan 1 or Illustrative Plan 2; is that correct?

14:39:13 15 A You mean Illustrative 1 or 3?

16 Q Exactly. Thank you for correcting the record. You
17 provide no racial schematic analysis of Illustrative Plan 1 or
18 Illustrative Plan 3; is that correct?

19 A Correct. As you've done, it's easy enough to flip between
14:39:30 20 the amount of maps that I did do and just compare where the
21 lines go.

22 Q Dr. Johnson, you would agree that all of Mr. Cooper's
23 plans comply with the equal population principle?

24 A Yes.

14:39:51 25 Q And you would agree that Mr. Cooper's plans keep the same

1 number of counties whole as the 2011 plan, and in some cases
2 preserve more whole counties than in the 2011 plan, correct?

3 A No. I think the county splits that he claims to reduce is
4 he takes one -- Jackson County from having two splits to just
14:40:16 5 one split in it. So I don't think he's reducing the number of
6 counties split.

7 THE COURT: That's if we look at his maps as a whole,
8 as opposed to just Districts 1 and 2?

9 THE WITNESS: Correct. Yeah. Districts 1 and 2 are
14:40:33 10 definitely splitting more counties -- at least District 1 is
11 splitting more counties in his map than it does in the adopted.

12 BY MS. KHANNA:

13 Q Maybe I can make this clearer and quicker.

14 Do you have any reason -- you have no reason to dispute

14:40:48 15 Mr. Cooper's analysis on the number of county and VTD splits
16 for each of his illustrative plans; is that correct? As
17 reported in his report; is that correct?

18 A One of them's fairly ticky-tack. I didn't go into detail
19 about it, but -- the numbers are close enough that clearly the
14:41:08 20 number of county splits doesn't just -- improving -- improving
21 the number of county splits doesn't justify the massive changes
22 he's making because he didn't -- even by his own numbers, he
23 didn't make that big of an improvement.

24 But whether it's one or zero, I didn't go into, even
14:41:25 25 though that Jackson County thing is a bit of an overriding

1 legislative decision just to have a fun number to put in his
2 report.

3 Q I am going to repeat my question.

4 THE COURT: I think that's something that the Court
14:41:36 5 can count, even if it is counting numbers.

6 BY MS. KHANNA:

7 Q You provided no such analysis of that split in either your
8 report or your deposition when discussing the number of county
9 splits; is that correct?

14:41:51 10 A Right. It didn't go to the point of my report which is
11 does -- is that a traditional criteria that would justify how
12 he drew these lines, and explain how it's a basis other than
13 race. And it does not.

14 Q You would agree that Mr. Cooper's illustrative plans are
14:42:07 15 contiguous, correct?

16 A As we discussed, just barely. But, yes, they do meet the
17 technical definition of contiguous.

18 Q And you would agree his illustrative plans do not pair any
19 incumbents as based on the revised plans; is that correct?

14:42:22 20 A Yes, as revised.

21 Q And you do not dispute Mr. Cooper's claim that he follows
22 VTD lines; is that correct?

23 A I agree with his description that generally he does.
24 There are a couple of exceptions. But I agree with how he
14:42:38 25 describes it.

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1 Q As he reports?

2 A Yes.

3 Q Dr. Johnson, on page 3 of your report, you list other
4 cases in which you've testified as an expert; is that correct?

14:42:53 5 A Yes.

6 Q On one case that does not appear on that list is one that
7 just happened this summer called *Common Cause v. Lewis* in which
8 you testified?

9 MR. WALKER: Your Honor, I'm sorry. I didn't mean to
14:43:04 10 interrupt my colleague. But I do want to make an objection
11 when it's appropriate.

12 THE COURT: Do you know what she's going to ask, or
13 should we let her ask her question and then you can object?

14 MR. WALKER: I'm pretty sure what I know what she's
14:43:20 15 going to ask. She is going to ask about some cases that he has
16 participated in.

17 And I would make the same objection that my colleague
18 Mr. Davis made when earlier she asked about cases that Dr. Hood
19 had participated in. The point being that the parties have
14:43:37 20 stipulated to the expertise of these expert witnesses.

21 MS. KHANNA: Your Honor, I believe on direct
22 Mr. Walker specifically asked about previous cases that
23 Dr. Johnson has testified in, whether he would or would not
24 point out various flaws or would present various arguments in a
14:43:59 25 Section 2 case. And I believe he's certainly opened the door

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1 to question Dr. Johnson on opinions he's had in other cases on
2 these similar topics.

3 MR. WALKER: Your Honor, I believe that I -- I may
4 recall incorrectly. But my recollection is that I very
14:44:19 5 generally said, Do these paragraphs indicate cases in which you
6 have testified? And he said, yes. And I think we moved on.

7 MS. KHANNA: Well --

8 THE COURT: I don't remember any significant
9 conversation about prior testimony.

14:44:36 10 MS. KHANNA: I believe he asked Dr. Johnson whether or
11 not he would present an analysis in a certain way to a Court in
12 a Section 2 case, whether he would have provided those numbers.

13 THE COURT: Well, if there's a case that occurred
14 after his report, I think we could easily update his report
14:45:00 15 with a reference to a more recent case. Is that what you're
16 trying to do?

17 MS. KHANNA: Yes, Your Honor.

18 THE COURT: Okay. Do you want to ask him if he's
19 testified more recently than his report which was submitted --
14:45:17 20 I don't know if it's got a date on it or not.

21 MR. WALKER: Your Honor, if I may get a point of
22 clarification.

23 THE COURT: Okay. His report was dated May 6th, 2019.
24 So are you asking him about something subsequent to the report?

14:45:35 25 MS. KHANNA: Yes, Your Honor.

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1 MR. WALKER: If she wants a stipulation that he
2 participated in a case, we would agree to that.

3 If she wants to talk about that in a way that attacks his
4 expertise, we would say that the parties have agreed to the
14:45:51 5 expertise of the experts. And that and consistent with the
6 ruling Your Honor made earlier today about with Dr. Hood under
7 the same circumstance, that that line of inquiry should be
8 foreclosed.

9 THE COURT: Okay. Well, I'd like to know if he
14:46:08 10 testified in another case more recently. So I'd like to have
11 an answer to that question, if I may. Is that what you're
12 asking him?

13 MS. KHANNA: That would be the first question I was
14 going to ask, Your Honor, yes.

14:46:22 15 BY MS. KHANNA:

16 Q Dr. Johnson, is it -- you did testify this summer in a
17 case in North Carolina called *Common Cause v. Lewis*; is that
18 correct?

19 A Yes.

14:46:30 20 Q Do you recall how the Court -- whether the Court rejected
21 your testimony in that case?

22 A I recall.

23 Q You recall that it did?

24 A No, it did not.

14:46:43 25 Q Do you recall whether the Court stated that you testified

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1 as a live witness in four cases previously, and the courts in
2 all four cases have rejected your analysis?

3 MR. WALKER: Objection, Your Honor.

4 MS. KHANNA: Your Honor, he just said the Court did
14:47:02 5 not reject his analysis, and I'm correcting him or attempting
6 to impeach him.

7 MR. WALKER: She's attempting to impeach his
8 expertise, but the parties have stipulated to the expertise.

9 MS. KHANNA: Your Honor, I would just like to renew
14:47:17 10 the argument about the weight and credibility of the expert's
11 testimony. We are not trying to exclude his testimony, but we
12 believe this is relevant to the weight and credibility of his
13 testimony, particularly since it's a case not included in his
14 report.

14:47:26 15 THE COURT: That was why I wanted to know the name of
16 it. Thank you. That's all I need.

17 MS. KHANNA: Thank you, Your Honor.

18 Thank you, Dr. Johnson.

19 THE COURT: Redirect, Mr. Walker?

14:47:45 20 MR. WALKER: A very little bit, Your Honor. More than
21 one question, but a very little bit.

22 REDIRECT EXAMINATION

23 BY MR. WALKER:

24 Q Dr. Johnson, you were asked about the primary method that
14:48:04 25 DOJ uses and then a secondary method that it uses.

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1 Does DOJ ever skip the primary method and go to the second
2 method?

3 A No.

4 Q It always uses the primary method? That's why it's called
14:48:18 5 the primary method?

6 A Yeah, or the initial method, yes.

7 Q Okay. Now, would you agree with me that for the Voting
8 Rights Act to work for all of this to matter, when an election
9 is held enough African-Americans have got to show up at the
14:48:38 10 polls for African-Americans to have a reasonable opportunity to
11 elect their candidate of choice?

12 A Yes.

13 Q And do Dr. Cooper's plans, his proposed District 1s,
14 embedded in those is the assumption that persons who identify
14:48:58 15 as part black and part something else, that those people vote
16 together with people who identify as DOJ black?

17 A Right. My entire understanding is the reason to bring a
18 challenge is to get a remedy.

19 Q Yeah. And if that assumption fails, if people who do not
14:49:21 20 identify or who -- people who identify as part black and part
21 something else do not vote cohesively with DOJ black, then I
22 believe it's your testimony that in at least two of the
23 districts, there's no majority black district; is that correct?

24 A Correct.

14:49:41 25 Q Okay. You were asked some questions about compactness.

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1 And the *Gingles 1* requirement is to demonstrate that the
2 African-American population is significant -- is sufficiently
3 populous and geographically compact to be able to draw a
4 district; is that correct?

14:50:15 5 A Exactly.

6 Q So if the African-American population of Alabama were
7 spread across the state, that population would not be
8 sufficiently compact to be able to draw a district. Would that
9 be correct?

14:50:31 10 A I think that's exactly the point both the *Gingles* and, I
11 think it was LULAC in Texas. That was the whole point of that
12 case.

13 Q So the point is, I think, that you've got to have a
14 population that's in an area of reasonable compactness so that
14:50:51 15 you can draw a district around it; is that correct?

16 A Exactly. I suppose --

17 Q Well, just -- yeah. Is that correct?

18 A Yes.

19 Q Okay. But in addition, traditional districting criteria
14:51:03 20 require that districts be compact, do they not?

21 A It is certainly one of the traditional goals of
22 redistricting.

23 Q So the minority population has to be compact enough that
24 you can fit it inside one district, and that district itself
14:51:18 25 has to meet the traditional districting criteria of compactness

1 without race predominating; is that correct? Is that your
2 understanding?

3 A Yes. I suppose once you got there you could have a
4 non-compact arm for some other reason as long as that wasn't
14:51:34 5 what was getting --

6 Q As long as race is not predominant?

7 A Yeah.

8 Q As long as you were not bypassing one group of people to
9 get to another group of people?

14:51:42 10 A Exactly.

11 Q And that's what Dr. Cooper did; is that correct?

12 A Yes.

13 Q That's all I have. Thank you.

14 THE COURT: Any recross?

14:51:51 15 MS. KHANNA: Nothing further, Your Honor.

16 THE COURT: All right. Thank you. Dr. Johnson, you
17 may step down.

18 Anything else from defense?

19 MR. WALKER: Your Honor, I get to say defense rests.

14:52:01 20 THE COURT: Mr. Davis had jumped up, as well. I'm
21 surprised Ms. Howell didn't also jump up to say --

22 MR. DAVIS: I was too.

23 THE COURT: They all rest.

24 Anything else from the plaintiff?

14:52:11 25 MR. SPIVA: Your Honor, we just want to submit two

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1 proposed exhibits as rebuttal, but we don't have a witness.

2 We've shown -- you have an objection or -- oh, I should
3 tell you what they are.

4 It's simply the House resolution regarding President
14:52:29 5 Trump's tweets and the vote roll call.

6 THE COURT: Okay.

7 MR. SPIVA: It's concerning the testimony yesterday
8 from Congress Byrne.

9 I'm sorry. I didn't know you were waiting for me.

14:53:30 10 MR. DAVIS: I wasn't sure you were finished.

11 MR. SPIVA: I was done. I just wanted to tell you
12 what they were, yeah.

13 THE COURT: Do they have numbers?

14 MR. SPIVA: Well, I was going to -- the discussion we
14:53:38 15 were having is should I write it on there, or would the Court
16 prefer that we first, you know, do them electronically.

17 They would be PX-130, which we're proposing as the
18 resolution itself, Your Honor, and then the roll call vote from
19 the -- which -- I guess is from the congressional record is --
14:53:57 20 I mean, the vote from the congressional record would be PX-131.

21 THE COURT: Okay. Mr. Davis, have you seen those?

22 MR. DAVIS: We have seen them.

23 THE COURT: Do you have any objections to them?

24 MR. DAVIS: We do. We don't understand the relevance
14:54:12 25 of this. If the relevance is how a particular congressman

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1 voted, only one testified that day, and they could have asked
2 him about it then. I think they did, and that provided
3 sufficient testimony.

4 THE COURT: Well, I think he testified about it
14:54:25 5 yesterday, and wasn't -- the resolution wasn't shown to him,
6 and so Congressman Byrne refused to commit, not having the
7 resolution to see. I think that was his testimony that, you
8 know --

9 MR. SPIVA: Yes, Your Honor.

14:54:45 10 THE COURT: -- there are a lot of resolutions, and
11 they often cover a lot of things. And until he could read it,
12 he wasn't going to commit to how he voted on it.

13 MR. SPIVA: Right. He couldn't remember how he voted,
14 I think was his testimony.

14:54:57 15 THE COURT: Well, I think he also had questions about
16 the resolution itself. But the record will be clear on that
17 when we get it.

18 So I understand that's why it's being offered.

19 MR. DAVIS: Offered just to show how he voted, but,
14:55:12 20 well --

21 THE COURT: Or to show what the resolution was and how
22 he voted on it, and I guess in essence to impeach his
23 recollection of the resolution.

24 MR. DAVIS: Without him here, I don't see the
14:55:25 25 relevance of any Trump tweet. We do object on grounds of

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1 relevancy, Your Honor.

2 THE COURT: I will overrule. I understand it's being
3 offered as impeachment, and it's a little unusual. I don't
4 know that I would allow it in a jury trial without the
14:55:40 5 opportunity of the person to rebut it.

6 But I think Congressman Byrne's testimony is what it was,
7 and this record is what it is.

8 So, I mean --

9 MR. SPIVA: Thank you, Your Honor.

14:55:54 10 THE COURT: So I will allow those two exhibits in.

11 MR. SPIVA: Should I hand up a copy at this point?
12 I've got copies of it. That's why -- I don't know how many
13 copies the Court requires.

14 THE COURT: We'll need one official and I guess one
14:56:11 15 for me.

16 MR. SPIVA: Okay.

17 THE COURT: Assuming that defense already has one.

18 MR. SPIVA: If you don't mind my scribbles on it, I'll
19 just put the exhibit number on both of them.

14:56:23 20 THE COURT: I'm not the keeper of the exhibits.
21 Ms. Kecia is.

22 MR. SPIVA: Ms. Kecia, do you mind my scribbles?

23 THE COURTROOM DEPUTY CLERK: I don't. As long as I
24 can make the numbers out.

14:56:34 25 MR. SPIVA: Yeah. There are two sets of them. 130,

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1 131. 130, 131. Thank you.

2 MR. DAVIS: Mr. Spiva, what were those exhibit
3 numbers, please?

4 MR. SPIVA: Oh, yes. I labeled the resolution itself
14:56:47 5 as PX-130, and the roll call vote is PX-131.

6 I won't note that Ms. Howell is one step ahead of you, you
7 know, but...

8 MR. DAVIS: That is not unusual.

9 THE COURT: Okay. Anything else from the plaintiff,
14:57:06 10 then? Is that the extent of your rebuttal?

11 MR. SPIVA: That is the extent of our rebuttal.

12 THE COURT: Okay. Great.

13 MR. SPIVA: We -- if Your Honor wants closings, we did
14 prepare one, but if -- you know, it's up to you.

14:57:21 15 THE COURT: Defense wants to close?

16 MR. WALKER: Your Honor, we're happy to if you want
17 to. But we would defer to have the opportunity --

18 THE COURT: Ms. Howell wants to.

19 MR. WALKER: Ma'am?

14:57:31 20 THE COURT: Ms. Howell wants to.

21 MR. WALKER: We would prefer to have the opportunity
22 to look at the record and give you our arguments in a brief.

23 THE COURT: Well, I think we talked about yesterday
24 allowing y'all to do that on certain points, and I kind of
14:57:45 25 outlined those.

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1 If there are other things that y'all want to emphasize --
2 how much time, Mr. Spiva?

3 MR. SPIVA: About 25 minutes, Your Honor. For our
4 side it would be given by my much more eloquent and concise
14:58:03 5 partner actually, so -- and --

6 THE COURT: I don't know that I want to sit for
7 25 minutes. I mean, I think y'all have done a really good job
8 presenting your case, both sides, from the very beginning. You
9 gave me very good pretrial briefs.

14:58:28 10 And I really think it may be more effective to have
11 written summations, particularly after you have the benefit of
12 the transcript, if you want those. And as we discussed
13 yesterday, if after reading those and digesting everything that
14 I have heard this week, and studying it a bit more and -- oh, I
14:58:58 15 can't wait to get into this over the holiday break, which looks
16 like that will be when it will be.

17 If I have additional questions, we can reconvene for oral
18 argument, which, when I have them, is more oral
19 questioning-and-answer session. I think that would be more
14:59:21 20 helpful and effective to me.

21 MR. SPIVA: That makes sense, Your Honor. And I was
22 joking about the eloquence. I mean, she is more eloquent than
23 I am. But it's focused on the legal issues. So I just wanted
24 to make sure that was clear.

14:59:35 25 THE COURT: Oh, yeah. I understand. She can make

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1 that argument at the bar tonight, or on the way home, or
2 whatever.

3 But I think at this point, the other plan would be just a
4 lot more helpful and effective for me. Okay?

14:59:53 5 MR. SPIVA: All right. Thank you.

6 THE COURT: Case closed. We talked about it last
7 night -- yeah.

8 MR. SPIVA: The exhibits?

9 THE COURT: Yeah. I want those. What did we decide?

15:00:10 10 A week?

11 MR. SPIVA: Yeah --

12 THE COURTROOM DEPUTY CLERK: That was two weeks.

13 THE COURT: Okay. All right.

14 MR. DAVIS: Is it one week or two?

15:00:21 15 THE COURT: That's what we were discussing.

16 We can do this off the record.

17 (Discussion off the record.)

18 (Whereupon, the above proceedings were concluded at
19 3:10 p.m.)

20

21

22

23

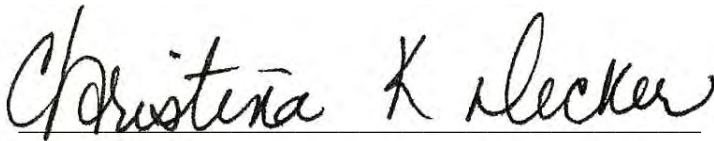
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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



11-15-19

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255

Randy Hinaman
December 09, 2021

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

EVAN MILLIGAN, et al.,)	
)	CIVIL CASE NO.
Plaintiffs,)	2:21-CV-01530-AMM
VS.)	VIDEO DEPOSITION OF:
JOHN MERRILL, et al.,)	RANDY HINAMAN
)	
Defendants.)	

S T I P U L A T I O N S

IT IS STIPULATED AND AGREED, by and
between the parties through their respective
counsel, that the deposition of:

RANDY HINAMAN,
may be taken before LeAnn Maroney, Notary Public,
State at Large, at the law offices of Balch &
Bingham, 105 Tallapoosa Street, Montgomery,
Alabama, 36104, on December 9, 2021, commencing at
9:13 a.m.

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<p style="text-align: right;">Page 2</p> <p>1 IT IS FURTHER STIPULATED AND AGREED that</p> <p>2 the signature to and reading of the deposition by</p> <p>3 the witness is waived, the deposition to have the</p> <p>4 same force and effect as if full compliance had</p> <p>5 been had with all laws and rules of Court relating</p> <p>6 to the taking of depositions.</p> <p>7</p> <p>8 IT IS FURTHER STIPULATED AND AGREED that</p> <p>9 it shall not be necessary for any objections to be</p> <p>10 made by counsel to any questions, except as to form</p> <p>11 or leading questions, and that counsel for the</p> <p>12 parties may make objections and assign grounds at</p> <p>13 the time of the trial, or at the time said</p> <p>14 deposition is offered in evidence, or prior</p> <p>15 thereto.</p> <p>16</p> <p>17</p> <p>18 ***</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 DAVIN M. ROSBOROUGH (Via Zoom)</p> <p>2 JULIE A. EBENSTEIN</p> <p>3 Attorneys at Law</p> <p>4 American Civil Liberties Union Foundation</p> <p>5 125 Broad Street</p> <p>6 New York, New York 10004</p> <p>7 drosborough@aclu.org</p> <p>8</p> <p>9 LATISHA GOTELL FAULKS (Via Zoom)</p> <p>10 Attorney at Law</p> <p>11 American Civil Liberties Union of Alabama</p> <p>12 P.O. Box 6179</p> <p>13 Montgomery, Alabama 36106</p> <p>14 tgfaulks@aclualabama.org</p> <p>15</p> <p>16 FOR THE SINGLETON PLAINTIFFS: (Via Zoom)</p> <p>17 JAMES URIAH BLACKSHER</p> <p>18 Attorney at Law</p> <p>19 825 Linwood Road</p> <p>20 Birmingham, Alabama 35222</p> <p>21 jublacksher@gmail.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE MILLIGAN PLAINTIFFS:</p> <p>4 MICHAEL L. TURRILL</p> <p>5 Attorney at Law</p> <p>6 Hogan Lovells US LLP</p> <p>7 1999 Avenue of the Stars, Ste. 1400</p> <p>8 Los Angeles, California 90067</p> <p>9 michael.turrill@hoganlovells.com</p> <p>10</p> <p>11 BLAYNE R. THOMPSON</p> <p>12 Attorney at Law</p> <p>13 Hogan Lovells US LLP</p> <p>14 609 Main Street, Ste. 4200</p> <p>15 Houston, Texas 77002</p> <p>16 blayne.thompson@hoganlovells.com</p> <p>17</p> <p>18 DEUEL ROSS (Via Zoom)</p> <p>19 Attorney at Law</p> <p>20 NAACP Legal Defense & Educational Fund</p> <p>21 700 14th Street N.W., Ste. 600</p> <p>22 Washington, DC 20005</p> <p>23 dross@naacpldf.org</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 MYRON C. PENN</p> <p>2 Attorney at Law</p> <p>3 Penn & Seaborn</p> <p>4 1971 Berry Chase Place</p> <p>5 Montgomery, Alabama 36117</p> <p>6 myronpenn28@hotmail.com</p> <p>7</p> <p>8 ELI J. HARE</p> <p>9 Attorney at Law</p> <p>10 Dicello Levitt Gutzler</p> <p>11 420 20th Street North, Ste. 2525</p> <p>12 Birmingham, Alabama 35203</p> <p>13 Ehare@dicellolevitt.com</p> <p>14</p> <p>15 HENRY C. QUILLEN (Via Zoom)</p> <p>16 Attorney at Law</p> <p>17 Whatley Kallas, LLP</p> <p>18 159 Middle Street, Ste. 2C</p> <p>19 Portsmouth, New Hampshire 03801</p> <p>20 hquillen@whatleykallas.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 6</p> <p>1 FOR THE CASTER PLAINTIFFS: (Via Zoom)</p> <p>2 LALI MADDURI</p> <p>3 Attorney at Law</p> <p>4 Elias Law Group</p> <p>5 10 G Street NE, Ste. 600</p> <p>6 Washington, DC 20002</p> <p>7 lmadduri@elias.law</p> <p>8</p> <p>9 FOR DEFENDANT JOHN H. MERRILL:</p> <p>10 JIM DAVIS</p> <p>11 Assistant Attorney General</p> <p>12 Office of the Attorney General</p> <p>13 501 Washington Avenue</p> <p>14 Montgomery, Alabama 36130</p> <p>15 jim.davis@alabamaag.gov</p> <p>16</p> <p>17 FOR THE DEFENDANTS JIM McCLENDON & CHRIS PRINGLE:</p> <p>18 DORMAN WALKER</p> <p>19 Attorney at Law</p> <p>20 Balch & Bingham</p> <p>21 105 Tallapoosa Street, Ste. 200</p> <p>22 Montgomery, Alabama 36104</p> <p>23 dwalker@balch.com</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 (5-5-21 Reapportionment Committee</p> <p>2 Redistricting Guidelines)</p> <p>3 Plaintiff's Exhibit 8 - 160</p> <p>4 (District 1-7 maps, RC 000556-562)</p> <p>5 Plaintiff's Exhibit 9 - 179</p> <p>6 (List of 2021 congressional plans)</p> <p>7 Plaintiff's Exhibit 10 - 201</p> <p>8 (State of AL v. US Department of Commerce</p> <p>9 Introduction)</p> <p>10 Plaintiff's Exhibit 11 - 203</p> <p>11 (9-1-21 public hearing transcript excerpt)</p> <p>12 Plaintiff's Exhibit 12 - 208</p> <p>13 (Whole County Plan)</p> <p>14 Plaintiff's Exhibit 13 - 213</p> <p>15 (Tuscaloosa and Montgomery Whole)</p> <p>16 Plaintiff's Exhibit 14 - 213</p> <p>17 (Data table)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 7</p> <p>1 ALSO PRESENT:</p> <p>2 Paige Ali, Videographer</p> <p>3 Elizabeth Baggett</p> <p>4</p> <p>5</p> <p>6 I N D E X</p> <p>7 MR. THOMPSON: 11-197</p> <p>8 MR. BLACKSHER: 197-229</p> <p>9</p> <p>10</p> <p>11 E X H I B I T L I S T</p> <p>12</p> <p style="text-align: right;">PAGE</p> <p>13 Plaintiff's Exhibit 1 - 14</p> <p>14 (Depo notice)</p> <p>15 Plaintiff's Exhibit 2 - 14</p> <p>16 (Subpoena)</p> <p>17 Plaintiff's Exhibit 3 - 21</p> <p>18 (CV)</p> <p>19 Plaintiff's Exhibit 4 - 25</p> <p>20 (Declaration)</p> <p>21 Plaintiff's Exhibit 5 - 92</p> <p>22 (2021 Alabama Congressional Plan, RC 000553)</p> <p>23 Plaintiff's Exhibit 6 - 93</p> <p>24 (2011 Congressional Districts)</p> <p>25 Plaintiff's Exhibit 7 - 135</p>	<p style="text-align: right;">Page 9</p> <p>1 I, LeAnn Maroney, a Court Reporter of</p> <p>2 Birmingham, Alabama, and a Notary Public for the</p> <p>3 State of Alabama at Large, acting as commissioner,</p> <p>4 certify that on this date, pursuant to the Federal</p> <p>5 Rules of Civil Procedure and the foregoing</p> <p>6 stipulation of counsel, there came before me on</p> <p>7 December 9, 2021, RANDY HINAMAN, witness in the</p> <p>8 above cause, for oral examination, whereupon the</p> <p>9 following proceedings were had:</p> <p>10 * * * * *</p> <p>11 THE VIDEOGRAPHER: This marks the</p> <p>12 beginning of the deposition of Randy Hinaman in the</p> <p>13 matter of Evan Milligan, et al, versus John H.</p> <p>14 Merrill, et al., Civil Case Number 2:21-CV-01530-AMM</p> <p>15 filed in the United States District Court for the</p> <p>16 Northern District of Alabama. The date is December</p> <p>17 9, 2021. The time is 9:13 a.m</p> <p>18 All attorneys present, will you please</p> <p>19 state your names and whom you represent.</p> <p>20 MR. HARE: Eli Hare on behalf of the</p> <p>21 Singleton plaintiffs.</p> <p>22 MR. DAVIS: Jim Davis for Secretary</p> <p>23 Merrill.</p> <p>24 MR. WALKER: Dorman Walker for the</p> <p>25 Committee Chairs, Senator Jim McCleendon and</p>

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<p style="text-align: right;">Page 10</p> <p>1 Representative Chris Pringle.</p> <p>2 MR. PENN: Myron Penn for the Singleton</p> <p>3 plaintiffs.</p> <p>4 MR. TURRILL: Mike Turrill for the</p> <p>5 Milligan plaintiffs.</p> <p>6 MR. THOMPSON: And Blain Thompson for</p> <p>7 the Milligan plaintiffs.</p> <p>8 MR. BLACKSHER: And Jim Blacksher for</p> <p>9 the Singleton plaintiffs. I'll be asking questions</p> <p>10 virtually.</p> <p>11 MS. MADDURI: Lali Madduri for the</p> <p>12 Caster plaintiffs.</p> <p>13 MR. QUILLEN: Henry Quillen for the</p> <p>14 Singleton plaintiffs.</p> <p>15 MR. ROSS: Deuel Ross for the Milligan</p> <p>16 plaintiffs.</p> <p>17 MR. ROSBOROUGH: Davin Rosborough for</p> <p>18 the Milligan plaintiffs.</p> <p>19 MS. EBENSTEIN: Good morning. Julie</p> <p>20 Ebenstein for the Milligan plaintiffs.</p> <p>21 MS. FAULK: Good morning. Tish Faulks</p> <p>22 for the Milligan plaintiffs.</p> <p>23 MS. BAGGETT: Good morning. It's</p> <p>24 Elizabeth Baggett for the Milligan plaintiffs. I'm</p> <p>25 a law clerk, not an attorney.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Is there anything that might prevent you</p> <p>2 from understanding my questions or answering</p> <p>3 truthfully today?</p> <p>4 A. No.</p> <p>5 Q. Are you being represented by a lawyer</p> <p>6 today?</p> <p>7 A. Dorman Walker with the reapportionment</p> <p>8 committee.</p> <p>9 Q. Are you paying Mr. Walker to be your</p> <p>10 lawyer today?</p> <p>11 A. I am not.</p> <p>12 Q. Do you assume that plaintiffs or the</p> <p>13 State of Alabama is paying Mr. Walker to be your</p> <p>14 lawyer today?</p> <p>15 A. I do.</p> <p>16 Q. Have you ever been deposed before?</p> <p>17 A. I have.</p> <p>18 Q. How many times?</p> <p>19 A. Once. Once is all I remember, not</p> <p>20 counting trial.</p> <p>21 Q. And was that in the ALBC versus the</p> <p>22 State of Alabama lawsuit?</p> <p>23 A. Yes, sir.</p> <p>24 Q. All right. So I'll go over a few of the</p> <p>25 key rules.</p>
<p style="text-align: right;">Page 11</p> <p>1 THE VIDEOGRAPHER: Court Reporter, will</p> <p>2 you please swear in the witness.</p> <p>3 RANDY HINAMAN,</p> <p>4 having been duly sworn, was examined and testified</p> <p>5 as follows:</p> <p>6 THE REPORTER: Usual stipulations?</p> <p>7 MR. WALKER: The ones that we've just</p> <p>8 discussed.</p> <p>9 MR. THOMPSON: Yes.</p> <p>10 Mr. Walker, did you want to say</p> <p>11 something before we begin?</p> <p>12 MR. WALKER: Yes. I'd like to put on</p> <p>13 the record that the committee chair, Senator Jim</p> <p>14 McClendon, and Representative Chris Pringle have</p> <p>15 asserted their legislative privilege and immunity in</p> <p>16 this case. Of course, the Court has not yet ruled</p> <p>17 on that. Thank you.</p> <p>18 EXAMINATION BY MR. THOMPSON:</p> <p>19 Q. Good morning, sir.</p> <p>20 A. Good morning.</p> <p>21 Q. Please state your name for the record.</p> <p>22 A. Randy Hinaman.</p> <p>23 Q. Mr. Hinaman, you understand that you're</p> <p>24 testifying under oath right now?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 13</p> <p>1 I think that last deposition was about</p> <p>2 eight years ago. Is that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. So I'll be asking questions</p> <p>5 today. And then after I'm done, there will be</p> <p>6 several other people asking questions, as well.</p> <p>7 If you don't understand a question, just</p> <p>8 let me know. Is that okay?</p> <p>9 A. Yes, sir.</p> <p>10 Q. If you answer a question, I will assume</p> <p>11 that you understood it. Is that fair?</p> <p>12 A. Yes.</p> <p>13 Q. Also, as you can see, we have a court</p> <p>14 reporter here who is doing an amazing job typing</p> <p>15 everything that we say as we go. But it's very</p> <p>16 important, because she's typing it, that we both</p> <p>17 speak one at a time. So I'll do my best to wait</p> <p>18 until you're done answering questions. And if you</p> <p>19 can do the same, that will help her out a lot. Is</p> <p>20 that all right?</p> <p>21 A. Yes.</p> <p>22 Q. And then we'll take a break about every</p> <p>23 hour. If you need a break before then, just let us</p> <p>24 know, and we can do that as long as there's not a</p> <p>25 question pending. Fair?</p>

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<p style="text-align: right;">Page 14</p> <p>1 A. Very well.</p> <p>2</p> <p>3 (Plaintiff's Exhibits 1&2</p> <p>4 were marked for identification.)</p> <p>5</p> <p>6 Q. I'm handing you what's been marked as</p> <p>7 Exhibit 1 and Exhibit 2.</p> <p>8 MR. THOMPSON: I've got copies for</p> <p>9 everyone else to the extent you would like one.</p> <p>10 Q. This is a copy of the deposition notice</p> <p>11 and subpoena.</p> <p>12 MR. WALKER: Which one is which?</p> <p>13 MR. THOMPSON: Exhibit 1 is the notice.</p> <p>14 MR. WALKER: Okay.</p> <p>15 MR. THOMPSON: And Exhibit 2 is the</p> <p>16 subpoena.</p> <p>17 MR. WALKER: Thanks.</p> <p>18 Q. Have you seen a copy of these documents</p> <p>19 before today?</p> <p>20 A. I have.</p> <p>21 Q. Both of them?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Who provided them to you?</p> <p>24 A. Dorman Walker.</p> <p>25 Q. And when was that?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Did you review any of the complaints in</p> <p>2 this lawsuit?</p> <p>3 A. No, I didn't.</p> <p>4 Q. Did you review any maps?</p> <p>5 A. Yeah. I looked -- I looked at the</p> <p>6 current -- the map that was passed. And I also</p> <p>7 looked briefly at some of the other maps that were</p> <p>8 offered to the legislature.</p> <p>9 Q. Which other maps did you look at?</p> <p>10 A. The Singleton --</p> <p>11 MR. BLACKSHER: Randy needs to speak up</p> <p>12 a little bit, please.</p> <p>13 THE WITNESS: Sure.</p> <p>14 A. The Singleton maps, the Coleman map, and</p> <p>15 the Hatcher map, I believe.</p> <p>16 Q. Had you reviewed those maps, any of</p> <p>17 those maps, before preparing for your deposition?</p> <p>18 MR. WALKER: Objection to form.</p> <p>19 Q. You mentioned that you reviewed several</p> <p>20 of those maps in preparation for your deposition,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Before then, had you reviewed any of</p> <p>24 those maps?</p> <p>25 A. I looked at them when they were offered</p>
<p style="text-align: right;">Page 15</p> <p>1 A. The end of last week. Friday maybe.</p> <p>2 Q. All right. You can set those aside.</p> <p>3 Without disclosing the content of any</p> <p>4 discussions that you had with your attorneys, what</p> <p>5 did you do to prepare for your deposition today?</p> <p>6 A. I met with Dorman Walker and Jim Davis</p> <p>7 and others and did some -- just reviewed numbers and</p> <p>8 talked about the process we followed.</p> <p>9 Q. When did you meet with them?</p> <p>10 A. Monday and Tuesday, Monday morning and</p> <p>11 -- Monday afternoon really and Tuesday morning of</p> <p>12 this week.</p> <p>13 Q. About how long would you say you met</p> <p>14 with them?</p> <p>15 A. I guess about four -- four or five hours</p> <p>16 on Monday. We also had lunch in there. And three</p> <p>17 hours on Tuesday.</p> <p>18 Q. Did you meet with anyone who was not an</p> <p>19 attorney?</p> <p>20 A. No, I don't believe so.</p> <p>21 Q. Did you review any documents in</p> <p>22 preparation for today?</p> <p>23 A. I just reviewed some of the census</p> <p>24 numbers and the guidelines, the committee</p> <p>25 guidelines. That would be about it.</p>	<p style="text-align: right;">Page 17</p> <p>1 on the floor of either -- whatever body they were</p> <p>2 offered in.</p> <p>3 Q. Other than in preparation for your</p> <p>4 deposition last Monday and Tuesday, have you</p> <p>5 discussed this lawsuit with anyone?</p> <p>6 A. No.</p> <p>7 Q. Did you do anything else to prepare for</p> <p>8 your deposition today?</p> <p>9 A. I did not.</p> <p>10 Q. Are you being compensated by anyone for</p> <p>11 being here today?</p> <p>12 A. I assume I am. I haven't -- I haven't</p> <p>13 billed anybody yet. But I'm planning to.</p> <p>14 Q. And who do you plan to bill for today?</p> <p>15 A. The attorney general's office.</p> <p>16 Q. How much do you plan to bill the</p> <p>17 attorney general's office for your time today?</p> <p>18 A. \$400 an hour.</p> <p>19 Q. Is that pursuant to some agreement that</p> <p>20 you have with the attorney general's office?</p> <p>21 A. Well, we really haven't even discussed</p> <p>22 it, honestly. I guess I'll send them the bill, and</p> <p>23 we'll see if they pay it.</p> <p>24 Q. Fair enough.</p> <p>25 Similarly, do you expect to be</p>

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<p style="text-align: right;">Page 18</p> <p>1 compensated in any way to testify at trial?</p> <p>2 A. I would assume the same arrangement.</p> <p>3 Q. By the attorney general's office, as</p> <p>4 well?</p> <p>5 A. Yes.</p> <p>6 Q. All right. Taking a step back and just</p> <p>7 talking about your background a little bit, can you</p> <p>8 please state your date of birth?</p> <p>9 A. 5-5-57.</p> <p>10 Q. What's your address?</p> <p>11 A. 33267 River Road, Orange Beach, Alabama,</p> <p>12 36561.</p> <p>13 Q. Is that your full-time address now here</p> <p>14 in Alabama?</p> <p>15 A. Yes, sir.</p> <p>16 Q. You previously lived in Virginia; is</p> <p>17 that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. When did you make that move?</p> <p>20 A. I bought this property about five years</p> <p>21 ago. But I really technically moved probably about</p> <p>22 three years ago.</p> <p>23 Q. Do you have a telephone number?</p> <p>24 A. Just my cell phone.</p> <p>25 Q. What's that number?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Yeah. In the middle of that, I was</p> <p>2 offered a position with the Reagan campaign, which</p> <p>3 was sort of my dream job to work for his</p> <p>4 presidential race. So I left to take on that</p> <p>5 responsibility for the national field director for</p> <p>6 the Reagan Youth Campaign.</p> <p>7 Q. How far along had you gotten in your</p> <p>8 studies when you left?</p> <p>9 A. Two years.</p> <p>10 Q. Do you have any other -- excuse me. Do</p> <p>11 you have any educational certificates or anything</p> <p>12 like that?</p> <p>13 A. No.</p> <p>14 Q. Do you have any certain specializations</p> <p>15 in anything?</p> <p>16 A. No.</p> <p>17 Q. Mr. Hinaman, what do you do for a</p> <p>18 living?</p> <p>19 A. I do political consulting and lobbying.</p> <p>20 Q. Where do you work?</p> <p>21 A. I work for my own company out of my</p> <p>22 residence in Orange Beach.</p> <p>23 Q. What's the name of that company?</p> <p>24 A. R. Hinaman, LLC.</p> <p>25 Q. And what is your -- do you have a formal</p>
<p style="text-align: right;">Page 19</p> <p>1 A. (703)598-8383.</p> <p>2 Q. Do you have an email account?</p> <p>3 A. I do.</p> <p>4 Q. What is that?</p> <p>5 A. Sharhl@comcast.net.</p> <p>6 Q. Do you have any other email addresses?</p> <p>7 A. I do not.</p> <p>8 Q. Have you ever been involved in any other</p> <p>9 lawsuits?</p> <p>10 A. No. I mean, not as a witness or -- no.</p> <p>11 Q. What's the highest level of education</p> <p>12 you've completed?</p> <p>13 A. I attended Cornell University.</p> <p>14 Q. Was that for undergraduate?</p> <p>15 A. Yes.</p> <p>16 Q. Did you graduate?</p> <p>17 A. I did not.</p> <p>18 Q. What did you study at Cornell?</p> <p>19 A. Political science. Really they called</p> <p>20 it government.</p> <p>21 MR. WALKER: Called it what?</p> <p>22 THE WITNESS: Government. Anywhere else</p> <p>23 on earth, it would be political science.</p> <p>24 Q. And if you don't mind me asking, you</p> <p>25 said you did not graduate. Is there a reason why?</p>	<p style="text-align: right;">Page 21</p> <p>1 title within R. Hinaman, LLC?</p> <p>2 A. I guess I would be the president of R.</p> <p>3 Hinaman, LLC.</p> <p>4 Q. Are there other employees of that</p> <p>5 company?</p> <p>6 A. There are not.</p> <p>7 Q. If you can, explain to me briefly what</p> <p>8 you do as a political consultant and lobbyist.</p> <p>9 A. Sure. On the political consulting</p> <p>10 front, I usually do -- I consult political</p> <p>11 campaigns, usually on the federal level, mostly</p> <p>12 congress, put together the campaign team for various</p> <p>13 candidates to get elected to those offices.</p> <p>14 On the lobbying side, which I'm doing</p> <p>15 less and less and less of, I did lobbying on the</p> <p>16 federal level for various companies and</p> <p>17 organizations.</p> <p>18</p> <p>19 (Plaintiff's Exhibit 3 was</p> <p>20 marked for identification.)</p> <p>21</p> <p>22 Q. I think I can short-circuit our</p> <p>23 discussion about your background a little bit here.</p> <p>24 This is Exhibit 3.</p> <p>25 MR. THOMPSON: I can get you a copy, as</p>

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<p style="text-align: right;">Page 22</p> <p>1 well, Mr. Walker.</p> <p>2 Q. And I'll state for the record that this</p> <p>3 is a copy of your resume that was shown to you in a</p> <p>4 prior deposition that you gave on June 25, 2013. I</p> <p>5 believe this was PX3 in that deposition.</p> <p>6 Do you recognize this document?</p> <p>7 A. I do.</p> <p>8 Q. Does this appear to be a true and</p> <p>9 correct copy of your resume as of June 25, 2013?</p> <p>10 A. It does.</p> <p>11 Q. Is this resume up to date?</p> <p>12 A. It is not.</p> <p>13 Q. What has changed?</p> <p>14 A. Well, technically, the name of my</p> <p>15 company changed because I moved from Virginia to</p> <p>16 Alabama. Obviously, my address has changed, again</p> <p>17 because of moving. Obviously, I've had some</p> <p>18 additional clients since 2013.</p> <p>19 Q. Who have your additional clients been?</p> <p>20 A. I was afraid you would ask me that.</p> <p>21 Congressman Ben Cline, I did his</p> <p>22 campaign to replace Bob Goodlatte who retired in</p> <p>23 2018. Let's see. The American Dental Association</p> <p>24 is on there.</p> <p>25 That's the major one. I can't say there</p>	<p style="text-align: right;">Page 24</p> <p>1 of staff at one point and then his consultant in</p> <p>2 Alabama, and helped draw a map in 1992 which was</p> <p>3 then put into practice by a federal court.</p> <p>4 Q. Anything beyond that?</p> <p>5 A. No. I mean, I assisted the majority</p> <p>6 leader of the Virginia senate in some of his efforts</p> <p>7 on redistricting ten years ago. Actually, it was</p> <p>8 more like 20 years ago. But I wasn't really the</p> <p>9 lead on it. I was just assisting his office.</p> <p>10 Q. Outside of Alabama and Virginia, have</p> <p>11 you ever worked in redistricting for any other</p> <p>12 states?</p> <p>13 A. I have not.</p> <p>14 Q. How did you get involved in drawing maps</p> <p>15 originally?</p> <p>16 A. Well, my first effort, I guess, was way</p> <p>17 back in 1992 when the legislature failed to draw a</p> <p>18 map for congress in Alabama. I was working for</p> <p>19 Congressman Callahan. And with him and some of the</p> <p>20 other members of the delegation, we decided that we</p> <p>21 needed to file a lawsuit to remedy that situation.</p> <p>22 And so I helped produce a map that was filed with</p> <p>23 that lawsuit. That was my first endeavor.</p> <p>24 Q. Had you ever drawn a map before then?</p> <p>25 A. I had not.</p>
<p style="text-align: right;">Page 23</p> <p>1 wasn't another campaign in there.</p> <p>2 Q. On here, it says that your company name</p> <p>3 is Hinaman & Company, Inc. Did that change at some</p> <p>4 point?</p> <p>5 A. Yeah, when I moved. That was an LLC in</p> <p>6 Virginia. And when I moved to Alabama, I formed a</p> <p>7 new LLC.</p> <p>8 Q. And when was that?</p> <p>9 A. Again, approximately about three years</p> <p>10 ago.</p> <p>11 Q. Does a more current version of your</p> <p>12 resume exist anywhere?</p> <p>13 A. Yeah, I'm sure it does.</p> <p>14 Q. Is that something that you could produce</p> <p>15 in this case if you were asked to?</p> <p>16 A. Yes.</p> <p>17 Q. What experience do you have working with</p> <p>18 redistricting?</p> <p>19 A. Obviously, I drew three of the four maps</p> <p>20 for Alabama ten years ago, 2011, 2012. I drew the</p> <p>21 congressional maps and the two legislative maps. I</p> <p>22 also worked for the republican congressmen in</p> <p>23 Virginia to draw their map in 2012.</p> <p>24 And before that, I worked with</p> <p>25 Congressman Callahan, who was my -- I was his chief</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. So how did they come about saying,</p> <p>2 "Randy, we want you to draw this map"?</p> <p>3 A. I guess we drew straws and I lost.</p> <p>4 Q. Fair enough.</p> <p>5</p> <p>6 (Plaintiff's Exhibit 4 was</p> <p>7 marked for identification.)</p> <p>8</p> <p>9 Q. I'm going to hand you another exhibit</p> <p>10 here. This is being marked as Plaintiff's Exhibit</p> <p>11 4. This is also from the ALBC versus Alabama</p> <p>12 lawsuit. This is a declaration that was signed by</p> <p>13 you.</p> <p>14 And you can see at the top there,</p> <p>15 there's a date that says this was filed on June 17,</p> <p>16 2013, in the Alabama Legislative Black Caucus for</p> <p>17 the State of Alabama lawsuit. Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Do you recognize this document?</p> <p>20 A. Not particularly.</p> <p>21 Q. If you can, flip to Page 7. Do you see</p> <p>22 there's a signature?</p> <p>23 A. Yes.</p> <p>24 Q. And your name?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. Does that appear to be your signature?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Does this appear to be a true and</p> <p>4 correct copy of your declaration?</p> <p>5 A. Again, it doesn't ring a bell. But I</p> <p>6 have no reason to believe it isn't.</p> <p>7 Q. Take a look at paragraph two. It</p> <p>8 states, "I have substantial experience in drafting</p> <p>9 redistricting plans in Alabama, including drawing</p> <p>10 the congressional plan adopted by the three-judge</p> <p>11 federal district court in Mobile in 1992 and work on</p> <p>12 the 2011 congressional plan." Excuse me. "And work</p> <p>13 on the 2001 congressional plan. In 2011, I</p> <p>14 developed the redistricting plan for the Alabama</p> <p>15 congressional delegation. In that work, I worked</p> <p>16 within the guidelines for redistricting adopted by</p> <p>17 the reapportionment committee."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Is that an accurate description of your</p> <p>21 experience in drafting redistricting plans in</p> <p>22 Alabama?</p> <p>23 A. It is. I mean, I don't know what that</p> <p>24 -- the sentence on 2001, I did not draft the 2001</p> <p>25 plans. But I did work with the leaders in the</p>	<p style="text-align: right;">Page 28</p> <p>1 it.</p> <p>2 Q. What's your understanding?</p> <p>3 A. Well, it was essentially a continuation</p> <p>4 of the 1992 map, just updated for the most part for</p> <p>5 population shift.</p> <p>6 Q. And you said you were working with the</p> <p>7 republican legislators?</p> <p>8 A. I was working with Congressman Callahan</p> <p>9 at that point.</p> <p>10 Q. Did you have any role whatsoever in</p> <p>11 drawing that map in 2001?</p> <p>12 A. I had no official role other than I was</p> <p>13 working with the leaders -- the democratic leaders</p> <p>14 who were working on that map. I would occasionally,</p> <p>15 you know, talk to them about the changes that were</p> <p>16 made, and for especially Congressman Callahan's</p> <p>17 district. But I didn't -- I didn't have control of</p> <p>18 the process, if that makes any sense.</p> <p>19 Q. Do you know who did draw the map?</p> <p>20 A. Senator Enfinger, I believe.</p> <p>21 Q. Did he --</p> <p>22 A. Well, that's who the -- he was the -- I</p> <p>23 don't know who he hired. That's who I interfaced</p> <p>24 with. Let's put it that way.</p> <p>25 Q. Understood. That was going to be my</p>
<p style="text-align: right;">Page 27</p> <p>1 legislature who did draft those plans. I didn't</p> <p>2 want it to imply that I drew those maps. I don't</p> <p>3 know that it does imply that.</p> <p>4 Q. Okay. Well, let's go to the first part</p> <p>5 there where you said that you -- your experience did</p> <p>6 include drawing the congressional plan adopted in</p> <p>7 1992. Does that mean that you did draw that map?</p> <p>8 A. I did, yes.</p> <p>9 Q. Is that the map that was used for the</p> <p>10 Alabama congressional elections in the '90s?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Did that map serve as the starting</p> <p>13 point, then, for the congressional map that was</p> <p>14 drafted for 2001?</p> <p>15 A. I didn't draw that map.</p> <p>16 Q. You said you worked on drawing that map.</p> <p>17 What does that mean?</p> <p>18 A. The legislature at that time was</p> <p>19 controlled by the democrats, and I was representing</p> <p>20 some republican Congressman in just interacting with</p> <p>21 them. But they -- they drew the map. I was just</p> <p>22 trying to give our point of view to it.</p> <p>23 Q. Are you familiar at all with how that</p> <p>24 map was drawn in 2001?</p> <p>25 A. Vaguely, but not -- not the specifics of</p>	<p style="text-align: right;">Page 29</p> <p>1 next question.</p> <p>2 You said you spoke to several members of</p> <p>3 the legislature. Do you remember who you spoke to?</p> <p>4 A. In 2001?</p> <p>5 Q. Yes.</p> <p>6 A. My primary -- my primary interface on</p> <p>7 that map was Senator Enfinger.</p> <p>8 Q. When you spoke with Senator Enfinger,</p> <p>9 did you provide any sort of input or recommendations</p> <p>10 about how the map should be drawn?</p> <p>11 A. Only as to how -- he had a draft, I</p> <p>12 believe, and was talking about the changes he wanted</p> <p>13 to make in various districts. And my primary focus</p> <p>14 was the first district because I was working for</p> <p>15 Congressman Callahan.</p> <p>16 So he had come with some suggestions,</p> <p>17 and we just talked about those. They were not -- I</p> <p>18 don't think I had any tremendously substantive</p> <p>19 changes to recommend. So I think it was pretty much</p> <p>20 what he had drawn, we were comfortable with.</p> <p>21 Q. Did you provide any other sort of</p> <p>22 feedback in drawing the 2001 congressional map</p> <p>23 beyond what you just mentioned with District 1?</p> <p>24 A. I did not.</p> <p>25 Q. Do you know if it was a goal in the 2001</p>

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<p style="text-align: right;">Page 30</p> <p>1 congressional map to make sure that District 7 2 remained a majority black district? 3 A. I do not. 4 Q. Do you know if it was considered in 2001 5 to draw two majority black districts? 6 A. I do not, no. 7 Q. Let's go back to the 1992 congressional 8 map. Because you said you did draw that one, 9 correct? 10 A. Yes, sir. 11 Q. The 1992 congressional map created the 12 first majority black congressional district in 13 Alabama history; is that correct? 14 A. I believe so, yes. 15 Q. And you said you drafted that map? 16 A. I did. 17 Q. So you drafted District 7 as it stood in 18 1992? 19 A. Yes, sir. 20 Q. Who asked you to draw that map? 21 A. I was working for Congressman Callahan 22 and some of the other members of the Alabama 23 delegation. 24 Q. Did you work with Senator Larry Dixon in 25 drafting the map?</p>	<p style="text-align: right;">Page 32</p> <p>1 A. No, sir. 2 Q. Did you draw District 7 with the intent 3 to make it a majority black district? 4 A. I did. 5 Q. How did you make sure that District 7 6 would have a majority black voting age population? 7 A. I just included areas of high 8 concentration of African American voters. 9 Q. How did you do that? 10 A. By assigning counties and precincts that 11 fit that definition. 12 Q. Did you have a particular percentage of 13 black voters that you were shooting for? 14 A. I did not. 15 Q. How did you go about choosing District 7 16 to be the district that has the majority black 17 voting age population? 18 A. I don't -- I mean, I think it was a 19 function of geography, I mean, where areas with 20 concentration of black voters were. 21 Q. And how did you gather that information? 22 A. Census data. 23 Q. What specifically? 24 A. Just the census data from the -- related 25 to population and race.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Probably, yes. 2 I will point out that this was 30 years 3 ago. So if you ask me a specific question, it's 4 probably going to be hard for me to answer. 5 Q. Understood. 6 Do you remember any other legislators 7 that you worked with directly in drafting the 1992 8 map? 9 A. I do not. As you know, the legislature 10 did not ultimately pass a map. So we went -- it was 11 a court action that imposed this map. 12 Q. Were you asked to create a majority 13 black district in drawing the 1992 map? 14 A. I guess -- I guess I was, yeah. 15 Q. Who asked you to do that? 16 A. I think the -- well, Congressman 17 Callahan and the delegation probably in concert with 18 the NRCC. 19 Q. Do you know why you were asked to do 20 that? 21 A. At the time, I believe they thought that 22 was the proper thing to do under the Voting Rights 23 Act. 24 Q. Did you receive any instructions from 25 the court?</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. So when you were drawing it, you were 2 able to pull up and see black voters, white voters 3 in different areas? 4 A. Yes. 5 MR. WALKER: Objection to form. 6 Q. How did you see that information when 7 you were drawing the map in 1992? 8 A. I'm not sure I understand your question. 9 Q. Did you use a software to draw the map 10 in 1992? 11 A. As I remember -- again, it was 30 years 12 ago -- I believe I used the computers at the Alabama 13 reapportionment office to draw the map. So I don't 14 know what their software was, to be honest with you. 15 Q. What specific racial data did you have 16 in front of you when you were drawing that map? 17 A. I would have total pop, total African -- 18 total black, and voting age data. 19 Q. Was that broken down by county, 20 precinct, neighborhood, block? 21 A. County, precinct, block, yes. Yes, sir. 22 Q. And I realize it was 30 years ago. How 23 did you go about drawing District 7 in 1992? 24 A. Again, it was 30 years ago. I don't 25 remember the machinations that went into drawing the</p>

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<p style="text-align: right;">Page 34</p> <p>1 map.</p> <p>2 Q. Did you have in your mind a certain</p> <p>3 black voting age population that you were shooting</p> <p>4 for?</p> <p>5 A. No.</p> <p>6 Q. So you just drew general lines and you</p> <p>7 found that it came to a certain percentage of black</p> <p>8 voting age population, and you thought that was</p> <p>9 good?</p> <p>10 A. Obviously, I was -- I had in my mind</p> <p>11 that we wanted it to be majority black district.</p> <p>12 But in terms of above 50 percent, I didn't have a</p> <p>13 specific number in mind.</p> <p>14 Q. Did you take into account any other</p> <p>15 characteristics of the black voting age population</p> <p>16 that you were looking at when you drew that map in</p> <p>17 1992?</p> <p>18 A. Such as?</p> <p>19 Q. For instance, did you look at any</p> <p>20 socioeconomic factors?</p> <p>21 A. I did not.</p> <p>22 Q. Did you look at attitudes?</p> <p>23 A. I did not.</p> <p>24 Q. Interests?</p> <p>25 A. (Witness shakes head).</p>	<p style="text-align: right;">Page 36</p> <p>1 race?</p> <p>2 A. Other than geography and deviation.</p> <p>3 Those would be the top -- obviously, things had to</p> <p>4 be contiguous.</p> <p>5 Q. If District 7 did not have a majority</p> <p>6 black population, would it have passed?</p> <p>7 A. Passed what?</p> <p>8 Q. Would it have been approved?</p> <p>9 A. You're asking me to question what three</p> <p>10 federal judges would approve?</p> <p>11 Q. You were asked to draw a map that had a</p> <p>12 majority black district, correct?</p> <p>13 A. Yes.</p> <p>14 Q. If you had turned in a map that did not</p> <p>15 have a majority black district, would you have done</p> <p>16 what you were asked to do?</p> <p>17 A. You mean turned into Congressman</p> <p>18 Callahan?</p> <p>19 Q. Correct.</p> <p>20 A. No. I think our goal was to draw a</p> <p>21 majority black district.</p> <p>22 Q. Why did you draw only one majority black</p> <p>23 district?</p> <p>24 A. That was our -- that was our goal, to</p> <p>25 draw a district.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Type of employment?</p> <p>2 A. I did not.</p> <p>3 Q. Income?</p> <p>4 A. I did not.</p> <p>5 Q. Educational level?</p> <p>6 A. No.</p> <p>7 Q. Voter turnout?</p> <p>8 A. No.</p> <p>9 Q. Election results to assess party</p> <p>10 affiliation amongst the black voting age population?</p> <p>11 A. No, I don't believe so.</p> <p>12 Q. When you drew District 7 in 1992, did</p> <p>13 you determine that to be a community of interest?</p> <p>14 A. Yeah. Well, I think it included most of</p> <p>15 the black belt. I would say they had a community of</p> <p>16 interest along -- yeah. So yes.</p> <p>17 Q. And what was the basis for that</p> <p>18 determination?</p> <p>19 A. Well, geography and like demographics.</p> <p>20 Q. And race?</p> <p>21 A. And race.</p> <p>22 Q. Was race the main factor you considered</p> <p>23 in drawing District 7?</p> <p>24 A. It was a major factor.</p> <p>25 Q. Was there a more predominant factor than</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Your goal was to draw only one district?</p> <p>2 A. Well, I'm not sure at that -- I don't</p> <p>3 remember the numbers exactly. I'm not sure -- I'm</p> <p>4 not sure whether it would have been possible to draw</p> <p>5 two or not. I don't know that it would have.</p> <p>6 Q. Did you consider drawing two majority</p> <p>7 black districts?</p> <p>8 A. I did not.</p> <p>9 Q. Did anyone suggest to you to draw that?</p> <p>10 A. They did not.</p> <p>11 Q. Did you review or comment on any other</p> <p>12 maps that contained two majority black districts at</p> <p>13 the time?</p> <p>14 A. I don't --</p> <p>15 MR. WALKER: Objection to form.</p> <p>16 A. I don't remember seeing any majority two</p> <p>17 district maps.</p> <p>18 Q. Did you consider race in drawing any of</p> <p>19 the other districts in 1992?</p> <p>20 A. I did not. I mean, other than -- I did</p> <p>21 not, no.</p> <p>22 Q. Skipping ahead to the 2011 congressional</p> <p>23 map. You also drew that map, correct?</p> <p>24 A. Yes. But may I go back just one?</p> <p>25 Q. Sure.</p>

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<p style="text-align: right;">Page 38</p> <p>1 A. Obviously, we drew this map -- I drew 2 this map, and it was submitted in a lawsuit. I had 3 no idea what would happen to it from there. So it's 4 not like I -- you know, I didn't know whether the 5 judges would change it or what would happen. 6 Q. That's a good point. Did the judges 7 change it after you submitted it? 8 A. I don't -- no, I don't believe they did. 9 Sorry. Go ahead. 10 Q. So you stated that you also drew the 11 2011 congressional map, correct? 12 A. Yes, sir. 13 Q. That one is a little bit more recent, 14 ten years ago. Do you recall the general method 15 that you used in drawing that map? 16 A. Yeah. I mean, essentially it was 17 updating the 2001 map based on demographic changes 18 that had happened over the last ten years and 19 working with the -- all of the -- I was hired by all 20 of the members to update the map and submit a -- 21 submit a map to the legislature for approval. 22 Q. So correct me if I'm wrong. But 23 generally when you're drawing these maps, it's more 24 of a redrawing than a drawing from scratch. Is that 25 fair to say?</p>	<p style="text-align: right;">Page 40</p> <p>1 probably used the 1992 map in drawing the 2001 map? 2 A. That's an -- a fair assumption, I guess. 3 Q. And the 2011 map then that you drew used 4 the 2001 map as its starting point? 5 A. Yes, sir. 6 Q. And then the 2021 map that you drew used 7 the 2011 map as its starting point? 8 A. Yes, sir. 9 Q. In drawing the 2011 congressional map, 10 did you speak to members of congress? 11 A. I spoke to all of them, yes, sir. 12 Q. All seven of the incumbents? 13 A. Yes. 14 Q. And what did you speak to them about? 15 A. We're talking about 2011? 16 Q. Correct. 17 A. I spoke to them about the over and under 18 nature of their districts, whether they needed to 19 gain population or lose population. And based on 20 that, where they would like to gain or where they 21 would like to -- where they would be -- you know, 22 like to lose. 23 And I tried to work with adjacent 24 districts to make sure that if person X wanted to 25 give up this county, that the other person would be</p>
<p style="text-align: right;">Page 39</p> <p>1 A. That is fair to say. 2 Q. So the general process is that you will 3 use the existing map from the prior census data and 4 update it with the new census data, correct? 5 A. That's correct. And obviously, whether 6 it's a congressional map or any other maps, you have 7 officeholders who have an interest in, for the most 8 part, keeping the voters that they've had for the 9 last ten years. So, most of them would not go into 10 a redistricting process looking for wholesale 11 change. 12 Q. So the 2021 map, for instance, can be 13 traced back to the 2011 map, the 2001 map, and the 14 1992 map in that order, correct? 15 A. Yeah. Preserving cores of existing 16 districts was a guideline for the 2021 map. 17 Q. For instance, the 2001 map used the 1992 18 map as a starting point, true? 19 A. I didn't draw that map. 20 Q. Do you have any other understanding of 21 how that map was drawn? 22 A. I mean, if you look at it, it looks like 23 it was continuing that map, yes. But I didn't -- 24 the democratic legislature drew that map. 25 Q. Is it a fair assumption to say that they</p>	<p style="text-align: right;">Page 41</p> <p>1 amenable to taking it. So I tried to negotiate a 2 map that everybody was happy with. 3 Q. Did you consult the state's 4 redistricting criteria in drawing that map? 5 A. I did. 6 Q. Did you review election returns in 7 drawing that map? 8 A. They were part of it, yes. 9 Q. What data did you have on that? 10 A. I don't remember if all their races were 11 in there. But I had the latest last three or four 12 state-wide races that were available. 13 Q. And how did you use that information? 14 A. I didn't use it all that much. It was a 15 common -- you know, a common question from a member 16 might be, you know, what did the governor get in my 17 district? And if we make this change -- or what did 18 whomever ran for president in the race before that, 19 whoever that was. 20 But I didn't use it so much in drawing 21 the map. It was more of confirming to them that 22 their district was going to perform similarly to how 23 the previous district had performed electorally. 24 Q. Did that data give you information on 25 party affiliation?</p>

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<p style="text-align: right;">Page 42</p> <p>1 A. I don't believe so. I think it was just 2 election returns. 3 Q. Was that aggregate election returns? Or 4 was that by individual counties or precincts? Does 5 that make sense? 6 A. Yeah. It was precinct-based. But then 7 it was aggregate for counties and then for the 8 districts. 9 Q. You can look at all of that? 10 A. Yes. 11 Q. Understood. 12 Did you look at any racial polarization 13 data in drawing the 2011 map? 14 A. I did not. 15 Q. Did you look at any other voter behavior 16 data? 17 A. I did not. 18 Q. Was it a goal in drafting the 2011 19 congressional map to make sure that District 7 20 remained a majority black district? 21 (Zoom interruption.) 22 A. What is that? 23 Q. It sounds like we might have a singer. 24 MR. TURRILL: Someone is off on mute on 25 the line there.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Their campaigns, yes. 2 Q. Was that the extent of the verbal 3 agreement? 4 A. It was. 5 Q. Was it a goal in drafting that 2011 6 congressional map to make sure that District 7 kept 7 a 60 percent black voting age population? 8 A. No. 9 Q. Was there any sort of specific black 10 voting age population percentage that you were 11 shooting for? 12 A. No. 13 Q. Were you successful in making sure that 14 District 7 remained a majority black district? 15 A. We were. 16 Q. How did you make sure of that? 17 A. By whatever -- you know, whatever -- and 18 I don't even remember the various counties ten years 19 ago. If you handed me a map, I could probably tell 20 you. 21 But by what we added county and 22 precinct-wise to make sure it did not dramatically 23 alter the makeup of the district. 24 Q. Explain that to me a little bit further. 25 So what changes were you making in 2011?</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. I think we're good now. 2 A. Can you ask -- I'm sorry. Can you ask 3 that again? 4 Q. No problem. 5 Was it a goal in drafting the 2011 6 congressional map to make sure that District 7 7 remained a majority black district? 8 A. Yeah. Obviously, Congresswoman Sewell 9 was one of my -- one of my clients for that map. 10 And she wanted to maintain her majority black 11 district, yes. 12 Q. When you say that she was one of your 13 clients, what do you mean? 14 A. She was one of the members of congress 15 who paid me to draw the map. 16 Q. Did you have a contract with those 17 members of congress? 18 A. Verbally. 19 Q. You didn't have a written contract? 20 A. No. 21 Q. What was the verbal contract? 22 A. That they would all put in \$10,000 to 23 draw -- each to draw -- pay me to draw this map. 24 Q. That each individual congressman or 25 woman would put in \$10,000?</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Again, I don't even know how much -- I'm 2 going to hazard a guess that District 7 was 3 underpopulated in 2011. I don't remember the exact 4 numbers. It was ten years ago. 5 But I'm going to guess that it was 6 underpopulated. And so then the discussion with 7 Congresswoman Sewell would be, you know, where -- 8 what areas would we add to your district to get your 9 district to ideal population. 10 And, obviously, in looking at those 11 areas, we, you know, wanted to make sure that we 12 preserved the majority black district. 13 Q. I know some of this was discussed in 14 your deposition eight years ago. So I'll try not to 15 tread the same water too much. 16 But explain to me just a little bit 17 about the process when you were drawing the 2011 18 congressional map. So did you start with District 19 7? 20 A. I probably did start with District 7. I 21 don't really remember, to be honest with you. I 22 mean, I -- you know, I was meeting -- I met with the 23 entire delegation to start. And then we went from 24 there. 25 But preserving Congresswoman Sewell's</p>

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<p style="text-align: right;">Page 46</p> <p>1 majority black district was a priority for the 2 delegation. 3 Q. And that was the priority for you, as 4 well? 5 A. Yes. 6 Q. Do you remember generally what sort of 7 changes you made to District 7 in 2011? 8 A. I really don't. I mean, I apologize. 9 But I did so many maps and plans in the last ten 10 years that I don't. 11 Q. What other maps and plans have you done 12 in the last ten years? 13 A. Well, we just did four in the last 14 couple of months. 15 Q. Anything else? 16 A. Those are the ones that are mostly stuck 17 in my brain. 18 Q. Are there any others? 19 A. No. 20 MR. WALKER: What was the question 21 again? 22 MR. THOMPSON: He said there were so 23 many maps that he had drawn in the last ten years. 24 And I asked him which ones, and he said just the 25 four that he just did.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. I looked at -- 2 MR. WALKER: And you're talking about -- 3 Q. We're talking about 2021 now. Did you 4 review all the maps that were offered in the 5 legislature in 2021? 6 A. Yes, I tried to. Some of -- some of 7 that may have been a very short review because some 8 of those maps were literally submitted 24 hours 9 before they were offered either on the floor or at 10 committee. So it's not like it was a long review. 11 Q. One more question going back to the 2011 12 congressional map. Did you consider race -- excuse 13 me. A couple more questions, to be fair. 14 Did you consider race in drawing any of 15 the other districts other than District 7 in 2011? 16 MR. WALKER: Congressional. 17 Q. The congressional map in 2011. 18 A. Not specifically. I mean, I'm not sure 19 I know what "consider" means. But, obviously, all 20 that information was available on each district. 21 But -- 22 Q. Did you review the racial data for each 23 district when you were drawing the 2011 24 congressional map? 25 A. As a matter of course, yeah. I mean,</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Well, "drawn" is -- we could find the 2 exact number. But I think in this last legislative 3 session, there were something like 41 various maps 4 and plans that were submitted to the legislature. 5 So while I certainly didn't draw most of those, I 6 did look at them. 7 So to ask me to go back ten years, it's 8 hard to -- when you have some 41 pieces of 41 maps 9 in your head, it's hard to expand back ten years. 10 Q. So you reviewed all 41 maps that were 11 submitted? 12 A. I didn't review them all, but I looked 13 at most of them. 14 Q. What's the difference between looking at 15 them and reviewing them? 16 A. Well, reviewing them would take more 17 time. Looking at them would be, okay, this is a -- 18 this is a house map or a senate map or whatever. I 19 just looked at the cover sheet and maybe the overall 20 numbers, but didn't review -- didn't -- some of them 21 were never offered, obviously. So if they weren't 22 offered, I didn't look at them more seriously than 23 that. 24 Q. Did you review all of the maps that were 25 offered?</p>	<p style="text-align: right;">Page 49</p> <p>1 it's all there. 2 Q. Explain that. 3 A. Well, when you finish -- when you draw a 4 map, obviously, you've got seven districts. And 5 you're going to have -- if you look at the, you 6 know, top data for each district, it's going to have 7 race and voting age, black, so forth and so on for 8 each district. It's not like it just only comes up 9 on the majority black district. It would come up on 10 all of them, obviously. 11 Q. Did you review that data for each 12 district? 13 A. I looked at it. 14 Q. What did that data tell you? 15 A. Nothing specifically. 16 Q. Did you do anything with that data? 17 A. I did not. 18 Q. Did you consider drawing two majority 19 black districts when you drew the 2011 congressional 20 map? 21 A. I really did not. 22 Q. Why not? 23 A. Well, primarily because the people who 24 were paying me to draw these maps preferred the 25 districts similar to how they were.</p>

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<p style="text-align: right;">Page 50</p> <p>1 Q. Did the people that were paying you to</p> <p>2 draw the map prefer not to have a second majority</p> <p>3 black district?</p> <p>4 A. I don't know about that. But they</p> <p>5 preferred to have their districts as close to what</p> <p>6 they had under that map going forward.</p> <p>7 Q. Did you discuss with anyone the</p> <p>8 possibility of creating a second majority black</p> <p>9 district?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Were you aware of requests in the</p> <p>12 legislature in 2011 to create a second majority</p> <p>13 black district?</p> <p>14 A. Again, I don't have a -- I don't have a</p> <p>15 complete recollection of ten years ago what maps</p> <p>16 were offered or not offered on the -- I don't want</p> <p>17 to guess on what was offered and what wasn't</p> <p>18 offered.</p> <p>19 Q. Do you know if it would have been</p> <p>20 possible to create a second majority black district</p> <p>21 in 2011?</p> <p>22 MR. DAVIS: Object to the form.</p> <p>23 MR. WALKER: Objection. Go ahead.</p> <p>24 A. I did not do it. So I -- I don't have</p> <p>25 an opinion on whether it was possible.</p>	<p style="text-align: right;">Page 52</p> <p>1 in drawing all four maps that they -- the</p> <p>2 congressional, as well as the other maps that needed</p> <p>3 to be drawn in this session.</p> <p>4 Q. And those four would be the</p> <p>5 congressional, the house and senate for the state</p> <p>6 legislature, and the board of education?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Did you agree to draw all four?</p> <p>9 A. I did.</p> <p>10 Q. When were you officially retained?</p> <p>11 A. Around that time, I would think. Like</p> <p>12 maybe October of 2020.</p> <p>13 Q. And who officially retained you?</p> <p>14 A. Well, I was working for the two chairs</p> <p>15 of the -- the house chair, Representative Pringle,</p> <p>16 and the senate chair, Senator McClendon.</p> <p>17 Q. Did you sign a contract?</p> <p>18 A. I did.</p> <p>19 Q. When did you sign that contract?</p> <p>20 A. Again, I don't have that in front of me.</p> <p>21 But September or October of 2020, I would imagine.</p> <p>22 Q. Is the contract with you individually,</p> <p>23 or is it with your company?</p> <p>24 A. It was with R. Hinaman, yes.</p> <p>25 Q. And who is the other party that you</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. To be clear for the timeline, I'm moving</p> <p>2 ahead now to 2021 for the most recent maps that were</p> <p>3 drawn.</p> <p>4 A. Yes, sir.</p> <p>5 Q. And I'm going to refer now to the 2021</p> <p>6 congressional map. When I refer to that, I mean the</p> <p>7 one that was enacted. It was also referred to, I</p> <p>8 believe, as HB-1 and then ultimately Act 2021-555.</p> <p>9 Is that fair?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And I'll refer to that either as the</p> <p>12 2021 map or the 2021 congressional map. Is that</p> <p>13 okay?</p> <p>14 A. Yes, sir.</p> <p>15 Q. When were you first approached about</p> <p>16 drawing the 2021 congressional map?</p> <p>17 A. That probably would have been the end --</p> <p>18 sometime in September or October of 2020.</p> <p>19 Q. Of 2020 or 2021?</p> <p>20 A. 2020. About a year out, I would say.</p> <p>21 Q. Who approached you?</p> <p>22 A. Senator McClendon and Representative</p> <p>23 Pringle on behalf of the republican leadership.</p> <p>24 Q. What were you asked to do?</p> <p>25 A. They asked me if I would be interested</p>	<p style="text-align: right;">Page 53</p> <p>1 contracted with?</p> <p>2 A. Citizens for Fair -- Citizens for Fair</p> <p>3 Representation. Or maybe Alabamians for Fair</p> <p>4 Representation.</p> <p>5 Q. Do you recall which one it is?</p> <p>6 A. Not off the top of my head.</p> <p>7 Q. Who is Citizens for Fair Representation</p> <p>8 or Alabamians or Fair Representation? Whichever the</p> <p>9 name is, who is that group?</p> <p>10 A. It's a 501(c)(4) which also paid me to</p> <p>11 do the map drawing that I did in 2011.</p> <p>12 Q. And what's your understanding of why you</p> <p>13 were contracted by this particular group?</p> <p>14 A. Meaning?</p> <p>15 Q. As opposed to the State of Alabama, the</p> <p>16 legislature, anyone else. Why this 501(c)(4)</p> <p>17 organization?</p> <p>18 A. The leadership had set up that (c)(4)</p> <p>19 for the purpose of drawing districts in 2020 -- 2011</p> <p>20 and then continued it for 2021.</p> <p>21 Q. So this 501(c)(4) organization was</p> <p>22 created for the purpose of drawing the redistricting</p> <p>23 in the state of Alabama?</p> <p>24 A. In 2011, that's my understanding, yes.</p> <p>25 Q. Do you know if that organization does</p>

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<p style="text-align: right;">Page 54</p> <p>1 anything else?</p> <p>2 A. I do not.</p> <p>3 Q. The contract that you signed around</p> <p>4 September, October of 2020, did you draft that</p> <p>5 contract?</p> <p>6 A. I did.</p> <p>7 Q. What does the contract call for you to</p> <p>8 do?</p> <p>9 A. It calls for me to work with the two</p> <p>10 chairs and the leadership of the house and the</p> <p>11 senate to draw four maps, congressional, state</p> <p>12 senate, state house, and state board of education.</p> <p>13 And to the extent practical and possible, meet with</p> <p>14 the officeholders for those four maps to get their</p> <p>15 interest in changes and so forth.</p> <p>16 Q. In that last part, you said "to meet</p> <p>17 with the officeholders"?</p> <p>18 A. Yes.</p> <p>19 Q. Is that basically the incumbents for</p> <p>20 each of the various districts on each of those maps?</p> <p>21 A. Correct.</p> <p>22 Q. Do you have a copy of that contract?</p> <p>23 A. Not with me. But yes, I do.</p> <p>24 Q. Is that something that you could produce</p> <p>25 if you were requested in this case?</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Have you been fully paid at this point?</p> <p>2 A. I have.</p> <p>3 Q. Was any part of your compensation</p> <p>4 contingent on anything?</p> <p>5 A. No. However, the -- just to be clear on</p> <p>6 the payment, because the time frame of the project</p> <p>7 changed -- I mean, when we initially signed the</p> <p>8 contract, the theory was, again, we would have the</p> <p>9 census data in March and we would pass a plan in</p> <p>10 July. Obviously, that didn't happen.</p> <p>11 So my timeline for when I was supposed</p> <p>12 to get those four payments I modified so that they</p> <p>13 didn't have to pay me before I had actually even had</p> <p>14 census data. So we changed the timeline. But yes.</p> <p>15 Q. Were you able to do any work on the maps</p> <p>16 before you got the census data?</p> <p>17 A. Yeah. We -- especially the state-wide</p> <p>18 ones such as congress and state board of education.</p> <p>19 We had to -- we had the estimates, county estimates,</p> <p>20 from the census bureau. I guess it would have been</p> <p>21 the 2019 numbers.</p> <p>22 So it was possible to look at them and</p> <p>23 say, okay, this district is likely to be under, this</p> <p>24 district is likely to be over, which on the</p> <p>25 congressional level allowed me to start meeting with</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Yes.</p> <p>2 Q. What were the terms of your compensation</p> <p>3 in that contract?</p> <p>4 A. Four payments spaced out over various</p> <p>5 months, four payments of \$50,000 spaced out over the</p> <p>6 length of the contract.</p> <p>7 I believe when we actually signed the</p> <p>8 contract back in September or October, we were</p> <p>9 hoping or planning to do a special session in July.</p> <p>10 So we didn't at that time know that COVID was going</p> <p>11 to delay the census numbers and so forth and so on.</p> <p>12 So when I started the process at the end</p> <p>13 of 2020, the theory was we would, you know, probably</p> <p>14 have a special session in June or July sometime to</p> <p>15 pass these maps.</p> <p>16 Q. You said you started the process around</p> <p>17 the end of 2020. What do you --</p> <p>18 A. Well, when I signed the contract.</p> <p>19 Q. You also said that there was -- the</p> <p>20 contract called for four payments of \$50,000. Is</p> <p>21 that four separate payments of 50,000 each, for a</p> <p>22 total of --</p> <p>23 A. Yes, sir.</p> <p>24 Q. -- 200,000?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 57</p> <p>1 members before we had the official census data which</p> <p>2 we didn't get until the end of August.</p> <p>3 Q. So you didn't get the official census</p> <p>4 data until the end of August. But you had</p> <p>5 unofficial estimates from the census before then?</p> <p>6 A. Correct.</p> <p>7 Q. And when did you receive those</p> <p>8 unofficial results?</p> <p>9 A. I don't -- I don't know when the 2019</p> <p>10 numbers were updated. But I'm going to say around</p> <p>11 the end of -- somewhere around the end of 2020. But</p> <p>12 I don't know that exactly.</p> <p>13 Q. Did you begin working on the</p> <p>14 congressional map before you received the official</p> <p>15 census data?</p> <p>16 A. Yes, sir.</p> <p>17 Q. When did you begin working on that map?</p> <p>18 A. In earnest probably in May of 2021.</p> <p>19 Q. What do you mean "in earnest"?</p> <p>20 A. Well, meeting with members and talking</p> <p>21 substantively about potential changes.</p> <p>22 Q. Before we get into the specifics of</p> <p>23 that, just on your compensation real quick, were you</p> <p>24 paid or retained by anyone else?</p> <p>25 A. No. I mean, I assume you mean relative</p>

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<p style="text-align: right;">Page 58</p> <p>1 to redistricting.</p> <p>2 Q. Certainly. You've received other</p> <p>3 payments --</p> <p>4 A. Yes.</p> <p>5 Q. -- for other --</p> <p>6 A. Consulting.</p> <p>7 Q. Correct.</p> <p>8 So you stated that you began drawing the</p> <p>9 2021 map in earnest in May of 2021. Did you do</p> <p>10 anything else in preparation for drawing the maps</p> <p>11 before that date?</p> <p>12 A. No. I mean, I had conversations with</p> <p>13 members of the congressional delegation. And as you</p> <p>14 may -- may know, there was considerable</p> <p>15 concerns/discussion about whether Alabama would have</p> <p>16 seven members of congress or six.</p> <p>17 And until we really knew the answer to</p> <p>18 that -- which I think we were told by the census</p> <p>19 bureau in April, sometime in April what the answer</p> <p>20 to that question was -- there really wasn't much --</p> <p>21 I didn't -- my position with the congressmen was it</p> <p>22 would not make sense to work on a map until we knew</p> <p>23 how many districts we were going to have.</p> <p>24 Because, obviously, working on a</p> <p>25 six-person map where somebody would be paired with</p>	<p style="text-align: right;">Page 60</p> <p>1 wait until we knew how many districts the state</p> <p>2 would have. And then I would go to Washington and</p> <p>3 meet with the members and start formulating a plan</p> <p>4 from there to hopefully reach some consensus on a</p> <p>5 map.</p> <p>6 Q. Before you received word from the census</p> <p>7 bureau that there were going to be seven districts</p> <p>8 in Alabama again, did you do anything else in</p> <p>9 furtherance of drawing the 2021 congressional map?</p> <p>10 A. I did not.</p> <p>11 Q. When did you actually begin redrawing</p> <p>12 the 2021 congressional map?</p> <p>13 A. After my May round of meetings in</p> <p>14 Washington.</p> <p>15 Q. You say after then. Would that have</p> <p>16 been in May? Or June, July?</p> <p>17 A. I think the end of May, beginning --</p> <p>18 again, this was all based on estimates. We did not</p> <p>19 have the real census data. So I just -- I probably</p> <p>20 roughed out a map sometime in May or June based off</p> <p>21 of the estimates, knowing full well they were not</p> <p>22 going to be completely accurate.</p> <p>23 Q. From the time that you started drawing</p> <p>24 the 2021 congressional map until it was completed,</p> <p>25 about how much time did you spend in terms of hours</p>
<p style="text-align: right;">Page 59</p> <p>1 somebody was not going to be a lot of fun. And</p> <p>2 there was no need to do that if we didn't ever have</p> <p>3 to.</p> <p>4 Q. Certainly. So the census bureau</p> <p>5 informed --</p> <p>6 A. All the states, I think, in April of how</p> <p>7 many -- how many members of congress they would</p> <p>8 have. And then that allowed me to set up meetings</p> <p>9 and work off of the estimates of 2019 to talk about</p> <p>10 whether your district was over or under and so</p> <p>11 forth.</p> <p>12 Q. And you began those meetings around May</p> <p>13 of --</p> <p>14 A. I went to DC with the goal to meet with</p> <p>15 everybody in May, yes, sir.</p> <p>16 Q. So you said you went to DC. So I assume</p> <p>17 that you're referring to meetings with the</p> <p>18 congressional members.</p> <p>19 A. Yes.</p> <p>20 Q. Did you meet with any other -- for</p> <p>21 instance, did you meet with anybody in the Alabama</p> <p>22 state legislature in the spring of 2021?</p> <p>23 A. Well, I met with the two co-chairs to</p> <p>24 talk about my plan to how to -- you know, how to</p> <p>25 move forward on the congressional, that we would</p>	<p style="text-align: right;">Page 61</p> <p>1 on drawing that map?</p> <p>2 A. I have no idea. I guess I would make a</p> <p>3 bad lawyer.</p> <p>4 Q. Well, I don't want you to guess.</p> <p>5 When was the map completed for the 2021</p> <p>6 congressional?</p> <p>7 A. Complete. When was I done with what I</p> <p>8 was doing with it?</p> <p>9 Q. Correct.</p> <p>10 A. Probably the Friday before the week we</p> <p>11 went into session. So whatever that -- October 23rd</p> <p>12 or -- I'm making up that date. Whatever the Friday</p> <p>13 before we went into session was.</p> <p>14 Q. And you're referring to the special</p> <p>15 session that was called in the fall of 2021?</p> <p>16 A. Correct.</p> <p>17 Q. Going back to how much time it took you</p> <p>18 in terms of hours. Would you say that you spent</p> <p>19 more than 100 hours drawing the congressional map in</p> <p>20 2021?</p> <p>21 A. Well, if you're including meetings and</p> <p>22 discussions about it, yeah, probably.</p> <p>23 Q. Would you say you spent more than 150</p> <p>24 hours?</p> <p>25 A. I don't know. I just -- I don't really</p>

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<p style="text-align: right;">Page 62</p> <p>1 have a -- I didn't think of it in terms of hours. 2 My contract didn't -- my contract was just you were 3 going to draw these four maps. And whether it took 4 123 hours or 217 was irrelevant to what I was doing. 5 Q. Right. I'm just trying to get an idea 6 about how long it took you. I know there were 7 months involved. 8 But how much time you were actually 9 spending on this in that time frame, would you say 10 it took you more than 200 hours? 11 A. I have no way of even guessing that. I 12 really -- I apologize, but I don't. 13 Q. Were you doing other things work-wise 14 between May 2021 and -- when was the special 15 session? Was it in October? 16 A. October of 2021, yes. 17 Q. Between May 2021 and October 2021, were 18 you doing anything else work-wise other than drawing 19 these four maps? 20 A. Not very much because it was an 21 off-year, obviously. I had clients that I did 22 things for, obviously, in 2020, working up to the 23 November 2020 election. But -- and I still had an 24 ongoing relationship with some of -- a couple of my 25 clients. But there wasn't a lot of work that needed</p>	<p style="text-align: right;">Page 64</p> <p>1 clarification. 2 Does that apply to all four of the maps 3 that you were drawing? 4 A. No. That's obviously the -- the only 5 one that the census determined how many members 6 there would be would be -- was congress. 7 Q. Because you said you had unofficial 8 census data on, I guess, population prior to that? 9 A. By county, yes. 10 Q. And did you use that unofficial data for 11 the other maps? 12 A. I used it -- I used it to start working 13 with the state school board members. 14 It was less effective at the senate and 15 house levels, virtually useless at the house level 16 because it was mostly county data at the beginning. 17 And so most house districts are not made up of full 18 counties, obviously. So it was less valuable in 19 those maps and more valuable in the statewide maps. 20 Q. When did you begin drawing the state 21 house and senate maps in 2021? 22 A. I did not start on a house map until we 23 actually had all of our census data at the end of 24 August. I had roughed out a few of the rural senate 25 districts based on some of the estimates. But it</p>
<p style="text-align: right;">Page 63</p> <p>1 to be done in the off-year. 2 Q. Were you working full 40-hour weeks 3 during that entire time? 4 A. By and large, yes. 5 Q. Did you take any trips or personal 6 vacation time during that time period? 7 A. Well, it was during COVID. So I didn't 8 travel a whole lot. But it was a crazy time, as you 9 all remember. 10 Q. Did you take any time off? 11 A. Sure. 12 Q. About how long did you take off? 13 A. I don't know. A couple of weeks. 14 Q. And in that -- you had mentioned that 15 you weren't able to begin redrawing the 16 congressional map before you received the census 17 estimates in April of 2021. Does that apply to all 18 -- 19 A. Before I received how many districts we 20 had in April of 2021. 21 Q. Correct. Does that -- 22 A. I think we had the census estimates 23 before that. I'm saying we just didn't know how 24 many districts there were. 25 Q. Fair enough. Thank you for the</p>	<p style="text-align: right;">Page 65</p> <p>1 wasn't particularly effective. 2 So I would -- I would really say I 3 didn't seriously start drawing those maps until 4 August of 2021. 5 Q. And what about the board of education 6 map? 7 A. The board of education I was doing 8 simultaneously to congress because that was 9 obviously a statewide map. And the county numbers 10 were more usable in that type of map than they were 11 in a 105-member state house map. 12 Q. So you began drawing the board of 13 education map around -- 14 A. The same times as congress. 15 Q. Which was around May of 2021? 16 A. Correct. I think I started meeting with 17 those members in May, as well. 18 Q. We've been going about an hour. Do you 19 want to take a break? 20 A. Sure. 21 THE VIDEOGRAPHER: We're off the record. 22 The time is 10:17 a.m. 23 (Recess was taken.) 24 THE VIDEOGRAPHER: We are back on the 25 record. The time is now 10:35 a.m.</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. Mr. Hinaman, when we left off, we were</p> <p>2 talking about the preparation that you did starting</p> <p>3 to get into the beginnings of drawing the 2021 map.</p> <p>4 Prior to May 2021, did you anything in</p> <p>5 furtherance of drawing the 2021 congressional map?</p> <p>6 A. Other than reviewing the 2019 census</p> <p>7 estimates by county, no.</p> <p>8 Q. And what did you do when you were</p> <p>9 reviewing the --</p> <p>10 A. I was trying to get a feel for what</p> <p>11 districts would be underpopulated and what districts</p> <p>12 would be overpopulated based on those estimates.</p> <p>13 And while the estimates in the end</p> <p>14 didn't turn out to be obviously particularly close</p> <p>15 to the actual numbers, in order -- they were -- they</p> <p>16 were close in that they did predict the three</p> <p>17 districts that would be under and the four districts</p> <p>18 that would be over.</p> <p>19 So it was helpful to pay attention to</p> <p>20 that when I started to do my round of meetings with</p> <p>21 the members of congress.</p> <p>22 Q. Did you do anything else prior to May</p> <p>23 2021 in furtherance of drawing the 2021</p> <p>24 congressional map?</p> <p>25 A. No. I mean, obviously, I -- at some</p>	<p style="text-align: right;">Page 68</p> <p>1 guidelines had been passed in early May.</p> <p>2 The only other thing in there, obviously</p> <p>3 I had talked -- before we knew seven to six, I had</p> <p>4 talked to, obviously, all of the offices, the</p> <p>5 congressional offices, about what my -- what our</p> <p>6 proposed timeline was going to be based on the fact</p> <p>7 that the census data was delayed, and that hopefully</p> <p>8 we would be able to set up a round of meetings in</p> <p>9 May and then we would get our data in August or</p> <p>10 whatever, and then we would fine tune it from there.</p> <p>11 Q. So those were more of administrative</p> <p>12 coordination discussions?</p> <p>13 A. Yes, sir.</p> <p>14 Q. You flew to DC, you said, in May of 2021</p> <p>15 to meet with the congressional members. Did you</p> <p>16 meet with each -- all seven congressional members?</p> <p>17 A. I met with five in person, one by Zoom.</p> <p>18 And one of the members declined to meet because they</p> <p>19 were more interested in running for a different</p> <p>20 office, I guess.</p> <p>21 Q. Which member was that that declined to</p> <p>22 meet?</p> <p>23 A. Mo Brooks. I met with his chief of</p> <p>24 staff, but I did not meet with Congressman Brooks</p> <p>25 directly.</p>
<p style="text-align: right;">Page 67</p> <p>1 point in that time frame, the reapportionment</p> <p>2 committee met and passed their guidelines.</p> <p>3 Obviously, I reviewed those and how they would</p> <p>4 impact the drawing of the maps. But that was --</p> <p>5 that was about the May time frame, as well. It may</p> <p>6 have been early May rather than later May.</p> <p>7 Q. You met with members of congress in DC</p> <p>8 in May of 2021, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Was that the first thing that you did</p> <p>11 after the census data came out in 2021?</p> <p>12 A. Well, the data --</p> <p>13 Q. Let me take a step back there.</p> <p>14 You said that prior to May 2021, the</p> <p>15 only thing that you had done was review some of the</p> <p>16 unofficial census data to get a feel for</p> <p>17 underpopulation, overpopulation?</p> <p>18 A. Yes.</p> <p>19 Q. Then the census bureau announced around</p> <p>20 April 2021 that there will be seven congressional</p> <p>21 districts again in Alabama?</p> <p>22 A. Correct.</p> <p>23 Q. Was the next step that you did flying to</p> <p>24 DC to meet with the congressional members?</p> <p>25 A. Yes. And that was, again, after</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. You met with each of the other</p> <p>2 congressional members?</p> <p>3 A. Five in person and one by Zoom.</p> <p>4 Q. Who was the one you met with by Zoom?</p> <p>5 A. Congresswoman Sewell. She was back in</p> <p>6 Alabama on a personal matter. So I met with her by</p> <p>7 Zoom.</p> <p>8 Q. Did you meet personally with Congressman</p> <p>9 Sewell by Zoom?</p> <p>10 A. Yes.</p> <p>11 Q. And when was that?</p> <p>12 A. During the May trip. Is that what</p> <p>13 you're asking me?</p> <p>14 Q. Correct. Because you went to DC to meet</p> <p>15 with some of them.</p> <p>16 A. Yes. And she was not in DC because of a</p> <p>17 personal matter. So we did a Zoom call.</p> <p>18 Q. You were in DC when you had the</p> <p>19 Zoom call?</p> <p>20 A. And she was in Birmingham, I believe.</p> <p>21 Q. Was it just one call that you had with</p> <p>22 Congressman Sewell?</p> <p>23 A. During that trip, just one call.</p> <p>24 Q. Have you had other meetings with</p> <p>25 Congressman Sewell?</p>

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<p style="text-align: right;">Page 70</p> <p>1 A. I've had other Zoom meetings with her. 2 Microsoft Teams, technically. But yes, Zoom 3 meetings. 4 Q. Have you had any in-person meetings with 5 Congressman Sewell? 6 A. No, I don't think I did this time. I 7 mean, as -- in-person meetings were rather 8 difficult. It was actually May when I went to -- 9 the house office buildings were actually closed and 10 didn't allow visitors. So meeting anybody in person 11 was a bit challenging during that time. 12 I would have met with her in person on 13 that trip had she been in town. But she was not. 14 But the other members that I met with were all 15 off-campus, so to speak, because we couldn't go to 16 -- I couldn't go to their offices. 17 Q. As far as Congressman Brooks goes, you 18 said you met with somebody from his staff? 19 A. I met with his chief of staff, yes. 20 Q. And what did you discuss with these 21 representatives when you met with them in May of 22 2021? 23 A. I discussed the over and under nature of 24 their district. And if their district was 25 underpopulated based on the estimates, I said, you</p>	<p style="text-align: right;">Page 72</p> <p>1 information. And then what did you do with it? 2 A. Tried to rough it out in an estimated 3 map, but again knowing that it was going to change 4 because the estimates were not going to be 5 completely accurate. 6 And, again, I didn't want to -- if there 7 was a conflict somewhere between some -- two members 8 wanted county X, I didn't really want to litigate 9 that until we had real numbers because it may become 10 irrelevant when it turns out that their district was 11 10,000 off of what the estimate said. 12 So I tried not to get into any 13 negotiations at that point. 14 Q. Were there some disputes in the 15 recommendations and requests that you received? 16 A. Minorly, yeah. 17 Q. Were there specific counties that more 18 than one representative wanted? 19 A. Yeah. I mean, for example, the 1st 20 District was going to be over. The 1st District was 21 going to be overpopulated, and it was going to have 22 to lose some. And the 1st District congressman 23 wanted to probably lose some to the 2nd in Monroe, 24 but the 2nd District congressman wanted to gain some 25 from the 1st in Escambia, just things like that.</p>
<p style="text-align: right;">Page 71</p> <p>1 know, "Where would you envision picking up 2 population?" If you were over populated, "What 3 areas of your district would you envision 4 potentially losing?" 5 Q. Did you discuss anything other than 6 population changes with them? 7 A. Population changes and potential 8 timelines and when we might get the real census 9 data. 10 Q. Anything else that you discussed with 11 them? 12 A. That was about it. 13 Q. What did you do next after meeting with 14 the representatives in May of 2021? 15 A. I took -- took back that information and 16 looked at it in terms of a map, and then waited for 17 the real census data to come to see where we really 18 were. 19 Q. You said you took back that information. 20 What sort of information did you get from these 21 meetings? 22 A. When somebody said if I need to lose 23 10,000, I would like to lose them in county X or 24 place Y or whatever. 25 Q. And so you said you took that</p>	<p style="text-align: right;">Page 73</p> <p>1 They were not major. 2 But, again, it really wasn't worth the 3 point of negotiating it fully until we knew the real 4 numbers. Because as it turned out, it only ended up 5 being 739 people, and it wasn't particularly 6 important which county it was in the scheme of 7 717,000 voters or citizens in a district. 8 Q. You said you then took that information 9 from those meetings with the representatives and 10 roughed out a map. What does that mean? 11 A. It means I took the -- we had the 12 estimates on Maptitude at the state reapportionment 13 office. And I just roughed without -- I mean, I 14 didn't get anywhere close to zero deviation because 15 there was no point in it. 16 I just generally roughed out based on 17 what we had discussed in DC, knowing that it was all 18 going to change when we got the real numbers. But 19 just explored some of the potential. 20 Q. And to be clear, for somebody that 21 doesn't draw maps, what does "roughed out" mean? 22 A. Meaning assigned various counties to 23 districts just in an effort to get things closer to 24 the ideal population. 25 Q. Kind of playing with the numbers, just</p>

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<p style="text-align: right;">Page 74</p> <p>1 kind of seeing what works as a preliminary 2 standpoint, I guess?</p> <p>3 A. Yes. And just to be clear, that was all 4 on total population. Because I certainly didn't 5 have the ability or trust the internals of any of 6 those -- I mean, I wouldn't have trusted like BVAP 7 or anything else to the extent it wouldn't have made 8 any sense to look at it at that point.</p> <p>9 Q. Did you have any data on the black 10 voting age population at that --</p> <p>11 A. I don't know what the estimates had. 12 But I didn't even look at it because I knew it 13 wasn't going to be significant to what we were 14 doing.</p> <p>15 Q. Did you do anything else before you 16 received the official census data in August of 2021?</p> <p>17 A. No.</p> <p>18 Q. Did you review any other materials in 19 that time frame before August 2021?</p> <p>20 A. Obviously, I reviewed the guidelines and 21 had discussions with the two chairs of how we will 22 proceed once we get the data in terms of all the 23 maps.</p> <p>24 Q. What were those discussions like?</p> <p>25 A. Just mostly timing and how we would --</p>	<p style="text-align: right;">Page 76</p> <p>1 A. No, sir.</p> <p>2 Q. And then in August 2021, you received 3 the official census data, correct?</p> <p>4 A. Correct.</p> <p>5 Q. What did you do once you received that 6 data?</p> <p>7 A. Well, the State received it.</p> <p>8 Q. And then ultimately it was passed on to 9 you, correct?</p> <p>10 A. Well, it was -- I used the state 11 computer. So their -- that data was then given to 12 Maptitude. This is my understanding. I did not do 13 any of this.</p> <p>14 That data was given to Maptitude, and 15 Maptitude turned it into their workable -- put it 16 into their program and sent it back to the State. 17 And the State loaded it into their computers, which 18 all took another week. And then I was able to 19 manipulate it on -- use it on a computer at that 20 point.</p> <p>21 Q. So walk me through that. So Maptitude 22 is a software on a computer, correct?</p> <p>23 A. Yes.</p> <p>24 Q. A map-drawing software?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 75</p> <p>1 how we would go forward. And hopefully we could get 2 some consensus on the state school board members and 3 some consensus with the congressional members.</p> <p>4 And, obviously, the house map I couldn't 5 do anything with until we got the real numbers. The 6 senate map I could do next to nothing with. I mean, 7 I could look at a few of the more rural districts 8 because they were whole counties. But once you got 9 into major metropolitan areas, I couldn't come up 10 with too many suggestions for that then.</p> <p>11 Q. Other than Pringle and McClendon, did 12 you meet with any other members of the Alabama 13 legislature?</p> <p>14 A. I don't believe so at that time.</p> <p>15 Q. And "that time" being before August 16 2021, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Did you review any election returns in 19 that time frame?</p> <p>20 A. I did not.</p> <p>21 Q. Did you review any voter registration 22 info in that time frame?</p> <p>23 A. I did not.</p> <p>24 Q. Did you review any voter primary 25 participation data in that time frame?</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Is it the same software that you had 2 used previously in drawing maps?</p> <p>3 A. I used it in 2011, yes, sir.</p> <p>4 Q. Did you ever use it before then?</p> <p>5 THE WITNESS: I used it in 2011. The 6 State used ESRI.</p> <p>7 A. Excuse me?</p> <p>8 Q. Did you use it before 2011?</p> <p>9 A. I don't think so.</p> <p>10 Q. And you were clarifying with Mr. Walker 11 that you used in 2011 --</p> <p>12 A. Yeah. In 2011, I had a computer, and I 13 had Maptitude on it. The State used -- the State of 14 Alabama used a different software, I think, called 15 ESRI.</p> <p>16 THE REPORTER: Called what?</p> <p>17 A. ESRI.</p> <p>18 Q. Can you spell that?</p> <p>19 A. I don't know.</p> <p>20 MR. WALKER: E-S-R-I, all capital 21 letters.</p> <p>22 Q. And what is ESRI?</p> <p>23 A. It's just a -- it's similar to Maptitude 24 software for using the census data.</p> <p>25 Q. So in 2011, you drew the map using your</p>

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<p style="text-align: right;">Page 78</p> <p>1 own computer and your own software?</p> <p>2 A. Correct.</p> <p>3 Q. Was that then imported into ESRI for the</p> <p>4 State?</p> <p>5 A. Yes, sir.</p> <p>6 Q. The file types can be imported from one</p> <p>7 to the other?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Then in 2021, you did not use your own</p> <p>10 computer and software, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. You used the State's computers and</p> <p>13 software?</p> <p>14 A. Entirely.</p> <p>15 Q. Where was that physically?</p> <p>16 A. In the reapportionment office at the</p> <p>17 state house, Room 317.</p> <p>18 Q. So any time that you wanted to actually</p> <p>19 work on redrawing the map, you had to --</p> <p>20 A. Physically be there.</p> <p>21 Q. How often --</p> <p>22 A. Sorry. I didn't mean to finish your</p> <p>23 sentences.</p> <p>24 Q. That's fine. And we're doing a pretty</p> <p>25 decent job. But let's try to remember to let each</p>	<p style="text-align: right;">Page 80</p> <p>1 starting in August 2021 through October 2021?</p> <p>2 A. Yes.</p> <p>3 Q. And all four maps, you were doing the</p> <p>4 same process using the State's computers and using</p> <p>5 Maptitude, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Were there any of those maps that took a</p> <p>8 significantly larger portion of your time to draw?</p> <p>9 A. Well, obviously, including meetings with</p> <p>10 members. 105 house members are significantly more</p> <p>11 meetings than, you know, seven for congress and</p> <p>12 eight for school board.</p> <p>13 So, obviously, the house map probably</p> <p>14 took a lot longer just in terms of meeting with 105</p> <p>15 different -- I didn't meet with everybody. But the</p> <p>16 vast majority of 105 people -- and sometimes more</p> <p>17 than once -- took a lot longer than meeting with</p> <p>18 seven congressmen, for example.</p> <p>19 Q. In addition to meeting, I assume that</p> <p>20 drawing 105 districts probably takes a lot more of</p> <p>21 your time to do than just drawing seven. Is that</p> <p>22 fair?</p> <p>23 A. That's fair.</p> <p>24 Q. If you had to put very rough percentages</p> <p>25 on the amount of time you spent on the congressional</p>
<p style="text-align: right;">Page 79</p> <p>1 other finish so that the court reporter can type</p> <p>2 everything down.</p> <p>3 How often -- starting in August 2021,</p> <p>4 how often would you go to the -- what did you say it</p> <p>5 was? The reapportionment office?</p> <p>6 A. Reapportionment office.</p> <p>7 Q. How often would you go to the</p> <p>8 reapportionment office after August 2021?</p> <p>9 A. Once the -- once the material was loaded</p> <p>10 into the computer, which was probably the last week</p> <p>11 of August maybe, I was there once or twice a week</p> <p>12 for the next week or so. And then after that, I was</p> <p>13 there four or five days a week until we were through</p> <p>14 the special session. I basically lived in</p> <p>15 Montgomery. For all intents and purposes, I lived</p> <p>16 in Montgomery for a couple of months.</p> <p>17 Q. From, say, the beginning of September</p> <p>18 through the end of October?</p> <p>19 A. Yeah. Certainly Labor Day until the end</p> <p>20 of October.</p> <p>21 Q. Would you work on weekends, as well?</p> <p>22 A. Rarely. I mean, once we got very close</p> <p>23 to the session, yes. But not -- not normally.</p> <p>24 Q. Of the four maps you were -- you were</p> <p>25 working on all four maps in that time frame, right,</p>	<p style="text-align: right;">Page 81</p> <p>1 map versus the other ones, about how much of your</p> <p>2 time would you say you spent?</p> <p>3 A. Now you're -- now you're making me a</p> <p>4 lawyer again. And I'm not good at this.</p> <p>5 I really -- I don't really know how to</p> <p>6 do that. I mean, you would be correct that the</p> <p>7 majority -- I mean, I put more time into the house</p> <p>8 map than I put into the state school board and the</p> <p>9 congressional. But I really don't have a way to</p> <p>10 quantify that.</p> <p>11 Q. Did you put more time into the senate</p> <p>12 map, as well?</p> <p>13 A. Yeah. Obviously, it's 35 members versus</p> <p>14 seven or eight. It just takes longer to do the</p> <p>15 meetings and follow-ups and so forth.</p> <p>16 Q. And the state school board --</p> <p>17 A. Is eight members.</p> <p>18 Q. Eight members. Did that take you about</p> <p>19 the same amount of time to draw as the --</p> <p>20 A. Yeah.</p> <p>21 Q. Sorry. Let me make sure that I can</p> <p>22 finish.</p> <p>23 Did drawing the state school board map</p> <p>24 take you about the same amount of time as it did for</p> <p>25 drawing the congressional map, given that they have</p>

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<p style="text-align: right;">Page 82</p> <p>1 about the same number of districts?</p> <p>2 A. Yes.</p> <p>3 Q. Going back to the software, this</p> <p>4 Maptitude software, you said that it took about a</p> <p>5 week for the census information to be uploaded; is</p> <p>6 that correct?</p> <p>7 A. Yeah, that's what I said.</p> <p>8 Q. What does that mean?</p> <p>9 A. Again, this was not part of my</p> <p>10 responsibility. But the State got the data, as I</p> <p>11 understood it, and gave it to Maptitude. Maptitude</p> <p>12 translated it into their software and sent it back</p> <p>13 to the State to be loaded on the State computer.</p> <p>14 But, again, this is all my secondhand</p> <p>15 knowledge of what was going on. I was not doing</p> <p>16 this.</p> <p>17 Q. From your perspective, once you arrived</p> <p>18 around the end of August looking at Maptitude and</p> <p>19 the software, you were able to see what information</p> <p>20 has been uploaded, correct?</p> <p>21 A. Well, once it's -- yeah. Once it's</p> <p>22 uploaded, yes.</p> <p>23 Q. What sort of information is -- was</p> <p>24 available to you on the Maptitude software regarding</p> <p>25 the districts?</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Who did you meet with to discuss the</p> <p>2 drawing of the map between August 2021 and when you</p> <p>3 submitted the map in the week before the special</p> <p>4 session?</p> <p>5 A. Once we had the real data, I went back</p> <p>6 and had Zoom calls with all of the members of</p> <p>7 congress or their -- or their chief of staff to talk</p> <p>8 about what the differences were from the estimates</p> <p>9 versus the actual census data and to reiterate, you</p> <p>10 know, what we discussed in May, what was still</p> <p>11 operable and what maybe needed to be slightly</p> <p>12 revised based on what our thoughts were.</p> <p>13 Then after those round of Zoom calls, I</p> <p>14 went back and drew a proposed map. Which I then did</p> <p>15 another round of calls, Zoom calls with, to look at</p> <p>16 the final -- semifinal, final version, I guess.</p> <p>17 Q. In those meetings, did you discuss</p> <p>18 anything with the representatives other than changes</p> <p>19 that needed to be made for population deviation?</p> <p>20 A. No.</p> <p>21 Q. How many meetings would you say you had</p> <p>22 with each of the representatives in that time frame?</p> <p>23 A. It varied. For example, Mo Brooks would</p> <p>24 be zero because he again was not interested to</p> <p>25 participate. Others took, you know, three, four,</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Once it's all loaded in, I have, you</p> <p>2 know, total population and voting age population and</p> <p>3 race down to the block level.</p> <p>4 Q. Is there any other information that's</p> <p>5 available to you in Maptitude?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Did you, yourself, upload any additional</p> <p>8 information into Maptitude?</p> <p>9 A. I did not.</p> <p>10 Q. Did you review any other data in</p> <p>11 preparing the maps?</p> <p>12 A. I did not.</p> <p>13 Q. Did you meet with anyone between August</p> <p>14 2021 and the time that you submitted the maps before</p> <p>15 the special session in furtherance of drawing the</p> <p>16 2021 congressional map?</p> <p>17 A. Well, I met with virtually all of the</p> <p>18 officeholders.</p> <p>19 Q. You met with each of the seven</p> <p>20 congressional representatives again?</p> <p>21 A. Oh, yeah. I had Zoom calls with -- with</p> <p>22 them. And then -- are you talking just</p> <p>23 congressional now, or all of it?</p> <p>24 Q. Focusing on the 2021 congressional map.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 85</p> <p>1 five phone calls. Some were one or two.</p> <p>2 In the final end, Representative Palmer</p> <p>3 decided not to do the final call. So I didn't have</p> <p>4 a final call with him. But everybody else, I had at</p> <p>5 least two, if not more.</p> <p>6 Q. Were all of the meetings with the</p> <p>7 representatives from August 2021 through the special</p> <p>8 session by Zoom?</p> <p>9 A. Yes.</p> <p>10 Q. When you had those meetings, would you</p> <p>11 share your screen to be able to show what the map</p> <p>12 looks like?</p> <p>13 A. Exactly, yes.</p> <p>14 Q. Did you discuss with each of the</p> <p>15 representatives the map as a whole or just their</p> <p>16 specific districts?</p> <p>17 A. Their specific districts and an adjacent</p> <p>18 district if there was some change there.</p> <p>19 Q. You stated for the 2011 congressional</p> <p>20 map that you were actually hired by the seven</p> <p>21 congressional representatives, correct?</p> <p>22 A. Correct.</p> <p>23 Q. That was not the case for 2021, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Why not?</p>

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<p style="text-align: right;">Page 86</p> <p>1 A. That was not my -- the leadership</p> <p>2 decided that they would, you know, hire me through</p> <p>3 the 501(c)(4), which -- which is how they hired me</p> <p>4 for legislative. I did the legislative maps in</p> <p>5 2021, and I guess they preferred that model over the</p> <p>6 other one. I don't know. That was their choice,</p> <p>7 not mine.</p> <p>8 Q. Did you receive any other instructions</p> <p>9 or requests from the congressional representatives</p> <p>10 other than changes to make to account for population</p> <p>11 deviation?</p> <p>12 A. No.</p> <p>13 Q. Did you meet with any members of the</p> <p>14 Alabama state legislature to discuss the 2021</p> <p>15 congressional maps?</p> <p>16 A. Just -- just the two co-chairs, two</p> <p>17 chairs.</p> <p>18 Q. And that's --</p> <p>19 A. Senator McClendon and Representative</p> <p>20 Pringle.</p> <p>21 Q. What did you discuss with Senator</p> <p>22 McClendon and Representative Pringle?</p> <p>23 A. I would just update them on our progress</p> <p>24 and discussions with various members. And to the</p> <p>25 extent that there were conflicts like the one I</p>	<p style="text-align: right;">Page 88</p> <p>1 at 10:00 o'clock. It was just when they were both</p> <p>2 there or singularly there, I would just give them a</p> <p>3 quick update.</p> <p>4 Q. Were these updates by phone or email or</p> <p>5 in person?</p> <p>6 A. Usually in person.</p> <p>7 Q. Were there ever communications by email</p> <p>8 with them?</p> <p>9 A. No.</p> <p>10 Q. Did you attend any of the public</p> <p>11 hearings in preparation for the 2021 congressional</p> <p>12 maps?</p> <p>13 A. I didn't. They were happening</p> <p>14 simultaneously with me being in Montgomery. And I</p> <p>15 would occasionally walk in the room while they were</p> <p>16 happening to talk to somebody else or whatever. But</p> <p>17 I didn't officially attend them.</p> <p>18 Q. There were a few that you walked into</p> <p>19 the room while they were going, you said?</p> <p>20 A. Well, they were being done in an</p> <p>21 adjacent room, and I occasionally walked in. And I</p> <p>22 would also occasionally -- either the co-chairs or</p> <p>23 Dorman Walker or somebody would come back and update</p> <p>24 me as to something somebody said if they thought it</p> <p>25 was significant to my drawing.</p>
<p style="text-align: right;">Page 87</p> <p>1 described between the 1st and the 2nd, I just</p> <p>2 updated on that in case they were to receive a call</p> <p>3 from somebody, they would know what was happening.</p> <p>4 Q. In these meetings with Senator McClendon</p> <p>5 and Representative Pringle, were you pretty much</p> <p>6 just providing information to them?</p> <p>7 A. Yeah, pretty much.</p> <p>8 Q. Did you receive any feedback or</p> <p>9 particular requests from them about how to draw the</p> <p>10 map?</p> <p>11 A. No.</p> <p>12 Q. Beyond anything that you were told from</p> <p>13 the congressional -- U.S. congressional</p> <p>14 representatives, were you given any instructions or</p> <p>15 requests about how to draw the 2021 congressional</p> <p>16 map from anyone?</p> <p>17 A. No.</p> <p>18 Q. And how many times did you meet with</p> <p>19 Representative Pringle and Senator McClendon in</p> <p>20 preparation for drawing the 2021 congressional maps?</p> <p>21 A. I don't -- I mean, this was during the</p> <p>22 course in time when they were also in town doing</p> <p>23 meetings with their colleagues. So maybe I updated</p> <p>24 them every other week. It was rather -- I mean, it</p> <p>25 wasn't a formally structured we meet every Tuesday</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Do you recall what any of those sort of</p> <p>2 comments would have been?</p> <p>3 A. Yeah. For example -- and this was</p> <p>4 already in process, so it wasn't a tremendous shock.</p> <p>5 But there were comments, for example, in the</p> <p>6 Montgomery meeting that they didn't want to be split</p> <p>7 into three districts as they were in 2001, that they</p> <p>8 would prefer Montgomery not -- probably they</p> <p>9 preferred it not to be split at all. But if it were</p> <p>10 going to be split, to certainly not three ways and</p> <p>11 have it be two, which was a feature of a map I was</p> <p>12 already working on. But things like that.</p> <p>13 Q. Do you remember any other specific</p> <p>14 feedback that you received from the public hearings?</p> <p>15 A. Just areas like the Shoals area wanted</p> <p>16 to be kept as intact as possible. And people in</p> <p>17 Madison and Morgan wanted to be -- they thought</p> <p>18 there was obviously a lot of community of interest</p> <p>19 between those areas in north Alabama. People in</p> <p>20 Baldwin and Mobile wanted to be kept together.</p> <p>21 There was a lot of community of interest between</p> <p>22 those counties. Things like that.</p> <p>23 Q. When you refer to "the Shoals area,"</p> <p>24 you're referring to Muscle Shoals?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 90</p> <p>1 Q. Any other specific feedback that you</p> <p>2 recall receiving from the public hearings?</p> <p>3 A. Not on congressional. There was a lot</p> <p>4 of feedback on state maps that we also talked about.</p> <p>5 Q. And did you ever personally sit in on</p> <p>6 any of these hearings or hear anything that was</p> <p>7 being said personally?</p> <p>8 A. I did for ten-minute snippets</p> <p>9 occasionally when I was waiting to talk to somebody</p> <p>10 in that room.</p> <p>11 Q. Did you gather anything from the time</p> <p>12 that you spent in the hearing personally?</p> <p>13 A. Nothing other than observations that I</p> <p>14 relayed to you a minute ago.</p> <p>15 Q. You mentioned that Montgomery County,</p> <p>16 the public hearings provided feedback that they</p> <p>17 didn't want to be split. Do you remember why that</p> <p>18 was?</p> <p>19 A. I think -- I think both in Montgomery</p> <p>20 County and most any county when you have split</p> <p>21 counties or split precincts, there's confusion as to</p> <p>22 who somebody's -- who their representative may be.</p> <p>23 And it was a -- it was obviously a</p> <p>24 guideline of the committees on all these maps to try</p> <p>25 to split less precincts and less counties.</p>	<p style="text-align: right;">Page 92</p> <p>1 doing that split. So yes, it was in my mind when we</p> <p>2 were, for example, doing that split.</p> <p>3 Q. Other than the accommodations for the</p> <p>4 Lauderdale, Muscle Shoals area, did any of the</p> <p>5 public feedback that you received from the public</p> <p>6 hearings tangibly impact a change that you made on</p> <p>7 the map?</p> <p>8 A. Not so much a change. But it did -- it</p> <p>9 did confirm that our theory of putting -- not</p> <p>10 splitting Montgomery three ways was a worthy goal.</p> <p>11 And I worked to get Congressmen Rogers to agree to</p> <p>12 come out of Montgomery County because he was</p> <p>13 partially in Montgomery County.</p> <p>14 Q. Since we're talking about it, this may</p> <p>15 help a bit.</p> <p>16</p> <p>17 (Plaintiff's Exhibit 5 was</p> <p>18 marked for identification.)</p> <p>19</p> <p>20 Q. I'm handing you Exhibit 5. I don't want</p> <p>21 this to be a memory test for you. So this is a copy</p> <p>22 of the 2021 --</p> <p>23 A. I've had enough -- I've had enough of</p> <p>24 those already.</p> <p>25 Q. This is a copy of the 2021 congressional</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Do you know when Montgomery County was</p> <p>2 originally split?</p> <p>3 A. Originally split?</p> <p>4 Q. Correct.</p> <p>5 A. No. I mean -- no, I don't.</p> <p>6 Q. The first map you drew was in 1992. Was</p> <p>7 Montgomery County already split prior to that?</p> <p>8 A. I have no idea. I'm sorry. I don't</p> <p>9 even remember the map I drew, whether it was split,</p> <p>10 to be honest with you.</p> <p>11 Q. Did any of the information that you</p> <p>12 received from the public hearings impact the way you</p> <p>13 drew the 2021 congressional map?</p> <p>14 A. No, other than things like I said, not</p> <p>15 splitting Montgomery three ways, putting as much of</p> <p>16 the Shoals area together, keeping Mobile and Baldwin</p> <p>17 together, keeping Madison and Morgan together.</p> <p>18 Q. Was that something that you specifically</p> <p>19 made changes to your map to accommodate?</p> <p>20 A. No. Most of those features were already</p> <p>21 happening. It just -- I kept it in mind. For</p> <p>22 example, when -- we eventually had to split</p> <p>23 Lauderdale County between 5 and 4. And when we were</p> <p>24 doing that, I was trying to keep Florence and Muscle</p> <p>25 Shoals together as much as possible when we were</p>	<p style="text-align: right;">Page 93</p> <p>1 map. Do you recognize this?</p> <p>2 A. I do.</p> <p>3 Q. Does this appear to be a true and</p> <p>4 correct of the 2021 congressional map?</p> <p>5 A. It does.</p> <p>6 Q. We were talking about Montgomery County</p> <p>7 here not wanting to be split.</p> <p>8 A. Three ways, yes.</p> <p>9</p> <p>10 (Plaintiff's Exhibit 6 was</p> <p>11 marked for identification.)</p> <p>12</p> <p>13 Q. I'm also going to hand you what's being</p> <p>14 marked as Plaintiff's Exhibit 6 for your reference.</p> <p>15 This is a copy of the 2011 congressional map.</p> <p>16 So looking at Montgomery County, it</p> <p>17 looks like in -- well, first off, Plaintiff's</p> <p>18 Exhibit 6, does that appear to be a true and correct</p> <p>19 copy of the 2011 congressional map, to your</p> <p>20 knowledge?</p> <p>21 A. It does.</p> <p>22 Q. We were -- and you used this 2011</p> <p>23 congressional map as the starting point in drafting</p> <p>24 the 2021 congressional map, correct?</p> <p>25 A. I used the cores of the existing</p>

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<p style="text-align: right;">Page 94</p> <p>1 districts as a starting point, yes.</p> <p>2 Q. Is that different from using this map as</p> <p>3 the starting point?</p> <p>4 A. I don't know. I don't think so.</p> <p>5 Q. When you began drawing the 2021</p> <p>6 congressional map, you didn't start from scratch,</p> <p>7 right?</p> <p>8 A. No. Correct.</p> <p>9 Q. You started using the 2011 congressional</p> <p>10 map?</p> <p>11 A. Correct.</p> <p>12 Q. Looking at Montgomery County, so that</p> <p>13 was split into three districts in 2011; is that</p> <p>14 right?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you know why that was split into</p> <p>17 three districts at the time?</p> <p>18 A. Not specifically, other than, obviously,</p> <p>19 it had been -- Congressman Mike Rogers in the 3rd</p> <p>20 District had had an office in Montgomery, that part</p> <p>21 of Montgomery County, and had represented it for a</p> <p>22 while and probably didn't -- didn't want to lose</p> <p>23 that base of support and financial support and so</p> <p>24 forth.</p> <p>25 Q. In the 2011 congressional map, District</p>	<p style="text-align: right;">Page 96</p> <p>1 add a number of different counties to make up that</p> <p>2 population.</p> <p>3 Q. Well, it looks like District 7 also</p> <p>4 includes only a portion of Tuscaloosa County and</p> <p>5 Jefferson County, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. So could you not have taken more of</p> <p>8 either Tuscaloosa County or Jefferson County and</p> <p>9 then been able to leave Montgomery County as being</p> <p>10 solely in one district?</p> <p>11 A. Well, yeah, it would have been possible</p> <p>12 certainly in Jefferson. I don't know about</p> <p>13 Tuscaloosa. I don't think actually -- I think there</p> <p>14 are many more people in the 7th District portion of</p> <p>15 Montgomery than there are in the 4th District</p> <p>16 portion of Tuscaloosa. But yes, certainly in</p> <p>17 Jefferson that would have been possible.</p> <p>18 But as you know, they -- these all have</p> <p>19 to fit back together at the end. So what might have</p> <p>20 been a perfect map for somebody in Montgomery may</p> <p>21 not have created a perfect situation for whatever</p> <p>22 member represented Jefferson or wherever.</p> <p>23 Q. Did you consider moving -- did you</p> <p>24 consider making Montgomery County solely District 2?</p> <p>25 A. I did not.</p>
<p style="text-align: right;">Page 95</p> <p>1 7 reaches into a portion in the middle of Montgomery</p> <p>2 County. Do you know why it does that?</p> <p>3 A. To gain population for that district.</p> <p>4 Q. Was District 7 reaching into a portion</p> <p>5 of Montgomery County in the prior 2001 congressional</p> <p>6 map?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you remember if Montgomery County --</p> <p>9 do you remember if District 7 reached into a portion</p> <p>10 of Montgomery County in the 1992 congressional map</p> <p>11 that you drew?</p> <p>12 A. I do not remember, no. I'm sure</p> <p>13 somebody has a map and could tell me. But I don't</p> <p>14 know.</p> <p>15 Q. So it looks like from the 2011</p> <p>16 congressional map to the 2021 congressional map, you</p> <p>17 were able to take District 3 out of Montgomery so</p> <p>18 that it's not split three ways anymore and is only</p> <p>19 split two ways; is that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Is there a reason why it still needed to</p> <p>22 be split into two different districts?</p> <p>23 A. Yeah. I mean, obviously, the 7th</p> <p>24 District was underpopulated. So if you took it all</p> <p>25 the way out of Montgomery, then you would have to</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Why not?</p> <p>2 A. Because, again, I didn't think it --</p> <p>3 while that may look like geographically not a very</p> <p>4 large area, it has a considerable number of voters</p> <p>5 in it. And it would have been hard to take that out</p> <p>6 of 7 and make up the population somewhere else.</p> <p>7 About the only place, as you pointed</p> <p>8 out, to do that might have been Jefferson. But,</p> <p>9 again, we have two representatives in Jefferson</p> <p>10 County right now. And it would have been hard to</p> <p>11 eliminate one from that process.</p> <p>12 Q. Is there anything in particular about</p> <p>13 this specific portion of Montgomery County that's in</p> <p>14 District 7 that makes it a community of interest or</p> <p>15 something that ties it into District 7 versus</p> <p>16 District 2?</p> <p>17 A. Not necessarily. I mean, obviously,</p> <p>18 geographically it's next to -- it's adjacent to</p> <p>19 Lowndes County.</p> <p>20 Q. Did you look at racial data in including</p> <p>21 that portion of Montgomery County in District 7?</p> <p>22 A. I didn't. When we started doing -- I</p> <p>23 didn't initially. When we started filling in this</p> <p>24 -- all these discussions we've had up until now have</p> <p>25 all been based on total pop. I didn't look at race</p>

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<p style="text-align: right;">Page 98</p> <p>1 at all on the computer when we were adding folks to</p> <p>2 these districts or subtracting folks from these</p> <p>3 districts.</p> <p>4 So at this point, I've basically just</p> <p>5 been looking at total pop and where do you get the</p> <p>6 total pop to get the districts back to ideal</p> <p>7 population. So at that point, there was no</p> <p>8 discussion of race. It was all a discussion of</p> <p>9 total pop.</p> <p>10 Q. You say "at this point." Where are we</p> <p>11 talking in the timeline?</p> <p>12 A. Up until -- up until we finished the</p> <p>13 map.</p> <p>14 Q. Finishing the map being the week before</p> <p>15 the special session?</p> <p>16 A. Correct.</p> <p>17 Q. So is it your testimony that you did not</p> <p>18 look at race at all in 2021 before submitting the</p> <p>19 maps to the special session?</p> <p>20 A. No, I did not look at it up until the</p> <p>21 week before we submitted the maps, when at that</p> <p>22 point we did turn on race and look at the racial</p> <p>23 breakdowns in the various maps.</p> <p>24 Q. Why did you look at the racial breakdown</p> <p>25 that week before the special session?</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Anything else?</p> <p>2 A. That's it.</p> <p>3 Q. Other than modifying the existing</p> <p>4 district lines to account for population changes,</p> <p>5 did you make any other changes from the 2011</p> <p>6 congressional map?</p> <p>7 A. I'm not sure I follow that.</p> <p>8 Q. You made changes to the 2011</p> <p>9 congressional map for the 2021 map based on changes</p> <p>10 in population, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Did you make any changes based on any</p> <p>13 other factors?</p> <p>14 A. Are we talking -- we're talking the 2021</p> <p>15 map?</p> <p>16 Q. Correct. So in drawing the 2021 map,</p> <p>17 you made certain changes from the prior map based on</p> <p>18 changes in population, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Did you make any changes based on any</p> <p>21 other factors?</p> <p>22 A. No. I didn't make any changes.</p> <p>23 Obviously, where members lived was a consideration.</p> <p>24 I certainly would be mindful -- when I was moving a</p> <p>25 precinct in Jefferson County, for example, I</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Well, to -- obviously, we wanted to see</p> <p>2 what the, you know, outcomes of our changes were.</p> <p>3 Q. What do you mean?</p> <p>4 A. We wanted to see what -- the changes we</p> <p>5 had made to get the population balanced among all</p> <p>6 these districts, if it changed any of the, you know,</p> <p>7 racial makeup of the districts.</p> <p>8 Q. Why did you want to know that?</p> <p>9 A. Well, one of our guidelines is to comply</p> <p>10 with the Voting Rights Act.</p> <p>11 Q. And you say "we wanted." Who is "we"?</p> <p>12 A. The two co-chairs, myself, and legal</p> <p>13 counsel.</p> <p>14 Q. "Legal counsel" being Mr. Dorman --</p> <p>15 A. Yes.</p> <p>16 Q. -- Walker?</p> <p>17 A. Yes.</p> <p>18 Q. And prior to that week before the</p> <p>19 special session, it's your testimony that you did</p> <p>20 not look at any of the racial data at all for any</p> <p>21 of the districts in drawing the 2021 congressional</p> <p>22 map?</p> <p>23 A. That's correct.</p> <p>24 Q. What data did you look at?</p> <p>25 A. Just -- just total pop and geography.</p>	<p style="text-align: right;">Page 101</p> <p>1 couldn't move Congresswoman Sewell out of her</p> <p>2 district, for example. But I didn't make any</p> <p>3 changes based on that.</p> <p>4 Q. Other than population data and race data</p> <p>5 starting the week before the map was submitted, did</p> <p>6 you review any other data about the constituents or</p> <p>7 the districts when drawing the 2021 map?</p> <p>8 A. I did not.</p> <p>9 Q. If any changes were made to the 2021</p> <p>10 map, would you have been the one to physically make</p> <p>11 those changes on the computer?</p> <p>12 A. Yes.</p> <p>13 Q. Was there anyone else who physically sat</p> <p>14 on the computer and made any changes for the 2021</p> <p>15 map?</p> <p>16 A. I don't believe so. I mean, Donna</p> <p>17 Loftin, who heads the reapportionment office,</p> <p>18 certainly was capable of doing that. But I don't</p> <p>19 believe she ever -- she's not really authorized to</p> <p>20 change a map, I guess, without me asking her to.</p> <p>21 Q. Do you know if she made any changes?</p> <p>22 A. I don't believe she did, no.</p> <p>23 Q. Did anyone else assist you in drawing</p> <p>24 the map?</p> <p>25 A. Nobody assisted me in drawing the map.</p>

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<p style="text-align: right;">Page 102</p> <p>1 Q. When did you have a -- when did you 2 first have an initial draft map completed? 3 A. Using the real data? I mean, not an 4 estimate. 5 Q. Did you have an initial draft made from 6 the estimates? 7 A. I had a -- I roughed -- again, it wasn't 8 -- it wasn't something that would have -- it wasn't 9 to zero deviation. It was just roughed-out 10 counties. 11 So yes, when I came back from my May 12 meetings, I roughed out a map using the estimates on 13 Maptitude just to get a feel for what areas needed 14 to be added and subtracted from various districts. 15 But, again, it was -- it was not -- it 16 was not to deviation and it was knowing that the 17 estimates were going to be off by thousands, if not 18 tens of thousands, which they turned out to be. 19 Q. When was that draft completed? 20 A. The end of May. 21 Q. Did you save a copy of that draft? 22 A. No. 23 Q. After that, when was the next draft 24 using official data completed? 25 A. After my round of calls in September.</p>	<p style="text-align: right;">Page 104</p> <p>1 She felt strongly about picking up facilities and 2 universities and things rather than just random 3 citizens. 4 Q. And what precinct did you take out from 5 District 7 in exchange? 6 A. Well, it was a split at an adjacent 7 precinct. Whitfield, I think, was the name of it. 8 Q. How do you choose that precinct? 9 A. It just was adjacent to it. 10 Q. That was the only factor? 11 A. That was the only factor. 12 Q. So you had the draft completed, you 13 said, mid September? 14 A. Yeah. And just to give a more complete 15 answer, I also had to do a -- change the split a 16 little bit in Lauderdale based on conversations with 17 Congressman Adderholt. I had conversations with 18 Representative -- Congressman Moore's 19 representative, Bill Harris, about he would have 20 preferred a change in Monroe rather than the way I 21 did it in Escambia. 22 So they were each -- not every district. 23 But a number of districts had these little minor 24 things that we talked through at that point. 25 Q. Beyond any minor changes -- and I assume</p>
<p style="text-align: right;">Page 103</p> <p>1 So probably mid -- mid to late September would have 2 been the next draft. And then I did a round of 3 calls to go over those maps and make any last 4 changes before the last week. 5 Q. A round of calls being the calls that 6 you discussed with the U.S. congress 7 representatives? 8 A. Yes. 9 Q. Did you make any further changes to the 10 draft based on any feedback you received from those 11 calls? 12 A. Very minorly. Congresswoman Sewell, I 13 had split a precinct in Montgomery County that she 14 did not want split. So I put it back together and 15 split in a different -- an adjacent precinct. But 16 very, very minorly. 17 Q. What precinct was that? 18 A. It was the Acadome precinct. I had 19 split the university into two different districts, 20 and she, I think wanted it all in her district. So 21 I put that back together. 22 Q. Do you know why she wanted that all in 23 her district? 24 A. I don't. I mean, other than that was 25 one of her principles in this redistricting process.</p>	<p style="text-align: right;">Page 105</p> <p>1 this is more kind of a precinct-by-precinct type 2 change that you're referring to there, correct? 3 A. Yes, sir. 4 Q. Beyond that, were there any changes that 5 you made based on those calls that you would 6 consider to be significant changes? 7 A. No. 8 Q. So once you had the draft completed in 9 mid September and then had the calls with the 10 various representatives to go over that, then you 11 made whatever minor changes you could based on that 12 feedback. 13 When did you have the next draft 14 completed? 15 A. Going into the last -- the next to last 16 week of October. And in some of these -- as you 17 well know, with congressional schedules, it's not 18 like I had seven congressmen lined up to talk to me 19 at 9:00 o'clock on a Monday morning. This took over 20 a course of weeks. I would, you know, schedule, and 21 move and change for voting schedules and all the 22 wonderful things that go on with dealing with 23 congressmen. 24 Q. And in that same time frame, you were 25 also drawing three other maps?</p>

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<p style="text-align: right;">Page 106</p> <p>1 A. Correct.</p> <p>2 Q. And meeting with all of the</p> <p>3 representatives and senators and all of that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Was there any other drafts that you had</p> <p>6 other than the first one that you made using the</p> <p>7 unofficial data in the summer of 2021, the next</p> <p>8 draft that you made using the official data in mid</p> <p>9 September 2021, and then the draft that you had</p> <p>10 based on the congressional representatives' feedback</p> <p>11 that was completed the week before the special</p> <p>12 session in October of 2021? Were there any other</p> <p>13 drafts that you made of the 2021 congressional map?</p> <p>14 A. No.</p> <p>15 Q. Between those last two drafts that we</p> <p>16 discussed, between September 2021 and the special</p> <p>17 session, did you meet with anyone else to discuss</p> <p>18 the redrawing of the 2021 map, congressional map,</p> <p>19 other than the seven representatives and Senator</p> <p>20 McClendon and Representative Pringle?</p> <p>21 A. And legal counsel.</p> <p>22 Q. Anyone else?</p> <p>23 A. No.</p> <p>24 Q. At that time, did you consider</p> <p>25 Mr. Walker to be your attorney?</p>	<p style="text-align: right;">Page 108</p> <p>1 when you met with Senator McClendon and</p> <p>2 Representative Pringle about the draft map?</p> <p>3 MR. WALKER: I'm going to object to</p> <p>4 attorney-client privilege to the extent that I was</p> <p>5 present in the room and we were having an</p> <p>6 attorney-client communication. If you had any</p> <p>7 communications with them that I was not present, you</p> <p>8 may answer the question.</p> <p>9 A. There were -- they just looked at the</p> <p>10 map. There was nothing substantive in terms of a</p> <p>11 response.</p> <p>12 Q. And are you going to refuse to answer</p> <p>13 any questions that I were to ask you that would</p> <p>14 involve any discussions that you had where</p> <p>15 Mr. Walker was present?</p> <p>16 MR. WALKER: I would instruct him not to</p> <p>17 answer those questions if other conditions</p> <p>18 indicating it was an attorney-client privilege were</p> <p>19 present.</p> <p>20 Let me -- let me clarify that for you.</p> <p>21 If I believed we had a conversation that was an</p> <p>22 attorney-client privilege, I would -- I would</p> <p>23 instruct him not to answer the question. I don't</p> <p>24 think that all the conversations I had with him were</p> <p>25 covered by the privilege.</p>
<p style="text-align: right;">Page 107</p> <p>1 A. I considered him to be the</p> <p>2 reapportionment committee's attorney.</p> <p>3 Q. Did you consider him to represent you</p> <p>4 personally?</p> <p>5 A. I don't know how to answer that. I</p> <p>6 didn't -- I didn't feel I needed representation at</p> <p>7 that point personally.</p> <p>8 Q. Did you have any sort of retention</p> <p>9 agreement with Mr. Walker or his office?</p> <p>10 A. No.</p> <p>11 Q. Once you had the draft completed of the</p> <p>12 2021 congressional map the week before the special</p> <p>13 session, who did you provide it to?</p> <p>14 A. Well, obviously, all of the members saw</p> <p>15 their districts. But they didn't really see the</p> <p>16 rest of the map. The members of congress saw their</p> <p>17 district, but they didn't really -- and adjacent</p> <p>18 districts. But they didn't really see the rest of</p> <p>19 the map.</p> <p>20 I think at that last week, I went</p> <p>21 through that map with Representative Pringle and</p> <p>22 Senator McClendon and Dorman Walker. Obviously,</p> <p>23 Donna Loftin, who runs the office, was in the</p> <p>24 background during most of this.</p> <p>25 Q. What sort of feedback did you receive</p>	<p style="text-align: right;">Page 109</p> <p>1 MR. THOMPSON: When you say you don't</p> <p>2 think that all of the conversations you had with</p> <p>3 him, do you mean nonsubstantive conversations like</p> <p>4 lunch and dinner?</p> <p>5 MR. WALKER: Certainly that would be</p> <p>6 included. What I'm saying is there -- I can think</p> <p>7 of times when he and I were speaking, although I may</p> <p>8 not know exactly what we were talking about, when</p> <p>9 there were other people in the room who were not</p> <p>10 within the privilege. And we may have been talking</p> <p>11 about the map. I just don't know.</p> <p>12 But there were certain times when I</p> <p>13 reviewed with him specifically the map. And I would</p> <p>14 contend that that's covered by the attorney-client</p> <p>15 privilege.</p> <p>16 MR. THOMPSON: Understood. And you</p> <p>17 would instruct him not to answer on those.</p> <p>18 MR. WALKER: Yeah.</p> <p>19 Q. And would you follow that instruction?</p> <p>20 A. Yes.</p> <p>21 Q. So walk me through the timeline, then,</p> <p>22 once you provided the draft to Senator McClendon and</p> <p>23 Representative Pringle. What happened with the map</p> <p>24 at that point?</p> <p>25 A. I mean, once it was finalized and they</p>

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<p style="text-align: right;">Page 110</p> <p>1 made no changes to it, it was submitted to be drawn 2 up into a bill and prepared to be presented at the 3 -- be sent out to the members of the reapportionment 4 committee the following Monday and then voted on in 5 committee on Tuesday. 6 Q. Were there any changes made to the map 7 by the reapportionment committee? 8 A. No. 9 Q. Were there any changes made to the map 10 after it was submitted to the legislature? 11 A. No. 12 Q. So the version of the map that you 13 completed the week before the special session is 14 identical to the version of the map that was 15 ultimately enacted that we've marked as Exhibit 5, 16 Plaintiff's Exhibit 5, correct? 17 A. Correct. 18 Q. Did you save any drafts of the 2021 19 congressional map? 20 A. No, sir. The way Maptitude works is it 21 just -- every time you make a change, it saves -- it 22 saves the map at that point. So previous iterations 23 don't -- don't really exist. 24 Q. Did you print out any copies of any 25 drafts?</p>	<p style="text-align: right;">Page 112</p> <p>1 have preferred sort of a whole county map with 2 two -- I would call them influence districts. 3 THE REPORTER: What districts? 4 A. Influence districts 5 Q. Would that be the same as -- I've heard 6 "opportunity district." Would "influence district" 7 and "opportunity district" be about the same? 8 A. Yes, sir. 9 Q. And what's your understanding of what an 10 influence district or opportunity district is? 11 A. It would be a district that would be 12 less than a majority of BVAP, but still have a 13 substantial population of minorities that could 14 potentially impact the election of a candidate of 15 their choice. 16 Q. And when we say "minorities" here 17 specifically, are we referring to the black voting 18 age population? 19 A. Primarily here in Alabama, you would be 20 referring to the black voting age population. 21 Q. So if in this case the court were to 22 find that the maps do not comply with the Voting 23 Rights Act or the 14th Amendment and they needed to 24 be modified, do you expect that you would be the one 25 that would be asked to make those modifications?</p>
<p style="text-align: right;">Page 111</p> <p>1 A. No. 2 Q. Do you have any notes that you took or 3 used while drafting the 2021 congressional map? 4 A. No. I mean, I'm sure I had a scrap of 5 paper somewhere that said Congressman Moore would 6 rather split Escambia and Congressman Carl would 7 rather split Monroe. But they were -- all these 8 things were so -- there were not very many of them. 9 There weren't too may. I didn't need notes to 10 remember that. 11 Q. Do you have any of those notes saved? 12 A. No. 13 Q. If you needed to modify the maps now, do 14 you have any estimate of about how long that would 15 take you to do? 16 A. Modify in what way? 17 Q. For instance, are you familiar with what 18 this lawsuit is about? 19 A. Well, it's three different lawsuits, if 20 I understand it correctly. 21 Q. What is your understanding of the three 22 different lawsuits? 23 A. I think two of the -- well, two of the 24 lawsuits I think would have preferred two majority 25 black districts. And the Singleton lawsuit would</p>	<p style="text-align: right;">Page 113</p> <p>1 A. I don't have a crystal ball. I can't 2 predict the future. 3 Q. Is that something that's covered in your 4 contract? 5 A. It is not. 6 Q. If you were asked to modify the map to 7 make changes to comply with the Voting Rights Act or 8 the 14th Amendment, in that situation, do you have 9 any estimate about how long it would take you to do 10 that? 11 A. No. I mean, asked by whom? 12 Q. The Alabama state legislature, the 13 courts, Mr. Walker, any of us. 14 A. No. I mean, I -- conceptually, I guess 15 that would depend on what the court deemed changes 16 were. 17 Q. Is that something that you think you 18 could complete within a month? 19 A. I would hope so. I don't know. 20 Q. Is it something you think you could 21 complete within a week? 22 A. You're asking me a hypothetical about 23 something that hasn't happened, and I don't have a 24 clue what the changes would be. 25 Q. When you met with Congressman Sewell,</p>

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<p style="text-align: right;">Page 114</p> <p>1 did you receive any specific instructions from her</p> <p>2 about how to draw District 7?</p> <p>3 A. No, not specifically. Again, it was</p> <p>4 more of -- our initial meetings were more of here is</p> <p>5 what the estimates show, here is -- you're</p> <p>6 obviously -- the district is going to be</p> <p>7 underpopulated. Let's talk about areas where you</p> <p>8 may -- may pick up population to get closer to the</p> <p>9 ideal.</p> <p>10 As I said earlier, she was interested in</p> <p>11 facilities and universities and some companies and</p> <p>12 military, like Maxwell, and so forth. So she was</p> <p>13 interested in things above and beyond just picking</p> <p>14 up additional voters or citizens. So we talked</p> <p>15 about that briefly.</p> <p>16 And then we just went through the most</p> <p>17 likely areas where she could pick up additional</p> <p>18 population. And the most likely in my mind, again,</p> <p>19 to present to her as options were counties that were</p> <p>20 split.</p> <p>21 For example, Clarke County was -- under</p> <p>22 this map, the 2011 map, was split between 7 and 1.</p> <p>23 We know 1 is going to be over. We knew -- at the</p> <p>24 beginning, we didn't know how much. But we knew 1</p> <p>25 would be over, and we knew 7 would be under.</p>	<p style="text-align: right;">Page 116</p> <p>1 she wanted that in her district not split. So we</p> <p>2 talked about things like that.</p> <p>3 Q. Do you remember the name of that</p> <p>4 university in Montgomery?</p> <p>5 A. Yeah, I do. I'm blanking on it at the</p> <p>6 moment. Alabama -- is it State?</p> <p>7 MR. WALKER: Alabama State, ASU.</p> <p>8 A. ASU. ASU. Sorry.</p> <p>9 Q. Other than those things that you just</p> <p>10 discussed, did you receive any other instructions or</p> <p>11 feedback from Congressman Sewell about how to draw</p> <p>12 District 7?</p> <p>13 A. No, not at that time. We did -- in the</p> <p>14 next round of those talks after we had real numbers,</p> <p>15 we did talk about some of the changes in Jefferson.</p> <p>16 In this -- in the 2011 map, some of the</p> <p>17 precincts of Homewood -- I think there were three or</p> <p>18 four Homewood precincts. Some were in her district,</p> <p>19 and some were in 6. She thought that maybe it might</p> <p>20 make sense for all of them to be in one district.</p> <p>21 She would be happy if they were hers, which I did.</p> <p>22 So we talked about a few things like</p> <p>23 that in the next round of discussions.</p> <p>24 Q. Did you discuss anything else with her</p> <p>25 about how to draw her map?</p>
<p style="text-align: right;">Page 115</p> <p>1 So a logical thing, in my mind anyway,</p> <p>2 would be let's put Clarke County back together. And</p> <p>3 whatever population that is, let's put that into 7.</p> <p>4 And also we talked about some of the</p> <p>5 changes that would happen that would cascade to her</p> <p>6 from north Alabama. As we knew, District 5 would be</p> <p>7 over. The only place District 5 can go to is to</p> <p>8 District 4 because it's the only district adjacent</p> <p>9 to it. And that would then put District 4 over.</p> <p>10 And one of the options was for her to pick up some</p> <p>11 more of District 4 in Tuscaloosa. So we talked</p> <p>12 about that.</p> <p>13 And then we talked about potential</p> <p>14 changes in Jefferson, another area where she could</p> <p>15 pick up additional population.</p> <p>16 Q. You mentioned that she wanted</p> <p>17 universities in her district. What were the names</p> <p>18 of the universities she wanted?</p> <p>19 A. She wanted to make sure that whatever</p> <p>20 changes we made in Tuscaloosa, we kept the</p> <p>21 University of Alabama in her district. She was</p> <p>22 interested in picking up Maxwell Air Force Base in</p> <p>23 Montgomery, if that was a possibility.</p> <p>24 As I discussed earlier, I had split a</p> <p>25 precinct that had a university in Montgomery. And</p>	<p style="text-align: right;">Page 117</p> <p>1 A. No.</p> <p>2 Q. Did you discuss race at all with</p> <p>3 Congressman Sewell?</p> <p>4 A. No.</p> <p>5 Q. Did she give you any instructions or</p> <p>6 requests about a certain black voting age population</p> <p>7 percentage that she wanted in District 7?</p> <p>8 A. She did not, other than I think there</p> <p>9 was -- we both assumed, and I think she would</p> <p>10 confirm, that she wanted a majority -- a majority</p> <p>11 black district for her district.</p> <p>12 And she also, I should add -- there was</p> <p>13 one other thing. When we initially asked every</p> <p>14 member for their home addresses so we made sure we</p> <p>15 had them inside their own districts, she actually</p> <p>16 sent in two addresses, knowing that only one of them</p> <p>17 was her official home address.</p> <p>18 One of them was also her home -- her</p> <p>19 mother's home or whatever in Dallas County. And she</p> <p>20 wanted -- would prefer that both of those addresses</p> <p>21 be inside her district. So that was one request she</p> <p>22 made.</p> <p>23 Q. Was that an accommodation you had to</p> <p>24 change the map to --</p> <p>25 A. No. They were -- it was already</p>

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<p style="text-align: right;">Page 118</p> <p>1 happening. They both were -- they both under this</p> <p>2 map were in her district, and they both under this</p> <p>3 map were in her district.</p> <p>4 Q. Going back to your prior statement, you</p> <p>5 said that you didn't discuss race with Congressman</p> <p>6 Sewell; is that correct?</p> <p>7 A. Not at that point.</p> <p>8 Q. Did you at some point?</p> <p>9 A. In the last week, she did ask what was</p> <p>10 the BVAP of my -- her district.</p> <p>11 Q. And what did you tell her?</p> <p>12 A. I told her it was 54.22.</p> <p>13 Q. And what did she say?</p> <p>14 A. She didn't -- I mean, she was</p> <p>15 comfortable with that, I guess. She didn't comment</p> <p>16 further. She didn't ask me to make any changes, I</p> <p>17 guess, if that's what you're asking me.</p> <p>18 Q. You said before then that you both</p> <p>19 assumed that she wanted a majority black population.</p> <p>20 What are you basing that off of?</p> <p>21 A. I don't even know if it's an assumption.</p> <p>22 I think she -- I think she did say that, that she</p> <p>23 would prefer to continue to have a majority black</p> <p>24 district.</p> <p>25 Q. You think she said that, or you know she</p>	<p style="text-align: right;">Page 120</p> <p>1 Alabama legislators or their staff about the 2021</p> <p>2 congressional maps?</p> <p>3 A. No. Maybe -- maybe right before we went</p> <p>4 to the floor, I think I probably had a conversation</p> <p>5 with the pro tem and speaker just briefly to say</p> <p>6 that the members of congress were reasonably in</p> <p>7 agreement on this map. But it was just sort of a</p> <p>8 pro forma discussion, not about the details of the</p> <p>9 map.</p> <p>10 Q. Did you speak with anyone else?</p> <p>11 A. No.</p> <p>12 Q. Did you correspond with anyone by email</p> <p>13 regarding the redistricting process?</p> <p>14 A. No.</p> <p>15 Q. Did you make any recommendations to the</p> <p>16 committee, the reapportionment committee, about how</p> <p>17 the map should be drawn beyond just providing them a</p> <p>18 copy of the map?</p> <p>19 A. No.</p> <p>20 Q. Did the reapportionment committee make</p> <p>21 any requests or recommendations to you about how the</p> <p>22 map should be drawn or changed?</p> <p>23 A. None other than the guidelines they</p> <p>24 passed.</p> <p>25 Q. Did you receive any requests or</p>
<p style="text-align: right;">Page 119</p> <p>1 said that?</p> <p>2 A. I think she -- yeah, I think -- I think</p> <p>3 she said that.</p> <p>4 Q. But you don't know for certain?</p> <p>5 A. I'm pretty confident she said that, yes.</p> <p>6 Q. Are you certain that she said that?</p> <p>7 A. I'm pretty confident she said that.</p> <p>8 Q. Just to be clear, pretty confident, but</p> <p>9 not 100 percent certain, fair?</p> <p>10 A. Sure.</p> <p>11 Q. Did she say anything about any sort of</p> <p>12 percentage of black voting age population that she</p> <p>13 wanted in District 7?</p> <p>14 A. No.</p> <p>15 Q. Did you discuss race with any of the</p> <p>16 other representatives?</p> <p>17 A. I did not.</p> <p>18 Q. So Congressman Sewell was the only</p> <p>19 Congressman you discussed race with?</p> <p>20 A. Well, she's the only one who asked at</p> <p>21 the end of the process what her black -- black</p> <p>22 voting age population was.</p> <p>23 Q. Other than the U.S. congressional</p> <p>24 representatives and Senator McClendon and</p> <p>25 Representative Pringle, did you speak with any other</p>	<p style="text-align: right;">Page 121</p> <p>1 instructions about how to draw the 2021</p> <p>2 congressional map from anyone else that we haven't</p> <p>3 discussed yet?</p> <p>4 A. No.</p> <p>5 Q. Did you receive any feedback from anyone</p> <p>6 else that we haven't discussed yet about the way</p> <p>7 that the 2021 congressional map was drawn?</p> <p>8 A. No. I'm assuming you're including</p> <p>9 chiefs of staff as a subset of a congressman.</p> <p>10 Q. Certainly. No one other than the</p> <p>11 congressmen or their chiefs of staff or anyone else</p> <p>12 that we've discussed?</p> <p>13 A. Right.</p> <p>14 MR. THOMPSON: Dorman, I think we've</p> <p>15 been going a little over an hour. We're approaching</p> <p>16 that lunch time. We could go a little bit longer,</p> <p>17 or we could go ahead and break now. What do you</p> <p>18 prefer?</p> <p>19 MR. WALKER: I'm happy with whatever</p> <p>20 y'all want to do.</p> <p>21 MR. THOMPSON: Are you hungry, sir?</p> <p>22 THE WITNESS: Not overly. But I'm happy</p> <p>23 to --</p> <p>24 MR. WALKER: I usually go to lunch at</p> <p>25 11:30. So I'm happy to take a lunch break.</p>

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<p style="text-align: right;">Page 122</p> <p>1 MR. THOMPSON: Let's -- let's take a 2 lunch break, then. 3 MR. WALKER: All right. 4 THE VIDEOGRAPHER: We're off the record. 5 The time is 11:42 a.m. 6 (Lunch break was taken.) 7 THE VIDEOGRAPHER: We are back on the 8 record. The time is 12:57 p.m. 9 Q. Mr. Hinaman, before we broke for lunch, 10 we had discussed some of the conversations that you 11 had with the seven U.S. congressmen. Do you recall 12 that? 13 A. Yes. 14 Q. And we went into some specifics about 15 your discussions with Congressman Sewell. Or 16 Congresswoman Sewell. Excuse me. I would like to 17 discuss some of the specifics with the other 18 representatives. So I just kind of want to go down 19 the line. 20 So starting with Representative Carl in 21 District 1, can you tell me what specifics you 22 recall from your discussions with him? 23 A. Yes. But just to be clear, are we -- 24 you just want -- over the whole time frame, just 25 capsulize it? Or are you talking about a specific</p>	<p style="text-align: right;">Page 124</p> <p>1 in District 2. 2 A. Well, we talked again about making 3 Montgomery County only split between 7 and 2 and 4 getting the 3rd District out of Montgomery County, 5 which was good because 2 was under anyway. So they 6 needed to pick up some people. 7 Initially I said, well, depending on 8 what the numbers are, we might need to split off a 9 little bit of Elmore to balance out 3 if we're not 10 splitting Montgomery. But as it turned out, we 11 didn't have to do that. We did -- we did make some 12 changes to 3 in Coosa and Chilton, but we made no 13 further changes in the 2nd. 14 We talked a little bit about the 15 Escambia and Monroe thing. Again, he would have 16 preferred not to have picked up another county. But 17 unfortunately, that was not in the cards by 739 18 people. So he needed to -- he did end up picking up 19 Escambia. 20 And we talked about just geographically 21 making the 7th District a little more compact in 22 Montgomery from where the 2011 lines were versus to 23 what they are now in the 2021 plan. 24 And at the end of it -- I mean, we had 25 some discussions about Maxwell going into the 7th,</p>
<p style="text-align: right;">Page 123</p> <p>1 time frame? 2 Q. At any point in the discussions you had 3 with them in drawing the 2021 congressional map. 4 A. Okay. So essentially from May to 5 October? 6 Q. Correct. 7 A. Okay. Yeah. So we talked about Clarke 8 County which was split, of course, between 7 and 9 District 1. And we talked that the 1st District 10 would likely be over or was over after we got the 11 real numbers, and that one of the solutions to that 12 would be putting Clarke County back together and be 13 putting it in 7. 14 And then whatever else the overage was, 15 which turned out to be 739 people, that we would 16 take those out of either -- initially we said Monroe 17 or Escambia. And as it turned out, we fine tuned it 18 to Escambia. And that's where we made that change. 19 And those are basically the discussions 20 with the 1st District congressman. 21 Q. Did he have any objections to putting 22 all of Clarke County in District 7? 23 A. He did not. 24 Q. All right. Tell me what specifics you 25 recall from your discussions with Congressman Moore</p>	<p style="text-align: right;">Page 125</p> <p>1 which surprisingly he wasn't too excited about 2 initially, but at the end was comfortable with I 3 think primarily because there was some talk of 4 another BRAC, base closing commission. 5 And Congressman Moore probably thought 6 it would be helpful to have Terri representing part 7 -- that part of Maxwell that she would have, and he 8 represents another part of Maxwell, the annex, in 9 his district. So two congresspeople fighting that 10 was maybe better than one. 11 Q. Where is Maxwell? 12 A. Maxwell is in the northern little part 13 of Montgomery County here that was -- in 2011 was in 14 the 2nd, but is now in the 7th. 15 Q. With Congressman Sewell, especially in 16 the area you were just discussing there, it had 17 gotten as granular was this college or whatnot. Did 18 you have discussions to that detail with either of 19 the two representatives in District 1 or 2? 20 A. No, other than the Maxwell, Maxwell 21 annex thing we just talked about with Congressman 22 Moore. He wanted to make sure he still had one of 23 them. And he has the annex one, which is further 24 west in Montgomery, but not the actual base itself. 25 Q. Do you know why he wanted that in his</p>

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<p style="text-align: right;">Page 126</p> <p>1 district?</p> <p>2 A. Again, so they had two voices on base</p> <p>3 closing issues rather than one.</p> <p>4 Q. Do you recall anything else specifically</p> <p>5 from your discussions with Congressman Moore?</p> <p>6 A. No.</p> <p>7 Q. How about Congressman Rogers in District</p> <p>8 3?</p> <p>9 A. Well, we talked briefly. There was a</p> <p>10 little piece of Cherokee County that was split off</p> <p>11 in the last redistricting, which was really somewhat</p> <p>12 needless. So we talked about putting that back</p> <p>13 together.</p> <p>14 We talked about again him getting out of</p> <p>15 Montgomery County so that it would only be split two</p> <p>16 ways instead of three. And then we talked about</p> <p>17 what that might mean in terms of where he would pick</p> <p>18 up.</p> <p>19 Coosa had been in the 3rd in some</p> <p>20 earlier maps, meaning 2001 or sometime back in the</p> <p>21 past. So he was fine picking up Coosa County from</p> <p>22 6. And then for population -- obviously, population</p> <p>23 reasons, he needed a little more than that. So we</p> <p>24 took, I think, like 12,000 people from Chilton and</p> <p>25 put it into 3 to get his population to where it</p>	<p style="text-align: right;">Page 128</p> <p>1 congressional districts.</p> <p>2 Q. Did you have any discussions with him</p> <p>3 about which specific areas of Tuscaloosa to include</p> <p>4 or not include?</p> <p>5 A. A little bit. I mean, we talked about</p> <p>6 the precincts, the next most likely geographical</p> <p>7 precincts to add into 7. We talked about them. It</p> <p>8 was sort of obvious geographically where he had to</p> <p>9 go next. So there wasn't much discussion about it.</p> <p>10 Q. How did you choose the precincts you</p> <p>11 chose other than geography?</p> <p>12 A. Well, that's -- population and geography</p> <p>13 were the only two ways to choose them.</p> <p>14 Q. Do you recall anything else, specifics</p> <p>15 about your conversations with Congressman Adderholt?</p> <p>16 A. No. And then at the end -- as I said, I</p> <p>17 had splint a precinct in Lauderdale to get to zero</p> <p>18 deviation in District 5, and he referred a different</p> <p>19 precinct split. So I changed it to the one he</p> <p>20 preferred. So that was -- that was one of the final</p> <p>21 changes at the end that we made.</p> <p>22 Q. Moving on to Congressman Brooks in</p> <p>23 District 5. What do you recall from those</p> <p>24 conversations?</p> <p>25 A. Well, there weren't any because</p>
<p style="text-align: right;">Page 127</p> <p>1 needed to be.</p> <p>2 Q. Anything else you recall?</p> <p>3 A. No.</p> <p>4 Q. What about Congressman Adderholt in</p> <p>5 District 4?</p> <p>6 A. Yeah, I talked to him numerous times.</p> <p>7 Part of it is, obviously, he was going to pick up a</p> <p>8 lot of folks from the 5th district. And there was</p> <p>9 initial discussion on which end of the 5th, should</p> <p>10 we take them from Jackson County or should we take</p> <p>11 them from Lauderdale, and how was the best way to do</p> <p>12 that.</p> <p>13 And we had a couple of different</p> <p>14 discussions about that, and finally decided that</p> <p>15 putting the Shoals -- Muscle Shoals area back</p> <p>16 together as much as possible in Lauderdale was the</p> <p>17 preferable way to do that. And that's what we</p> <p>18 talked about.</p> <p>19 And then, obviously, that required him</p> <p>20 to lose some of Tuscaloosa, a few precincts in</p> <p>21 Tuscaloosa, to make up for -- to get the population</p> <p>22 to equal out.</p> <p>23 And also he had a little chunk of Blount</p> <p>24 County, as well, from 6. And we talked about making</p> <p>25 Blount whole again and not splitting it between two</p>	<p style="text-align: right;">Page 129</p> <p>1 Congressman Brooks decided not to meet -- this is my</p> <p>2 presumption -- because he was running for the senate</p> <p>3 and had less interest in how this was going to come</p> <p>4 out.</p> <p>5 I did meet the first time with his chief</p> <p>6 of staff just to talk about keeping Morgan and</p> <p>7 Madison together. But that was -- that was about</p> <p>8 it.</p> <p>9 Q. What was the discussion there about</p> <p>10 keeping Morgan and Madison together?</p> <p>11 A. The community of interest. And a number</p> <p>12 of people that, obviously, live in northern Morgan</p> <p>13 work in Huntsville, in Madison County, and so forth,</p> <p>14 and thought it was a good combination to keep them</p> <p>15 whole and together.</p> <p>16 Q. Other than that first meeting -- and I</p> <p>17 guess that would have been back in May --</p> <p>18 A. May.</p> <p>19 Q. -- of 2021 with the chief of staff for</p> <p>20 Congressman Brooks, did you meet with anybody else</p> <p>21 on behalf of Congressman Brooks or his office?</p> <p>22 A. No. I called his chief of staff back</p> <p>23 once we had, you know, roughed out a -- gotten the</p> <p>24 math from the real data. And he -- he didn't call</p> <p>25 me back. I called him a couple of times. And I</p>

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<p style="text-align: right;">Page 130</p> <p>1 assumed that meant he was less interested in how 2 this was going to go. 3 Q. And then finally, what about Congressman 4 Palmer in District 6? What do you recall about 5 those conversations? 6 A. Well, I talked to him about again 7 putting Blount back together and giving that all to 8 him. I talked to him -- in the meantime, he had -- 9 he had initially, I thought, lived in Jefferson 10 County. And then he had moved to Shelby. 11 So I talked a little bit about making 12 sure I had the right home address for him. Because 13 I initially thought he still lived in Jefferson, but 14 he didn't. So we did have the right address in 15 Shelby. So that was fine. 16 I talked about he may loose Coosa to the 17 3rd and a little part of Chilton. He was 18 comfortable with that. And I talked to him about 19 some of the changes in Jefferson in the 7th District 20 where geographically I was trying to make the 7th 21 District's footprint in Jefferson more compact by 22 adding western Jefferson and shortening the district 23 on the top. And I wanted him to be aware of that. 24 But as I said earlier, we had initial 25 meetings and even a follow-up call. But when the</p>	<p style="text-align: right;">Page 132</p> <p>1 was relevant to what I was doing. 2 Q. Jefferson County, the way it's split in 3 the 2021 congressional map, is not exactly a 4 straight line. How did you decide which areas of 5 Jefferson County would move from District 6 to 6 District 7? 7 A. I was looking geographically to widen 8 the face of the protrusion into Jefferson -- if you 9 want to call it that, into Jefferson County. I was 10 looking to not split precincts. Those are all, 11 except for one that's split for deviation -- well, 12 two, technically. One Congressman Sewell -- 13 Congresswoman Sewell lives in and another one. 14 But I was trying not to split precincts. 15 I was picking whole precincts. And I was trying to 16 make the district more compact, meaning widen it as 17 it goes into Jefferson County and eliminate some of 18 the longer, further-away ones at the northern part 19 of the county. 20 Q. So how does that process work when 21 you're choosing which precincts to pick up? Are you 22 just kind of choosing at random geographically as 23 you move up and seeing what works? Or are there 24 other factors at play that you're considering? 25 A. No, that's exactly it, seeing what works</p>
<p style="text-align: right;">Page 131</p> <p>1 final map was done, meaning that last week of 2 October, he -- he allowed as how he didn't really 3 want to -- his chief of staff told me that the 4 congressman did not really want to talk about it, 5 that he was convinced we were going to go to court, 6 and he didn't really see a need to discuss it. 7 Q. Who was that that told you that? 8 A. Congressman Palmer's chief of staff. 9 Q. And when was that discussion? 10 A. That was in mid October. 11 Q. And why did he say that he was convinced 12 that this was going to go to court? 13 A. I don't know. He was -- the chief of 14 staff said that -- the chief of staff said that he 15 had been told, I think, by the NRCC that this map 16 was going to go to court, and that Congressman 17 Palmer had decided to not discuss it further. 18 Q. Did you ask him why he thought it was 19 going to court? 20 A. No. I accepted his answer. 21 Q. Did you have any idea about why this 22 would go to court based on that discussion? 23 A. No. 24 Q. And you didn't care to ask? 25 A. It was his opinion. I didn't think it</p>	<p style="text-align: right;">Page 133</p> <p>1 numerically and making something, in my mind, look 2 more compact geographically. 3 Q. Are there any other factors or data that 4 you're considering when you're choosing which 5 precincts to include? 6 A. No. I mean, other than -- we had that 7 discussion about Homewood where she allowed that -- 8 we had split a couple of Homewood precincts, some on 9 one side of her line in 7 and some on the other side 10 in 6, and thought it might be good to group them all 11 together. 12 Q. You mentioned that there were two 13 precincts that were split for deviation purposes, 14 one of which Congressman Sewell lives in you said. 15 What were those two precincts? 16 A. The names? 17 Q. Do you recall? 18 A. I do not. 19 Q. This isn't a memory test. I just -- 20 A. I do not. 21 Q. Okay. 22 A. And the reason it's not one -- I was 23 trying to make the split just solely in one 24 precinct. But unfortunately the census blocks 25 didn't cooperate very much. And when I got to where</p>

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<p style="text-align: right;">Page 134</p> <p>1 I got to geographically in the one -- the precinct 2 she lived in, I was hoping I could pick up the right 3 number of populations. 4 But unfortunately I hit a situation 5 where there was like a 550 block next to it, and 6 that was too many. So that was not going to work. 7 So I had to split another precinct to get to zero 8 deviation. 9 Q. Do you recall anything else specifically 10 from your discussions with Congressman Palmer or his 11 chief of staff in furtherance of drawing the 2021 12 congressional map? 13 A. No. 14 Q. And I think we discussed this earlier. 15 But in any of those discussions with any of those 16 congressmen, Congressmen Carl, Moore, Rogers, 17 Adderholt, Brooks, Palmer, did race ever come up in 18 your discussions with any of them or their staff? 19 A. No. 20 I mean, I'll amend that slightly. I do 21 think in the final when I went through with 22 everybody, I think maybe Congressman Moore's 23 district director, Bill Harris, who I was talking 24 to, may have asked, "Can you tell me what the BVAP 25 of the 2nd District is now?" I think I probably</p>	<p style="text-align: right;">Page 136</p> <p>1 A. I do. 2 Q. What is this document? 3 A. These are the guidelines that were 4 approved by the reapportionment committee for 5 drawing the four maps. 6 Q. Were you provided a copy of these 7 redistricting guidelines before you drafted the 2021 8 congressional map? 9 A. I was. 10 Q. Who provided it to you? 11 A. The two co-chairs, probably with Dorman 12 Walker, as well. I'm not sure who handed it to me. 13 Q. And when was that? 14 A. It would have been around the time it 15 was passed, May 5th. 16 Q. What -- 17 A. Which very importantly happens to be my 18 birthday. 19 Q. That is an important note. Thank you 20 for letting me know. Happy belated birthday. 21 A. Thank you. 22 Q. What were you told when you were 23 provided these guidelines? 24 A. I was told these were the guidelines for 25 drawing the four maps that you've been contracted to</p>
<p style="text-align: right;">Page 135</p> <p>1 gave him that number. 2 Q. And when was that? 3 A. In the last -- that last week when we 4 turned race on. 5 Q. You gave him the -- 6 A. He asked -- 7 Q. -- black voting age population? 8 A. Yeah. He asked what the BVAP for that 9 district was, and I gave him that number. 10 Q. Was there any further discussion about 11 it? 12 A. No. 13 14 (Plaintiff's Exhibit 7 was 15 marked for identification.) 16 17 Q. I'm handing you what's been marked as 18 Plaintiff's Exhibit 7. This is a copy of the 19 reapportionment committee redistricting guidelines 20 that was produced in this lawsuit. The Bates number 21 at the bottom is RC 043723, and it's dated May 5th 22 2021. 23 Do you see that? 24 A. I do. 25 Q. Do you recognize this document?</p>	<p style="text-align: right;">Page 137</p> <p>1 draw, and to follow them to the best of my 2 abilities. 3 Q. Anything else that you recall? 4 A. No. 5 Q. And did you, in fact, follow these 6 guidelines in drawing the 2021 congressional map? 7 A. I did. 8 Q. Let's take a look at the criteria that's 9 listed here. So starting on Page 1, you see Line 10 10 there. It says Section II, Criteria for 11 Redistricting. 12 A. Yes, sir. 13 Q. I want to talk through these with you. 14 So Sections II a and b both state that the 15 congressional district should equalize total 16 population and have minimal population deviation. 17 Do you see that? 18 A. I do. 19 Q. What does minimal population deviation 20 mean to you? 21 A. I took that to mean for the 22 congressional districts, that that was -- they 23 should be zero for six of the districts and plus one 24 for the remaining district because the population 25 was not divisible by seven. So six were to zero</p>

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<p style="text-align: right;">Page 138</p> <p>1 deviation, and one should be plus one.</p> <p>2 Q. Which district did you choose to be the</p> <p>3 plus one deviation?</p> <p>4 A. I knew you would ask me that. I don't</p> <p>5 -- I would have to look. I think it was the 6th</p> <p>6 maybe. I would have to look at a map. I don't have</p> <p>7 numbers. I'm sorry.</p> <p>8 Q. Was it District 7?</p> <p>9 A. No, I don't think so. I think it was 2</p> <p>10 or 6, but I can't remember which.</p> <p>11 Q. And what did you do to make sure that</p> <p>12 your map complied with that zero deviation for six</p> <p>13 of the districts and plus or minus one for the</p> <p>14 other?</p> <p>15 A. I moved -- I split seven precincts down</p> <p>16 to the census block level to get to zero deviation</p> <p>17 for six of the districts and plus one for the</p> <p>18 seventh one.</p> <p>19 Q. Did anyone tell you that zero percent</p> <p>20 deviation was required or that there was a certain</p> <p>21 cutoff that you had to reach to satisfy this</p> <p>22 criteria?</p> <p>23 MR. WALKER: Objection to form. You can</p> <p>24 answer.</p> <p>25 A. I was told that it was literally zero</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. So that goes back to the population</p> <p>2 deviation?</p> <p>3 A. Correct.</p> <p>4 Q. And where does that understanding come</p> <p>5 from?</p> <p>6 A. Where does my understanding come from?</p> <p>7 I'm sure if I had any questions about it, I asked</p> <p>8 legal counsel.</p> <p>9 Q. So other than what you just discussed</p> <p>10 doing for Sections II a and b in adjusting for the</p> <p>11 population, did you do anything else to make sure</p> <p>12 that your plan complies with the one person, one</p> <p>13 vote principle?</p> <p>14 A. No.</p> <p>15 Q. Section II e looks like it just states</p> <p>16 that a plan that does not comply with the population</p> <p>17 requirements above will not be approved.</p> <p>18 Is there anything additional you needed</p> <p>19 to consider here for this section e beyond what</p> <p>20 we've already discussed?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Section II f states, "Districts shall be</p> <p>23 drawn in compliance with the Voting Rights Act of</p> <p>24 1965 as amended. A redistricting plan shall have</p> <p>25 neither the purpose nor the effect of diluting</p>
<p style="text-align: right;">Page 139</p> <p>1 deviation, meaning zero -- not percent, but zero</p> <p>2 people except for the one that had to be plus one.</p> <p>3 Q. Is that plus one person?</p> <p>4 A. Yes.</p> <p>5 Q. Understood.</p> <p>6 A. Sorry. Plus one person.</p> <p>7 Q. And who told you --</p> <p>8 A. Dorman Walker, legal counsel.</p> <p>9 Q. Section II c looks like it's about</p> <p>10 legislative and board of education districts. So I</p> <p>11 don't think that would apply to the congressional</p> <p>12 map. Is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. Section II d says that the plan must</p> <p>15 comply with the one person, one vote principle of</p> <p>16 the Equal Protection Clause of the 14th Amendment of</p> <p>17 the United States Constitution.</p> <p>18 Do you understand what the one person,</p> <p>19 one vote principle is?</p> <p>20 A. I think I do.</p> <p>21 Q. What's your understanding?</p> <p>22 A. Again, that's so no -- so people have</p> <p>23 equal representation, the representatives in those,</p> <p>24 in the congressional case, should be representing</p> <p>25 the same number of people.</p>	<p style="text-align: right;">Page 141</p> <p>1 minority voting strength, and shall comply with</p> <p>2 Section 2 of the Voting Rights Act and the United</p> <p>3 States Constitution."</p> <p>4 Are you familiar with the Voting Rights</p> <p>5 Act of 1965?</p> <p>6 A. I'm not a lawyer, but I'm familiar with</p> <p>7 it.</p> <p>8 Q. What is your understanding?</p> <p>9 A. Well, that the -- a plan should not have</p> <p>10 the intent or purpose of discriminating against any</p> <p>11 minority population.</p> <p>12 Q. Where does that understanding come from?</p> <p>13 A. Just conversations with legal counsel</p> <p>14 and others during the process.</p> <p>15 Q. Are you familiar with Section 2 of the</p> <p>16 Voting Rights Act?</p> <p>17 A. Again, I'm not a lawyer. But vaguely.</p> <p>18 Q. Have you ever read Section 2 of the</p> <p>19 Voting Rights Act?</p> <p>20 A. I'm not sure I have.</p> <p>21 Q. What is your understanding of what</p> <p>22 Section 2 requires?</p> <p>23 A. Where there -- I guess my understanding</p> <p>24 of it, a layman's understanding of it, would be</p> <p>25 where there's a sufficient and compact enough</p>

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<p style="text-align: right;">Page 142</p> <p>1 population of -- minority population to create a</p> <p>2 district, a congressional district in this case,</p> <p>3 that a district should be drawn if it's compact and</p> <p>4 sort of meets the Gingles, I guess, requirements,</p> <p>5 compact, contiguous population.</p> <p>6 Q. Where there would be a majority black</p> <p>7 district?</p> <p>8 A. Right, and would have the opportunity to</p> <p>9 elect a candidate of their choice.</p> <p>10 Q. And does that understanding come from</p> <p>11 the same sources, conversations with counsel?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What did you do to make sure that your</p> <p>14 plan complies with Section 2 of the Voting Rights</p> <p>15 Act?</p> <p>16 A. Again, once it was done and we turned on</p> <p>17 race, we talked about it. No one asked me to make</p> <p>18 any other changes. And I talked to legal counsel</p> <p>19 and, I guess, concluded that it satisfies Section 2</p> <p>20 of the Voting Rights Act.</p> <p>21 Q. Anything else?</p> <p>22 A. No.</p> <p>23 Q. Did you personally make a determination</p> <p>24 that your plan does not have the purpose or effect</p> <p>25 of diluting minority voting strength?</p>	<p style="text-align: right;">Page 144</p> <p>1 numbers related to the map.</p> <p>2 Q. Did you have anyone other than</p> <p>3 Mr. Walker or someone with his firm analyze your map</p> <p>4 at any point to confirm that it complies with</p> <p>5 Section 2 of the Voting Rights Act?</p> <p>6 A. I did not.</p> <p>7 Q. Do you know if anyone reviewed the map</p> <p>8 to determine whether it complies with Section 2 of</p> <p>9 the Voting Rights Act, other than potentially</p> <p>10 Mr. Walker and his firm?</p> <p>11 A. I do not, no.</p> <p>12 Q. And other than what we've discussed</p> <p>13 already, did you do anything else to make sure that</p> <p>14 your plan complies with Section 2 of the Voting</p> <p>15 Rights Act?</p> <p>16 A. I did not.</p> <p>17 Q. Moving on to the next criteria, Section</p> <p>18 II g. This one is a little longer.</p> <p>19 It states, "No district will be drawn in</p> <p>20 a manner that subordinates race-neutral districting</p> <p>21 criteria to considerations of race, color, or</p> <p>22 membership in a language-minority group, except that</p> <p>23 race, color, or membership in a language-minority</p> <p>24 group may predominate over race-neutral districting</p> <p>25 criteria to comply with Section 2 of the Voting</p>
<p style="text-align: right;">Page 143</p> <p>1 A. I'm -- I'm not a lawyer, so I don't know</p> <p>2 that I can make that -- I don't know that it's my</p> <p>3 job to make that distinction. But I don't believe</p> <p>4 it discriminated against anyone.</p> <p>5 Q. Did you do anything to make that</p> <p>6 determination yourself?</p> <p>7 A. Other than talk to legal counsel, no.</p> <p>8 Q. Other than potentially legal counsel,</p> <p>9 did you have discussions with anyone else about</p> <p>10 whether your plan complied with Section II of the</p> <p>11 Voting Rights Act?</p> <p>12 A. No.</p> <p>13 Q. In making the determination, whether</p> <p>14 that's through conversation with legal counsel or</p> <p>15 not, about whether your plan complies with this</p> <p>16 policy, did that require you to review the racial</p> <p>17 makeup of the districts?</p> <p>18 A. Well, yeah. I mean, race -- at that</p> <p>19 point, we had turned race on. So the BVAPs and</p> <p>20 numbers were available.</p> <p>21 Q. And you say they were available. So</p> <p>22 then you had to review them, as well, to make sure</p> <p>23 that everything was in compliance with this policy?</p> <p>24 A. Well, we -- the numbers were then</p> <p>25 revealed or available, and we discussed the various</p>	<p style="text-align: right;">Page 145</p> <p>1 Rights Act, provided there is a strong basis in</p> <p>2 evidence in support of such a race-based choice. A</p> <p>3 strong basis in evidence exists when there is good</p> <p>4 reason to believe that race must be used in order to</p> <p>5 satisfy the Voting Rights Act."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. What is your understanding of what that</p> <p>9 section requires?</p> <p>10 A. My understanding of what that section</p> <p>11 requires is that's why -- when we made all of our</p> <p>12 changes to the districts by adding or subtracting</p> <p>13 population, that's why race was not on. We did it</p> <p>14 based on total population. And then at the end of</p> <p>15 the process, we did turn race on to look at various</p> <p>16 districts.</p> <p>17 And because we were doing a number of</p> <p>18 these maps at the same time, there were a couple of</p> <p>19 instances in the other maps where we did look at</p> <p>20 race to add to a district. But that did not come</p> <p>21 into play in congressional.</p> <p>22 Q. What, if anything, did you do to make</p> <p>23 sure that specific congressional districts complied</p> <p>24 with this policy?</p> <p>25 A. I made sure that when I added -- I used</p>

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<p style="text-align: right;">Page 146</p> <p>1 traditional redistricting principles of total pop 2 and geography considerations to add and subtract to 3 these districts, and that that was not based on 4 race.</p> <p>5 Q. Flip the page to Page 2. The next 6 section is Section 2 h, and it states that districts 7 must be composed of contiguous and reasonably 8 compact geography.</p> <p>9 What is your understanding of what this 10 section requires?</p> <p>11 A. Yeah, obviously contiguous counties 12 and/or precincts had to be adjacent, to be hooked 13 together, to form a district. You couldn't have 14 part of Madison County tied to Mobile or something 15 crazy like that.</p> <p>16 And to the extent possible, I was trying 17 to, when changing things inside a county as 18 Jefferson, I was trying to make -- or Montgomery, 19 for that matter, tried to make districts more 20 geographically compact so they were not as spread 21 out.</p> <p>22 Q. Beyond what you just mentioned with 23 Montgomery -- sorry. Was that Jefferson County?</p> <p>24 A. And Montgomery, too.</p> <p>25 Q. And Montgomery County. Beyond that,</p>	<p style="text-align: right;">Page 148</p> <p>1 already basically been covered in other things we've 2 discussed.</p> <p>3 Q. Anything else that you had to take into 4 account to comply with this policy?</p> <p>5 A. I don't think so.</p> <p>6 Q. Section II j starting at Line 21 there. 7 Section II j lists six redistricting policies. Do 8 you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Sorry. Can you answer verbally?</p> <p>11 A. Yes. Sorry.</p> <p>12 Q. That's fine.</p> <p>13 Did you consider these redistricting 14 policies when drawing your map?</p> <p>15 A. I did.</p> <p>16 Q. How?</p> <p>17 A. Well, I wanted to make sure that no -- 18 to the extent possible that no incumbents were put 19 together, which they were not, in the congressional 20 map. While continuity by water was allowed, I was 21 trying to not use that. Which I don't think we did.</p> <p>22 I don't know how far down your --</p> <p>23 Q. I can walk through them with you. That 24 might make more sense.</p> <p>25 First off, did anyone explain to you</p>
<p style="text-align: right;">Page 147</p> <p>1 what did you do to make sure that your plan complies 2 with this policy?</p> <p>3 A. That's about it.</p> <p>4 Q. Moving on to the next section, Section 5 II i. It lists several requirements of the Alabama 6 Constitution. I'm not going to read all of them 7 here.</p> <p>8 Did you consider these factors in 9 drawing your map?</p> <p>10 A. I did.</p> <p>11 Q. It appears, just by looking at them, 12 that most of them do not apply to the congressional 13 map. Rather, they talk about Alabama senate and 14 Alabama house. Is that right?</p> <p>15 A. Correct.</p> <p>16 Q. How did you consider these factors here 17 under Section II i in drawing the congressional map?</p> <p>18 A. Well, I don't know how far down this 19 list -- I don't know how far down this list you're 20 counting.</p> <p>21 Q. It looks like II i. It's from Line 3 22 down to Line 20 on Page 2 of Exhibit 7.</p> <p>23 A. As you say, most of them don't really 24 apply. They are all -- all districts will be 25 single-member districts, they're contiguous. That's</p>	<p style="text-align: right;">Page 149</p> <p>1 what these policies mean?</p> <p>2 A. No. I'm sure if I had a question, I 3 would have asked legal counsel. But I don't 4 remember asking.</p> <p>5 Q. Similarly, did anyone explain to you how 6 to apply these policies in drawing the map?</p> <p>7 A. No.</p> <p>8 Q. What is your understanding of the 9 priority amongst these various policies?</p> <p>10 A. I think the only two that are paramount 11 to the rest of them would be one person, one vote 12 and the Voting Rights Act.</p> <p>13 The rest of them are somewhat -- can 14 occasionally be in conflict. And it depends on the 15 various situations where one might trump the other 16 or vice versa.</p> <p>17 You may have two incumbents that live 18 very close to one another. Maybe they need to be 19 split apart. That may make the districts not quite 20 as compact as you would like. But one of those -- 21 you know, you couldn't put the two incumbents 22 together. So sometimes they are in conflict, and 23 you have to resolve that.</p> <p>24 Q. Other than the two you just mentioned, 25 one person, one vote and the Voting Rights Act, did</p>

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<p style="text-align: right;">Page 150</p> <p>1 you place any greater importance on one of these</p> <p>2 policies over the other?</p> <p>3 A. No.</p> <p>4 Q. Let's walk through these. So the first</p> <p>5 policy under Section J starting on Line 25 there</p> <p>6 states, "Contests between incumbents will be avoided</p> <p>7 whenever possible."</p> <p>8 What's your understanding of what this</p> <p>9 requires?</p> <p>10 A. That when -- certainly when possible, I</p> <p>11 would not put incumbents in the same district.</p> <p>12 Q. What did you do to make sure that you</p> <p>13 complied with that?</p> <p>14 A. Retrieved -- made sure that we retrieved</p> <p>15 all of the home addresses and looked to where they</p> <p>16 were and made sure two of them were not in the same</p> <p>17 district.</p> <p>18 Q. You might have answered this earlier.</p> <p>19 But did you have to make any modifications to your</p> <p>20 map to comply with this?</p> <p>21 A. Not the congressional map.</p> <p>22 Q. This factor applies equally to both</p> <p>23 parties, correct?</p> <p>24 A. Certainly, yes.</p> <p>25 Q. So you applied it equally to all</p>	<p style="text-align: right;">Page 152</p> <p>1 A. No.</p> <p>2 Q. Did you have to make any modifications</p> <p>3 to your map to comply with this policy?</p> <p>4 A. I did not.</p> <p>5 Q. The third one -- the third policy, which</p> <p>6 is Section II j(iii,) states, "Districts shall</p> <p>7 respect communities of interest, neighborhoods, and</p> <p>8 political subdivisions to the extent practicable and</p> <p>9 in compliance with paragraphs a through i."</p> <p>10 What is your understanding of what this</p> <p>11 policy requires?</p> <p>12 A. It requires -- like I said earlier, in</p> <p>13 areas; for example, Mobile and Baldwin which wanted</p> <p>14 to stay together or Madison and Morgan that had</p> <p>15 specific communities of interest, it was to keep</p> <p>16 areas together that have similar -- and, obviously,</p> <p>17 there are lots of different communities of interest.</p> <p>18 So I tried to keep areas, to the extent possible,</p> <p>19 together.</p> <p>20 Obviously, this comes into conflict with</p> <p>21 county lines, precinct lines, other things. So it's</p> <p>22 not always -- and everybody has -- a number of</p> <p>23 people have different views of what communities of</p> <p>24 interest are. So it's certainly not always possible</p> <p>25 to keep all of them together.</p>
<p style="text-align: right;">Page 151</p> <p>1 incumbents, both the republicans and to the</p> <p>2 democrat, correct?</p> <p>3 A. Correct.</p> <p>4 Q. The second policy there, Section II</p> <p>5 j(ii) starting on Line 26, states -- I don't know</p> <p>6 why I'm having trouble pronouncing the word.</p> <p>7 "Contiguity by water is allowed, but point-to-point</p> <p>8 contiguity and long-lasso contiguity is not."</p> <p>9 What is your understanding of what that</p> <p>10 policy requires?</p> <p>11 A. I'm not sure I even know what long-lasso</p> <p>12 contiguity is, to be honest with you.</p> <p>13 But point-to-point, occasionally you can</p> <p>14 have a precinct or a census block that connects to</p> <p>15 the next one just by one point in space. And that's</p> <p>16 not -- under their guidelines, not allowable in</p> <p>17 terms of connecting them together.</p> <p>18 Again, on the congressional map, it</p> <p>19 didn't come into play very much because I tried not</p> <p>20 to split -- I only split seven precincts and tried</p> <p>21 not to have situations where census blocks were --</p> <p>22 weren't any -- weren't close to any of those options</p> <p>23 there.</p> <p>24 Q. Did you have to do anything else to make</p> <p>25 sure your plan complied with this policy?</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. What is your definition of a community</p> <p>2 of interest?</p> <p>3 A. My definition of community of interest,</p> <p>4 it can be geographic, it can be economic, where</p> <p>5 people work, it can be racial, it could be</p> <p>6 geography, it could be people on the bay, for</p> <p>7 example, for Mobile and Baldwin counties. A host</p> <p>8 of -- a host of communities of interest.</p> <p>9 Q. What do you consider to be communities</p> <p>10 of interest in Alabama?</p> <p>11 A. All those things I just listed.</p> <p>12 Q. Is there any sort of particular</p> <p>13 communities of interest that are well established or</p> <p>14 a list of any of these? Or is this just something</p> <p>15 that is subjectively known but doesn't really exist</p> <p>16 in writing anywhere?</p> <p>17 A. I don't know of a definitive list of all</p> <p>18 the communities of interest in Alabama.</p> <p>19 Q. Are there any specific communities of</p> <p>20 interest that come to mind for you right now?</p> <p>21 A. No, other than the ones I listed. I</p> <p>22 mean, precincts can be -- counties are, I guess,</p> <p>23 communities of interest sometimes. I mean, it's --</p> <p>24 there are a whole host of things.</p> <p>25 Q. It sounds like communities of interest</p>

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<p style="text-align: right;">Page 154</p> <p>1 can be somewhat fluid. Is that fair to say?</p> <p>2 A. It is fair to say.</p> <p>3 Q. One area, say, where we're sitting right</p> <p>4 now in Montgomery, could be part of three, four,</p> <p>5 five, six different communities of interest</p> <p>6 depending on what factors you're looking at?</p> <p>7 A. Yeah, whether they're economic or racial</p> <p>8 or social or everybody roots for the same football</p> <p>9 team, I suppose.</p> <p>10 Q. Do they?</p> <p>11 A. No.</p> <p>12 Q. I see. I see. That would be a</p> <p>13 community of interest perhaps.</p> <p>14 Are you familiar with the black belt?</p> <p>15 You mentioned that earlier.</p> <p>16 A. I am.</p> <p>17 Q. What is the black belt?</p> <p>18 A. It's a group of mostly rural counties</p> <p>19 that have a -- for the most part have a majority</p> <p>20 black population.</p> <p>21 Q. Do you know what counties are in the</p> <p>22 black belt?</p> <p>23 A. I'm not sure I can list every one. But</p> <p>24 yeah, in general, I do.</p> <p>25 Q. What counties would you say are in the</p>	<p style="text-align: right;">Page 156</p> <p>1 for example, the Muscle Shoals area together in</p> <p>2 the -- in the 4th District when we split Lauderdale.</p> <p>3 Not that it was at issue, but the people in Mobile</p> <p>4 and Baldwin very much wanted to be together because</p> <p>5 they share the bay. But that didn't require a</p> <p>6 change. It just is a . . .</p> <p>7 Q. Other than the modification for the</p> <p>8 Muscle Shoals community, are there any other</p> <p>9 specific modifications that you felt like you made</p> <p>10 in drawing the 2021 map?</p> <p>11 A. No, not specifically.</p> <p>12 Q. Does your map split any communities of</p> <p>13 interest?</p> <p>14 A. Oh, I'm sure it does. I mean, all maps</p> <p>15 split some communities of interest.</p> <p>16 Q. And part of that is because of what we</p> <p>17 just discussed, that communities of interest can</p> <p>18 mean lots of different things?</p> <p>19 A. To different people, I'm sure.</p> <p>20 Q. Looking at the bottom of Section II</p> <p>21 j(iii,) that third policy, it gives a definition.</p> <p>22 It says, "The term communities of interest" --</p> <p>23 excuse me.</p> <p>24 It says, "A community of interest is</p> <p>25 defined as an area with recognized similarities of</p>
<p style="text-align: right;">Page 155</p> <p>1 black belt?</p> <p>2 A. I would say Sumpter, Greene, Choctaw,</p> <p>3 Marengo, Hale, Perry, Dallas, Wilcox, Lowndes, I</p> <p>4 guess Macon and Bullock. Some would say Montgomery.</p> <p>5 Q. Do you consider the black belt to be a</p> <p>6 community of interest?</p> <p>7 A. I do.</p> <p>8 Q. So in drawing your map, what did you do</p> <p>9 to make sure that your plan complies with this</p> <p>10 policy, that it respected communities of interest?</p> <p>11 A. Again, I mean, because there are so many</p> <p>12 different communities of interest, they're not -- I</p> <p>13 mean, no plan is going to respect all of them. So</p> <p>14 there are trade-offs.</p> <p>15 There are also -- you know, the entire</p> <p>16 black belt I imagine if you made into a</p> <p>17 congressional district would accomplish -- would hit</p> <p>18 up against other one person, one vote issues and</p> <p>19 other issues in here, as well. So they are</p> <p>20 sometimes in conflict. So you can't -- you can't</p> <p>21 satisfy all communities of interest.</p> <p>22 Q. Did you have to make any specific</p> <p>23 modifications to your map to make sure that you were</p> <p>24 respecting communities of interest?</p> <p>25 A. No. Although, again, I tried to keep,</p>	<p style="text-align: right;">Page 157</p> <p>1 interests, including but not limited to ethnic,</p> <p>2 racial, economic, tribal, social, geographic, or</p> <p>3 historical identities. The term communities of</p> <p>4 interest may in certain circumstances include</p> <p>5 political subdivisions such as counties, voting</p> <p>6 precincts, municipalities, tribal lands and</p> <p>7 reservations, or school districts."</p> <p>8 Did you review any ethnic, racial,</p> <p>9 tribal, or other similar data to identify</p> <p>10 communities of interest?</p> <p>11 A. I did not.</p> <p>12 Q. Moving to the next policy, the fourth</p> <p>13 policy, Section II j(iv.) It states, "The</p> <p>14 legislature shall try to minimize the number of</p> <p>15 counties in each district."</p> <p>16 I think that's pretty self-explanatory.</p> <p>17 But what is your understanding of what that policy</p> <p>18 requires?</p> <p>19 A. Yeah, that's sort of a compactness</p> <p>20 thing. I was trying to keep the fewest number of</p> <p>21 counties necessary to -- and it's not always --</p> <p>22 there are other -- the next one down says</p> <p>23 "preserving cores of existing districts."</p> <p>24 I mean, some of these things come into</p> <p>25 conflict. But to where possible, I tried to deal in</p>

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<p style="text-align: right;">Page 158</p> <p>1 whole counties, keeping counties whole, and the</p> <p>2 minimum number to reach the ideal population.</p> <p>3 Q. Did you have to make any specific</p> <p>4 modifications to your map to comply with that</p> <p>5 policy?</p> <p>6 A. No. Although it does come into effect</p> <p>7 when people were talking about adding -- where you</p> <p>8 split a -- for example, the Escambia County split,</p> <p>9 you know, where does that go.</p> <p>10 I was trying to keep districts so that</p> <p>11 not all of the splits were in the same district and</p> <p>12 the number of counties in a particular district</p> <p>13 didn't grow a lot. Because for a congressional</p> <p>14 office, that takes on local governments and more</p> <p>15 work. So I tried to be mindful of that when looking</p> <p>16 at it.</p> <p>17 Q. Other than trying to be mindful of that,</p> <p>18 did you have to make any specific changes?</p> <p>19 A. No.</p> <p>20 Q. You referenced it just now. The next</p> <p>21 policy, the fifth policy, Section II j(v) states,</p> <p>22 "The legislature shall try to preserve the cores of</p> <p>23 existing districts."</p> <p>24 What is your understanding of what that</p> <p>25 policy requires?</p>	<p style="text-align: right;">Page 160</p> <p>1 district is?</p> <p>2 A. I did not.</p> <p>3 Q. Does maintaining the core of districts</p> <p>4 require considerations of racial data?</p> <p>5 A. I don't think it does, no.</p> <p>6</p> <p>7 (Plaintiff's Exhibit 8 was</p> <p>8 marked for identification.)</p> <p>9</p> <p>10 Q. I'm handing you what's been marked as</p> <p>11 Plaintiff's Exhibit 8. This is a document that was</p> <p>12 produced in this lawsuit. The Bates number in the</p> <p>13 corner is RC 00056. It's a seven-page document.</p> <p>14 Each page has one of the seven congressional</p> <p>15 districts from the 2021 congressional map.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Have you seen this document before?</p> <p>19 A. I have not.</p> <p>20 Q. And you can take a look through it if</p> <p>21 you don't believe me. But these are the seven --</p> <p>22 these are maps of each of the seven congressional</p> <p>23 districts in the 2021 map that you drew; is that</p> <p>24 correct?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 159</p> <p>1 A. That's basically the cores of the -- of</p> <p>2 existing districts or the counties that make up the</p> <p>3 majority of those districts, to keep them together</p> <p>4 in the same district.</p> <p>5 Obviously, incumbents have a preference</p> <p>6 to not have to add folks they haven't represented</p> <p>7 when they can continue to keep the folks they have</p> <p>8 been representing.</p> <p>9 Q. What, in your mind, is the core of an</p> <p>10 existing district?</p> <p>11 A. The core of an existing district is</p> <p>12 basically -- I view it as geography. It's the</p> <p>13 county -- the key counties that make up the current</p> <p>14 district, current as in 2001.</p> <p>15 Q. Where --</p> <p>16 A. Or 2011 I mean.</p> <p>17 Q. Where does that understanding come from?</p> <p>18 A. I don't know. That understanding comes</p> <p>19 from what the cores of a district are.</p> <p>20 Q. Your understanding of what a core of a</p> <p>21 district is comes from --</p> <p>22 A. I mean, that's what the definition of</p> <p>23 those words are to me anyway.</p> <p>24 Q. Did you have some sort of metric to use</p> <p>25 when determining what the core of an existing</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Looking at page one here, District 1,</p> <p>2 show me on here where the core of District 1 is.</p> <p>3 A. Well, the core of District 1 to me would</p> <p>4 be Mobile and Baldwin counties.</p> <p>5 Q. Flipping over to -- and why do you</p> <p>6 consider those two --</p> <p>7 A. Well, that's --</p> <p>8 Q. -- to be the core?</p> <p>9 A. Those are the two predominant counties.</p> <p>10 They have the vast majority of the population in the</p> <p>11 district.</p> <p>12 Q. Flipping the page to District 2. What</p> <p>13 do you consider to be the core of District 2?</p> <p>14 A. The core of District 2 is a little more</p> <p>15 complicated than that, I guess. You have the Wire</p> <p>16 -- you have Dothan, which is Houston County, you</p> <p>17 have the Wiregrass region, you have Montgomery, and</p> <p>18 then you have Autauga and Elmore on top -- of top of</p> <p>19 them.</p> <p>20 Q. And why do you consider those counties</p> <p>21 to be the core of this district?</p> <p>22 A. Again, that's where the majority of the</p> <p>23 population is. And they've been for the most part</p> <p>24 consistently inside the 2nd District for a</p> <p>25 considerable period of time.</p>

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<p style="text-align: right;">Page 162</p> <p>1 Q. Moving the page to District 3, the same</p> <p>2 question. What do you consider to be the core of</p> <p>3 District 3?</p> <p>4 A. The core of District 3 would be Calhoun</p> <p>5 and St. Clair. And then obviously more down, Lee</p> <p>6 and Russell, which are very fast-growing counties,</p> <p>7 especially Lee County. That would be the core of</p> <p>8 the district to me.</p> <p>9 Q. And why do you say that?</p> <p>10 A. Again, it's the vast majority of the</p> <p>11 population. It's also -- those areas have been</p> <p>12 pretty much continuously in the 3rd District.</p> <p>13 Q. Turning the page to District 4, same</p> <p>14 question. What do you consider to be the core of</p> <p>15 District 4?</p> <p>16 A. The core of District 4 would be sort of</p> <p>17 the Winston, Walker, Cullman area, and then northern</p> <p>18 Tuscaloosa which was only added ten years ago but</p> <p>19 certainly plays a key role in the district now. And</p> <p>20 then sort of Marshall, Etowah, again large</p> <p>21 population, have been in the district a considerable</p> <p>22 amount of time.</p> <p>23 Q. Is your answer for why those are the</p> <p>24 core based on population again?</p> <p>25 A. Population, yeah.</p>	<p style="text-align: right;">Page 164</p> <p>1 in that district for a long period of time.</p> <p>2 Q. And going through each of these counties</p> <p>3 that you consider to be the core of each district,</p> <p>4 is that a determination that you made? Or is that</p> <p>5 something that you were told by someone else?</p> <p>6 A. That's a determination I made.</p> <p>7 Q. Have you discussed what you consider to</p> <p>8 be the core of each of these districts with anyone</p> <p>9 else?</p> <p>10 A. I may have discussed it with legal</p> <p>11 counsel. But I don't have a specific recollection</p> <p>12 of the discussion.</p> <p>13 Q. Has anyone ever told you before what the</p> <p>14 core of each district is?</p> <p>15 A. No.</p> <p>16 Q. Looking back at the policy that we were</p> <p>17 referencing here about preserving the cores of each</p> <p>18 of the districts, what did you do to make sure that</p> <p>19 your plan preserved the core of each of these</p> <p>20 districts?</p> <p>21 A. I kept the areas we referenced by</p> <p>22 district inside that district.</p> <p>23 Q. Did you have to make any specific</p> <p>24 modifications to comply with this?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 163</p> <p>1 Q. Flipping the page to District 5, same</p> <p>2 question. What's the core there?</p> <p>3 A. The core would be Madison and Morgan and</p> <p>4 Limestone, which is now rapidly growing, as well.</p> <p>5 Again, population, and they've been in that district</p> <p>6 for a considerable period of time.</p> <p>7 Q. Any other reasons?</p> <p>8 A. No.</p> <p>9 Q. Turning the page to District 6, same</p> <p>10 question.</p> <p>11 A. District 6, obviously Shelby and then</p> <p>12 Jefferson because of population would be, in my</p> <p>13 mind, the core of that district.</p> <p>14 Q. Any other reasons?</p> <p>15 A. No. It's population primarily.</p> <p>16 Q. Finally flipping the page to District 7.</p> <p>17 What would you consider to be the core of District</p> <p>18 7?</p> <p>19 A. I would say the core of District 7 is</p> <p>20 the black belt counties that we talked about earlier</p> <p>21 from Choctaw through to Lowndes, and then also the</p> <p>22 portions of Tuscaloosa and Jefferson.</p> <p>23 Q. What are the reasons for considering</p> <p>24 those to be the core?</p> <p>25 A. Again, population and that they've been</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Where did this policy rank in comparison</p> <p>2 to the other policies?</p> <p>3 A. It was equal to all except one person,</p> <p>4 one vote and the Voting Rights Act.</p> <p>5 Q. We're almost through the criteria here.</p> <p>6 The last policy, Section II j(vi) states, "In</p> <p>7 establishing legislative districts, the</p> <p>8 reapportionment committee shall give due</p> <p>9 consideration to all the criteria herein. However,</p> <p>10 priority is to be given to the compelling state</p> <p>11 interests requiring equality of population among</p> <p>12 districts and compliance with the Voting Rights Act</p> <p>13 of 1965, as amended, should the requirements of</p> <p>14 those criteria conflict with any other criteria."</p> <p>15 That sounds to be pretty much what you</p> <p>16 just said to me, correct?</p> <p>17 A. Correct.</p> <p>18 Q. To your knowledge, was there any</p> <p>19 conflict between the five policies we just discussed</p> <p>20 and the requirements regarding equality of</p> <p>21 population?</p> <p>22 A. No. I mean, obviously, there can be</p> <p>23 conflicts between one person, one vote and</p> <p>24 communities of interest and one person, one vote and</p> <p>25 how many counties are in a district. But not on</p>

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<p style="text-align: right;">Page 166</p> <p>1 that level, I guess. You would have to ask me that</p> <p>2 one again.</p> <p>3 Q. And did you run into any of those</p> <p>4 conflicts? Did you have to make any modifications</p> <p>5 based on any sort of conflict like that in drawing</p> <p>6 the map?</p> <p>7 A. Well, I mean, I didn't run into them.</p> <p>8 But, I mean, I kept those in mind when we were doing</p> <p>9 our initial additions or subtractions to the plan.</p> <p>10 Q. Same question. To your knowledge, was</p> <p>11 there any conflict between those five policies we</p> <p>12 just discussed and the requirements under the Voting</p> <p>13 Rights Act of 1965?</p> <p>14 A. No. As I stated, when I added</p> <p>15 population to the 7th district, for example, I was</p> <p>16 not looking at race. So there was no conflict with</p> <p>17 any of it to the Voting Rights Act.</p> <p>18 THE REPORTER: There was no conflict</p> <p>19 what?</p> <p>20 A. With any of those to the Voting Rights</p> <p>21 Act.</p> <p>22 Q. I don't think it's another policy. But</p> <p>23 looking down here at the bottom, g, the last section</p> <p>24 under the criteria. Section g states that the six</p> <p>25 policies we just discussed in paragraphs j(i)</p>	<p style="text-align: right;">Page 168</p> <p>1 A. I'm not.</p> <p>2 Q. What is your understanding of what a</p> <p>3 racial polarization analysis entails?</p> <p>4 A. I think it -- I've never done one, and</p> <p>5 I'm not an expert. But my understanding -- a</p> <p>6 layman's understanding of it, it is an analysis of</p> <p>7 performance of how a district would perform in terms</p> <p>8 of electing a candidate of choice for a minority</p> <p>9 candidate.</p> <p>10 Q. Do you know why a racial polarization</p> <p>11 analysis was not conducted?</p> <p>12 A. I do -- that was -- I do not.</p> <p>13 Q. Did you ever suggest one?</p> <p>14 A. I did not.</p> <p>15 Q. Why not?</p> <p>16 A. It wasn't under my purview.</p> <p>17 Q. What do you mean?</p> <p>18 A. It wasn't part of my -- I was asked to</p> <p>19 draw four maps and submit them to the legislature.</p> <p>20 Q. Did anyone ever talk to you about a</p> <p>21 racial polarization analysis?</p> <p>22 A. Counsel. We talked -- we've talked</p> <p>23 about --</p> <p>24 MR. WALKER: Objection to form.</p> <p>25 Q. Without going into any discussion that</p>
<p style="text-align: right;">Page 167</p> <p>1 through (vi) are not listed in order of precedence,</p> <p>2 and in each instance where they conflict, the</p> <p>3 legislature shall at its discrimination determine</p> <p>4 which takes priority.</p> <p>5 Were you given any instruction on which</p> <p>6 policy should take priority over the others?</p> <p>7 A. No, other than section 6 that says</p> <p>8 clearly one person, one vote and the Voting Rights</p> <p>9 Act. But other than that, no.</p> <p>10 Q. Is there anything else in Exhibit 8,</p> <p>11 which is the reapportionment committee redistricting</p> <p>12 guidelines, that you considered other than the</p> <p>13 criteria we just discussed in Section II?</p> <p>14 A. No.</p> <p>15 Q. In looking back at these criteria in</p> <p>16 Exhibit 8, Section II, were these the main factors</p> <p>17 that you considered when drawing the 2021</p> <p>18 congressional map?</p> <p>19 A. They were.</p> <p>20 Q. Did you consider any other factors when</p> <p>21 drawing the 2021 congressional map?</p> <p>22 A. I did not.</p> <p>23 Q. Are you aware of any racial polarization</p> <p>24 analysis that was done on any of the districts on</p> <p>25 the 2021 congressional map?</p>	<p style="text-align: right;">Page 169</p> <p>1 you had with Mr. Walker, did anyone else ever talk</p> <p>2 to you about any racial polarization analysis being</p> <p>3 done for the 2021 congressional map?</p> <p>4 A. No.</p> <p>5 MR. THOMPSON: For the record, Counsel,</p> <p>6 I have a copy here of the joint stipulated facts</p> <p>7 that were agreed to by counsel and filed this past</p> <p>8 Friday. I only have one copy.</p> <p>9 MR. WALKER: Do you want me to get a</p> <p>10 copy made, copies made?</p> <p>11 MR. THOMPSON: We can. I just have a</p> <p>12 question about one of these. So if it works, I can</p> <p>13 just read it into the record and show the witness.</p> <p>14 MR. WALKER: That's fine.</p> <p>15 Q. Paragraph 62 of -- for your knowledge,</p> <p>16 sir, this is a document titled Joint Stipulated</p> <p>17 Facts for Preliminary Injunction Proceedings. And</p> <p>18 this was a document of stipulated facts that the</p> <p>19 parties in the three lawsuits here have agreed to.</p> <p>20 Does that make sense?</p> <p>21 A. Yes.</p> <p>22 MR. DAVIS: Actually, there are</p> <p>23 differences. What one set of counsel agreed to with</p> <p>24 us may not be exactly what another set of counsel</p> <p>25 agreed to with us. So you might want to clarify for</p>

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<p style="text-align: right;">Page 170</p> <p>1 the record in which case those stipulations are.</p> <p>2 MR. THOMPSON: This is the Milligan</p> <p>3 plaintiffs versus Merrill stipulations.</p> <p>4 Q. All right. Paragraph 62 in this -- and</p> <p>5 I'll read it to you, and then I can show it to you.</p> <p>6 It states, "In recent litigation,</p> <p>7 Secretary Merrill stated that CD 7," which is</p> <p>8 Congressional District 7, "appears to be racially</p> <p>9 gerrymandered, with a finger sticking up from the</p> <p>10 black belt for the sole purpose of grabbing the</p> <p>11 black population of Jefferson County. Defendant</p> <p>12 does not believe that the law would permit Alabama</p> <p>13 to draw that district today if the finger into</p> <p>14 Jefferson County was for the predominant purpose of</p> <p>15 drawing African American voters into the district."</p> <p>16 And that's from Secretary of State Merrill's</p> <p>17 pretrial brief in Chestnut v. Merrill.</p> <p>18 And I'll show that to you. Just let me</p> <p>19 know when you've had a chance to look at it.</p> <p>20 A. Okay.</p> <p>21 Q. Do you agree with Secretary Merrill that</p> <p>22 District 7 appears to be racially gerrymandered?</p> <p>23 MR. DAVIS: Object to the form.</p> <p>24 MR. WALKER: Object to the form.</p> <p>25 MR. DAVIS: Which District 7? What</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. And you drew the original District 7</p> <p>2 back in 1992, we discussed, right?</p> <p>3 A. Correct.</p> <p>4 Q. So you drew that original, for lack of</p> <p>5 better terms, finger that extends into District 6?</p> <p>6 A. Yeah. And I'm not sure it looked</p> <p>7 exactly like that. But yes, I did.</p> <p>8 Q. And why did you draw that long finger</p> <p>9 extension into District 6?</p> <p>10 A. Well, it partially probably had to do</p> <p>11 with where the incumbent lived at that point. But</p> <p>12 also to create a majority black district.</p> <p>13 Q. Moving ahead to the 2021 congressional</p> <p>14 map. Were you asked to do anything to District 7 so</p> <p>15 that it does not appear to be racially</p> <p>16 gerrymandered?</p> <p>17 A. I wasn't asked to do anything. But when</p> <p>18 I was looking at adding population to District 7, I</p> <p>19 was hoping -- my goal was to make it more compact</p> <p>20 and geographically comprehensible in terms of, for</p> <p>21 example, Jefferson County. So that's why I was</p> <p>22 adding west Jefferson County and gaining population</p> <p>23 there.</p> <p>24 Q. Did you do anything specifically in</p> <p>25 drawing the 2021 congressional map to modify it so</p>
<p style="text-align: right;">Page 171</p> <p>1 year?</p> <p>2 MR. THOMPSON: I believe this was in</p> <p>3 reference to the 2011 --</p> <p>4 MR. WALKER: Right.</p> <p>5 MR. THOMPSON: -- congressional map.</p> <p>6 Correct?</p> <p>7 MR. DAVIS: I just want to make sure</p> <p>8 it's clear if, in fact, you're asking him about the</p> <p>9 2011 district, that y'all are on the same page.</p> <p>10 MR. THOMPSON: Thank you.</p> <p>11 Q. So do you agree with Secretary Merrill</p> <p>12 that District 7 in the 2011 Alabama congressional</p> <p>13 map appears to be racially gerrymandered?</p> <p>14 A. Well, again, I'm not a lawyer nor an</p> <p>15 expert. But I think it's clear there is a racial</p> <p>16 component to the finger that goes into Jefferson</p> <p>17 County.</p> <p>18 Q. And why do you say that?</p> <p>19 A. Well, I think because of shape and size</p> <p>20 and what have you. And, again, I haven't done -- I</p> <p>21 haven't looked at it specifically. But I imagine,</p> <p>22 obviously, the majority of the folks inside that</p> <p>23 finger, for lack of a better word, are probably</p> <p>24 African American and the majority of folks on the</p> <p>25 outside probably aren't.</p>	<p style="text-align: right;">Page 173</p> <p>1 that District 7 does not appear to be racially</p> <p>2 gerrymandered?</p> <p>3 A. I don't know how to answer that other</p> <p>4 than I tried to make it more geographically compact</p> <p>5 in shape.</p> <p>6 Q. Other than that, did you make --</p> <p>7 A. And not -- and not split precincts.</p> <p>8 Which I think a number of precincts were split in</p> <p>9 this version.</p> <p>10 Q. Other than trying to make it</p> <p>11 geographically compact and not splitting precincts,</p> <p>12 did you make any other changes for that purpose?</p> <p>13 A. No.</p> <p>14 MR. WALKER: Just so the record is</p> <p>15 clear, the witness' reference to "this version" was</p> <p>16 to the 2011 version.</p> <p>17 A. When I said they were split. Is that</p> <p>18 what you're talking -- yeah.</p> <p>19 MR. THOMPSON: Thank you.</p> <p>20 Q. And I'm referring to when you were</p> <p>21 drawing the 2021 map now. So thank you for the</p> <p>22 clarification.</p> <p>23 Did you specifically make any changes in</p> <p>24 drawing the 2021 map to ensure that District 7 does</p> <p>25 not appear to be racially gerrymandered?</p>

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<p style="text-align: right;">Page 174</p> <p>1 A. No, other than -- other than making the</p> <p>2 district more compact and more geographically</p> <p>3 contiguous.</p> <p>4 Q. Anything else?</p> <p>5 A. And not split precincts.</p> <p>6 Q. Anything beyond that?</p> <p>7 A. No.</p> <p>8 Q. Do you know if District 7 would still be</p> <p>9 majority black without that finger sticking up into</p> <p>10 Jefferson County?</p> <p>11 A. I do not.</p> <p>12 Q. Have you looked at that?</p> <p>13 A. No. But, of course, it's not really a</p> <p>14 finger anymore. It was basically the southwestern</p> <p>15 part of the county.</p> <p>16 Q. In drawing the 2021 congressional map,</p> <p>17 were you asked to consider anything about race when</p> <p>18 drawing District 7?</p> <p>19 A. No.</p> <p>20 Q. Did you consider anything about race</p> <p>21 when drawing District 7?</p> <p>22 A. No.</p> <p>23 Q. And you say "No." That was before the</p> <p>24 week before you submitted this to the special</p> <p>25 session, correct?</p>	<p style="text-align: right;">Page 176</p> <p>1 A. No.</p> <p>2 Q. Educational level?</p> <p>3 A. No.</p> <p>4 Q. Favorite football team?</p> <p>5 A. No.</p> <p>6 Q. Voter turnout?</p> <p>7 A. No, sir.</p> <p>8 Q. Election results to assess party</p> <p>9 affiliation?</p> <p>10 A. No.</p> <p>11 Q. Were you asked to consider anything</p> <p>12 about race when drawing any of the other districts?</p> <p>13 A. I was not.</p> <p>14 Q. Did you consider anything about race</p> <p>15 when drawing Districts 1 through 6?</p> <p>16 A. I did not.</p> <p>17 Q. Did you consider whether it would be</p> <p>18 possible to create a second black majority district</p> <p>19 when drawing the 2021 congressional map?</p> <p>20 A. I did.</p> <p>21 Q. When did you make that -- when did you</p> <p>22 consider that?</p> <p>23 MR. WALKER: I'm going to assert the</p> <p>24 attorney-client privilege.</p> <p>25 THE REPORTER: I'm sorry?</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Correct. But even once we turned race</p> <p>2 on, nobody asked me to make any changes to District</p> <p>3 7 or any other district.</p> <p>4 Q. And did you make any changes to District</p> <p>5 7 at that point?</p> <p>6 A. No.</p> <p>7 Q. Did you look at the racial makeup of</p> <p>8 certain neighborhoods that week before the special</p> <p>9 session?</p> <p>10 A. I did not.</p> <p>11 Q. Did you take into account any of the</p> <p>12 other characteristics of the black voting age</p> <p>13 population when drawing District 7?</p> <p>14 A. Help me with that one.</p> <p>15 Q. Similar to what I asked before. Did you</p> <p>16 take into account different socioeconomic factors</p> <p>17 within the black voting age population?</p> <p>18 A. No, sir, I did not.</p> <p>19 Q. Attitudes?</p> <p>20 A. No, sir.</p> <p>21 Q. Interests?</p> <p>22 A. No.</p> <p>23 Q. Type of employment?</p> <p>24 A. No.</p> <p>25 Q. Income?</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. WALKER: I'm asserting the</p> <p>2 attorney-client privilege in response to that</p> <p>3 question.</p> <p>4 MR. THOMPSON: To the question of when?</p> <p>5 MR. WALKER: He can answer when.</p> <p>6 Q. When did you consider whether making a</p> <p>7 -- excuse me. Let me ask the question again.</p> <p>8 When did you consider whether it would</p> <p>9 be possible to create a second majority black</p> <p>10 district?</p> <p>11 A. After we got the final census results.</p> <p>12 So early September.</p> <p>13 Q. Did anyone ask you to consider that?</p> <p>14 MR. WALKER: Objection.</p> <p>15 MR. THOMPSON: Was that an instruction</p> <p>16 not to answer, or just an objection?</p> <p>17 MR. WALKER: I think he can tell you</p> <p>18 that I asked him to consider that.</p> <p>19 Q. I'll go ahead and let you --</p> <p>20 A. Dorman Walker asked me to take -- to</p> <p>21 look at it, yes.</p> <p>22 Q. Did you attempt to draw such a plan?</p> <p>23 MR. WALKER: Objection. I instruct the</p> <p>24 witness not to answer. It's privileged.</p> <p>25 Q. Beyond your discussion with Mr. Walker,</p>

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<p style="text-align: right;">Page 178</p> <p>1 did you discuss with anyone else the possibility of 2 creating a second majority black district? 3 A. I did not. 4 Q. Do you agree that it would be possible 5 to create a second majority black district in 6 Alabama? 7 MR. DAVIS: Object to the form. 8 MR. WALKER: Same objection. 9 THE WITNESS: Does that mean I'm not 10 supposed to answer? 11 MR. WALKER: It's an objection to the 12 form of the question. 13 A. I think it would be possible. It's a 14 question of whether -- how many counties and 15 precincts you feel comfortable splitting to do so 16 and how -- what the shape and size and scope of it 17 would be. 18 Q. Would it be possible to create a second 19 majority black district and still comply with the 20 reapportionment committee redistricting guidelines? 21 A. I would not think so. 22 Q. Why not? 23 A. Well, I can't say every -- some of the 24 plans that were submitted that did that either 25 paired incumbents or disallowed cores of districts</p>	<p style="text-align: right;">Page 180</p> <p>1 A. I don't think I have. 2 Q. Does this appear to be a list of the 3 congressional plans that were introduced in the 2021 4 special session? 5 A. It does. 6 Q. Did you review any of these maps? 7 A. I looked at most all of them, yes. 8 Q. Earlier today you made a distinction 9 between looking at and reviewing. 10 A. Well, because a couple of these plans I 11 know were put into the system very, very late in the 12 process. So my quote, unquote review of them may 13 have been ten minutes. 14 Q. Which plans were those? 15 A. Well, Senator Coleman's plan. Senator 16 Hatcher's plan, I think, came in very late. A 17 couple of these others which are full plans, 18 obviously, but they were more amendments. Like 19 Waggoner and Barfoot were done on the last day. So 20 I looked at them, but I didn't have very long to 21 look at them. 22 Q. Did you have an opportunity to review 23 the Holmes congressional plan? 24 A. Yeah. Again, that was basically a 25 change for Congressman Moore when we were discussing</p>
<p style="text-align: right;">Page 179</p> <p>1 or made an inordinate number of splits or had 20 2 counties in a congressional district or some other 3 thing that was not positive in our guidelines. 4 Q. You said some of the other plans that 5 were submitted. I know we referenced this way back 6 earlier there morning -- 7 A. Yes. 8 Q. -- that there were, you said, 9 approximately 41 plans that were offered at some 10 point in the special -- 11 A. Not congressional. All the -- all the 12 whole. That was all. That was legislative, that 13 was everything. 14 Q. Understood. This may help. 15 16 (Plaintiff's Exhibit 9 was 17 marked for identification.) 18 19 Q. I'm marking Plaintiff's Exhibit 9. This 20 is another document that was produced in this 21 lawsuit. It's Bates number RC 000007. And I will 22 represent to you that the file name for this 23 document is Congressional Plans Introduced in 2021 24 Special Session. 25 Have you seen this document before?</p>	<p style="text-align: right;">Page 181</p> <p>1 the whole Escambia versus Monroe thing. So it 2 was -- it was not really a whole -- it was a whole 3 plan. But the changes were very specific to 4 Congressman Moore. So yes, I'm familiar with it. 5 Q. Did you have an opportunity to review 6 the Faulkner congressional plan two? 7 A. I did. Those were changes that were 8 primarily in Jefferson County. Again, the vast 9 majority of the plan was the same this as the 10 Pringle plan. So I was familiar with those changes. 11 Q. You may or may not know the answer to 12 this. There's only one Faulkner plan listed here, 13 but it's numbered two. Do you know if there was a 14 Faulkner plan one? 15 A. I don't know. I don't know. 16 Q. It seems to be like the school prank 17 where you number the pigs one, two, and four. 18 A. One would guess there would be a one. 19 But I don't -- I don't know that. 20 MR. WALKER: I think that's the best 21 extraneous comment in a deposition I've ever heard. 22 Q. Understood. 23 Then did you review the Singleton 24 congressional plans? And there's three of those 25 here.</p>

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<p style="text-align: right;">Page 182</p> <p>1 A. The first one, the whole county plan, I</p> <p>2 did because that was a plan that was submitted to</p> <p>3 public hearings along the way and had been in the</p> <p>4 office for quite a while. So yes, I did. I did</p> <p>5 have more time to look at that one, yes.</p> <p>6 Q. And that's plan one, the --</p> <p>7 A. Plan one, yeah, SB-10. Yes, sir.</p> <p>8 Q. I'm sorry. Go ahead.</p> <p>9 A. Yes, plan one, SB-10.</p> <p>10 Q. And are you aware that that one was</p> <p>11 submitted by the League of Women Voters?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And there is also two other plans, plan</p> <p>14 two and plan three. Did you have an opportunity to</p> <p>15 review those?</p> <p>16 A. Much more quickly. I mean, they were</p> <p>17 offshoots of the initial plan that just changed</p> <p>18 deviation for the most part.</p> <p>19 Q. I want to walk through those, the Holmes</p> <p>20 plan, the Faulkner plan, and the Singleton plan.</p> <p>21 Starting with the Holmes plan, why did</p> <p>22 you review that one?</p> <p>23 A. I reviewed that because that was put in</p> <p>24 essentially for Congressman Moore because he did not</p> <p>25 want to pick up another county. And instead of</p>	<p style="text-align: right;">Page 184</p> <p>1 Q. Was that the only reason you didn't make</p> <p>2 those changes?</p> <p>3 A. Primarily. I didn't think it was a good</p> <p>4 -- first of all, it's 739 people. It's not really</p> <p>5 -- you couldn't make a case that Congressman Moore</p> <p>6 was going to lose re-election over gaining 739</p> <p>7 republicans in Escambia County.</p> <p>8 So I was not concerned about what it did</p> <p>9 to his district. I was concerned about the fairness</p> <p>10 issue of putting all of the splits in one</p> <p>11 congressional district.</p> <p>12 Q. Were there any other reasons why you</p> <p>13 didn't incorporate those changes in the Holmes plan</p> <p>14 into your map?</p> <p>15 A. That was -- that was the primary reason.</p> <p>16 Q. Were you asked by anybody to review the</p> <p>17 Holmes congressional plan?</p> <p>18 A. Well, when it was offered on the</p> <p>19 floor -- I'm not sure where it was offered. The</p> <p>20 house floor maybe. This doesn't say on here.</p> <p>21 But whatever chair where that was being</p> <p>22 offered asked me to, I'm sure, tell him what I knew</p> <p>23 about the Holmes plan.</p> <p>24 Q. What did you tell him?</p> <p>25 MR. WALKER: You can tell him.</p>
<p style="text-align: right;">Page 183</p> <p>1 splitting Escambia between 1 and 2, he wanted to</p> <p>2 split Monroe between 1 and 7 so that District 7</p> <p>3 would pick up an additional county and he would not,</p> <p>4 and then make the corresponding change in Montgomery</p> <p>5 to offset the 739 people that were needed to get 1</p> <p>6 to zero deviation. To my knowledge, those were the</p> <p>7 only changes.</p> <p>8 Q. You had had conversations with</p> <p>9 Congressman Moore when you were creating your map,</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. Were these changes in the Moore --</p> <p>13 excuse me.</p> <p>14 Were these changes in the Holmes plan</p> <p>15 changes that you did not want to or did not for some</p> <p>16 reason make in the 2021 map that you drew?</p> <p>17 A. That's correct.</p> <p>18 Q. And why did you not make those changes?</p> <p>19 A. Because I didn't think it was fair to</p> <p>20 put the majority of split counties into the 7th</p> <p>21 District.</p> <p>22 Q. Why not?</p> <p>23 A. I just didn't think any one district</p> <p>24 should have to have four split counties when other</p> <p>25 districts only had one.</p>	<p style="text-align: right;">Page 185</p> <p>1 THE WITNESS: I thought you didn't want</p> <p>2 me to --</p> <p>3 MR. WALKER: You can tell him.</p> <p>4 A. I told him that I didn't -- I didn't</p> <p>5 think that was a good change to our map because,</p> <p>6 again, it put all of -- not all. But put another</p> <p>7 split into the 7th District. Which I didn't think</p> <p>8 it was equitable to put most of the splits in one</p> <p>9 congressional district.</p> <p>10 Q. Did you tell him anything else?</p> <p>11 A. That's basically it.</p> <p>12 Q. Did you provide any evaluations or</p> <p>13 recommendations regarding that map?</p> <p>14 A. Other than voting it down, no. I</p> <p>15 suggested they not vote for it.</p> <p>16 Q. Moving to the Faulkner congressional</p> <p>17 plan two.</p> <p>18 A. Yes.</p> <p>19 Q. Why did you review that map?</p> <p>20 A. That was the change where I had put</p> <p>21 Homewood back together that made a few people in</p> <p>22 Jefferson County, I guess, unhappy.</p> <p>23 So representative Faulkner, who is from</p> <p>24 Jefferson County, had a map that took the three</p> <p>25 Homewood precincts out of District 7 and put them</p>

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<p style="text-align: right;">Page 186</p> <p>1 into District 6, and took four precincts in the</p> <p>2 Center Point area, which is the northern end of</p> <p>3 District 7, and put those back into District 7. So</p> <p>4 I reviewed those changes.</p> <p>5 Q. Similar to before, were you asked by</p> <p>6 anybody to review that plan?</p> <p>7 A. I was. And whatever -- again, I think</p> <p>8 these were offered in the house. So I think it</p> <p>9 probably would have been Representative Pringle that</p> <p>10 asked me for a quick analysis of what the plan</p> <p>11 changes were.</p> <p>12 Q. And what did you tell him?</p> <p>13 A. I told him that it moved the Homewood</p> <p>14 area into District 6, and it took those four</p> <p>15 precincts at the northern end of district -- who</p> <p>16 were in District 7 and added them back into District</p> <p>17 7.</p> <p>18 And I allowed as how I didn't think that</p> <p>19 was really a good thing to do because it eliminated</p> <p>20 some of my geographical compactness of what I was</p> <p>21 trying to do when we were adding in western</p> <p>22 Jefferson and not extending the quote, unquote</p> <p>23 finger further north into Jefferson County.</p> <p>24 Q. To your knowledge, did any of the</p> <p>25 changes from your plan to the Faulkner plan have to</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Not that comes to mind, no.</p> <p>2 Q. Were you asked by anybody to review the</p> <p>3 Singleton plan?</p> <p>4 A. Again, I was when it was offered in the</p> <p>5 house or senate -- I guess it was offered on the</p> <p>6 senate floor maybe first. Whichever chair of</p> <p>7 wherever it was offered, I was asked to comment on</p> <p>8 it.</p> <p>9 Q. And what did you tell that chairperson?</p> <p>10 A. Well, the initial Singleton plan was not</p> <p>11 a zero deviation plan. So it really didn't meet our</p> <p>12 guidelines. I also think it paired a couple of</p> <p>13 incumbents, if I'm remembering the plan correctly,</p> <p>14 in the 3rd District. I think it put in -- put maybe</p> <p>15 Shelby County in the 3rd. So it would have paired</p> <p>16 Gary Palmer and Mike Rogers. And it wasn't to zero</p> <p>17 deviation. Also, it didn't have a majority black</p> <p>18 district in it.</p> <p>19 Q. Was that an issue to you, that there's</p> <p>20 not a majority black district?</p> <p>21 A. Yeah. Well, it -- it was an observation</p> <p>22 that it did not have a majority black district.</p> <p>23 Q. Does that matter for any particular</p> <p>24 reason to you?</p> <p>25 A. Well, it matters -- again, I'm not a</p>
<p style="text-align: right;">Page 187</p> <p>1 do with any racial factors?</p> <p>2 A. I don't know -- I mean, I don't know</p> <p>3 about the motivations of who drew the Faulkner plan.</p> <p>4 Q. Are you aware of any racial</p> <p>5 considerations that were taken in account in drawing</p> <p>6 the Faulkner plan?</p> <p>7 A. I'm not.</p> <p>8 MR. WALKER: Objection to form. You may</p> <p>9 answer.</p> <p>10 Q. What about the Singleton plan? Why did</p> <p>11 you review that plan?</p> <p>12 A. Well, that was one that -- the initial</p> <p>13 Singleton plan was one that was offered at a number</p> <p>14 of public -- virtually every public hearing, I</p> <p>15 believe. It had been in existence for quite a</p> <p>16 while.</p> <p>17 So I looked at it for what it -- you</p> <p>18 know, for what it was doing. And I had a little</p> <p>19 more time to look at it, actually, than some of</p> <p>20 these other ones that came in at the last minute.</p> <p>21 Q. Do you know what feedback there was from</p> <p>22 the public hearings on the Singleton plan?</p> <p>23 A. Not specifically. I really don't.</p> <p>24 Q. Did you ever hear of any public feedback</p> <p>25 on the Singleton plan?</p>	<p style="text-align: right;">Page 189</p> <p>1 lawyer. But I suppose there would be some question</p> <p>2 to how well it comported with Section 2 of the</p> <p>3 Voting Rights Act. But, again, that wasn't my major</p> <p>4 concern with it.</p> <p>5 Q. There were two subsequent Singleton</p> <p>6 plans, plan two and three.</p> <p>7 A. Yeah.</p> <p>8 Q. Both of which you stated -- and it</p> <p>9 describes here in Exhibit 9 as having adjustments</p> <p>10 for population deviation.</p> <p>11 Were there any other changes in</p> <p>12 Singleton plan two and three other than changes to</p> <p>13 deviation, to your knowledge?</p> <p>14 A. Not to my knowledge. And, again, I</p> <p>15 looked at -- I didn't look at these plans</p> <p>16 extensively. But to my knowledge, it was just a</p> <p>17 change in deviation.</p> <p>18 Q. Were those other observations that you</p> <p>19 made to Singleton plan one regarding incumbents</p> <p>20 being paired up against each other, a lack of a</p> <p>21 black majority district, any other observations you</p> <p>22 made, were any of those addressed with Singleton</p> <p>23 plan two or three?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. Were you asked by anybody to review</p>

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<p style="text-align: right;">Page 190</p> <p>1 Singleton plan two and three?</p> <p>2 A. Again, in whatever body they were</p> <p>3 offered in, the chair would have asked me about</p> <p>4 them, yes.</p> <p>5 Q. Do you recall what recommendations or</p> <p>6 observations you provided?</p> <p>7 A. Basically the same ones. The narrow</p> <p>8 deviation, again while a more narrow deviation, was</p> <p>9 not to zero deviation. And I think it still paired</p> <p>10 the incumbents. And as I remember, the BVAPs on the</p> <p>11 districts were very similar between -- among the</p> <p>12 three. So I don't think it changed any of those</p> <p>13 things.</p> <p>14 Q. You also mentioned that you looked at</p> <p>15 briefly the Coleman plan, Hatcher plan, Waggoner</p> <p>16 plan, and Barfoot --</p> <p>17 A. Yeah.</p> <p>18 Q. -- plan.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Did you make any observations from your</p> <p>21 looking at or review of those?</p> <p>22 A. No. Well, the Barfoot plan was sort of</p> <p>23 just the senate version of the Holmes plan making</p> <p>24 the change for Representative Moore.</p> <p>25 The Wagner plan was basically Faulkner</p>	<p style="text-align: right;">Page 192</p> <p>1 plan, is it a similar response as you had to the</p> <p>2 other ones, that you were asked to look at those by</p> <p>3 whoever was presenting them on the floor?</p> <p>4 A. Whoever was managing the time, the time</p> <p>5 on the floor.</p> <p>6 Q. And as to each of those, do you recall</p> <p>7 what your feedback was?</p> <p>8 A. Yeah. I mean, obviously, the Waggoner</p> <p>9 plan was the same as the Faulkner plan. So I didn't</p> <p>10 think it was a good change. And the Barfoot plan</p> <p>11 was essentially the same as the Holmes plan. So I</p> <p>12 didn't think that was a good change. And the</p> <p>13 Waggoner three was just a compilation of the two of</p> <p>14 them added together, which didn't do anything to</p> <p>15 move the bar.</p> <p>16 Q. What about the Coleman plan?</p> <p>17 A. The Coleman plan, again, I didn't look</p> <p>18 -- didn't have a chance to look at very much. I</p> <p>19 believe it paired two incumbents in 1, in District</p> <p>20 1, Carl and Moore. And it certainly didn't respect</p> <p>21 the cores of districts because I think it had</p> <p>22 District -- District 7 went from Mobile to</p> <p>23 Tuscaloosa maybe.</p> <p>24 Anyway, again, I didn't spend a lot of</p> <p>25 time on either of those, looking at either of those</p>
<p style="text-align: right;">Page 191</p> <p>1 and Barfoot put together or Barfoot and Holmes put</p> <p>2 together. It also made the Moore change, but made</p> <p>3 the Faulkner change in Jefferson County. So they</p> <p>4 were just sort of different versions or compilations</p> <p>5 of those two things.</p> <p>6 Q. I'm going to stop you right there</p> <p>7 because I think there's -- it looks like there's two</p> <p>8 Waggoner plans here. Which one are you referring</p> <p>9 to, three or one?</p> <p>10 A. Three was the combination. One -- one</p> <p>11 was essentially the Faulkner version of the plan,</p> <p>12 only in a -- drawn up by a senator or offered by a</p> <p>13 senator.</p> <p>14 Q. And I interrupted you there. I think</p> <p>15 the only other plan we haven't discussed yet is the</p> <p>16 Hatcher plan.</p> <p>17 A. Right. And, again, that came in, if I</p> <p>18 remember correctly, the night before it was offered</p> <p>19 on the floor. So I really looked at it for</p> <p>20 literally ten minutes before whoever -- wherever it</p> <p>21 was offered. I guess on the senate side. So I</p> <p>22 didn't do a very deep analysis of the Hatcher plan.</p> <p>23 Q. For each of these plans that you said</p> <p>24 you just looked at briefly, the Coleman plan, the</p> <p>25 Waggoner plans, the Barfoot plan, and the Hatcher</p>	<p style="text-align: right;">Page 193</p> <p>1 plans.</p> <p>2 Q. What about the Hatcher plan?</p> <p>3 A. The Hatcher plan I think was obviously a</p> <p>4 two black district plan.</p> <p>5 THE REPORTER: Two?</p> <p>6 A. Two black district plan. I do think it</p> <p>7 -- I think it paired incumbents, but maybe I'm</p> <p>8 wrong. Again, geographically it was not very</p> <p>9 compact. I think it went from Mobile to Russell</p> <p>10 essentially on one of the black districts.</p> <p>11 So I didn't think it -- I didn't think</p> <p>12 it followed our guidelines very well in terms of</p> <p>13 compactness.</p> <p>14 Q. Other than compactness --</p> <p>15 A. And splits. I think it also had like 13</p> <p>16 county splits, where the Pringle plan had six. I</p> <p>17 think it split a lot more precincts.</p> <p>18 Q. Other than compactness and splitting</p> <p>19 precincts, was there any other reason that you felt</p> <p>20 that the Hatcher plan did not comply with the</p> <p>21 guidelines?</p> <p>22 A. Those were the main issues.</p> <p>23 Q. Were there any other issues?</p> <p>24 A. I don't think so.</p> <p>25 Q. And with the Singleton plan, were there</p>

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<p style="text-align: right;">Page 194</p> <p>1 any reasons why you felt that the Singleton plan did 2 not comply with the redistricting guidelines? 3 A. Yeah. Well, the initial Singleton plan 4 was not to zero deviation. It did pair incumbents 5 again in the 6th -- in the 3rd District, it had two 6 incumbents together, Moore and -- not Moore. Palmer 7 and Mike Rogers. 8 Q. Any other reasons? 9 A. And, again, it didn't have a majority 10 black district. 11 Q. Speaking of that, when you drew your 12 map -- which on this table, I would assume that's 13 the Pringle congressional plan. Correct? 14 A. Yes, sir. 15 Q. When you drew the 2021 congressional 16 map -- remind me. Did you start with drawing 17 District 7? 18 A. No. Actually, I started -- I started 19 with District 5 because I knew it had to spill into 20 4. And I had to do that before I could do much else 21 there. 22 Q. What order did you go in for drawing the 23 districts after that? 24 A. I basically moved down -- moved down the 25 state. I did 5 to 4. And then the changes that 4</p>	<p style="text-align: right;">Page 196</p> <p>1 A. I think if it had come back under 50 2 percent, in consultation with legal counsel, I 3 assume we would have, under the guidelines, looked 4 for a basis and evidence to see if one existed to 5 add African Americans to the district. 6 Q. Did you draw any other maps other than 7 -- let me take a step back. 8 Did you draw any other congressional 9 maps other than the HB-1 Pringle congressional plan 10 that was ultimately enacted? 11 A. This cycle -- I don't know what time 12 frame we're talking about. 13 Q. I'll try again. Sorry. 14 In drawing the 2021 congressional maps, 15 through that process you drew the map that was 16 ultimately enacted, correct? 17 A. Yes, sir. 18 Q. Did you draw any other maps in that 19 cycle -- 20 MR. WALKER: I'm going to -- 21 Q. -- for the congressional plan? 22 MR. WALKER: -- object to the extent 23 that -- and you may not be intending to. You're 24 asking him whether he tried to draw a two majority 25 black district --</p>
<p style="text-align: right;">Page 195</p> <p>1 -- putting Cherokee back together in 3, putting 2 Blount back together in 6, corresponding changes in 3 Tuscaloosa in 7. I basically worked down the map 4 from there. 5 Q. And you stated that you did not look at 6 the racial data in drawing the 2021 map until the 7 week before the special session, correct? 8 A. Correct. 9 Q. When you did review the racial data, if 10 it had shown that District 7 was below 50 percent 11 black voting age population, what would you have 12 done? 13 A. I would have talked to legal counsel 14 about what steps to take at that point. 15 Q. Do you believe that you would have 16 needed to make modifications to make the black 17 voting age population percentage higher than 50 18 percent? 19 MR. WALKER: Object to the form, calls 20 for speculation. 21 Q. You can answer. 22 A. I'm sorry. Say that again. 23 MR. THOMPSON: Can I have the question 24 read back? 25 (Record read.)</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. I'm just asking if you drew any other 2 maps at all. 3 MR. WALKER: And my instruction to you 4 is if you did anything at the instruction of me 5 alone, then that would not be part of your answer. 6 A. Other than that, no. 7 Q. I've gone a little over an hour there, 8 but I wanted to finish up. I think I'm done with my 9 questions for now. So I think we'll take a break 10 and then allow some other folks to ask you some 11 questions. Is that fair? 12 A. That's fair. 13 THE VIDEOGRAPHER: We are off the 14 record. The time is 2:28 p.m. 15 (Recess was taken.) 16 THE VIDEOGRAPHER: We are back on the 17 record. The time is now 2:47 p.m. 18 MR. THOMPSON: At this time, I'm going 19 to pass the questions to Mr. Blacksher. 20 EXAMINATION BY MR. BLACKSHER: 21 Q. Good afternoon, Mr. Hinaman. 22 A. Good afternoon. 23 Q. So it was Dorman Walker who told you you 24 were required to achieve zero population deviation; 25 is that right?</p>

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<p style="text-align: right;">Page 198</p> <p>1 MR. WALKER: Object to the form.</p> <p>2 Q. You know, I'm having -- I've had trouble</p> <p>3 hearing you throughout. So I'm going to have to ask</p> <p>4 you to speak up a little louder.</p> <p>5 What was your last response?</p> <p>6 MR. WALKER: Are you talking to me, Jim?</p> <p>7 MR. BLACKSHER: The witness didn't</p> <p>8 respond? That was you?</p> <p>9 MR. WALKER: That was I who said "Object</p> <p>10 to the form." He doesn't make objections.</p> <p>11 MR. BLACKSHER: Oh, you said objection?</p> <p>12 MR. WALKER: Yes.</p> <p>13 Q. Okay. I'm going back to what you said</p> <p>14 in your examination, your direct examination, I</p> <p>15 guess we call it, where you said you were advised</p> <p>16 that you needed to use zero deviation in your plan.</p> <p>17 Is that right?</p> <p>18 A. That's correct. Under two criteria for</p> <p>19 redistricting, B, "Congressional districts shall</p> <p>20 have minimal population deviation."</p> <p>21 I was told by counsel that that was zero</p> <p>22 for six districts and plus one for one district.</p> <p>23 Q. And when you say "by counsel," you mean</p> <p>24 -- well, I didn't ask you. Were you advised by</p> <p>25 lawyers other than Dorman Walker?</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Okay. So if you read the West v. Hunt</p> <p>2 opinion -- let me ask this question -- do you recall</p> <p>3 the court saying that it felt compelled, because it</p> <p>4 was a court-ordered plan, to use zero deviation?</p> <p>5 A. I do not. As I said, I probably read it</p> <p>6 30 years ago. I certainly don't remember what it</p> <p>7 said today.</p> <p>8 Q. Were you advised to use zero deviation</p> <p>9 by anybody -- any lawyers in Washington, say,</p> <p>10 connected with the republican party, the RNC or --</p> <p>11 what was that other organization that you used</p> <p>12 letters for? NRRC or something?</p> <p>13 A. No. In terms of the -- are you talking</p> <p>14 about the 2021 plan?</p> <p>15 Q. The 2021 plan, yes.</p> <p>16 A. No, I did not speak to anybody at the</p> <p>17 NRCC or the RNC or anybody in Washington other than</p> <p>18 members of congress and their staffs.</p> <p>19 Q. Okay. NRCC, what does that stand for?</p> <p>20 A. National Republican Congressional</p> <p>21 Committee.</p> <p>22 Q. Okay. But they didn't give you any</p> <p>23 instructions or any advice about zero deviation?</p> <p>24 A. No, sir.</p> <p>25 Q. What about the members of congress in</p>
<p style="text-align: right;">Page 199</p> <p>1 A. No.</p> <p>2 Q. So it was Dorman who told you that</p> <p>3 minimal deviation means zero deviation?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. So you also drew the plan in</p> <p>6 1992. And did you read the opinion of the court in</p> <p>7 West v. Hunt, the 1992 opinion that adopted your</p> <p>8 plan?</p> <p>9 A. I'm sure I did in 1992 or '93. But I</p> <p>10 sure don't remember it today.</p> <p>11 Q. You don't recall -- well, let me ask you</p> <p>12 this: Did counsel tell you or remind you that in</p> <p>13 that decision, the three-judge court said that</p> <p>14 because it was a court-approved plan, a</p> <p>15 court-ordered plan, it felt constrained to have</p> <p>16 perfect or zero deviation. But that if the</p> <p>17 legislature had drawn the plan itself, it would have</p> <p>18 had greater leeway with respect to deviation?</p> <p>19 MR. WALKER: Objection.</p> <p>20 Q. Do you recall reading that?</p> <p>21 MR. WALKER: Jim, you've asked that</p> <p>22 question several ways. And one -- it could be</p> <p>23 interpreted in one way to be whether or not I gave</p> <p>24 him advice on that. If that's what you're asking, I</p> <p>25 object to that.</p>	<p style="text-align: right;">Page 201</p> <p>1 the Alabama delegation? Did they give you any</p> <p>2 instructions to use zero deviation?</p> <p>3 A. No, sir.</p> <p>4 MR. BLACKSHER: Eli, did I print out a</p> <p>5 copy of the passage from State of Alabama versus</p> <p>6 U.S. Department of Commerce that you can show him?</p> <p>7 MR. HARE: Let me see here.</p> <p>8 MR. BLACKSHER: It's got a highlighted</p> <p>9 section in it.</p> <p>10 MR. HARE: Yes.</p> <p>11 MR. BLACKSHER: Okay. Can you mark that</p> <p>12 as -- what did you say, PX 10?</p> <p>13 MR. HARE: Right. It's PX 10.</p> <p>14</p> <p>15 (Plaintiff's Exhibit 10 was</p> <p>16 marked for identification.)</p> <p>17</p> <p>18 MR. BLACKSHER: And show that to</p> <p>19 Mr. Hinaman</p> <p>20 Q. That, Randy, is the document that was</p> <p>21 filed by the State of Alabama, as you can see, in</p> <p>22 Montgomery's federal court against the census bureau</p> <p>23 and styled 21-211.</p> <p>24 And would you please read the</p> <p>25 highlighted part in Paragraph 116 of the State's</p>

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<p style="text-align: right;">Page 202</p> <p>1 complaint?</p> <p>2 A. The part --</p> <p>3 Q. Read it into the record.</p> <p>4 A. I must admit highlighting in it in blue</p> <p>5 makes it rather hard to read. But nevertheless.</p> <p>6 "Even at the higher census geography of</p> <p>7 Alabama's congressional districts, the November 2020</p> <p>8 demonstration data indicated that the differential</p> <p>9 privacy algorithm skewed the data enough to create</p> <p>10 population deviation on a level that courts have</p> <p>11 found in other contexts to violate the supreme</p> <p>12 court's equal population jurisprudence."</p> <p>13 Q. Thank you.</p> <p>14 And under that language is a table that</p> <p>15 shows what the State thought were errors caused by</p> <p>16 differential privacy in the demonstration. And they</p> <p>17 were congressional districts.</p> <p>18 Did counsel tell you that the State of</p> <p>19 Alabama thought that the zero deviation requirement</p> <p>20 was using flawed data, in their opinion?</p> <p>21 MR. WALKER: Objection to form. And I</p> <p>22 instruct the witness not to answer.</p> <p>23 Q. Okay. Are you going to follow counsel's</p> <p>24 advice not to answer my question, Mr. Hinaman?</p> <p>25 A. I am.</p>	<p style="text-align: right;">Page 204</p> <p>1 read into that into the record, please?</p> <p>2 MR. WALKER: You haven't highlighted the</p> <p>3 whole statement. You've highlighted Lines 5 through</p> <p>4 16. Is that what you want him to read?</p> <p>5 MR. BLACKSHER: Yes, the highlighted</p> <p>6 lines, please.</p> <p>7 A. "Most of Jackson County, particularly</p> <p>8 all of Jackson County -- practically all of Jackson</p> <p>9 County is in Congressional District 5. But there is</p> <p>10 a tiny little sliver of southern Jackson County</p> <p>11 that's in 4. And I understand about trying to get</p> <p>12 everything equalized in terms of population. But</p> <p>13 the very few people who live there very frequently</p> <p>14 think they're in District 5 and do not know who to</p> <p>15 vote for. And I would ask that you consider that</p> <p>16 when you are redistricting so that you don't have</p> <p>17 that tiny little sliver out of that county. It is</p> <p>18 in a section called Macedonia. Senator Livingston</p> <p>19 would know where I'm talking about, I'm sure."</p> <p>20 Q. Thank you.</p> <p>21 So did anyone on the reapportionment</p> <p>22 committee, the chairs or counsel, show you or tell</p> <p>23 you about that testimony?</p> <p>24 MR. WALKER: Objection as to what he may</p> <p>25 have been told my counsel. Otherwise, he may answer</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. So aside from what counsel told you,</p> <p>2 were you aware that the State of Alabama took the</p> <p>3 position in federal court that the -- that the 2020</p> <p>4 census, because of differential privacy, would not</p> <p>5 be reliable enough to use for zero -- for separating</p> <p>6 people at that level?</p> <p>7 A. I was not.</p> <p>8 MR. BLACKSHER: Eli, if you can find</p> <p>9 that passage from the public hearing at Northeast</p> <p>10 Alabama Community College.</p> <p>11 MR. HARE: I've got it right here.</p> <p>12 MR. BLACKSHER: And mark that as Exhibit</p> <p>13 11, please.</p> <p>14</p> <p>15 (Plaintiff's Exhibit 11 was</p> <p>16 marked for identification.)</p> <p>17</p> <p>18 MR. BLACKSHER: And show that to Randy,</p> <p>19 to Mr. Hinaman.</p> <p>20 Q. As you can see, this is a transcript of</p> <p>21 the reapportionment committee's hearing on September</p> <p>22 1 at Northeast Alabama Community College. And I've</p> <p>23 printed out Page 12 and highlighted it.</p> <p>24 Would you read the highlighted statement</p> <p>25 of one Toni McGriff who lives in Dutton? Would you</p>	<p style="text-align: right;">Page 205</p> <p>1 the question.</p> <p>2 A. I was not familiar with that testimony.</p> <p>3 But I did, of course, put Jackson County back</p> <p>4 together.</p> <p>5 Q. You sure did. And who paid the price</p> <p>6 for that? Lauderdale County?</p> <p>7 A. Well, you're comparing 17 people to</p> <p>8 43,000 or something. I'm not sure that's a fair</p> <p>9 comparison. But yes.</p> <p>10 Q. Was it 17 people in Jackson County?</p> <p>11 A. I'm making up that number. You're</p> <p>12 comparing a few people to many tens of thousands.</p> <p>13 But nevertheless.</p> <p>14 Q. In most of the cases on the 2021 plan,</p> <p>15 the enacted plan, for example, down in Escambia</p> <p>16 County where you had to put the eastern slice of</p> <p>17 Escambia into 2?</p> <p>18 A. Yeah, 739 people.</p> <p>19 Q. 739 people. Do you think that they're</p> <p>20 going to share the sentiment of Mr. Toni McGriff in</p> <p>21 Jackson County?</p> <p>22 A. They may very well.</p> <p>23 Q. And what I'm saying, what I'm trying to</p> <p>24 point out, can't we agree that most of these tiny</p> <p>25 splits to achieve zero population result in people</p>

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<p style="text-align: right;">Page 206</p> <p>1 being basically separated from their home county and</p> <p>2 put in a district where they really don't have much</p> <p>3 influence at all over the member of congress, right?</p> <p>4 A. In the Escambia County case, I would</p> <p>5 agree with that. Although looking at the map, there</p> <p>6 aren't many examples of that. Because most of the</p> <p>7 other splits in the enacted map are much larger</p> <p>8 segments of folks.</p> <p>9 Q. Okay. Now, you said that you began</p> <p>10 working on the congressional plan in May at some</p> <p>11 point; is that correct, when you found out that</p> <p>12 Alabama would have seven seats in congress</p> <p>13 apportioned to it?</p> <p>14 A. Yes, once we found out seven. And also</p> <p>15 the guidelines were passed on May 5th. I started</p> <p>16 work thereafter.</p> <p>17 Q. And you were using estimated census data</p> <p>18 to sort of rough out what that plan might look like;</p> <p>19 is that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And those estimated census data were</p> <p>22 only available for whole counties, right?</p> <p>23 A. I believe that's the case, yes.</p> <p>24 Q. So you were having to work with whole</p> <p>25 counties. And when the final census data came out,</p>	<p style="text-align: right;">Page 208</p> <p>1 answers were very accurate on what Maptitude had for</p> <p>2 estimates.</p> <p>3 So I didn't -- I didn't -- I lumped some</p> <p>4 counties together and I split some larger counties</p> <p>5 based on precincts, knowing that those numbers were</p> <p>6 not going to be very accurate, and then waited until</p> <p>7 we got the real numbers.</p> <p>8 Q. Okay. And when you got the real</p> <p>9 numbers, did you attempt to draw a whole county</p> <p>10 plan?</p> <p>11 A. I did not.</p> <p>12 Q. And why did you not attempt to do that?</p> <p>13 A. No one asked me to do that. And, again,</p> <p>14 my understanding of our guidelines would be that</p> <p>15 that would not have followed the proper deviation.</p> <p>16 Q. Take a look at our whole county --</p> <p>17 MR. BLACKSHER: Can you mark a copy -- I</p> <p>18 don't think it's been passed around yet -- just so</p> <p>19 we can be talking from something, the same thing?</p> <p>20 MR. HARE: This will be Plaintiff's</p> <p>21 Exhibit 12.</p> <p>22</p> <p>23 (Plaintiff's Exhibit 12 was</p> <p>24 marked for identification.)</p> <p>25</p>
<p style="text-align: right;">Page 207</p> <p>1 you simply had to adjust with the correct 2020</p> <p>2 legacy data; is that correct?</p> <p>3 A. That's correct. Although while the</p> <p>4 estimates captured the flavor of the changes that</p> <p>5 happened over the last ten years, meaning four</p> <p>6 districts were over and three districts were under</p> <p>7 and the estimates properly identified those</p> <p>8 districts, they didn't really capture the magnitude</p> <p>9 of it.</p> <p>10 Because I think the estimates had the</p> <p>11 7th District being 30,000 and some odd number under</p> <p>12 when it ended up being 54, and it had the 5th</p> <p>13 District being something like 23,000 over when it</p> <p>14 was really 43.</p> <p>15 So while it captured the over/under</p> <p>16 nature of the districts, it didn't -- it didn't do a</p> <p>17 particularly good job of capturing the ultimate</p> <p>18 numbers.</p> <p>19 Q. Did you attempt drawing a whole county</p> <p>20 plan at that point in May of 2021?</p> <p>21 A. No. I just -- no.</p> <p>22 Q. Why not?</p> <p>23 A. Well, I don't even consider it a plan.</p> <p>24 I mean, I was just lumping together -- and I do</p> <p>25 think I was able to split. I just don't think the</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. So think along with me, Mr. Hinaman,</p> <p>2 about how you might have attempted to reproduce your</p> <p>3 starting point of the plan, which was the 2011 plan,</p> <p>4 right?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And if you were going to attempt to take</p> <p>7 the 2011 plan and create whole districts and you</p> <p>8 start with Congressional District 7, then you would</p> <p>9 try to make Jefferson, Tuscaloosa, and Montgomery</p> <p>10 whole. And that's what this plan does, doesn't it?</p> <p>11 A. It does.</p> <p>12 Q. You would have attempted to keep as much</p> <p>13 of the black belt together as you could. And that's</p> <p>14 what this plan does, doesn't it?</p> <p>15 MR. WALKER: Objection. I'm not sure,</p> <p>16 Jim, the way you're phrasing your questions, what</p> <p>17 you're asking him. You seem to be telling him what</p> <p>18 he would have been doing and then -- I'm just</p> <p>19 confused.</p> <p>20 MR. BLACKSHER: I'm asking leading</p> <p>21 questions, Counsel. Is that all right?</p> <p>22 MR. WALKER: Well, you're allowed to ask</p> <p>23 leading questions. I just didn't understand what</p> <p>24 you were doing. So go ahead, if that's what you</p> <p>25 want to do.</p>

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<p style="text-align: right;">Page 210</p> <p>1 MR. BLACKSHER: Can you read the</p> <p>2 question back, please, Court Reporter? I'm sorry.</p> <p>3 (Record read.)</p> <p>4 MR. WALKER: Objection to form.</p> <p>5 A. It does, I guess. Hale and Perry I</p> <p>6 think would be considered part of the black belt,</p> <p>7 and that's in a different district. But by and</p> <p>8 large, you're correct, yes.</p> <p>9 Q. Switching gears for a minute. When you</p> <p>10 met with Congresswoman Sewell, do I understand you</p> <p>11 to say that she -- your testimony was that</p> <p>12 Congresswoman Sewell wanted to keep her district the</p> <p>13 way it is, adjusted for the population deviation</p> <p>14 known; is that correct?</p> <p>15 A. I would phrase it this way: I met with</p> <p>16 Congresswoman Sewell and told her her district was</p> <p>17 54,000 under. And I gave her some options of where</p> <p>18 it made, in my opinion anyway, sense to gain folks</p> <p>19 to make up that 54,000 difference. And then we</p> <p>20 worked through that on the map. That's how I would</p> <p>21 phrase it.</p> <p>22 Q. Did Congresswoman Sewell tell you she</p> <p>23 was opposed to attempting to draw two districts in</p> <p>24 which blacks could elect candidates of their choice?</p> <p>25 A. She did not. She didn't offer an</p>	<p style="text-align: right;">Page 212</p> <p>1 population in Montgomery -- in Tuscaloosa County,</p> <p>2 north Tuscaloosa County, with a population that</p> <p>3 extends into Montgomery County?</p> <p>4 A. I didn't offer that.</p> <p>5 Q. What did -- you said something in your</p> <p>6 earlier examination about considering that option.</p> <p>7 A. If I did, I didn't mean to. I did not</p> <p>8 consider that option.</p> <p>9 Q. You did not consider that option?</p> <p>10 A. No, I did not.</p> <p>11 Q. Why not?</p> <p>12 A. Because I started with her existing</p> <p>13 cores of districts and I looked at what she needed</p> <p>14 to gain, and I suggested areas that she may wish to</p> <p>15 gain in. And we worked through the map and made</p> <p>16 those changes.</p> <p>17 Q. Well, I mean, was the -- is the little</p> <p>18 -- the extension of District 7 that goes into</p> <p>19 Montgomery County part of the core of that</p> <p>20 district, in your opinion?</p> <p>21 A. It may be now. It probably wasn't at</p> <p>22 the -- obviously, I don't think it existed at the</p> <p>23 beginning. It's a lot of people. I mean, I don't</p> <p>24 know the exact number. We can obviously look it</p> <p>25 up. But it's --</p>
<p style="text-align: right;">Page 211</p> <p>1 opinion, to my knowledge, on that issue.</p> <p>2 Q. Say again.</p> <p>3 A. She didn't offer an opinion on that, to</p> <p>4 my knowledge.</p> <p>5 Q. And you didn't ask her about it?</p> <p>6 A. I did not.</p> <p>7 Q. Were you aware of all of the</p> <p>8 nongovernmental organizations and grass roots</p> <p>9 organizations in Alabama who have been urging the</p> <p>10 legislature to draw two districts from which blacks</p> <p>11 can elect candidates of their choice?</p> <p>12 A. I'm not sure that I was that aware of it</p> <p>13 in our initial meetings in May. Obviously, once</p> <p>14 public hearings were held and your whole county plan</p> <p>15 came out and so forth and so on, I was obviously</p> <p>16 more aware of it at that point.</p> <p>17 Q. Okay. So what you're saying is that you</p> <p>18 simply sat down with Ms. Sewell and made suggestions</p> <p>19 on how to increase -- get 53,000 and some odd</p> <p>20 additional population in District 7, correct?</p> <p>21 A. That's correct, and keeping her existing</p> <p>22 -- the core of her existing district together.</p> <p>23 Q. And didn't I hear you say you suggested</p> <p>24 that one option might be to making Tuscaloosa County</p> <p>25 and Montgomery County whole; that is, swapping the</p>	<p style="text-align: right;">Page 213</p> <p>1 Q. Well, I can tell you that based on the</p> <p>2 data that Dorman Walker and the reapportionment</p> <p>3 committee provided to us, the population of</p> <p>4 District 7 in Montgomery County is 62,519.</p> <p>5 A. Okay.</p> <p>6 Q. And the population of the portion of</p> <p>7 Tuscaloosa County that's in District 4, the</p> <p>8 northern part of Tuscaloosa County, is 42,770. So</p> <p>9 there's about a 20,000 difference between those two</p> <p>10 split counties making them whole in District 7.</p> <p>11 MR. BLACKSHER: So I'm going to ask</p> <p>12 Eli, if he would, to mark up those two documents</p> <p>13 that show -- that are labeled Plan Tuscaloosa and</p> <p>14 Montgomery Whole and show it to Mr. Hinaman.</p> <p>15 MR. HARE: I'm going to mark them as</p> <p>16 -- the map as Plaintiff's 13, and then the chart or</p> <p>17 the data sheet as Plaintiff's 14, Jim.</p> <p>18</p> <p>19 (Plaintiff's Exhibits 13&14</p> <p>20 were marked for identification.)</p> <p>21</p> <p>22 Q. I'll tell you, Mr. Hinaman, that I did</p> <p>23 this with Dave's Redistricting app. Are you</p> <p>24 familiar with Dave's Redistricting app?</p> <p>25 A. I've heard of it. I've never used it.</p>

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<p style="text-align: right;">Page 214</p> <p>1 Q. Okay. And I did exactly what I just 2 suggested. I made -- took Montgomery County 3 completely out of District 7, and I put all of 4 Tuscaloosa County into District 7. And that 20,000 5 difference I got out of Jefferson County. 6 Otherwise, it looks pretty close to 7 the map that you ended up drawing and that was 8 enacted. But, of course, would you -- would agree 9 that it otherwise (inaudible) the one that you 10 drew? 11 A. Yeah. Obviously, there's a split in 12 Blount and a split in Etowah that I don't have. 13 But yeah. 14 Q. Well, this is a good point. When you 15 talk about making changes in District 7 like I just 16 did with Dave's, you end up requiring changes in 17 several of the surrounding districts. 18 I mean, for example, because District 19 6 lost population to District 7, I elected to get 20 some population out of Blount. And that ended up 21 splitting Blount. 22 A. Right. 23 Q. And because Montgomery County went 24 into District 2, I ended up having to do a little 25 split of Elmore County, right?</p>	<p style="text-align: right;">Page 216</p> <p>1 didn't -- this is drawn with precincts. So you're 2 going to have to split some precincts, right? 3 A. Yes, sir. 4 Q. But that usually can be done after you 5 have achieved the goal you set out to in broader 6 terms in your districting scheme, right? 7 A. Sure. 8 Q. There are a lot of ways that you can 9 split precincts or counties in order to achieve 10 this -- this sacred zero deviation objective. And 11 yet you didn't consider this option at all when you 12 were going over the plan with Congresswoman Sewell; 13 is that correct? 14 A. That's correct. 15 Q. She did not -- she did not have an 16 option to consider this arrangement, right? 17 MR. WALKER: Objection to form. 18 A. Obviously, she could have said how 19 about if I get all of Tuscaloosa County and come 20 out of Montgomery? Which she said neither. 21 Q. Well, I wonder if the reason she said 22 neither is because it turns out that doing that 23 reduces the BVAP, the black voting age population, 24 to 49.79 percent? 25 MR. WALKER: For CD 7?</p>
<p style="text-align: right;">Page 215</p> <p>1 A. Yes, sir. 2 Q. And on up the line, if you will. But, 3 of course, I didn't have to interfere with the 4 split you made in Lauderdale County. And these are 5 -- and this is not zero deviation. 6 If you look to the left in that table, 7 you will see that there are as many as 471 people 8 in District 2 who are going to have to be -- I'm 9 sorry. District 3 who are going to have to be 10 taken out, right? 11 A. Yeah. I'll take -- I can't find that 12 number on this sheet. But I'll take your word for 13 it. 14 Q. Well, it's on the map. 15 A. Oh, I'm sorry. Yeah, I see it. Thank 16 you. I was looking on the corresponding number 17 sheet. Sorry. 18 Q. The point I want to make here is isn't 19 it true when you're drawing maps and you get to 471 20 people who have to be moved in order to get to zero 21 deviation, you go down to the block level, right? 22 A. Most times, yeah. Precincts aren't 23 going to have an exact number or that small a 24 number. 25 Q. And I'll represent to you that I</p>	<p style="text-align: right;">Page 217</p> <p>1 THE REPORTER: For what? 2 MR. WALKER: CD 7. 3 Q. Do you see that in the statistical 4 table? 5 A. Yes, sir, I do. 6 Q. So would that have been a problem for 7 Terri Sewell based on what she was telling you were 8 her objectives? 9 A. I don't know specifically. I don't 10 think she considered this map. So I can't -- I 11 don't really know how to answer your question. 12 Q. Okay. Did you and Congresswoman 13 Sewell discuss the whole county plan, the League of 14 Women Voters' whole county plan? 15 A. We did not. I don't think it -- in 16 our initial meetings, I don't think it existed. Or 17 at least I was not aware of it. I don't think she 18 was. So we really did not. 19 Q. It didn't exist in May, but it did 20 exist before you finalized the plan that became 21 HB-1, right? 22 A. Correct. 23 Q. And September 1, 2021, was the first 24 public hearing of the reapportionment committee. 25 And the League of Women Voters was the first</p>

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<p style="text-align: right;">Page 218</p> <p>1 witness at the first hearing offering that plan; 2 isn't that correct? 3 A. I wasn't at that hearing. But I'll 4 take your word for it. 5 Q. So you're telling us that the 6 whole county plan offered by the League of Women 7 Voters was never discussed at all when you were 8 communicating with Congresswoman Sewell? 9 A. I don't believe it -- maybe it was 10 discussed at the very end about what other plans 11 are out there. We may have had a minor discussion 12 about -- frankly, I think at that point in time 13 yours would have been the only other publicly 14 acknowledged congressional plan. So she may have 15 mentioned it. But we didn't have a very healthy 16 discussion about it. Let's put it that way. 17 Q. What do you mean not healthy? 18 A. Very long, very detailed. She was 19 asking what other plans have you heard about. And 20 I think at that point, yours was the only one that 21 was public at that point in time. 22 Q. Did she tell you she would object to 23 that plan? 24 A. We didn't have that detailed a 25 discussion about it.</p>	<p style="text-align: right;">Page 220</p> <p>1 Terri Sewell doesn't even live in District 7 under 2 your whole county plan. She lives in District 6. 3 Q. I'm sorry. I'm not being clear, and 4 my question was not understood by you. 5 I'm just asking if the court wanted to 6 change the array -- if it was drawing a 7 court-ordered plan and it wanted to make the whole 8 county plan 5 and 4 look more like the whole -- 9 like the 5 and 4 districts in the enacted plan, it 10 would simply be a matter of balancing out the 11 populations between 4 and 5, correct, splitting 12 some counties as needed? 13 A. Yeah. Obviously, 4 has changes in 14 Tuscaloosa and St. Clair that are different than 15 the enacted plan. 16 Q. Every -- every change has a ripple 17 effect, right? 18 A. Yes, sir. 19 Q. All right. But there would be no 20 problem in putting Lauderdale, Colbert, and 21 Franklin in CD 4 and moving Morgan County back up 22 into CD 5 if the court wanted to do that and made 23 the splits necessary to bring it into population 24 equality; isn't that correct? 25 A. Yeah. These hypothetical the court</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. So we don't know -- we don't know 2 whether Congresswoman Sewell would be happy with 3 the whole county plan or not; is that correct? 4 A. I do not know, no. You may know. 5 Q. Sir? 6 A. I don't know. I mean, you may have 7 talked to her about it. I don't have any knowledge 8 of it directly. 9 Q. I understand. 10 Can you take another look at the 11 whole county plan map, please? 12 A. Yes, sir. 13 Q. And compare it -- and compare it with 14 the map of the 55 -- 555 plan, HB-1, the enacted 15 plan. 16 A. Yes, sir. Exhibit 5. 17 Q. If the court wanted to -- was drawing 18 a remedial plan in this case, just for the sake of 19 argument, it had reached the point where it was 20 going to draw its own plan, and it wanted to change 21 the whole county plan to look more like the plan 22 that the legislature enacted, that would simply be 23 a matter of changing the array between Districts 5 24 and 4, correct? 25 A. No. I mean -- well, first of all,</p>	<p style="text-align: right;">Page 221</p> <p>1 wants to change things are hard for me. But yes, I 2 guess that's correct. 3 Q. I'm looking at the map of the plan you 4 drew in 1992 that was adopted by the three-judge 5 court in West versus Hunt. Did that map ever get 6 shown to you today, or not? 7 A. It has not been shown to me today. 8 MR. BLACKSHER: Okay. I'm looking at 9 it in the amended complaint. I don't know if 10 anyone has a copy there that they can show 11 Mr. Hinaman or not. 12 But do you recall, Mr. Hinaman, that 13 the plan you drew in 1992 included all of the same 14 counties that are in the plan you drew in 2021? 15 A. I'm not sure I -- I'm not sure I know 16 what that -- I'm not sure I know what you mean by 17 that. 18 Q. The plan that you drew in 1992 had 19 Clarke split, it had Pickens split, Tuscaloosa and 20 Jefferson split, and Montgomery County split. 21 Now, your plan in 2021 leaves Pickens 22 whole, correct? 23 A. Correct, and Clarke whole. 24 Q. And Clarke whole. But Tuscaloosa, 25 Jefferson, and Montgomery are still split?</p>

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<p style="text-align: right;">Page 222</p> <p>1 A. Yes, sir.</p> <p>2 Q. So your 2021 plan, the plan you drew</p> <p>3 and that was enacted by the legislature in 2021,</p> <p>4 preserves the core of the 1992 plan that you drew;</p> <p>5 is that correct?</p> <p>6 A. It's -- it's correct. But you've</p> <p>7 missed a few steps along the way, obviously.</p> <p>8 Because as we discussed earlier in the deposition</p> <p>9 testimony, it more preserves the cores of the 2011</p> <p>10 districts, which I guess by chain preserve some of</p> <p>11 the 2001 districts, which the legislature preserved</p> <p>12 some of the 1992 districts, if that made any sense.</p> <p>13 In other words, I did not use the 1992</p> <p>14 map as the starting point for my 2021 map.</p> <p>15 Q. No. You used the 2011 plan, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And isn't it true that the 2002 plan</p> <p>18 and the 2011 plan preserved the cores -- the core</p> <p>19 of the 1992 plan?</p> <p>20 A. For the most part.</p> <p>21 Q. Can we sum up your testimony about how</p> <p>22 you went about drawing the 2021 enacted plan by</p> <p>23 saying that you drew the plan so that it satisfied</p> <p>24 what each incumbent member of the Alabama</p> <p>25 congressional delegation wanted? That was your</p>	<p style="text-align: right;">Page 224</p> <p>1 into the plan. But they chose to allow the members</p> <p>2 of congress to talk about what areas they wanted to</p> <p>3 gain and lose underneath the guidelines that they</p> <p>4 had already passed.</p> <p>5 Q. And, in fact, in 19 -- let's see.</p> <p>6 Excuse me.</p> <p>7 In 2011, that's what the legislature</p> <p>8 did, as well. They simply deferred to what the</p> <p>9 congressional delegation wanted in redrawing that</p> <p>10 plan, right?</p> <p>11 A. No, that's not -- that was the goal I</p> <p>12 had. But that's not what happened. When we got --</p> <p>13 as you may remember, when we got to the senate</p> <p>14 floor, there were some members of the senate who</p> <p>15 may have wanted to run in one district or another</p> <p>16 who moved some things around.</p> <p>17 My map -- my initial map in 2011</p> <p>18 didn't even have the 4th District in Tuscaloosa.</p> <p>19 It had the 6th District in Tuscaloosa.</p> <p>20 So there were numerous changes made on</p> <p>21 the senate floor and probably subsequently the</p> <p>22 house floor from the map that the members and I</p> <p>23 worked on, members of congress and I worked on.</p> <p>24 Q. But that didn't happen in 2021?</p> <p>25 A. It did not happen in 2021. The map</p>
<p style="text-align: right;">Page 223</p> <p>1 primary guideline, right?</p> <p>2 A. Well, that was a part of it. My</p> <p>3 primary guidelines were the guidelines given to me</p> <p>4 by the reapportionment committee, and then based</p> <p>5 off of the subsequent population shifts over the</p> <p>6 last ten years to repopulate or take away from,</p> <p>7 depending on the over/under of each district,</p> <p>8 population, and geography to reach the required</p> <p>9 guidelines of zero deviation and preserving the</p> <p>10 cores of districts.</p> <p>11 And, of course, where possible -- and</p> <p>12 we've had a couple of minor cases where it wasn't,</p> <p>13 as we discussed with Representative Moore and so</p> <p>14 forth. But preserving what the incumbents would</p> <p>15 have -- would like to accomplish, as well.</p> <p>16 Q. But your testimony is that nobody else</p> <p>17 but the members of the Alabama congressional</p> <p>18 delegation had any input into the decisions you</p> <p>19 made about how to draw that plan; isn't that</p> <p>20 correct?</p> <p>21 A. That's pretty much correct, yes, sir.</p> <p>22 Q. No member of the Alabama legislature's</p> <p>23 reapportionment committee, including its chairs,</p> <p>24 had any input into that plan; isn't that correct?</p> <p>25 A. They had all the input they wanted</p>	<p style="text-align: right;">Page 225</p> <p>1 that came out of -- the map that I gave to the</p> <p>2 chairs that was offered at the reapportionment</p> <p>3 committee was not amended through the process. So</p> <p>4 it was identical to what was passed into law and</p> <p>5 signed by the governor.</p> <p>6 Q. Okay. So let me just go over -- I</p> <p>7 think I'm about finished here. I want to make sure</p> <p>8 I understand what your testimony is.</p> <p>9 You considered no other plans that did</p> <p>10 not have a zero deviation; is that correct? You</p> <p>11 never considered drawing a plan that did not have a</p> <p>12 zero deviation?</p> <p>13 A. That's correct. My understanding and</p> <p>14 -- my understanding of the guidelines required us</p> <p>15 to be at zero deviation.</p> <p>16 Q. And you understood, didn't you, that</p> <p>17 Jefferson County was now at a population level that</p> <p>18 was smaller than an ideal congressional district</p> <p>19 and, therefore, no longer needed to be split? You</p> <p>20 were aware of that, weren't you?</p> <p>21 A. I'm aware of it. I'm not sure I</p> <p>22 focused on it. But what you say is true.</p> <p>23 Q. It wasn't -- it wasn't a priority for</p> <p>24 you to try to make Jefferson County whole? That's</p> <p>25 what you're saying?</p>

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<p style="text-align: right;">Page 226</p> <p>1 A. That's correct.</p> <p>2 And, frankly, when I started the</p> <p>3 meetings, I didn't even -- at the time I started</p> <p>4 the meetings -- subsequently I realized it. But at</p> <p>5 the time I started the meetings, I actually thought</p> <p>6 that both Representative -- Congresswoman Sewell</p> <p>7 and Congressman Palmer both lived in Jefferson</p> <p>8 County. As I turned out, he had -- Representative</p> <p>9 Palmer had moved over the last few years into</p> <p>10 Shelby.</p> <p>11 But at the time, I would have thought</p> <p>12 that that wasn't possible under our guidelines.</p> <p>13 Because when I started the process, I thought they</p> <p>14 both lived in Jefferson County.</p> <p>15 Q. But, in fact, you found out that</p> <p>16 Congressman Gary Palmer lives about three blocks</p> <p>17 south of the Jefferson County line in Shelby</p> <p>18 County, and Congresswoman Sewell lives about a mile</p> <p>19 away from where Palmer lives. But she's on the</p> <p>20 Jefferson side of the line in Lake Cyrus, right?</p> <p>21 A. That's correct, yeah.</p> <p>22 Q. But I also understood you to say that</p> <p>23 Congresswoman Sewell considered making her</p> <p>24 residence, for purpose of redistricting, Dallas</p> <p>25 County. Am I correct?</p>	<p style="text-align: right;">Page 228</p> <p>1 perfectly comfortable. But I've -- I've seen in</p> <p>2 other races where, you know, the fact that somebody</p> <p>3 doesn't reside in their district is not a positive</p> <p>4 when you get around to campaigning.</p> <p>5 Q. Okay. I think I'm about done here. I</p> <p>6 need one more look at my notes.</p> <p>7 That's it. Thank you very much,</p> <p>8 Mr. Hinaman.</p> <p>9 A. Thank you.</p> <p>10 MS. MADDURI: This is Lali Madduri for</p> <p>11 the Caster plaintiffs. We don't have any</p> <p>12 questions.</p> <p>13 MR. THOMPSON: I think that's all the</p> <p>14 questions that I have at this time, too. So on</p> <p>15 behalf of all the plaintiffs, I'll pass the witness</p> <p>16 at this time.</p> <p>17 MR. WALKER: Let us have a few</p> <p>18 minutes.</p> <p>19 THE VIDEOGRAPHER: We're off the</p> <p>20 record. The time is 3:34 p.m.</p> <p>21 (Recess was taken.)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p> <p>23 record. The time is 3:39 p.m.</p> <p>24 MR. WALKER: We have nothing to ask</p> <p>25 Mr. Hinaman. So I guess we're done. Thank you</p>
<p style="text-align: right;">Page 227</p> <p>1 A. I'm not sure I would phrase it that</p> <p>2 way.</p> <p>3 When asked what residence -- when</p> <p>4 asked for her residence address so it could be put</p> <p>5 in the computer so that we would make sure she was</p> <p>6 inside her district, she gave us both her address</p> <p>7 where she votes at, which is obviously Jefferson</p> <p>8 County, and her ancestral home. I don't know the</p> <p>9 right way to phrase it. Where she grew up in</p> <p>10 Dallas County.</p> <p>11 Q. She grew up in Selma, right?</p> <p>12 A. Yes. Yes, sir.</p> <p>13 Q. Okay. And you're aware, aren't you,</p> <p>14 that there is no residency requirement for members</p> <p>15 of congress, aren't you?</p> <p>16 A. I am aware. I'm also aware it's</p> <p>17 exceedingly difficult to get elected when you're</p> <p>18 outside of your district. It makes a rather good</p> <p>19 TV spot.</p> <p>20 Q. So even though congress -- Congressman</p> <p>21 Palmer still lives in the city of Birmingham, he's</p> <p>22 in that part that extends into Shelby County, he</p> <p>23 would not feel comfortable representing the</p> <p>24 Birmingham area again; is that right?</p> <p>25 A. I don't know that. He may feel</p>	<p style="text-align: right;">Page 229</p> <p>1 very much, everyone.</p> <p>2 THE VIDEOGRAPHER: This ends the</p> <p>3 deposition of Randy Hinaman. The time is now</p> <p>4 3:40 p.m.</p> <p>5</p> <p>6 (DEPOSITION ENDED AT 3:40 P.M.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 STATE OF ALABAMA)

2 JEFFERSON COUNTY)

3

4 I hereby certify that the above
5 proceedings were taken down by me and transcribed
6 by me using computer-aided transcription and that
7 the above is a true and correct transcript of said
8 proceedings taken down by me and transcribed by me.

9 I further certify that I am neither of
10 kin nor of counsel to any of the parties nor in
11 anywise financially interested in the result of
12 this case.

13 I further certify that I am duly
14 licensed by the Alabama Board of Court Reporting as
15 a Certified Court Reporter as evidenced by the ACCR
16 number following my name found below.

17 So certified on December 9, 2021.

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LeAnn Maroney, Commissioner

23 ACCR# 134, Expires 9/30/25

24 505 North 20th Street, Suite 1250

25 Birmingham, AL 35203

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In The Matter Of:

Evan Milligan,et al v. John H.Merrill, et al.

Chris Pringle

December 17, 2021

US Legal

Evan Milligan, et al v. John H. Merrill, et al.

Chris Pringle
12/17/2021

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3
4
5
6 EVAN MILLIGAN, et al.,)
7) CIVIL CASE NO.
8 Plaintiffs,) 2:2021-CV-01530-AMM
9 VS.) VIDEO DEPOSITION OF:
10 JOHN MERRILL, et al.,) CHRIS PRINGLE
11)
12 Defendants.)
13
14
15
16 S T I P U L A T I O N S
17 IT IS STIPULATED AND AGREED, by and between
18 the parties through their respective counsel, that
19 the deposition of:
20 CHRIS PRINGLE,
21 may be taken before LeAnn Maroney, Notary Public,
22 State at Large, at the law offices of Balch &
23 Bingham, 105 Tallapoosa Street, Montgomery, Alabama,
24 36104, on December 17, 2021, commencing at 9:14 a.m.
25

Page 1

1 IT IS FURTHER STIPULATED AND AGREED that the
2 signature to and reading of the deposition by the
3 witness is waived, the deposition to have the same
4 force and effect as if full compliance had been had
5 with all laws and rules of Court relating to the
6 taking of depositions.
7
8 IT IS FURTHER STIPULATED AND AGREED that it
9 shall not be necessary for any objections to be made
10 by counsel to any questions, except as to form or
11 leading questions, and that counsel for the parties
12 may make objections and assign grounds at the time
13 of the trial, or at the time said deposition is
14 offered in evidence, or prior thereto.
15
16
17 ***
18
19
20
21
22
23
24
25

Page 2

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1 FOR THE CASTER PLAINTIFFS: (Via Zoom)	1 I, LeAnn Maroney, a Court Reporter of
2 DAN OSHER	2 Birmingham, Alabama, and a Notary Public for the
3 Attorney at Law	3 State of Alabama at Large, acting as commissioner,
4 Elias Law Group	4 certify that on this date, pursuant to the Federal
5 10 G Street NE, Ste. 600	5 Rules of Civil Procedure and the foregoing
6 Washington, DC 20002	6 stipulation of counsel, there came before me on
7 dosher@elias.law	7 December 17, 2021, CHRIS PRINGLE, witness in the
8	8 above cause, for oral examination, whereupon the
9 FOR DEFENDANT JOHN H. MERRILL:	9 following proceedings were had:
10 JIM DAVIS	10 * * * * *
11 Assistant Attorney General	11 THE VIDEOGRAPHER: This marks the
12 Office of the Attorney General	12 beginning of the deposition of Chris Pringle in the
13 501 Washington Avenue	13 matter of Evan Milligan, et al., versus John H.
14 Montgomery, Alabama 36130	14 Merrill, et al., Civil Case Number 2:21-CV-01530-AMM
15 jim.davis@alabamaag.gov	15 filed in the United States District Court for the
16	16 Northern District of Alabama. The date is December
17 FOR THE DEFENDANTS JIM McCLENDON & CHRIS PRINGLE:	17 17, 2021. The time is 9:14 a.m.
18 DORMAN WALKER	18 All attorneys present, will you please
19 Attorney at Law	19 state your names and whom you represent.
20 Balch & Bingham	20 MS. WELBORN: Kaitlin Welborn from the
21 105 Tallapoosa Street, Ste. 200	21 ACLU of Alabama representing the plaintiffs.
22 Montgomery, Alabama 36104	22 MS. FAULKS: LaTisha Gotell Faulks, ACLU
23 dwalker@balch.com	23 of Alabama, representing the plaintiffs.
24	24 MR. WALKER: Dorman Walker, Balch &
25	25 Bingham, representing the intervenor defendants,
Page 5	Page 7
1 ALSO PRESENT:	1 Senator Jim McClendon and Representative Chris
2 Paige Ali, Videographer	2 Pringle.
3 Elizabeth Baggett	3 MR. DAVIS: Jim Davis, Alabama Attorney
4	4 General's office, representing Secretary of State
5	5 John Merrill.
6 I N D E X	6 THE VIDEOGRAPHER: All attorneys on
7 MS. WELBORN: 9-120	7 Zoom.
8 MR. OSHER: 120-125	8 MS. SADASIVAN: This is Kathryn
9 MR. BLACKSHER: 125-140	9 Sadasivan from LDF for the Milligan plaintiffs.
10 MR. DAVIS: 140-141	10 MR. ROSS: Deuel Ross for the Milligan
11	11 plaintiffs.
12 E X H I B I T L I S T	12 MR. TURRILL: Michael Turrill for the
13	13 Milligan plaintiffs.
14 Plaintiff's Exhibit 1 - 12	14 MR. OSHER: Hi. This is Dan Osher from
15 (Depo notice)	15 Elias Law Group representing the Caster plaintiffs.
16 Plaintiff's Exhibit 2 - 52	16 Good to see you all.
17 (Reapportionment Guidelines)	17 MR. WALKER: Good to see you, Dan.
18 Plaintiff's Exhibit 3 - 55	18 MR. ROSBOROUGH: Good morning. I'm
19 (Proposed guidelines handout)	19 Davin Rosborough for the Milligan plaintiffs.
20 Plaintiff's Exhibit 4 - 104	20 MS. EBENSTEIN: Julie Ebenstein for the
21 (Transcript of 10-26-21)	21 Milligan plaintiffs.
22 Plaintiff's Exhibit 5 - 116	22 MR. BLACKSHER: Jim Blacksher for the
23 (Transcript of 11-1-21)	23 Singleton plaintiffs.
24 Plaintiff's Exhibit 6 - 119	24 MS. BAGGETT: Elizabeth Baggett. I'm a
25 (2021 Congressional map)	25 law clerk with the ACLU, not an attorney, for the
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<p>1 Milligan plaintiffs.</p> <p>2 THE VIDEOGRAPHER: Court reporter, will</p> <p>3 you please swear in the witness.</p> <p>4 CHRIS PRINGLE,</p> <p>5 having been duly sworn, was examined and testified</p> <p>6 as follows:</p> <p>7 THE REPORTER: Usual stipulations?</p> <p>8 MS. WELBORN: Yes.</p> <p>9 MR. WALKER: Yeah. Kaitlin, that means</p> <p>10 -- okay.</p> <p>11 MS. WELBORN: Yes, I understand.</p> <p>12 EXAMINATION BY MS. WELBORN:</p> <p>13 Q. Representative Pringle, my name is</p> <p>14 Kaitlin Welborn from the ACLU of Alabama. I</p> <p>15 represent the Milligan plaintiffs.</p> <p>16 Could you please state your full name</p> <p>17 for the record?</p> <p>18 A. Christopher Paul Pringle.</p> <p>19 Q. And do you understand that you're</p> <p>20 testifying under oath right now?</p> <p>21 A. I do.</p> <p>22 Q. Is there anything that might prevent you</p> <p>23 from understanding my questions or answering</p> <p>24 truthfully today?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 9</p>	<p>1 A. 2003.</p> <p>2 Q. And what was the case?</p> <p>3 A. Mr. Blacksher, redistricting.</p> <p>4 Q. Okay. And what was it -- it was about</p> <p>5 redistricting. Do you know what the result of that</p> <p>6 case was?</p> <p>7 A. No.</p> <p>8 Q. So I'll just go over some key rules of</p> <p>9 the road as a refresher. I'll ask the questions.</p> <p>10 And if you don't understand a question, let me know,</p> <p>11 just like you did just now. And if you answer a</p> <p>12 question, I will assume that you understood that</p> <p>13 question. Is that fair?</p> <p>14 A. Yes.</p> <p>15 Q. The court reporter is here, and she's</p> <p>16 typing everything you and I say and everybody else</p> <p>17 says. And she'll type everything said by anyone in</p> <p>18 the room or on Zoom.</p> <p>19 It's really important that only one</p> <p>20 person speaks at a time. So if you could just allow</p> <p>21 me to finish my questions and sentences, and I'll do</p> <p>22 my best to allow you to finish your answers before</p> <p>23 jumping on to the next question. Okay?</p> <p>24 I'd like to introduce my first exhibit,</p> <p>25 which is the deposition notice.</p> <p style="text-align: right;">Page 11</p>
<p>1 Q. Are you represented by a lawyer today?</p> <p>2 A. Yes.</p> <p>3 Q. And who is that lawyer?</p> <p>4 A. Dorman Walker.</p> <p>5 Q. And is he the same lawyer who represents</p> <p>6 plaintiffs -- or defendants in this lawsuit?</p> <p>7 A. Yes.</p> <p>8 Q. And --</p> <p>9 MR. WALKER: I'm not sure what the</p> <p>10 question is.</p> <p>11 A. The defendants are --</p> <p>12 MS. WELBORN: That's okay.</p> <p>13 Q. The intervenors. He represents the</p> <p>14 intervenors --</p> <p>15 A. Yes.</p> <p>16 Q. -- is that correct? Okay.</p> <p>17 And are you paying Mr. Walker to be your</p> <p>18 lawyer today?</p> <p>19 A. No.</p> <p>20 Q. And do you assume that the State of</p> <p>21 Alabama is paying Mr. Walker to be your lawyer?</p> <p>22 A. Yes.</p> <p>23 Q. Have you ever been deposed before?</p> <p>24 A. One time.</p> <p>25 Q. And when was that?</p> <p style="text-align: right;">Page 10</p>	<p>1 MR. WALKER: Are you -- are you</p> <p>2 numbering these sequentially from the last --</p> <p>3 MS. WELBORN: We'll start over. So this</p> <p>4 will be Plaintiff's Exhibit Number 1.</p> <p>5</p> <p>6 (Plaintiff's Exhibit 1 was</p> <p>7 marked for identification.)</p> <p>8</p> <p>9 Q. So have you seen this document before?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. And without disclosing the content of</p> <p>12 any discussions with your attorney, what did you do</p> <p>13 to prepare for your deposition today?</p> <p>14 A. We met yesterday to discuss the</p> <p>15 deposition.</p> <p>16 Q. With Mr. Walker?</p> <p>17 A. Yes.</p> <p>18 Q. With anybody else?</p> <p>19 A. Mr. Davis and Senator McClendon.</p> <p>20 Q. Okay. And for how long did you meet?</p> <p>21 A. An hour an 45 minutes, two hours maybe.</p> <p>22 It wasn't long.</p> <p>23 Q. Okay. And other than Senator McClendon,</p> <p>24 did you meet with anyone who's not an attorney?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 12</p>

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1 MS. WELBORN: I'm sorry. I don't know
2 if you're an attorney or not.
3 MR. McCLENDON: No.
4 MS. WELBORN: I'm from DC. I just
5 assume everybody is an attorney.
6 MR. WALKER: He's an eye doctor, if you
7 have any issues there. But he's not an attorney.
8 MS. WELBORN: Well, clearly, I do.
9 Q. Okay. And did you review any documents
10 for today?
11 A. No.
12 Q. Okay. You didn't review the complaint
13 for this case?
14 A. No.
15 Q. And have you discussed this case with
16 anyone other than your attorney, Mr. Davis, and
17 Senator McClendon?
18 A. No.
19 Q. And have you discussed your deposition
20 with anyone?
21 A. I told people I was being deposed. But
22 that was the extent of it.
23 Q. Okay. And who first told you that this
24 lawsuit had been filed?
25 A. Was this the one that was filed before

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1 we even introduced a bill?
2 Q. No.
3 A. Okay. So I have no recollection.
4 Q. And who first told you that your
5 deposition had been requested?
6 A. My attorney.
7 Q. And when was that? Do you remember?
8 A. Shortly after y'all noticed it.
9 Q. Okay. Which was --
10 A. Just a couple of days ago.
11 Q. Just a few days ago.
12 Are you being compensated by anyone to
13 be here today?
14 A. I'm getting my usual legislative per
15 diem for travel, which all state employees are
16 entitled to.
17 Q. Right. And do you expect to be
18 compensated in any way if you testify at trial?
19 A. I will receive the same compensation for
20 travel that all state employees are entitled to.
21 Q. Okay. Do you have an email account?
22 A. Yes.
23 Q. And what is that email account?
24 A. My private personal is
25 chrispringle@southerntimberlands.com. My state

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1 government, I couldn't even tell you.
2 Q. And that's your legislative --
3 A. Yes.
4 Q. -- email address?
5 Do you have any other email accounts?
6 A. No.
7 Q. Do you have an email account for any
8 PAC, for example?
9 A. No.
10 Q. So everything goes to either your
11 legislative account or your personal account?
12 A. Yes.
13 Q. Okay. Do you have any personal social
14 media accounts?
15 A. I have a Facebook page.
16 Q. So Twitter, anything like that, for
17 personal use?
18 A. Not for me, no.
19 Q. Okay.
20 A. I mean, there -- there are Twitter
21 accounts for me, but I didn't use them. I didn't --
22 they had my name on them, but I never used them.
23 Q. Okay. And on your personal Facebook
24 account, it's just your name on the account; is that
25 correct?

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1 A. Yes.
2 Q. Okay. And have you been involved in any
3 lawsuits other than the redistricting one with
4 Mr. Blacksher?
5 A. No.
6 Q. Okay. What's the highest level of
7 education that you've completed?
8 A. A graduate of the University of Alabama.
9 Q. And when was that?
10 A. August 11th 1984.
11 Q. And what degree did you obtain?
12 A. I got a degree in communications with a
13 minor in political science.
14 Q. Okay. Do you have any certificates or
15 any specialties, any certifications in anything?
16 A. I'm a licensed realtor. I'm a licensed
17 homebuilder. I'm a licensed general contractor.
18 And until I let it expire, I was a certified control
19 burn specialist.
20 THE REPORTER: Control what?
21 A. Control burn. You know when you see the
22 woods on fire? Guys like me are burning it on
23 purpose.
24 Q. Okay. Well, if I need to fix anything
25 in my apartment, it sounds like you're the person to

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<p>1 come to.</p> <p>2 A. I don't fight fires.</p> <p>3 Q. Well, no fires. I hope there's not a</p> <p>4 fire in my apartment.</p> <p>5 So what do you do for a living other</p> <p>6 than burn things?</p> <p>7 A. I actually quit doing that. I am a real</p> <p>8 estate agent with Southern Timberlands. We</p> <p>9 specialize in timberland sales and acquisitions.</p> <p>10 And I am a licensed homebuilder and a licensed</p> <p>11 general contractor. I build houses, hunting camps,</p> <p>12 and I do commercial remodeling work.</p> <p>13 Q. Who so is your employer? I'm sorry.</p> <p>14 A. Southern Timberlands.</p> <p>15 Q. Okay. And so all of those, the realtor</p> <p>16 and being a contractor, et cetera, that's all for</p> <p>17 that company, correct?</p> <p>18 A. No.</p> <p>19 Q. No?</p> <p>20 A. My real estate license is held at</p> <p>21 Southern Timberlands, a division of Cooper &</p> <p>22 Company, Incorporated.</p> <p>23 Q. Okay.</p> <p>24 A. My contracting license are held under</p> <p>25 Chris Pringle, Incorporated.</p> <p style="text-align: right;">Page 17</p>	<p>1 So seven years now. I mean seven years my second</p> <p>2 term.</p> <p>3 Q. Okay.</p> <p>4 A. So about 15 years.</p> <p>5 Q. And currently are you on any committees?</p> <p>6 A. Yes.</p> <p>7 Q. Which ones?</p> <p>8 A. I chair the committee on state</p> <p>9 government. I am cochairman of the house --</p> <p>10 cochairman of the reapportionment committee. I</p> <p>11 serve on constitution, campaigns, and elections;</p> <p>12 internal affairs; the oversight committee of public</p> <p>13 examiners; contract review. I believe that's all.</p> <p>14 Q. Okay. And during your first stint in</p> <p>15 the legislature -- so that's your first two terms.</p> <p>16 I'll just refer to it as your first stint. Is that</p> <p>17 okay?</p> <p>18 A. That's fine.</p> <p>19 Q. Or is there a different term that you --</p> <p>20 A. That works.</p> <p>21 Q. -- prefer?</p> <p>22 Okay. And what district did you</p> <p>23 represent at that time?</p> <p>24 A. 101.</p> <p>25 Q. Okay. So the same district?</p> <p style="text-align: right;">Page 19</p>
<p>1 Q. Okay. Any other employers?</p> <p>2 A. Alabama House of Representatives.</p> <p>3 Q. Right. And at Southern Timberlands,</p> <p>4 what's your title?</p> <p>5 A. Realtor, agent.</p> <p>6 Q. Right. Okay. And how long have you</p> <p>7 worked there?</p> <p>8 A. 27 plus years.</p> <p>9 Q. Okay. And how long have you been a</p> <p>10 contractor?</p> <p>11 A. Since about 2007.</p> <p>12 Q. And what's your current role in the</p> <p>13 legislature?</p> <p>14 A. I'm a state representative from House</p> <p>15 District 101 in Mobile.</p> <p>16 Q. I'm sorry. Could you repeat that?</p> <p>17 A. State representative from House District</p> <p>18 101.</p> <p>19 Q. Okay. And what portion of the state is</p> <p>20 that?</p> <p>21 A. Mobile.</p> <p>22 Q. Okay. And how long have you been in</p> <p>23 office?</p> <p>24 A. I was elected in 1994. I served two</p> <p>25 terms. I left in 2002. I was re-elected in '14.</p> <p style="text-align: right;">Page 18</p>	<p>1 A. Yes.</p> <p>2 Q. And were you on any committees then?</p> <p>3 A. Yes.</p> <p>4 Q. Do you remember which ones?</p> <p>5 A. I know I served on reapportionment. I</p> <p>6 served on boards and commissions, I served on</p> <p>7 health, I served on constitution, campaigns, and</p> <p>8 elections, I served on contract review. And that's</p> <p>9 all I can remember right now.</p> <p>10 Q. Okay. Did you chair any of those</p> <p>11 committees?</p> <p>12 A. No.</p> <p>13 Q. Okay. I'm sorry.</p> <p>14 A. We were in the superminority at that</p> <p>15 time.</p> <p>16 Q. Right. Well, were you the ranking</p> <p>17 member in any of the committees?</p> <p>18 A. No.</p> <p>19 Q. And why did you leave office?</p> <p>20 A. I decided not to run and sought higher</p> <p>21 office and was defeated.</p> <p>22 Q. And other than serving in the house of</p> <p>23 representatives, have you served in any other public</p> <p>24 office?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 20</p>

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<p>1 Q. Okay. And you mentioned that you were</p> <p>2 on the reapportionment committee during your</p> <p>3 first --</p> <p>4 A. Yes.</p> <p>5 Q. -- stint in the legislature. So you</p> <p>6 were involved in the redistricting process, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And what role did you have in the</p> <p>9 redistricting process?</p> <p>10 A. I was the ranking minority party member</p> <p>11 in the house, not the senate.</p> <p>12 Q. Okay. For the republicans, the minority</p> <p>13 party, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And why did you become involved in</p> <p>16 redistricting?</p> <p>17 A. Congressman Sonny Callahan, who I had</p> <p>18 previously worked for in Washington, wanted me to</p> <p>19 serve on the committee because they were trying to</p> <p>20 draw him out of his district. He believed they were</p> <p>21 trying to draw him out of his district. Let me --</p> <p>22 Q. I see. Any other reason?</p> <p>23 A. No, ma'am. I like serving.</p> <p>24 Q. And so that redistricting process ended</p> <p>25 in 2001; is that correct?</p> <p style="text-align: right;">Page 21</p>	<p>1 A. No.</p> <p>2 Q. So the 2002 congressional map, can you</p> <p>3 be a little more specific about what your</p> <p>4 involvement was in helping to draw that map?</p> <p>5 A. Virtually none.</p> <p>6 Q. Okay.</p> <p>7 A. Those maps were drawn off -- what we</p> <p>8 call off campus. They were not drawn in the state</p> <p>9 house.</p> <p>10 Q. Can you explain more about what that</p> <p>11 means?</p> <p>12 A. They were drawn by somebody off -- they</p> <p>13 were not drawn in the reapportionment office in the</p> <p>14 state house.</p> <p>15 Q. Okay. So they were drawn by somebody</p> <p>16 other than someone in the legislature?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know who that was?</p> <p>19 A. No.</p> <p>20 Q. Did you work with anyone to change the</p> <p>21 map at all?</p> <p>22 A. Yes.</p> <p>23 Q. Who was that?</p> <p>24 A. Randy Hinaman.</p> <p>25 Q. Okay. And what did you do with him?</p> <p style="text-align: right;">Page 23</p>
<p>1 A. January of 2002.</p> <p>2 Q. Of 2002. Okay.</p> <p>3 A. In the special session.</p> <p>4 Q. Okay. So the special session was in</p> <p>5 January of 2002?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Okay. And what was the result of that</p> <p>8 redistricting?</p> <p>9 A. The democratic leadership drew the plans</p> <p>10 and passed them.</p> <p>11 Q. And how did you become a cochair -- I'm</p> <p>12 sorry. What is your role in the 2021 redistricting</p> <p>13 process?</p> <p>14 A. I'm the house cochairman.</p> <p>15 Q. Okay. And is that a nonpartisan role?</p> <p>16 A. I was elected by the members of the --</p> <p>17 the house members of the committee.</p> <p>18 Q. Okay. And why did you decide to seek</p> <p>19 that role?</p> <p>20 A. The house member that chaired it prior</p> <p>21 to me was leaving, and we needed somebody with</p> <p>22 experience to step up and be the house chairman.</p> <p>23 Q. And other than currently and the 2002</p> <p>24 redistricting cycle, have you been involved in any</p> <p>25 other redistricting process?</p> <p style="text-align: right;">Page 22</p>	<p>1 A. We were in contact with Congressman</p> <p>2 Callahan. And he was in contact with the other</p> <p>3 members of the congressional delegation who had</p> <p>4 actually -- this is my memory, now.</p> <p>5 Q. Sure.</p> <p>6 A. The members of congress hired</p> <p>7 Mr. Hinaman to represent them on drawing --</p> <p>8 redrawing the congressional maps in 2002.</p> <p>9 Q. And so ultimately do you know who drew</p> <p>10 the 2002 map?</p> <p>11 A. I do not know who the democrats</p> <p>12 retained, no, ma'am.</p> <p>13 Q. Okay. But it was the democratic party</p> <p>14 of Alabama?</p> <p>15 A. They had somebody, yes. I don't know</p> <p>16 who.</p> <p>17 Q. Do you know the general method that was</p> <p>18 used to draw the map?</p> <p>19 A. I would -- I'm assuming that the</p> <p>20 guidelines we adopted in 2002 were used by them to</p> <p>21 draw the 2002 plan.</p> <p>22 Q. Do you know the software that was used</p> <p>23 to draw the maps?</p> <p>24 A. No, ma'am.</p> <p>25 Q. Do you know the data that was used to</p> <p style="text-align: right;">Page 24</p>

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<p>1 draw the maps?</p> <p>2 A. No, ma'am.</p> <p>3 Q. So the 1992 congressional map created</p> <p>4 the first majority black congressional district in</p> <p>5 Alabama history. That's District 7. Do you know if</p> <p>6 that map served as the starting point for the 2002</p> <p>7 congressional map?</p> <p>8 A. You are -- that is the Reed Buskey plan,</p> <p>9 correct?</p> <p>10 Q. To be honest, I don't know. I don't</p> <p>11 know the answer to that question.</p> <p>12 A. I'm pretty sure that's what we refer to</p> <p>13 as the Reed Buskey plan.</p> <p>14 Q. Okay.</p> <p>15 A. That was -- that was the first time that</p> <p>16 a map was drawn where a majority minority</p> <p>17 congressional district was created.</p> <p>18 Q. And so --</p> <p>19 A. And I know that the guidelines in 2002</p> <p>20 said we shall use the core of existing districts and</p> <p>21 not -- use the core of existing districts.</p> <p>22 Q. Okay. So is it fair to say that Reed --</p> <p>23 well, who drew the 1992 map? You don't know?</p> <p>24 A. I just know it's referred as the Reed</p> <p>25 Buskey plan because Representative Buskey and I</p> <p style="text-align: right;">Page 25</p>	<p>1 A. Now, we're talking just the</p> <p>2 congressional plan, correct?</p> <p>3 Q. Yes. That's right. And that's</p> <p>4 throughout this -- throughout the deposition we're</p> <p>5 referring to the congressional plans. If we refer</p> <p>6 to any other plans, I'll make sure to be more</p> <p>7 specific.</p> <p>8 MR. OSHER: I'm sorry to interrupt.</p> <p>9 Would it be possible to move the microphone a little</p> <p>10 closer to the witness?</p> <p>11 (Discussion held off the record.)</p> <p>12 Q. Okay. So for the 2001 congressional</p> <p>13 map, do you know the -- did you know the racial</p> <p>14 makeup of districts other than District 7?</p> <p>15 A. No.</p> <p>16 Q. Did you know the racial makeup of</p> <p>17 District 7?</p> <p>18 A. No. I mean, after the maps were passed,</p> <p>19 yes, we knew it.</p> <p>20 Q. Okay.</p> <p>21 A. But going into it --</p> <p>22 Q. Do you recall what they were?</p> <p>23 A. No.</p> <p>24 Q. And do you know if the legislature</p> <p>25 considered race in drawing any districts other than</p> <p style="text-align: right;">Page 27</p>
<p>1 served together, and he's a personal friend of mine.</p> <p>2 Q. Okay. So you said that it was in the</p> <p>3 legislative guidelines to maintain the cores of</p> <p>4 prior districts?</p> <p>5 A. If I remember the 2002 guidelines</p> <p>6 correctly, that's been a longstanding tradition of</p> <p>7 the Alabama legislature.</p> <p>8 Q. Okay. Do you know if it was -- and</p> <p>9 we're talking still about the 2002 redistricting</p> <p>10 process -- if it was a primary goal of the</p> <p>11 legislature to keep the racial demographics of each</p> <p>12 district the same?</p> <p>13 A. I couldn't answer that. I don't know.</p> <p>14 Q. Okay. So you wouldn't know if it was a</p> <p>15 primary goal to keep about a 60 percent black</p> <p>16 population in District 7?</p> <p>17 A. I don't remember. I have no -- no</p> <p>18 recollection of that.</p> <p>19 Q. Do you know if the legislature took into</p> <p>20 account any other characteristics other than keeping</p> <p>21 the core of each district the same?</p> <p>22 A. In 2002?</p> <p>23 Q. Yes.</p> <p>24 A. No, ma'am.</p> <p>25 Q. Okay.</p> <p style="text-align: right;">Page 26</p>	<p>1 District 7?</p> <p>2 A. In 2001?</p> <p>3 Q. That's right.</p> <p>4 A. Those maps were drawn off campus.</p> <p>5 That's the reason that ten-day rule comes into --</p> <p>6 into play. If you draw a map outside of the</p> <p>7 legislature reapportionment office, you have to</p> <p>8 submit it ten days before it can be introduced into</p> <p>9 the legislature so it can be put into the computer</p> <p>10 and analyzed.</p> <p>11 And those maps were drawn exactly ten</p> <p>12 days out at the last minute before the special</p> <p>13 session in 2020 -- in 2002.</p> <p>14 Q. And when did that rule come into play?</p> <p>15 A. It was there in 2002. Now, when it came</p> <p>16 into the guidelines, I don't know.</p> <p>17 Q. Okay. Do you know if in -- during the</p> <p>18 2001-2002 process if any legislators advocated for</p> <p>19 two majority black districts?</p> <p>20 A. Not to my recollection.</p> <p>21 Q. And if the 2000 -- well, did you vote</p> <p>22 for the 2002 congressional map? Did you vote to</p> <p>23 approve it?</p> <p>24 A. Yes.</p> <p>25 Q. And if --</p> <p style="text-align: right;">Page 28</p>

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1 A. To the best of my recollection, I did.
2 It protected Congressman Sonny Callahan and his
3 district, so I'm assuming I voted for it.
4 Q. Okay. And all of this is to the best of
5 your --
6 A. Yes.
7 Q. -- recollection.
8 A. Yes.
9 Q. If the 2002 map had contained two
10 majority black districts, would you have voted for
11 it?
12 A. I can't answer that.
13 Q. Why not?
14 A. Because I didn't look at how they would
15 have drawn it.
16 Q. Okay.
17 A. It was never presented to me. So I
18 can't tell you how I would vote on something I've
19 never seen.
20 Q. Do you think that the legislature as a
21 whole would have approved a congressional map like
22 that?
23 A. I'm not going to speak to that.
24 Q. Did you play a role in the 2011
25 congressional redistricting process?

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1 A. No.
2 Q. Okay. And do you happen to know, even
3 though you weren't there, if the 2001 congressional
4 map or 2002 congressional map was considered as the
5 starting point for the 2011 congressional map?
6 A. No.
7 Q. So you are the cochair of the
8 reapportionment committee for this year's
9 congressional redistricting process. What does it
10 mean to be the cochair of the reapportionment
11 committee?
12 A. I work with members of the Alabama house
13 on drawing their districts, their legislative
14 districts.
15 Q. And for congress, as well?
16 A. No.
17 Q. So who works on the congressional map?
18 A. Mr. Hinaman worked with members of
19 congress to help -- for them to draw the maps.
20 Q. Okay.
21 A. To have input from the members of
22 congress on their districts, what they wanted.
23 Q. So what is the role of the
24 reapportionment committee with respect to
25 congressional maps or the congressional map?

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1 A. We adopted the guidelines. If you read
2 the guidelines, they lay out what we expect the
3 committee and the plans to look like, to respect
4 communities of interest, not to pit incumbents
5 against each other. There's a whole list of things
6 that we put into the guidelines that we wanted to
7 see in our plans.
8 And Mr. Hinaman was given those
9 guidelines and instructed to draw those plans in a
10 race-neutral manner following the guidelines and
11 work with members of congress in how they wanted
12 their districts drawn.
13 Q. And as a member of the reapportionment
14 committee, do you have any input on how the
15 congressional maps are drawn?
16 A. We voted on the guidelines.
17 Q. Okay. You voted on --
18 A. We gave -- we gave Mr. Hinaman the
19 guidelines and told him to follow those guidelines
20 and to draw those -- those maps in a race-neutral
21 manner.
22 Q. Okay. Any other way that the members of
23 the reapportionment committee are involved in
24 drawing the congressional map?
25 A. Once they were finished, we looked at

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1 them in committee.
2 Q. Okay. And anything else?
3 A. Not that I can remember right now.
4 Q. Okay. And what are your
5 responsibilities as the cochair of the
6 reapportionment committee?
7 A. We -- we set -- we oversaw the public
8 hearings, the 28 public hearings we had dealing with
9 congressional, state board of education, state
10 senate, and state house maps and districts.
11 And I worked with members of the Alabama
12 house to work on their districts and what they
13 wanted and how we could address communities of
14 interest.
15 But on congressional, I allowed
16 Mr. Hinaman to meet with members of congress and
17 take the information we gathered in the public
18 hearings that was available to him and the
19 guidelines.
20 Q. Any other responsibilities?
21 A. Not that I can think of right now.
22 Q. And so what was the starting point for
23 drawing the 2021 congressional map?
24 A. I would say the guidelines. And part of
25 our guidelines are preserve the core of the existing

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<p>1 districts and not pit incumbents against each other.</p> <p>2 Q. And so is it fair to say that the 2011</p> <p>3 congressional map served as the starting point for</p> <p>4 the 2021 congressional map?</p> <p>5 A. I would assume it would. But I wasn't</p> <p>6 there when Mr. Hinaman started drawing them.</p> <p>7 Q. Did you instruct him to use the 2011 map</p> <p>8 as a starting point?</p> <p>9 A. I mean, the guidelines say preserve the</p> <p>10 core of the existing districts. So I would assume</p> <p>11 that if the committee told him to start with the</p> <p>12 core of the existing districts, he would start with</p> <p>13 the core of the existing districts.</p> <p>14 Q. Which is the 2011 congressional map,</p> <p>15 correct?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. And just really quickly going back to</p> <p>18 the 2001, 2002 redistricting process. You mentioned</p> <p>19 that it was a priority to protect Senator Callahan's</p> <p>20 district, correct?</p> <p>21 A. For Sonny Callahan, yes, and me.</p> <p>22 Q. And for you?</p> <p>23 A. Yes.</p> <p>24 Q. Right. Did you have any other</p> <p>25 priorities for the 2002 congressional map?</p> <p style="text-align: right;">Page 33</p>	<p>1 A. Probably 2019. You know, we were</p> <p>2 working on trying to come up with some type of</p> <p>3 schedule. But with the census being delayed and</p> <p>4 getting the numbers so late, we were working on a</p> <p>5 schedule of public hearings and working on the</p> <p>6 guidelines.</p> <p>7 Q. Do you remember when in 2019 you</p> <p>8 started?</p> <p>9 A. No, ma'am.</p> <p>10 Q. So what was your first step?</p> <p>11 A. We had a -- the first step was actually</p> <p>12 getting me reelected house chairman after the 2018</p> <p>13 election. Because I was -- I assumed -- I came on</p> <p>14 the committee in 2000 and, I want to tell you, 17</p> <p>15 when Mr. Davis stepped down. And then after the</p> <p>16 election, I had to be reelected by my colleagues to</p> <p>17 serve as the house -- the house cochairman.</p> <p>18 Then we began the process of updating</p> <p>19 the guidelines to conform with what we considered to</p> <p>20 be the law dealing with reapportionment and</p> <p>21 redistricting to make sure our guidelines complied</p> <p>22 with the law.</p> <p>23 Then we had extensive conversations,</p> <p>24 Mr. Davis and Mr. Dorman and Senator McClendon and</p> <p>25 I, in the reapportionment office about public</p> <p style="text-align: right;">Page 35</p>
<p>1 A. No. Just protect the congressman --</p> <p>2 Q. Okay.</p> <p>3 A. -- who I worked for at one time.</p> <p>4 Q. Right. So you were -- you worked for</p> <p>5 him before you were in the --</p> <p>6 A. Yes.</p> <p>7 Q. -- Alabama legislature. So when you</p> <p>8 were in the Alabama legislature, you wanted to</p> <p>9 protect his seat, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So that was really your</p> <p>12 motivation?</p> <p>13 A. Yes.</p> <p>14 Q. Anything else?</p> <p>15 A. I was trying to see if we could draw</p> <p>16 legislative districts. But that's not the point</p> <p>17 today.</p> <p>18 Q. I'm sorry?</p> <p>19 A. State legislative districts, also.</p> <p>20 Q. Right.</p> <p>21 A. But that was a different story.</p> <p>22 Q. Okay. Thank you.</p> <p>23 So now back to today's redistricting</p> <p>24 process. When did you first start planning for the</p> <p>25 2021 redistricting process?</p> <p style="text-align: right;">Page 34</p>	<p>1 hearings and how we were going to address public</p> <p>2 hearings, which all changed because of COVID-19.</p> <p>3 We began the process of laying out</p> <p>4 those -- talking about those meetings and where we</p> <p>5 were going to have them and how we were going to</p> <p>6 publicize them and conduct them.</p> <p>7 Q. Okay. So do you recall when you first</p> <p>8 started thinking about updating the reapportionment</p> <p>9 guidelines?</p> <p>10 A. 2019, 2000. I can't remember the exact</p> <p>11 date. But that was one of the first things we</p> <p>12 addressed, making sure our guidelines were updated</p> <p>13 based on the current reapportionment law and court</p> <p>14 cases.</p> <p>15 Q. Is it required to update the guidelines</p> <p>16 every redistricting cycle?</p> <p>17 A. Well, the law changes. So yes, you have</p> <p>18 to update your guidelines. I mean, the courts are</p> <p>19 constantly telling us -- handing down their rulings.</p> <p>20 And we have to update based on those rulings.</p> <p>21 Q. But it's not required by Alabama law or</p> <p>22 by any legislative rule to update the guidelines</p> <p>23 every -- you know, every cycle?</p> <p>24 A. I can't imagine not updating the</p> <p>25 guidelines going into this process if you know the</p> <p style="text-align: right;">Page 36</p>

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<p>1 law has changed. You have to.</p> <p>2 Q. If you could just give a broad overview</p> <p>3 or a timeline of the 2021 redistricting process for</p> <p>4 me.</p> <p>5 A. We were supposed to receive our initial</p> <p>6 numbers at the end of January. Then they -- then we</p> <p>7 were going to get our finals in April.</p> <p>8 Q. I'm sorry?</p> <p>9 A. We were supposed to get our initial --</p> <p>10 if I remember this correctly, we were supposed to</p> <p>11 get our initial census numbers in, I think, January.</p> <p>12 Yeah, January. And then we would get our final</p> <p>13 numbers in April.</p> <p>14 That all got bumped to -- we didn't get</p> <p>15 any numbers until the middle of the August. And we</p> <p>16 were trying to work out a schedule of public</p> <p>17 hearings from the spring and the summer. But we</p> <p>18 couldn't -- we couldn't engage in those public</p> <p>19 hearings because we had no numbers.</p> <p>20 And when we finally got our numbers in</p> <p>21 the middle of August, we immediately -- we laid out</p> <p>22 a series of public hearings, sent a notice to all</p> <p>23 the members of the committee. I think it was 22</p> <p>24 public hearings we had -- we proposed.</p> <p>25 Representative Hall sent us a letter</p> <p style="text-align: right;">Page 37</p>	<p>1 Q. And then what happened after that point?</p> <p>2 A. We worked right up to the last possible</p> <p>3 minute drawing those -- meeting with members, trying</p> <p>4 to adjust the districts to make sure the members</p> <p>5 were happy with them.</p> <p>6 But I'm talking about the state</p> <p>7 legislature.</p> <p>8 Q. Right. Right.</p> <p>9 A. The congressional, Mr. Hinaman met with</p> <p>10 the members of congress, and he worked on that. He</p> <p>11 -- I didn't. I was busy working on the state house.</p> <p>12 Q. Okay. For the congressional districts,</p> <p>13 what happened for you in between the public hearings</p> <p>14 and the reapportionment committee meeting at the end</p> <p>15 of October?</p> <p>16 A. Mr. Hinaman met with the members of</p> <p>17 congress. I did not.</p> <p>18 Q. Did you do anything else during that</p> <p>19 time with respect to the congressional map?</p> <p>20 A. No, ma'am. The closest I came, I walked</p> <p>21 in the room and he was on a team call with a member</p> <p>22 of congress. I picked up my paper and walked out of</p> <p>23 the room. I wasn't there but just a minute.</p> <p>24 Q. Okay.</p> <p>25 A. I didn't participate in any of those</p> <p style="text-align: right;">Page 39</p>
<p>1 requesting six additional public hearings in various</p> <p>2 parts of the state. We accepted her request and</p> <p>3 added the six additional public hearings Ms. Hall</p> <p>4 asked for, then published a list to everybody in the</p> <p>5 media and advertised that those are the public</p> <p>6 hearings we would be holding all over the state. As</p> <p>7 soon as we could get it to, we got it to.</p> <p>8 And as soon as those meetings were over,</p> <p>9 we took that information and began drawing</p> <p>10 districts. Because the secretary of state had given</p> <p>11 us a deadline of the 1st of November to have our</p> <p>12 plans passed in order for all the work behind the</p> <p>13 scenes that has to be done to get ready for the next</p> <p>14 election to occur.</p> <p>15 Q. So you started drawing the maps after</p> <p>16 the public hearings; is that correct?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. Okay. And when you said "we," who do</p> <p>19 you mean?</p> <p>20 A. Well, Randy Hinaman. And we began</p> <p>21 meeting with the individual house members about</p> <p>22 their -- their individual districts.</p> <p>23 Q. Okay. But for the congressional map,</p> <p>24 you mean primarily Mr. Hinaman?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 38</p>	<p>1 meetings.</p> <p>2 Q. And what happened -- I'm just trying to</p> <p>3 get like a timeline of events rather than the</p> <p>4 specifics.</p> <p>5 So after the reapportionment committee</p> <p>6 met on, I think, October 26th of 2020, what happened</p> <p>7 after that point?</p> <p>8 A. We adopted the plans. And we were in</p> <p>9 special session dealing with the prisons. So we</p> <p>10 went -- we went straight into special session</p> <p>11 dealing with the prison system.</p> <p>12 I was not there that week. I was only</p> <p>13 there one day. I had a prior contractual obligation</p> <p>14 to finish a construction project that I had to stay</p> <p>15 on. So I came one day that week, and that was it.</p> <p>16 Q. Okay. And regarding redistricting, what</p> <p>17 was the first thing that happened for redistricting</p> <p>18 after the reapportionment committee on October 26th?</p> <p>19 A. I don't understand the question.</p> <p>20 Q. Well, what happened next? How --</p> <p>21 eventually the maps were passed and signed by the</p> <p>22 governor, including the congressional map. So they</p> <p>23 made it out of the reapportionment committee. Then</p> <p>24 what happened?</p> <p>25 A. They made it out of the committee. They</p> <p style="text-align: right;">Page 40</p>

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1 became public. And when we went into the special
2 session for redistricting, they were introduced in
3 bill form.

4 Q. Okay. And can you explain in sort of a
5 Schoolhouse Rock way how that bill became a law?

6 A. It was brought up -- it was introduced
7 into the house. It passed. It was assigned to the
8 state government committee where it passed. It was
9 given a second reading on the floor. It was put on
10 the calendar. It was brought up on the floor, and
11 it was passed by the members of the Alabama house of
12 representatives.

13 Q. And then what happened?

14 A. It was sent to the senate --

15 Q. Okay.

16 A. -- where it went to committee, went to
17 the floor, and passed, was signed by the governor.

18 Q. So I just wanted to make sure that I had
19 the full -- the full process.

20 A. All nine steps occurred.

21 Q. Okay. Well, I'm glad that I paid
22 attention to Schoolhouse Rock, then.

23 I'm sorry to keep jumping back and
24 forth, but I'm just going to go back to the 2001,
25 2002 process really quickly.

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1 Which district did Representative
2 Callahan represent?

3 A. The 1st congressional district.

4 Q. And what area of the state is that?

5 A. At that time, it was Mobile, Washington,
6 Clarke, Monroe, Escambia, and Baldwin County.

7 Q. Okay.

8 A. I believe it lost Wilcox County in -- I
9 believe the Buskey Reed plan took Wilcox County out
10 of the 1st congressional district, I believe.

11 Q. Okay. And do you remember the racial
12 makeup of Representative Callahan's district?

13 A. No, ma'am.

14 Q. Do you have any sense at all?

15 A. No, ma'am.

16 Q. 10 percent black, 90 percent black?

17 A. No, ma'am.

18 Q. None at all?

19 A. No.

20 Q. Let's say that Representative Callahan's
21 district had -- previously had 40 percent black
22 population. If, in the redistricting cycle, his
23 district had an increase of black voters in the
24 district to 50 percent, would that be something that
25 you would have supported?

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1 A. I can't answer that. That's
2 speculation. I don't know.

3 Q. Okay. When you said that you were
4 protecting Representative Callahan's seat, what does
5 that mean?

6 A. There was a plan produced that used the
7 Mobile ship channel to come up. They turned and
8 used the Dog River channel. And they hit
9 Congressman Callahan's property line, and they came
10 down his property line to the road and went up the
11 road to the other side and back down his property
12 line and back out into the Dog River ship channel
13 and back out into the Mobile ship channel. They
14 carved just his house into the 1st congressional
15 district and sent it all the way to Dothan.

16 Q. So what was your -- what was your
17 response to that?

18 A. It's quicker to drive to Huntsville,
19 Alabama, from Mobile than it is to drive to Dothan.
20 Think about that. It's quicker for us to get in a
21 car and drive to Huntsville, Alabama, than it is to
22 drive to Dothan or Henry County. The congressman
23 was adamant that we would not do that to him.

24 Q. So what was the ideal outcome of the --
25 of that situation?

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1 A. We kept the core of the existing 1st
2 Congressional District intact. We kept Washington,
3 Clarke, Mobile, Monroe, Escambia, and Baldwin
4 County.

5 Q. Okay. And what about Representative
6 Callahan's house?

7 A. All of Mobile County was in the
8 district.

9 Q. Okay.

10 A. All of Mobile, all of Baldwin, all of
11 Washington, all of Monroe, all of Escambia. And I
12 believe that was the first time Clarke County was
13 split to achieve zero deviation.

14 Q. So your aim was -- is it fair to say
15 that your aim was to keep Senator Callahan's
16 residence within his district?

17 A. Yes, ma'am.

18 Q. Okay. Is that what you mean by
19 protecting his district?

20 A. Well, I mean, to draw just the lot his
21 house is on out of the district using a ship channel
22 or a boat channel, we didn't consider that to be
23 reasonable.

24 Q. So what would be reasonable?

25 A. Well, I mean, they didn't have the

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<p>1 Gingles test then. But we didn't consider that to</p> <p>2 be compact, concise, or a community of interest to</p> <p>3 send one lot in Mobile County and share it with</p> <p>4 Dothan in Houston and Henry County.</p> <p>5 Q. Do you mean -- were there any other ways</p> <p>6 that you wanted to protect Representative Callahan's</p> <p>7 seat?</p> <p>8 A. Well, of course. He was elected by the</p> <p>9 people in that district, and they -- he wanted to</p> <p>10 continue to represent those people. That's why he</p> <p>11 won reelection so overwhelmingly every time he ran.</p> <p>12 Q. Is it fair to say that you wanted to</p> <p>13 make sure that Representative Callahan remained in</p> <p>14 the 1st District so that he could win reelection?</p> <p>15 A. I wanted to make sure he continued to</p> <p>16 represent the people that had elected him, yes. And</p> <p>17 they continued to reelect him overwhelmingly for</p> <p>18 years.</p> <p>19 Q. So you mentioned that one of the first</p> <p>20 steps of the 2021 redistricting cycle were updating</p> <p>21 the reapportionment committee redistricting</p> <p>22 guidelines; is that correct?</p> <p>23 A. (Witness nods head).</p> <p>24 Q. When did that happen?</p> <p>25 A. I'm going to yield to the attorneys. Page 45</p>	<p>1 meeting?</p> <p>2 A. No, ma'am.</p> <p>3 Q. And was anybody in -- was anybody else</p> <p>4 in attendance other than Mr. Walker, Mr. Davis, and</p> <p>5 Senator McClendon?</p> <p>6 A. Not to my recollection, no.</p> <p>7 MS. SADASIVAN: The audio has stopped</p> <p>8 again.</p> <p>9 MS. WELBORN: Can you hear me, Kathryn?</p> <p>10 MS. SADASIVAN: I can hear you now. But</p> <p>11 the audio keeps coming in and out.</p> <p>12 Q. Did you -- was that your only meeting to</p> <p>13 talk about revising the reapportionment committee</p> <p>14 redistricting guidelines?</p> <p>15 A. No.</p> <p>16 Q. How many other meetings did you have, if</p> <p>17 you recall?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you have a sense of how many meetings</p> <p>20 you had?</p> <p>21 A. I would hate to put a number on it. But</p> <p>22 it was several.</p> <p>23 Q. Five, let's say?</p> <p>24 A. It was several meetings.</p> <p>25 Q. Okay. But less than ten? Page 47</p>
<p>1 But I remember sitting at a table with Mr. Davis,</p> <p>2 Representative McClendon, and Mr. Walker, and we</p> <p>3 began the process of working on those guidelines to</p> <p>4 update.</p> <p>5 MR. OSHER: We can't hear you.</p> <p>6 A. I remember sitting at a table in the</p> <p>7 reapportionment office with Mr. Davis, Senator</p> <p>8 McClendon, Mr. Walker, and myself, and we began</p> <p>9 reviewing the guidelines from the past</p> <p>10 redistricting. And the discussion to update them</p> <p>11 based on new -- the current law and court rulings.</p> <p>12 I think the Gingles test came into play</p> <p>13 first. Because I don't think Gingles was in effect</p> <p>14 in 2011. But I'm not an attorney.</p> <p>15 MR. WALKER: I'm going to instruct you,</p> <p>16 given that Mr. Davis and I were there, not to</p> <p>17 discuss what we discussed at that meeting because it</p> <p>18 was an attorney-client meeting.</p> <p>19 THE WITNESS: Okay.</p> <p>20 Q. When did that meeting occur?</p> <p>21 A. 2019 or '20.</p> <p>22 Q. Do you have any sense of what time of</p> <p>23 the year?</p> <p>24 A. No, ma'am, I don't remember.</p> <p>25 Q. And did you bring any materials to that Page 46</p>	<p>1 A. I would -- I would say that, yes.</p> <p>2 Q. Okay. And who was at those meetings?</p> <p>3 A. I remember Mr. Davis, Senator McClendon,</p> <p>4 Mr. Walker, and myself.</p> <p>5 Q. Anybody else?</p> <p>6 A. I'm going to say maybe a member of the</p> <p>7 reapportionment staff was there.</p> <p>8 Q. From the reapportionment office?</p> <p>9 A. Yes.</p> <p>10 Q. And do you know who that was?</p> <p>11 A. To err on the safe side, I would say</p> <p>12 Ms. Overton.</p> <p>13 Q. And what's her role?</p> <p>14 A. She is the director of the</p> <p>15 reapportionment staff.</p> <p>16 Q. And do you remember when that meeting</p> <p>17 occurred?</p> <p>18 A. No, ma'am.</p> <p>19 Q. And what was the goal of these meetings?</p> <p>20 A. To write committee guidelines that we</p> <p>21 thought would conform with the existing</p> <p>22 reapportionment law.</p> <p>23 Q. So on May 5th 2001 there was a meeting</p> <p>24 of the reapportionment committee; is that right?</p> <p>25 A. I believe you. Page 48</p>

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<p>1 Q. Okay. Well, when were there meetings of 2 the reapportionment committee since 2019?</p> <p>3 A. I -- I couldn't answer that. I just 4 don't remember.</p> <p>5 Q. Do you remember any --</p> <p>6 MR. ROSBOROUGH: I'm sorry. Everyone's 7 audio has completely dropped out again.</p> <p>8 MS. FAULKES: We should take a break.</p> <p>9 MS. SADASIVAN: I think we should break 10 possibly to resolve the audio issues quickly because 11 we keep going in and out.</p> <p>12 THE VIDEOGRAPHER: We are off the 13 record. The time is 10:03 a.m.</p> <p>14 (Recess was taken.)</p> <p>15 THE VIDEOGRAPHER: We are back on the 16 record. The time is 10:22 a.m.</p> <p>17 THE WITNESS: Can they hear me now? Is 18 this better?</p> <p>19 MS. SADASIVAN: Right. Thank you so 20 much.</p> <p>21 Q. So before the break, we were talking 22 about the reapportionment committee. How many times 23 has the reapportionment committee met in 2021, if 24 you can recall?</p> <p>25 A. I don't remember. 20 --</p> <p style="text-align: right;">Page 49</p>	<p>1 committee meetings in 2021 except for the May 5th 2 and the October 26th meetings.</p> <p>3 MS. WELBORN: Okay. Thank you. I just 4 wanted to double-check.</p> <p>5 Q. So for the May 5th meeting, do you -- 6 did you do anything to prepare for the meeting that 7 you recall?</p> <p>8 A. Nothing out of the -- that's -- that's 9 the day we voted on the guidelines.</p> <p>10 Q. That's correct.</p> <p>11 A. Yes. I mean, I read the proposed 12 guidelines and went over them with the attorney.</p> <p>13 Q. Okay. Did you do anything else to 14 prepare?</p> <p>15 A. No, ma'am.</p> <p>16 Q. And other than the meetings with the 17 attorneys and Senator McClendon to talk about the 18 revised guidelines, did you talk to anyone else 19 about the May 5th meeting ahead of time?</p> <p>20 A. I may have talked to the committee 21 members in the house, but I don't recall any 22 specific conversations.</p> <p>23 Q. So at the May 5th meeting, what 24 happened?</p> <p>25 A. The guidelines were sent to the members</p> <p style="text-align: right;">Page 51</p>
<p>1 Q. This year.</p> <p>2 A. I don't remember the exact number.</p> <p>3 Q. A handful?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Is there a regular schedule for 6 the reapportionment committee to have meetings?</p> <p>7 A. No reapportionment committee I've ever 8 served on had a regular schedule.</p> <p>9 Q. So how --</p> <p>10 A. I mean, like my state government 11 committee meets every Wednesday at 3:00 o'clock.</p> <p>12 Q. Right.</p> <p>13 A. Reapportionment doesn't do that.</p> <p>14 Q. So how do you decide when you have to 15 have a meeting?</p> <p>16 A. When we have something to discuss.</p> <p>17 Q. Okay.</p> <p>18 MS. WELBORN: So if there -- so we know 19 that there was a reapportionment committee meeting 20 on May 5th and one on October 26th. Mr. Walker, if 21 there were any other committee meetings for the 22 reapportionment committee, we would request any 23 records or recordings of those.</p> <p>24 MR. WALKER: Let me represent to you 25 that I'm not aware of any other reapportionment</p> <p style="text-align: right;">Page 50</p>	<p>1 prior to the meeting for their review and input. 2 And at the meeting, we talked about the guidelines. 3 And if I remember correctly, the attorney explained 4 them to the members of the committee, and we passed 5 them. We adopted them.</p> <p>6 Q. And do you remember when the proposed 7 guidelines were sent to members of the committee?</p> <p>8 A. No, ma'am. I know it was prior to the 9 meeting.</p> <p>10 Q. And did you take any notes at the 11 meeting?</p> <p>12 A. No, ma'am.</p> <p>13</p> <p>14 (Plaintiff's Exhibit 2 was 15 marked for identification.)</p> <p>16</p> <p>17 Q. So I would like to introduce as 18 Plaintiff's Exhibit 2 the reapportionment committee 19 redistricting guidelines from May 5th of 2021. 20 There's a copy.</p> <p>21 And did you have any role in drafting 22 this document?</p> <p>23 A. It was reviewed with me by Mr. Walker, 24 and we discussed it.</p> <p>25 Q. Okay. Did you have any other role in</p> <p style="text-align: right;">Page 52</p>

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<p>1 drafting the document?</p> <p>2 A. No, ma'am.</p> <p>3 Q. Who drafted the document?</p> <p>4 A. I would say Mr. Walker. Now, who he was</p> <p>5 in conjunction with, I do not know.</p> <p>6 Q. And is that normal to have an attorney</p> <p>7 draft the guidelines, would you say?</p> <p>8 A. Attorneys draft about everything we do.</p> <p>9 I'm not an attorney. I make no bones about it.</p> <p>10 Q. So the members of the reapportionment</p> <p>11 committee did not draft this document; is that</p> <p>12 correct?</p> <p>13 A. They were -- they reviewed it and the</p> <p>14 attorneys explained it to them.</p> <p>15 Q. Okay. Did anyone on the reapportionment</p> <p>16 committee make any changes to the document at that</p> <p>17 -- at the May 5th meeting?</p> <p>18 A. Not that I remember.</p> <p>19 Q. Do you know if they made any changes</p> <p>20 after the meeting? I guess they couldn't have if</p> <p>21 you voted on them.</p> <p>22 A. Right.</p> <p>23 Q. Sorry. I answered my own question for</p> <p>24 you.</p> <p>25 So what are these guidelines?</p> <p style="text-align: right;">Page 53</p>	<p>1 guidelines?</p> <p>2 A. I don't recall any specifics. But there</p> <p>3 were a -- there were a handful of changes to update.</p> <p>4 But I don't remember the exact specifics.</p> <p>5 Q. And who provided you with those</p> <p>6 specifics?</p> <p>7 A. Our attorney.</p> <p>8 Q. Mr. Walker?</p> <p>9 A. Yes.</p> <p>10 Q. And do you know -- do you know why those</p> <p>11 specifics were chosen?</p> <p>12 A. It was my understanding that the courts</p> <p>13 had handed down additional rulings since the last</p> <p>14 reapportionment guidelines were adopted. And we</p> <p>15 updated them to reflect those changes in the law.</p> <p>16 Q. And do you know how those specifics were</p> <p>17 chosen?</p> <p>18 A. Changes in the law in courtrooms.</p> <p>19</p> <p>20 (Plaintiff's Exhibit 3 was</p> <p>21 marked for identification.)</p> <p>22</p> <p>23 Q. Let me introduce Plaintiff's Exhibit 3.</p> <p>24 This is the proposed guidelines handout.</p> <p>25 Do you recognize this document?</p> <p style="text-align: right;">Page 55</p>
<p>1 A. That's the parameters that we used in</p> <p>2 order to draw districts we thought complied with the</p> <p>3 Voting Rights Act and the 14th amendment to the</p> <p>4 Constitution and the court rulings that the courts</p> <p>5 had handed down in redistricting.</p> <p>6 Q. And so what is your understanding --</p> <p>7 when you say "comply" with the Voting Rights Act or</p> <p>8 the constitution and court rulings, what do you mean</p> <p>9 by that?</p> <p>10 A. I mean, it deals with drawing districts</p> <p>11 on a race neutral -- race neutral. We didn't look</p> <p>12 at race while we were drawing the districts. And it</p> <p>13 complies with not putting incumbents together and</p> <p>14 respecting single-member districts and eliminating</p> <p>15 contests between incumbents. Everything is spelled</p> <p>16 out here. That was just a few of the highlights.</p> <p>17 Q. And other than compliance with federal</p> <p>18 laws, are there any other reasons why you have the</p> <p>19 guidelines?</p> <p>20 A. Just a road map for everybody to follow</p> <p>21 when we're drawing lines. It's agreed to by the</p> <p>22 committee and the members of the committee and what</p> <p>23 we prioritize as what we need to do.</p> <p>24 Q. And do you recall what updates there</p> <p>25 were to the law that needed to be put into the</p> <p style="text-align: right;">Page 54</p>	<p>1 A. It looks like the one I saw earlier,</p> <p>2 yes, ma'am, back in May.</p> <p>3 Q. And when you say you saw it earlier,</p> <p>4 could you explain?</p> <p>5 A. Back during the discussion of the</p> <p>6 guidelines.</p> <p>7 Q. And who provided this document to you?</p> <p>8 A. Mr. Walker.</p> <p>9 Q. And do you know when he provided it to</p> <p>10 you?</p> <p>11 A. Prior to -- I believe every member of</p> <p>12 the committee saw these -- the existing, the</p> <p>13 proposed changes, and the enrolled changes prior to</p> <p>14 the meeting for their review.</p> <p>15 Q. And did you see it before -- as a</p> <p>16 cochair, did you see it before any of the other</p> <p>17 members of the reapportionment committee?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Did you have any role in drafting this</p> <p>20 document?</p> <p>21 A. No, ma'am, other than it was reviewed</p> <p>22 with me prior to that.</p> <p>23 Q. Okay. But you did discuss revisions to</p> <p>24 the guidelines prior to this document --</p> <p>25 A. Yes, ma'am.</p> <p style="text-align: right;">Page 56</p>

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<p>1 Q. -- being drafted?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Do you know if any of your discussions</p> <p>4 went into the creation of this document?</p> <p>5 A. I couldn't answer that question.</p> <p>6 Q. Okay. Do you know if any of the updates</p> <p>7 that you wanted to make to the guidelines made it</p> <p>8 into this document?</p> <p>9 A. I know I was in favor of the 5 percent</p> <p>10 deviation.</p> <p>11 Q. And that's for the state --</p> <p>12 A. Yes.</p> <p>13 Q. -- legislative maps, correct?</p> <p>14 Anything else?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Okay. Do you know what the process was</p> <p>17 for drafting this document?</p> <p>18 A. Our attorney met with us and we went</p> <p>19 over the old guidelines, some proposed changes, and</p> <p>20 what we thought we needed to update to comply with</p> <p>21 the law.</p> <p>22 Q. And did you suggest any changes?</p> <p>23 A. The 5 percent.</p> <p>24 Q. Anything else?</p> <p>25 A. Not that I recall.</p> <p style="text-align: right;">Page 57</p>	<p>1 Justice under Section 5.</p> <p>2 Q. Okay.</p> <p>3 A. And they were -- they were drawn fairly</p> <p>4 closely aligned with the committee guidelines at that</p> <p>5 time.</p> <p>6 Q. And so you believe that the 2010</p> <p>7 guidelines, then, were based on the 2002 guidelines</p> <p>8 for that reason?</p> <p>9 A. What I remember from 2002, when they</p> <p>10 brought the 2010, I saw similarities that I</p> <p>11 remembered from both of them to the -- to the 2020</p> <p>12 guidelines, yes.</p> <p>13 Q. Okay. So one of the reasons that the</p> <p>14 2021 guidelines are based on the 2010 guidelines is</p> <p>15 because you believe that they would be -- they would</p> <p>16 have complied with Section 5 of the Voting Rights</p> <p>17 Act had that -- if that were still in effect?</p> <p>18 A. They would comply with Section 1 of the</p> <p>19 Voting Rights Act. I mean Section 2. I'm sorry.</p> <p>20 Section 2 of the Voting Rights Act. But they were</p> <p>21 precleared under Section 5.</p> <p>22 Q. Right.</p> <p>23 A. And I also thought they would comply</p> <p>24 with the 14th Amendment, one man, one vote.</p> <p>25 Q. Okay. Is there any other reason why you</p> <p style="text-align: right;">Page 59</p>
<p>1 Q. And just to make sure, other than</p> <p>2 Mr. Walker, Mr. Davis, and Senator McClendon, and</p> <p>3 perhaps one member of the reapportionment committee,</p> <p>4 did you speak to anyone else about revising the</p> <p>5 guidelines prior to the May 5th meeting?</p> <p>6 A. I can't recall.</p> <p>7 Q. Were the -- so on this document there</p> <p>8 are the 2010 guidelines. Would you say that it's</p> <p>9 fair -- is it fair to say that those were the basis</p> <p>10 for the 2021 guidelines?</p> <p>11 A. I would say that, yes.</p> <p>12 Q. Why did you choose to rely on the 2010</p> <p>13 guidelines rather than starting from scratch?</p> <p>14 A. Because the 2010 were based off the 2002</p> <p>15 guidelines, I would assume. I wasn't there.</p> <p>16 Q. Right.</p> <p>17 A. But I would just assume that they used</p> <p>18 the 2002 as the basis for the 2010, and we used them</p> <p>19 for the 2020.</p> <p>20 Q. Is there a reason why you would want to</p> <p>21 rely on the past documents?</p> <p>22 A. Because we had passed plans that were</p> <p>23 approved by the justice department under Section 5.</p> <p>24 In 2002, remember our plan -- our congressional plan</p> <p>25 was precleared by the United States Department of</p> <p style="text-align: right;">Page 58</p>	<p>1 based the 2021 guidelines off of the 2010 guidelines</p> <p>2 other than that you think that it would -- that they</p> <p>3 would have complied with federal law?</p> <p>4 A. Well, when I read the 2010, they were</p> <p>5 very similar to what I remember the 2002 guidelines.</p> <p>6 I remember specifically the ten-day rule was there</p> <p>7 in 2002.</p> <p>8 Q. Is it a principle that the committee</p> <p>9 follows to generally use what has come before, use</p> <p>10 materials that have come before?</p> <p>11 A. Yes.</p> <p>12 Q. Out of ease of use or out of tradition</p> <p>13 or because the -- you know, because you believe that</p> <p>14 they comply with the law? What -- what is the</p> <p>15 reason for reusing?</p> <p>16 A. I would say all three of those.</p> <p>17 Q. Is anything more important, any of those</p> <p>18 more important than the other?</p> <p>19 A. Complying with the law.</p> <p>20 Q. That's pretty important, huh?</p> <p>21 A. Yeah.</p> <p>22 Q. I think we all can agree on that.</p> <p>23 And do you know how the 2010 guidelines</p> <p>24 were created --</p> <p>25 A. No.</p> <p style="text-align: right;">Page 60</p>

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1 Q. -- other than being based off of the
2 2002?
3 A. No, ma'am.
4 Q. Who would know how the 2010 guidelines
5 were created?
6 A. I would say Mr. Walker.
7 Q. Okay. Anybody else?
8 A. I wasn't there.
9 Q. Okay.
10 A. I take that back. I said Senator
11 McClendon was there in 2010. I wasn't.
12 Q. Let's see. If you could flip to Pages 7
13 and 8. Let's start with 7. And as you'll see, that
14 third box is entirely striked out in the middle with
15 the proposed changes.
16 A. Uh-huh.
17 Q. That's the section on communities of
18 interest. If you'd like to read through those boxes
19 on Pages 7 and 8, it might be helpful.
20 A. Okay.
21 Q. So it looks to me like this subsection
22 was entirely rewritten. Do you know why?
23 A. I can't answer with certainty. But I
24 believe it goes back -- and I'm just supposing -- to
25 the Gingles test.

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1 Q. And what's your understanding of the
2 Gingles test?
3 A. Compactness, contiguity, and communities
4 of interest, I would assume. I don't know.
5 Q. Can you think of any other reason why
6 the section on communities of interest would be
7 entirely rewritten?
8 A. Other than a court ruling that gave a
9 better definition, I don't know.
10 Q. Did you have any role in this particular
11 change?
12 A. No, ma'am.
13 Q. Do you know who made this particular
14 change on the document?
15 A. You would have to talk to the attorney.
16 Q. Talk to Mr. Walker?
17 A. Mr. Walker.
18 Q. In this section, if you compare the 2010
19 guidelines to the enrolled guidelines, the 2021
20 guidelines eliminate partisan interest from the
21 definition of communities of interest.
22 So in 2010, partisan interests were part
23 of the definition of community of interest. But in
24 2021, they're not. Do you know why that is?
25 A. No, ma'am.

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1 Q. Who would know why?
2 A. I would suggest you talk to my attorney.
3 Q. Okay.
4 A. When you get into legal definitions --
5 Q. I understand that lawyers are pretty
6 fond of legal definitions.
7 So in the May 5th meeting, you mentioned
8 that Mr. Walker discussed these proposed changes.
9 Do you know if there were any other changes made at
10 that meeting other than the ones proposed by
11 Mr. Walker?
12 MR. WALKER: I think the way that
13 question is asked, I need to assert the
14 attorney-client privilege.
15 Q. I guess what I'm saying is did any --
16 are there any differences between these proposed
17 changes that were presented in the meeting and the
18 final version in Exhibit 2, the final guidelines?
19 Did anybody suggest any other changes?
20 A. Not that I recall.
21 Q. So the version that is here of these
22 proposed changes, they were accepted in whole and no
23 other changes were made?
24 A. No changes were made after the committee
25 adopted them.

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1 Q. Well, I guess I'm talking about at the
2 -- at the committee meeting.
3 A. I don't -- I don't remember.
4 Q. Okay. And did you talk to anyone about
5 the May 5th meeting after it happened?
6 A. I'm sure I did. But I don't recall.
7 Q. Do you recall what you would have talked
8 about?
9 A. The general guidelines that we adopted,
10 the guidelines that would control the committee's --
11 the way we drew plans. But they were public record
12 at that point.
13 Q. So what happened next in the
14 redistricting process?
15 A. Then we began trying to work on public
16 hearings and how we were going to handle public
17 hearings with COVID-19.
18 Q. Okay.
19 A. So we had -- we had to come up with a
20 way to handle the public hearings and where we were
21 going to hold them and how we were going to hold
22 them.
23 Q. So why did you hold public meetings?
24 A. It's part of the guidelines, and it's
25 tradition. They've been held -- I've heard they did

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<p>1 them in 2010. I know we did them in 2002.</p> <p>2 Q. And what's the purpose of the public</p> <p>3 meetings?</p> <p>4 A. To take input from the community at</p> <p>5 large, the people that live in the communities and</p> <p>6 what they like or dislike about the existing plan</p> <p>7 and what they would like to see changed.</p> <p>8 Q. Was there a draft -- when you say</p> <p>9 "existing plan," what do you -- what do you mean by</p> <p>10 that?</p> <p>11 A. The plan that we were currently</p> <p>12 operating under.</p> <p>13 Q. So you mean the 2011 map?</p> <p>14 A. Yes.</p> <p>15 Q. So the purpose of the public meetings is</p> <p>16 for people to express what they like or do not like</p> <p>17 about the current setup?</p> <p>18 A. Yes.</p> <p>19 Q. Is there any other reason why public</p> <p>20 meetings are held?</p> <p>21 A. Well, we go to the public and show them</p> <p>22 the existing plans and where the population has</p> <p>23 shifted and how they would like to see the lines</p> <p>24 drawn.</p> <p>25 Q. So you mentioned that there were public</p> <p style="text-align: right;">Page 65</p>	<p>1 there were people that liked their members of</p> <p>2 congress and wanted the maps to stay the way they</p> <p>3 were.</p> <p>4 Q. Was there a draft of the congressional</p> <p>5 map prepared before the public meetings occurred?</p> <p>6 A. No, ma'am.</p> <p>7 Q. And when did the public meetings occur?</p> <p>8 Not every single one, but in general.</p> <p>9 A. As soon as we had numbers from the</p> <p>10 census bureau and we could tell the people whether</p> <p>11 their congressional district was overpopulated or</p> <p>12 underpopulated and how many people they had to gain</p> <p>13 or lose based on the new -- we didn't know what the</p> <p>14 number was going to be to get to zero deviation on</p> <p>15 the congressional map until we had the census</p> <p>16 numbers.</p> <p>17 So we couldn't go out and talk to people</p> <p>18 about how they wanted to see their congressional</p> <p>19 district change in order to comply with one man, one</p> <p>20 vote.</p> <p>21 Q. Why is it -- why was it necessary to</p> <p>22 have the census numbers if you don't have a map yet?</p> <p>23 I guess I'm curious why the -- why the census</p> <p>24 numbers are necessary to hold the public hearings.</p> <p>25 A. We had a map.</p> <p style="text-align: right;">Page 67</p>
<p>1 meetings that were also held in 2001 when you were</p> <p>2 part of that redistricting process. Do you think</p> <p>3 that people's -- do you recall if people's -- their</p> <p>4 concerns are different now than they were then?</p> <p>5 A. Explain what you mean by that question.</p> <p>6 Q. Well, I guess I'm not talking about the</p> <p>7 nitty-gritty little, you know, this block here, this</p> <p>8 block there, but general opinions about how maps</p> <p>9 should be drawn or what a community of interest is</p> <p>10 or anything like that.</p> <p>11 Do people -- do you think that people</p> <p>12 felt the same way at public meetings back in 2001 as</p> <p>13 they did in the meetings this year?</p> <p>14 A. I would say, generally speaking, they</p> <p>15 held the same views.</p> <p>16 Q. And what sorts of views are those?</p> <p>17 A. I mean, some communities wanted to --</p> <p>18 I'm having -- I would have to separate congressional</p> <p>19 from --</p> <p>20 Q. Right.</p> <p>21 A. -- legislative.</p> <p>22 Some people wanted to see maps drawn</p> <p>23 differently. There was numerous people there to</p> <p>24 present the map for the League of Women Voters and</p> <p>25 discuss it. They asked us to look at that map. And</p> <p style="text-align: right;">Page 66</p>	<p>1 Q. The 2010?</p> <p>2 A. The existing map.</p> <p>3 Q. Okay.</p> <p>4 A. And then after we got the numbers, we</p> <p>5 knew which congressional district was over and which</p> <p>6 congressional districts were underpopulated and the</p> <p>7 amount of people we needed in each congressional</p> <p>8 district in order to comply with one man, one vote.</p> <p>9 Q. Okay.</p> <p>10 A. The same thing we did in 2001. We</p> <p>11 presented the existing map to the people in all the</p> <p>12 public hearings. And after the public hearings,</p> <p>13 then and only then was a map produced. And we had a</p> <p>14 lot more time in '01.</p> <p>15 Q. Right.</p> <p>16 Did the public have access to the</p> <p>17 numbers of people that would need to move between</p> <p>18 districts, about the overpopulation and</p> <p>19 underpopulation numbers? Did they have access to</p> <p>20 that?</p> <p>21 A. That was gone over in every public</p> <p>22 hearing.</p> <p>23 Q. Okay. Why was it necessary to have</p> <p>24 those numbers before holding the public hearings?</p> <p>25 A. So we could -- we knew how many people</p> <p style="text-align: right;">Page 68</p>

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<p>1 went into a district and how many people were in the 2 current district.</p> <p>3 Q. Well, I guess people have concerns about 4 -- well, did people have concerns about districts 5 other than, you know, the pure numbers? Did they 6 have opinions about how maps should be drawn period 7 regardless of the census numbers? Do you understand 8 what I'm saying?</p> <p>9 A. If you are referring to the League of 10 Women Voters who sent somebody to virtually every --</p> <p>11 Q. I'm talking in general.</p> <p>12 A. There were people there every -- every 13 meeting that had their talking points that basically 14 read them that all said the same thing. They wanted 15 to adopt another plan that created two majority 16 minority districts.</p> <p>17 Q. Well, I assume that there were people at 18 the meetings who didn't share that view.</p> <p>19 A. Yeah.</p> <p>20 Q. Do you think -- I guess wouldn't it be 21 possible to have that opinion before the census 22 numbers were even out?</p> <p>23 A. Well, they did have the opinion before 24 the numbers were out.</p> <p>25 Q. Okay. I guess I'm just not really</p> <p style="text-align: right;">Page 69</p>	<p>1 Q. Well, there are people -- so the map 2 changed between 2010 and today, right?</p> <p>3 A. Yes.</p> <p>4 Q. And there are members who have kept 5 their -- there are citizens who have kept their 6 representatives even though the lines of the 7 districts have changed, right?</p> <p>8 A. Correct.</p> <p>9 Q. So you could keep your representative 10 even though the line of the district changes, 11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. So when people are saying "I'm happy 14 with my representative," are they just saying that 15 they don't want the district to change at all? Or 16 what -- what do you think that they're saying?</p> <p>17 A. I would hate to interpret what they 18 would mean by that. They said they were happy with 19 their representative.</p> <p>20 Q. Okay. And how many of the public 21 hearings did you participate in?</p> <p>22 A. All 28.</p> <p>23 Q. Did you go in person --</p> <p>24 A. Yes.</p> <p>25 Q. -- to all 28?</p> <p style="text-align: right;">Page 71</p>
<p>1 understanding why the -- why you had to wait to hold 2 the public hearings until the census numbers were 3 out.</p> <p>4 A. Accuracy.</p> <p>5 Q. Okay. So you had mentioned that at the 6 public meetings, public hearings, some people liked 7 their members of congress and wanted to keep them. 8 What did you mean by that?</p> <p>9 A. They were happy with the representation 10 they were receiving from their elected 11 representatives.</p> <p>12 Q. So what does that mean for those 13 representatives' districts? Would they want to keep 14 them the same or --</p> <p>15 A. Our guidelines say we try to protect the 16 core of the existing districts, yes.</p> <p>17 Q. Well, I guess if you're happy with your 18 representative, that doesn't mean that -- you could 19 still live in the district and have the rest of the 20 district change and still keep your representative 21 if like, you know, they're on the margins. The rest 22 of the district could change. If you live in the 23 center of the district, you're still going to keep 24 your representative, right?</p> <p>25 A. I couldn't answer that question.</p> <p style="text-align: right;">Page 70</p>	<p>1 A. Yes. I want to say I -- I don't 2 remember missing any of them, no.</p> <p>3 Q. Okay. And how were the public meetings 4 held?</p> <p>5 A. Virtually, just like this meeting. We 6 were -- we were in COVID and we had to get as many 7 locations as we could to get as much input as we 8 could in a very compressed time period. So we did 9 it remotely.</p> <p>10 Q. And in person?</p> <p>11 A. Yes. We had one in the state house.</p> <p>12 Q. But 27 out of 28 were only held 13 virtually; is that right?</p> <p>14 A. Just like this meeting, yes, ma'am.</p> <p>15 Q. Okay. And what was your role in the 16 public meetings?</p> <p>17 A. I was to go over the -- to listen to the 18 house, when they talked about the state house 19 districts. And I listened to all the house, 20 congressional, senate, state school board, yes.</p> <p>21 Q. And were you just there to listen? Or 22 did you do anything else?</p> <p>23 A. I listened.</p> <p>24 Q. And did you answer any questions from 25 the public?</p> <p style="text-align: right;">Page 72</p>

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1 A. I believe I answered one.
2 Q. And what was that question?
3 A. I don't remember.
4 Q. Was it about the congressional map?
5 A. I don't remember.
6 Q. And was Mr. Walker present at these
7 public meetings?
8 A. He was our moderator. Yes, ma'am.
9 Q. Okay. And what does that mean?
10 A. He conducted the meeting.
11 Q. Okay. And is it fair to say that
12 Mr. Walker primarily addressed or answered audience
13 questions during the hearings?
14 A. There was a time when people could
15 either ask a question or submit a question
16 electronically.
17 Q. Okay.
18 A. And he would address those questions.
19 Q. And he addressed most of -- I'm sorry.
20 Of the questions that were answered, Mr. Walker was
21 the one who answered most of them?
22 A. Yes, ma'am.
23 Q. Okay. And did audience members ever
24 direct questions to you specifically?
25 A. I can't remember.

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1 Q. And do you know if they directed
2 questions to Senator McClendon specifically?
3 A. I don't remember.
4 Q. Did you prepare for any of the public
5 meetings?
6 A. We had the maps in front of us and the
7 demographic shifts in front of us. And we would --
8 I would read those as we went through the meetings.
9 Q. And by "the maps," you mean the 2011 --
10 A. Yes.
11 Q. -- maps? Because you didn't have draft
12 maps of the 2021 --
13 A. No.
14 Q. -- at that time. Okay.
15 And what demographic figures are you
16 talking about?
17 A. The over and underpopulations, whether
18 they had too many or too few people in them to stay
19 within -- of course, I'm kind of talking legislative
20 here and not congressional. Because congressional,
21 we went to zero deviation. But we looked at the
22 congressional districts to see which ones were
23 overpopulated and which ones were underpopulated.
24 Q. Okay.
25 A. And how many people would have to change

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1 in order to get to zero deviation.
2 Q. And who created that document?
3 A. I'm not sure.
4 Q. Do you know -- sorry.
5 Did you take any notes during any of the
6 public meetings?
7 A. Any notes I took, I turned over in my
8 evidence. They were handwritten on those -- those
9 documents.
10 Q. But you did take some --
11 A. Very few.
12 Q. -- notes? Okay.
13 Did you take any notes after any of the
14 public meetings?
15 A. No, ma'am.
16 Q. And did you talk to anyone about the --
17 what happened in the public hearings?
18 A. I'm sure I did. But I don't recall
19 specifics.
20 Q. Did you talk to Mr. Hinaman about what
21 happened in the public meetings?
22 A. Yes, ma'am.
23 Q. And what did you tell him?
24 A. Most of the conversations at the public
25 hearings were dealing with state legislative races,

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1 if I remember correctly.
2 Q. But occasionally people talked about
3 congress, right?
4 A. Yes. But we had not seen -- I had not
5 seen the numbers on any plans until after they were
6 submitted to reapportionment.
7 So until I saw the -- you know, that
8 ten-day rule kicked in and these plans that had been
9 drawn off campus were submitted to the
10 reapportionment office. Then and only then could we
11 look at the demographics, the population changes,
12 and the deviations in those districts.
13 Q. Well, you had the demographic shift
14 numbers to get to zero deviation during the public
15 meetings, right?
16 A. I had the number that we needed to get
17 to, correct.
18 Q. So you did talk to Mr. Hinaman about
19 what was brought up at the public hearings about
20 congress, correct?
21 A. We talked -- I would assume we discussed
22 it, yes.
23 Q. And do you recall any specifics of what
24 you talked about?
25 A. Just the difference -- we were trying to

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<p>1 get to zero deviation.</p> <p>2 Q. Did you relay any specific concerns that</p> <p>3 someone had at a public meeting about the</p> <p>4 congressional map to Mr. Hinaman?</p> <p>5 A. I was concerned about the deviations in</p> <p>6 any other proposed plans.</p> <p>7 Q. Well, the public, though, I'm talking</p> <p>8 about, what they brought up at the public hearings.</p> <p>9 Did you relay any of those specifics to Mr. Hinaman?</p> <p>10 A. I don't remember.</p> <p>11 Q. Do you recall discussing any of those</p> <p>12 kinds of specifics that the public had about</p> <p>13 congress to anyone else?</p> <p>14 A. I'm sure we did. I mean, it was the</p> <p>15 same talking points at every public hearing on the</p> <p>16 congressional plan.</p> <p>17 Q. I mean, that suggests that there was</p> <p>18 really only one view about the congressional map</p> <p>19 coming up at the public hearings.</p> <p>20 A. Well, it was the plan produced by the</p> <p>21 League of Women Voters. Every -- if I remember</p> <p>22 correctly, almost every single public hearing we</p> <p>23 had, somebody stood up with their talking points and</p> <p>24 read them to us and entered them into the record.</p> <p>25 Q. But not everybody who attended the</p> <p style="text-align: right;">Page 77</p>	<p>1 doing other things that aren't work related during</p> <p>2 the work hours. Do you think that that would have</p> <p>3 had an impact at all on --</p> <p>4 A. Well, the schedule of the public</p> <p>5 hearings was public. It was released. The links</p> <p>6 were public. You might not have been able to make</p> <p>7 one specific meeting, but you could have logged into</p> <p>8 any of the other 28 at any given time on any given</p> <p>9 day that we held them and listened and interjected</p> <p>10 into the congressional plan.</p> <p>11 Q. Well --</p> <p>12 A. I mean, you had 28 opportunities to log</p> <p>13 on over a three-week period that you could have come</p> <p>14 in and watched. It's not like you had to drive to a</p> <p>15 location like in the old days when you had to drive</p> <p>16 somewhere during the daytime to come hear us. You</p> <p>17 were able to listen at any time.</p> <p>18 Q. But even so, if you work at McDonald's</p> <p>19 from 9:00 to 5:00 and you're at the cash register,</p> <p>20 how are you going to attend one of those meetings?</p> <p>21 A. There are 28 different meetings at all</p> <p>22 different times of the day.</p> <p>23 Q. Well, not -- they're all between 9:00</p> <p>24 and 5:00 except for one.</p> <p>25 A. Then you could have logged in that night</p> <p style="text-align: right;">Page 79</p>
<p>1 public hearings would have known about the League of</p> <p>2 Women Voters' map, right?</p> <p>3 A. Somebody was there at virtually every</p> <p>4 meeting that I remember to talk about it.</p> <p>5 Q. Did anyone discuss anything about the</p> <p>6 congressional map that wasn't related to the League</p> <p>7 of Women Voters' map that you recall?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you know how many of the 28 meetings</p> <p>10 were held on weekdays during working hours, 9:00 to</p> <p>11 5:00?</p> <p>12 A. Like this one here, all but one of them.</p> <p>13 Q. Okay. And most people are working on</p> <p>14 weekdays during working hours from 9:00 to 5:00,</p> <p>15 right?</p> <p>16 That's a yes?</p> <p>17 A. That's -- I know a lot of people that</p> <p>18 work different hours.</p> <p>19 Q. But most people work on weekdays from</p> <p>20 the hours of around 9:00 to 5:00, would you say?</p> <p>21 A. I would say it's very common, yes.</p> <p>22 Q. Okay. Do you think that that had an</p> <p>23 impact on who could attend the public meetings?</p> <p>24 A. I don't know.</p> <p>25 Q. I mean, if I'm at work, I tend to not be</p> <p style="text-align: right;">Page 78</p>	<p>1 and watched.</p> <p>2 Q. For that one meeting?</p> <p>3 A. Exactly. And you could have spoken your</p> <p>4 mind or emailed in your questions or your concerns</p> <p>5 at that time.</p> <p>6 Q. Okay. But you and others from the</p> <p>7 reapportionment committee set the times of those</p> <p>8 meetings, correct?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. Primarily you and Senator McClendon; is</p> <p>11 that right?</p> <p>12 A. In conjunction with the other members.</p> <p>13 Like I said, we produced a list of 22. And Ms. Hall</p> <p>14 asked us to add six meetings in communities she</p> <p>15 thought did not have enough representation or enough</p> <p>16 opportunities. So we added those additional six</p> <p>17 meetings and included them in our press releases so</p> <p>18 anybody could log in.</p> <p>19 Q. Did you consider holding more meetings</p> <p>20 in the evening other than just the one?</p> <p>21 A. I couldn't answer that question.</p> <p>22 Q. Before the public hearings happened,</p> <p>23 Senator McClendon told the press that the new maps</p> <p>24 wouldn't cause, quote, any surprises for the</p> <p>25 candidates or for the voters. I'll just represent</p> <p style="text-align: right;">Page 80</p>

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<p>1 to you that that happened.</p> <p>2 Do you know what the basis was for that</p> <p>3 statement?</p> <p>4 A. You'll have to ask Senator McClendon.</p> <p>5 Q. Do you agree with that statement, that</p> <p>6 even before the public hearings would have happened,</p> <p>7 that there wouldn't be surprises for candidates or</p> <p>8 for the voters?</p> <p>9 A. I think every time you change the lines,</p> <p>10 you surprise people.</p> <p>11 Q. But on the whole, would you say that</p> <p>12 that statement was true?</p> <p>13 A. Well, when your guidelines are to keep</p> <p>14 the core of the existing districts intact as much as</p> <p>15 practicable, it shouldn't be too earth shattering,</p> <p>16 some of the changes around the edges.</p> <p>17 Q. And do you know if any work had been</p> <p>18 conducted on drafting the congressional map prior to</p> <p>19 the public hearings?</p> <p>20 A. No, ma'am.</p> <p>21 Q. Do you know if any decisions on the</p> <p>22 lines for the congressional maps had been made</p> <p>23 before holding the public hearings?</p> <p>24 A. No, ma'am.</p> <p>25 Q. Are you familiar with the black belt</p> <p style="text-align: right;">Page 81</p>	<p>1 Q. Would you agree that the black belt is a</p> <p>2 community of interest?</p> <p>3 A. It's a very broad area that stretches</p> <p>4 from one side of the state to the other. I believe</p> <p>5 it has some communities of interest in it, yes.</p> <p>6 Q. But as a whole, is the black belt a</p> <p>7 community of interest?</p> <p>8 A. I couldn't answer that.</p> <p>9 Q. Why not?</p> <p>10 A. Because while I work in Wilcox and</p> <p>11 Marengo and Perry, I don't go to Macon or the</p> <p>12 counties on the other side. So I don't really know</p> <p>13 much about them.</p> <p>14 Q. But that's true for other communities of</p> <p>15 interest in other parts of the state, right?</p> <p>16 A. Explain that one to me.</p> <p>17 Q. I guess if the legislature -- if the</p> <p>18 reapportionment committee is tasked with approving a</p> <p>19 congressional map that keeps, you know, communities</p> <p>20 of interest together, you don't personally know</p> <p>21 about every community of interest in the same way</p> <p>22 that you do know about those particular counties,</p> <p>23 right?</p> <p>24 A. I mean, you know, I'm from Mobile. And</p> <p>25 we run up and -- it's the river system. So many of</p> <p style="text-align: right;">Page 83</p>
<p>1 counties in Alabama, that term?</p> <p>2 A. I sell timberland. I work all through</p> <p>3 the black belt.</p> <p>4 Q. Okay.</p> <p>5 A. I've spent more time in the black belt</p> <p>6 than . . .</p> <p>7 Q. And what's your understanding of the</p> <p>8 black belt?</p> <p>9 A. It's a region in the middle of the state</p> <p>10 of Alabama that got its name because of the rich</p> <p>11 soils.</p> <p>12 Q. And what counties are in it?</p> <p>13 A. It's like 28 counties, I think,</p> <p>14 something like that. I spend most of my time in</p> <p>15 Wilcox, Marengo, Lowndes, Perry, Hale, those areas.</p> <p>16 Q. And if you could just describe what</p> <p>17 portion of the state are we talking about.</p> <p>18 A. Central Alabama.</p> <p>19 Q. Do you recall if anyone discussed the</p> <p>20 black belt at any of the public hearings?</p> <p>21 MR. WALKER: What was --</p> <p>22 MS. WELBORN: If anyone at the public</p> <p>23 meetings discussed the black belt.</p> <p>24 A. It's a term that's often used in</p> <p>25 Alabama. But I don't remember specifically.</p> <p style="text-align: right;">Page 82</p>	<p>1 the families in Mobile come from northern counties</p> <p>2 because of the way the river system is. We have</p> <p>3 very little to nothing in common with the people in</p> <p>4 the Wiregrass. It's not -- it's almost a totally</p> <p>5 different state over there.</p> <p>6 So I don't know -- if you're asking me</p> <p>7 do the people in Wilcox County have something in</p> <p>8 common with the people in Macon County, I can't</p> <p>9 answer that. But I know the people in Wilcox</p> <p>10 County. We go up and down the rivers.</p> <p>11 Q. Right. I guess what I'm saying is you</p> <p>12 still approve a map even though you don't have</p> <p>13 personal experience with every single community of</p> <p>14 interest, right?</p> <p>15 A. The state legislature approved the map,</p> <p>16 yes, ma'am.</p> <p>17 Q. Well, you voted for it, right?</p> <p>18 A. Yes.</p> <p>19 Q. So just going back to the black belt.</p> <p>20 Even though you don't necessarily have personal</p> <p>21 experience with every single county, can you still</p> <p>22 form an opinion about in general whether that is a</p> <p>23 community of interest?</p> <p>24 A. I know it's a very rural part of the</p> <p>25 state of Alabama.</p> <p style="text-align: right;">Page 84</p>

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<p>1 Q. Does that make it a community of 2 interest?</p> <p>3 A. I don't know what your definition of a 4 community of interest is.</p> <p>5 Q. Well, the reapportionment committee has 6 a definition of community of interest, right?</p> <p>7 A. Yes.</p> <p>8 Q. So looking at that definition, would you 9 consider the black belt to be a community of 10 interest?</p> <p>11 A. Our definition of community of interest 12 is in certain circumstances to include political 13 subdivisions such as counties, voting precincts, 14 municipalities, tribal lands, reservations, or 15 school districts. Those counties -- the counties 16 are a community of interest.</p> <p>17 Q. Well, it also includes ethnic, racial, 18 economic, tribal, social, geographic, and historical 19 identities.</p> <p>20 A. Yes.</p> <p>21 Q. Under any of those aspects, does the 22 black belt constitute a community of interest?</p> <p>23 A. I know it's -- it is predominantly 24 African American.</p> <p>25 Q. And the black belt is a historical term, Page 85</p>	<p>1 A. The general public -- I mean, every 2 committee meeting had somebody standing up and 3 reading the talking points on the League of Women 4 Voters' plan. So if you read the record, it's all 5 in there. They all talked about that specific plan 6 on their talking points.</p> <p>7 Q. But the --</p> <p>8 A. I don't remember the general public 9 being dissatisfied with the members of congress.</p> <p>10 Q. Meaning other people at the -- at the 11 public meetings --</p> <p>12 A. Yes.</p> <p>13 Q. -- were not --</p> <p>14 A. I don't remember them being 15 dissatisfied, no, ma'am.</p> <p>16 Q. Okay. So how -- but you still took away 17 the idea that the general public was happy with 18 their current representation?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. Okay. And what did you do with that 21 information?</p> <p>22 A. I mean, it's all part of the permanent 23 record. I remembered it because I listened to all 24 of it.</p> <p>25 Q. Right. Page 87</p>
<p>1 right?</p> <p>2 A. Based on the soil, yes, ma'am.</p> <p>3 Q. Okay. And that term goes back quite a 4 long time?</p> <p>5 A. It was developed because of the rich 6 soil in that area.</p> <p>7 Q. So yes or no, under these guidelines, 8 does the black belt constitute a community of 9 interest?</p> <p>10 A. I couldn't answer that question. I just 11 couldn't answer that.</p> <p>12 Q. I don't understand why not.</p> <p>13 A. Because I'm not sure they are 14 politically cohesive and compact and contiguous 15 enough to constitute one.</p> <p>16 Q. What, if anything, did you learn or take 17 away from the public hearings?</p> <p>18 A. What do you mean by that?</p> <p>19 Q. Well, did you learn anything from what 20 you heard at the public hearings?</p> <p>21 A. I walked away thinking most people in 22 the state of Alabama were happy with their 23 representation the way it was in congress.</p> <p>24 Q. And do you recall any specifics about -- 25 about that? Page 86</p>	<p>1 A. We put it in the record. It's all 2 there.</p> <p>3 Q. After -- after the meetings, what did 4 you do with that information?</p> <p>5 A. It was put into the official record of 6 the committee.</p> <p>7 Q. I guess I'm -- did any of what you 8 learned at the public hearings influence how the 9 congressional map was drawn?</p> <p>10 A. I can't answer that. I don't -- I 11 wasn't a member -- that map was drawn by Mr. Hinaman 12 and in conjunction with the members of congress.</p> <p>13 Q. But you did discuss what you learned 14 about the public meetings with Mr. Hinaman with 15 respect to the congressional meetings at some point?</p> <p>16 A. That somebody had come to every meeting 17 and read the League of Women Voters' talking points, 18 yes.</p> <p>19 Q. But did you express to Mr. Hinaman your 20 sentiment that the general public was happy with 21 their representation?</p> <p>22 A. I don't remember.</p> <p>23 Q. Do you remember telling him, about the 24 congressional map, anything other than about the -- 25 from the public hearings other than the League of Page 88</p>

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<p>1 Women Voters' talking points?</p> <p>2 A. Not that I can recall.</p> <p>3 Q. And how much weight did you give to</p> <p>4 those -- the sentiment that the general public was</p> <p>5 happy with their representation in terms of its</p> <p>6 importance in drawing the map?</p> <p>7 A. We listened to the people. I was</p> <p>8 anxious to see what the League of Women Voters' map</p> <p>9 turned out to be.</p> <p>10 Q. Did you -- did you consider it to be</p> <p>11 more important when the congressional map was being</p> <p>12 drawn that the general public was satisfied with</p> <p>13 their representation compared to what was said about</p> <p>14 the League of Women Voters' map?</p> <p>15 A. You know, when every meeting somebody</p> <p>16 stands up and reads the same talking points and you</p> <p>17 could tell they've been prompted just to go say that</p> <p>18 to get it into the record, I put more weight on the</p> <p>19 people who came out of a true sense of wanting to</p> <p>20 express their opinion, not the opinion that was</p> <p>21 written down on a piece of paper form them by an</p> <p>22 attorney. What I assume was an attorney. I'm</p> <p>23 sorry.</p> <p>24 Q. So you gave less weight to those League</p> <p>25 of Women Voter talking points than you did the</p> <p style="text-align: right;">Page 89</p>	<p>1 or twice?</p> <p>2 A. I don't remember the number of times.</p> <p>3 But it came up a few.</p> <p>4 Q. A few. But not at every meeting?</p> <p>5 A. I don't remember it coming up at every</p> <p>6 meeting, no.</p> <p>7 Q. What was your response to the suggestion</p> <p>8 that there should be two majority black</p> <p>9 congressional districts?</p> <p>10 A. If somebody could show me a plan that</p> <p>11 met the guidelines, I would be interested in looking</p> <p>12 at it.</p> <p>13 Q. And what do you mean by "interested in</p> <p>14 looking at it"?</p> <p>15 A. I mean I would give it due consideration</p> <p>16 if it met the guidelines.</p> <p>17 Q. If you have competing maps that all meet</p> <p>18 the guidelines, how do you choose one over the</p> <p>19 other?</p> <p>20 A. I would go with the one that's most in</p> <p>21 line with the guidelines.</p> <p>22 Q. How do you determine what is most in</p> <p>23 line with the guidelines?</p> <p>24 A. The number of county splits, the</p> <p>25 deviations.</p> <p style="text-align: right;">Page 91</p>
<p>1 people who were discussing on their own that they</p> <p>2 were happy with their representation?</p> <p>3 A. Somebody that was put in the room to put</p> <p>4 statements into the record is not, in my opinion,</p> <p>5 the same as somebody who comes on their own free</p> <p>6 will and their own fruition to express their</p> <p>7 personal opinion about their representation.</p> <p>8 Q. So did you give any instructions to</p> <p>9 Mr. Hinaman to change anything about the</p> <p>10 congressional map because of the public hearings?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Did you give instructions to anyone else</p> <p>13 about changing the map because of the public</p> <p>14 hearings?</p> <p>15 A. Not that I recall.</p> <p>16 Q. At the public hearings, do you recall</p> <p>17 anyone discussing the need to have two majority</p> <p>18 black districts for congress?</p> <p>19 A. Two majority black congressional</p> <p>20 districts, yes, ma'am.</p> <p>21 Q. Yes. Who mentioned that?</p> <p>22 A. I don't recall specifically.</p> <p>23 Q. Was it mentioned often, would you say?</p> <p>24 A. I don't remember.</p> <p>25 Q. Was it something that only came up once</p> <p style="text-align: right;">Page 90</p>	<p>1 Q. Okay. Is something -- is one of those</p> <p>2 factors more important than the other?</p> <p>3 A. Deviations.</p> <p>4 Q. That's the most important factor, in</p> <p>5 your opinion?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. And how important are the county splits?</p> <p>8 A. Well, we tried to split as the few</p> <p>9 counties as possible in order to achieve the zero</p> <p>10 deviation.</p> <p>11 Q. Just quickly going back to talking about</p> <p>12 this sentiment that people were happy with their</p> <p>13 representation. How did you know or how did you</p> <p>14 determine who was there with their talking points</p> <p>15 and who was there, you know, coming of their own</p> <p>16 volition?</p> <p>17 A. If they're reading a piece of paper and</p> <p>18 it's the same talking points you've heard, I would</p> <p>19 assume they were sent there to read it. If they're</p> <p>20 talking extemporaneously and they don't line up with</p> <p>21 the talking points you've heard before, I would</p> <p>22 assume they were talking of their own fruition.</p> <p>23 Q. Did you ask anyone at any of the public</p> <p>24 meetings if they were part of a particular group?</p> <p>25 A. They were instructed by Mr. Dorman to</p> <p style="text-align: right;">Page 92</p>

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<p>1 state their name and who they represented.</p> <p>2 Q. And did you ask any of them if they were</p> <p>3 sent there by somebody else?</p> <p>4 A. No. They -- when they were called to</p> <p>5 speak, they were to state their name and who they</p> <p>6 represented.</p> <p>7 Q. Okay. And did you -- did you consider</p> <p>8 -- if someone came there, you know, with a prepared</p> <p>9 set of talking points, did you consider their</p> <p>10 opinion to be less -- less important to drawing the</p> <p>11 map than someone who came there to speak</p> <p>12 extemporaneously, like you said?</p> <p>13 A. I believe I answered that question</p> <p>14 already, didn't I?</p> <p>15 Q. Do you know if a map with two majority</p> <p>16 minority districts was proposed at any point?</p> <p>17 A. During the legislative process when we</p> <p>18 were in session, yes, ma'am.</p> <p>19 Q. Do you know if any were proposed before</p> <p>20 the special session?</p> <p>21 A. We have a rule that any plan drawn off</p> <p>22 campus, outside the reapportionment office, has to</p> <p>23 be turned over ten days before it can be introduced</p> <p>24 as a bill.</p> <p>25 So after they were turned over, at</p> <p style="text-align: right;">Page 93</p>	<p>1 Q. What --</p> <p>2 A. Until it -- until it reaches that bill</p> <p>3 form and we can analyze it based on the population</p> <p>4 and the deviations, I don't consider it a plan.</p> <p>5 Q. Okay. What all information could you</p> <p>6 look at from any plan at that point?</p> <p>7 A. At that point?</p> <p>8 Q. Uh-huh.</p> <p>9 A. After it's introduced from the outside</p> <p>10 source?</p> <p>11 Q. Yes.</p> <p>12 A. Then we look at the population, we look</p> <p>13 at the deviations, we look at the county splits, and</p> <p>14 we look at the BVAP, we look at the racial makeup of</p> <p>15 the district.</p> <p>16 Q. And when you say "BVAP," just for the</p> <p>17 record, what do you mean?</p> <p>18 A. Black voting age population.</p> <p>19 Q. And is that all black or any part black?</p> <p>20 Do you know?</p> <p>21 A. No, I couldn't answer that. I've seen</p> <p>22 both columns, but I don't know.</p> <p>23 Q. So just to clarify, you did not see a</p> <p>24 map for two majority minority or majority black</p> <p>25 congressional districts prior to the ten-day mark?</p> <p style="text-align: right;">Page 95</p>
<p>1 whatever point they were turned over and they were</p> <p>2 put through our computers and we could get the</p> <p>3 information on them, the deviations and the county</p> <p>4 splits, we looked at them then.</p> <p>5 Q. So if someone submitted an outside plan,</p> <p>6 let's say, 30 days before the special session, so</p> <p>7 more than ten days, when would you have had access</p> <p>8 to that plan?</p> <p>9 A. I don't remember seeing the demographics</p> <p>10 of any plan that was introduced earlier than that.</p> <p>11 Q. I'm sorry. Could you --</p> <p>12 A. I don't remember seeing a plan that was</p> <p>13 submitted before then.</p> <p>14 Q. Before the ten days?</p> <p>15 A. Ten days, yes, ma'am.</p> <p>16 Q. Okay. And once a plan is submitted by</p> <p>17 outside groups, what happens?</p> <p>18 A. It's put through the computer and turned</p> <p>19 into what we call bill form. And then you have to</p> <p>20 find a member of the legislature that's willing to</p> <p>21 introduce it.</p> <p>22 Q. Okay. But you mentioned deviation and</p> <p>23 demographic data. Does the computer program also</p> <p>24 give you that information?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 94</p>	<p>1 A. I did not see a plan that had the</p> <p>2 deviations in the populations until then. There's a</p> <p>3 difference between just color coding a map and</p> <p>4 letting me see an actual plan.</p> <p>5 Q. Okay. What's the difference?</p> <p>6 A. Well, you can -- you can draw anything</p> <p>7 you want to on a map. But until you actually have</p> <p>8 the census numbers and the demographic numbers in</p> <p>9 it, I don't consider it a plan.</p> <p>10 Q. And why not?</p> <p>11 A. Because until I know the population in</p> <p>12 that district -- the whole basis of redistricting is</p> <p>13 the 14th Amendment to the Constitution, equal</p> <p>14 protection, that my vote for a member of congress</p> <p>15 counts the same as another person in the state of</p> <p>16 Alabama's vote. That's the reason why we go through</p> <p>17 this process. It's one man, one vote. And until I</p> <p>18 look at a plan and the numbers associated with that</p> <p>19 plan, I don't consider it a full plan.</p> <p>20 Q. So I just want to make sure that I'm</p> <p>21 getting this right. I'm not trying to ask you over</p> <p>22 and over and over again.</p> <p>23 Is it right that you did not look at</p> <p>24 what you considered to be a plan, so an analyzed,</p> <p>25 you know, map with all that demographic information</p> <p style="text-align: right;">Page 96</p>

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<p>1 and deviation information, until after that ten-day 2 mark?</p> <p>3 A. Until after it was analyzed and I could 4 get the numbers, yes.</p> <p>5 Q. Okay.</p> <p>6 A. Then we looked at it to see what the 7 deviation was, the overall deviation of the plan, 8 and how many splits there were in counties and what 9 counties were split.</p> <p>10 Q. Okay. And at that point, were there any 11 maps that were -- had two majority black districts?</p> <p>12 A. I don't remember seeing two majority 13 black districts. I remember seeing one -- two of 14 what they call opportunity districts, what they were 15 calling -- the districts were not 50 percent 16 minority.</p> <p>17 Q. Could you define your understanding of 18 an opportunity district?</p> <p>19 A. That's what they were calling them. 20 They called them opportunity districts, and they 21 were both under 50 percent minority.</p> <p>22 THE REPORTER: Under 50 percent what?</p> <p>23 A. Minority population.</p> <p>24 Q. And who is "they"?</p> <p>25 A. The people who introduced them, the Page 97</p>	<p>1 A. I'm afraid we would run afoul of Section 2 2 of the Voting Rights Act.</p> <p>3 Q. Okay.</p> <p>4 MR. DAVIS: Can I ask how we're doing on 5 time? This was -- I know we had a break, a long 6 break, for audio. This was a two-hour deposition 7 that was noticed. We've got three PI motions we 8 need to get back to work on. This seems to be 9 really dragging.</p> <p>10 MS. WELBORN: Well, I mean, we have up 11 to 7 hours under the Rules of Federal Procedure.</p> <p>12 MR. DAVIS: You're going to take 14?</p> <p>13 MS. WELBORN: I would hope -- I would 14 really like to not do that. But it certainly is our 15 right to do that. I can't really tell you at this 16 point exactly how much longer. But I'm happy to 17 take a break right now to help confer --</p> <p>18 MR. DAVIS: I'm hearing a lot of 19 repetition and a lot of arguing with the witness. 20 If you're going to do this discovery before the 21 preliminary injunction hearing, it needs to get 22 pretty focused and be a little sensitive and 23 courteous towards everything that we've got to do on 24 the defense side to get ready to respond to your 25 motions. Page 99</p>
<p>1 League of Women Voters and -- I can't remember who 2 introduced the bill in the house.</p> <p>3 Q. Okay. And -- sorry. One second. 4 If a district has under a 50 percent 5 minority population, what is the importance of that 6 number, I guess? Why was that number important?</p> <p>7 A. Under Section 2 of the Voting Rights 8 Act, we can't do anything to diminish the ability or 9 protect a class of minority citizens from electing 10 or defeating a candidate of their choice.</p> <p>11 Q. So if a district has under 50 percent 12 voting age population -- sorry. Under 50 percent 13 minority population, does that automatically 14 diminish their ability to choose a candidate of 15 their choice under Section 2?</p> <p>16 A. You're asking an attorney question.</p> <p>17 Q. Well, I mean, ultimately it's your 18 responsibility to --</p> <p>19 A. It would -- it would -- I would give 20 great caution in order to draw a district that was 21 less than 50 percent, yes.</p> <p>22 Q. Under 50 percent minority population?</p> <p>23 A. Yes. I would be very cautious.</p> <p>24 Q. Okay. And by "very cautious," does that 25 mean you are -- what does that mean? Page 98</p>	<p>1 MS. WELBORN: I understand what you're 2 saying.</p> <p>3 MR. ROSBOROUGH: Counsel, I thought we 4 were going to refrain from speaking objections.</p> <p>5 MR. DAVIS: What did he say?</p> <p>6 THE REPORTER: Refrain from speaking 7 objections.</p> <p>8 MS. WELBORN: Let's take a break. Let's 9 go off the record. And we'll come back and talk 10 after that.</p> <p>11 THE VIDEOGRAPHER: We are off the 12 record. The time is 11:26 a.m.</p> <p>13 (Recess was taken.)</p> <p>14 THE VIDEOGRAPHER: We are back on the 15 record. The time is 12:06 p.m.</p> <p>16 Q. So I'd like to talk about the October 17 26th reapportionment committee meeting. Do you 18 remember if you did anything to prepare for that 19 meeting?</p> <p>20 A. Yes. We sent the proposed maps to all 21 the members for their review prior to the meeting.</p> <p>22 Q. And by "we," who do you mean?</p> <p>23 A. The staff at the reapportionment 24 committee.</p> <p>25 Q. Okay. And do you remember how far in Page 100</p>

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1 advance you sent them out?

2 **A. As fast as we could. Remember this**

3 **whole process was very condensed, very condensed.**

4 Q. I think it was the day before the

5 meeting. Is that right?

6 **A. Yes, ma'am, which is standard operating**

7 **procedure. We get bills usually about a day before.**

8 Q. Okay.

9 **A. Usually. Not all the time.**

10 Q. And did you talk to anyone about this

11 meeting beforehand?

12 **A. I approached the members of my -- the**

13 **house members of the committee to make sure they**

14 **read their information and make sure they came to**

15 **the meeting.**

16 Q. And other than the maps themselves, did

17 you provide any materials to the members of the

18 committee?

19 **A. Whatever the committee sent with the**

20 **notice.**

21 Q. With the -- I'm sorry. What do you mean

22 by the notes?

23 **A. They were sent an email notifying them**

24 **of the meeting. Whatever was contained in that**

25 **notification of the meeting.**

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1 Q. And do you know who sent that email?

2 **A. Somebody on the reapportionment staff.**

3 Q. Okay. So a considerable portion of that

4 meeting was about racial polarization analysis,

5 which I'll also refer to as RPV. Does that --

6 **A. RP what?**

7 Q. RPV. Have you heard that term before?

8 **A. I've heard of racial population**

9 **analysis.**

10 Q. I'll try to refer to it as racial

11 polarization analysis. But that's also a lot of

12 words.

13 **A. You can use the acronym.**

14 Q. So what's your understanding of racial

15 polarization analysis?

16 **A. My understanding is that is done**

17 **particularly for the courts to determine whether we**

18 **either on purpose -- intentionally or**

19 **unintentionally violated Section 2 of the Voting**

20 **Rights Act and denied a group of protected class of**

21 **minority citizens from electing or defeating a**

22 **candidate of their choice based on the analysis of**

23 **the historical vote.**

24 Q. And do you know how it's done?

25 **A. No, ma'am.**

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1 Q. Who decides whether a racial

2 polarization analysis should be done for a

3 particular district?

4 **A. Not me.**

5 Q. Do you know who does decide?

6 **A. I would -- I would assume it would be**

7 **our attorney.**

8 Q. Why that assumption?

9 **A. Because he's an attorney and he**

10 **understands Section 2.**

11 Q. But the actual analysis itself is math,

12 right?

13 **A. I would assume. But I've never -- never**

14 **done it.**

15 Q. Okay. Would anyone other than your

16 attorneys make the decision to have a racial

17 polarization analysis done for a particular

18 district?

19 **A. Not that I'm aware of. I'm sure if I**

20 **asked for one, I could get it.**

21 Q. Okay. Can anyone ask for it?

22 **A. I don't know the answer to that**

23 **question.**

24 Q. Well, could a member of the

25 reapportionment committee ask for it and have it be

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1 performed?

2 **A. I'm sure if a member of the**

3 **reapportionment committee wanted one, they could**

4 **approach the legal counsel of the committee and**

5 **request one.**

6 Q. How do you decide which district a

7 racial polarization analysis should be done for?

8 **A. I didn't make that decision.**

9 Q. So you don't play any role in deciding

10 district X should have a racial polarization

11 analysis done?

12 **A. I did not, no.**

13 Q. Okay. Do you know if there are any

14 written guidelines for how someone should decide

15 whether a racial polarization analysis should be

16 done?

17 **A. I don't recall ever seeing any.**

18 Q. Do you know if there are any informal

19 guidelines?

20 **A. I don't recall ever seeing any.**

21 Q. Or hearing of any?

22 **A. No.**

23

24 (Plaintiff's Exhibit 4 was

25 marked for identification.)

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<p>1</p> <p>2 Q. I'd like to introduce Exhibit 4. This</p> <p>3 is a transcript of the reapportionment committee</p> <p>4 meeting from October 26th.</p> <p>5 MS. WELBORN: And we will provide</p> <p>6 electronic copies.</p> <p>7 MR. WALKER: I understand. My only</p> <p>8 caveat is while I don't have any reason to believe</p> <p>9 that these are inaccurate, we haven't had a chance</p> <p>10 to check it.</p> <p>11 MS. WELBORN: Of course.</p> <p>12 Q. I'll get to that in a second.</p> <p>13 But do you know when a racial</p> <p>14 polarization analysis is conducted? At what point</p> <p>15 in the process, I mean.</p> <p>16 A. I was under the assumption that after we</p> <p>17 passed the bills, that a racial polarization</p> <p>18 analysis would be done for the lawsuits.</p> <p>19 Q. Okay. So after they are already</p> <p>20 enacted, right?</p> <p>21 A. Well, given the timeline.</p> <p>22 Q. Okay.</p> <p>23 A. We didn't have time to.</p> <p>24 Q. If you could turn to Page 20. I'm</p> <p>25 sorry. It's Page 18. And at the very bottom,</p> <p style="text-align: right;">Page 105</p>	<p>1 racial issue, do you have an understanding of what</p> <p>2 that means?</p> <p>3 A. You would have to ask Mr. -- Senator</p> <p>4 McClendon.</p> <p>5 Q. Okay. Did you encounter any possible</p> <p>6 racial -- racial issues over the course of the</p> <p>7 redistricting process?</p> <p>8 MR. WALKER: Objection to form. I'm</p> <p>9 just not sure what you mean.</p> <p>10 Q. When did you take race into account in</p> <p>11 the redistricting process?</p> <p>12 A. Mr. Hinaman was directed by the</p> <p>13 committee to follow the guidelines and to draw those</p> <p>14 plans race neutral, without looking at race until</p> <p>15 after he had developed a plan. That's my</p> <p>16 understanding. The plan was developed, and race was</p> <p>17 not looked at until after it was drawn.</p> <p>18 Q. And then how was -- it was looked at</p> <p>19 after the plan was drawn?</p> <p>20 A. After the plan was drawn, yes, ma'am, in</p> <p>21 conjunction with the members of congress.</p> <p>22 Q. And do you know how it was looked at?</p> <p>23 A. No. He met with members of congress to</p> <p>24 go over it.</p> <p>25 Q. And do you know what data was looked at?</p> <p style="text-align: right;">Page 107</p>
<p>1 Senator McClendon says, "Can I ask something? The</p> <p>2 question you're asking, the answer is our attorney,</p> <p>3 mine and your attorney, set that data off for</p> <p>4 districts that it looked like there might possibly</p> <p>5 be a racial issue."</p> <p>6 And this is referring to a racial</p> <p>7 polarization analysis. That is, that racial</p> <p>8 polarization is done -- analysis is done for</p> <p>9 districts where it looked like there might possibly</p> <p>10 be a racial issue.</p> <p>11 Is that your understanding of when</p> <p>12 racial polarization -- that that is why a racial</p> <p>13 polarization analysis is done, is because there</p> <p>14 might possibly be a racial issue?</p> <p>15 A. I read that as our attorney was going to</p> <p>16 make that determination.</p> <p>17 Q. And is it your understanding that</p> <p>18 looking like there might possibly be a racial issue</p> <p>19 is the criteria for determining whether a racial</p> <p>20 polarization analysis should be conducted for a</p> <p>21 particular district?</p> <p>22 A. Again, I was leaving that to the</p> <p>23 attorney to determine, what we would have to prepare</p> <p>24 for court cases.</p> <p>25 Q. So talking about might possibly be a</p> <p style="text-align: right;">Page 106</p>	<p>1 A. No, ma'am.</p> <p>2 MR. WALKER: Did you say date?</p> <p>3 MS. WELBORN: Data.</p> <p>4 Q. And do you know anything that would have</p> <p>5 changed because race was taken into account in the</p> <p>6 congressional map?</p> <p>7 A. No, ma'am.</p> <p>8 Q. And when you said the committee gave</p> <p>9 instructions to Mr. Hinaman, who are you referring</p> <p>10 to specifically?</p> <p>11 A. I would say Chairman McClendon and I</p> <p>12 told Mr. Hinaman to follow the guidelines in drawing</p> <p>13 these maps.</p> <p>14 Q. And in doing so, that means taking a</p> <p>15 race-neutral approach to drawing the first map; is</p> <p>16 that right?</p> <p>17 A. Yes, ma'am. The congressional map, yes,</p> <p>18 ma'am.</p> <p>19 Q. Did you give any other instructions to</p> <p>20 Mr. Hinaman?</p> <p>21 A. Follow the guidelines.</p> <p>22 Q. But that's it?</p> <p>23 A. That's the reason why we adopted the</p> <p>24 guidelines.</p> <p>25 Q. And how did you communicate with</p> <p style="text-align: right;">Page 108</p>

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<p>1 Mr. Hinaman?</p> <p>2 A. I would see him in the reapportionment</p> <p>3 office, and on the telephone.</p> <p>4 Q. Okay. Did you ever email with him?</p> <p>5 A. No, ma'am. I'm not a big email person.</p> <p>6 Q. I suppose that means you didn't text him</p> <p>7 either.</p> <p>8 A. Nothing of substance.</p> <p>9 Q. Okay.</p> <p>10 A. And I'll be glad to show you the texts.</p> <p>11 Q. So are you aware of any racial</p> <p>12 polarization analysis that was done for any district</p> <p>13 in the 2001 -- or 2021 congressional map prior to</p> <p>14 this meeting on October 26th?</p> <p>15 A. No, ma'am.</p> <p>16 Q. So not for District 7?</p> <p>17 A. No, ma'am.</p> <p>18 Q. Had a racial polarization analysis been</p> <p>19 done for some state legislative districts?</p> <p>20 A. No, ma'am.</p> <p>21 Q. Was any racial polarization analysis</p> <p>22 conducted for any of the maps at any point before</p> <p>23 October 26th?</p> <p>24 A. No, ma'am.</p> <p>25 Q. So a racial polarization analysis</p> <p style="text-align: right;">Page 109</p>	<p>1 analysis was done because the maps had already</p> <p>2 passed, right?</p> <p>3 A. Yes.</p> <p>4 Q. Sorry. I'm not trying to trick you.</p> <p>5 A. No. I had to think about it. Yes,</p> <p>6 we -- we passed the maps.</p> <p>7 Q. Okay. Did you ever suggest having a</p> <p>8 racial polarization analysis done before the maps</p> <p>9 were passed?</p> <p>10 A. I didn't consider it an option. We were</p> <p>11 under such a tight timeline. We knew we would have</p> <p>12 to do it because of the lawsuit that had already</p> <p>13 been filed before we ever filed a bill, and we knew</p> <p>14 it would be done. We just didn't have time to . . .</p> <p>15 Q. To get it done?</p> <p>16 A. To get it done.</p> <p>17 Q. Do you know how long it takes to perform</p> <p>18 a racial polarization analysis?</p> <p>19 A. No, ma'am.</p> <p>20 Q. Do you know if anyone suggested doing a</p> <p>21 racial polarization analysis prior to the bill's</p> <p>22 passing?</p> <p>23 A. It came up in the committee meeting.</p> <p>24 And we assured them that we were going to perform</p> <p>25 them, the ones that our attorneys deemed necessary,</p> <p style="text-align: right;">Page 111</p>
<p>1 couldn't be taken into account for drawing the</p> <p>2 initial map?</p> <p>3 A. We drew them race blind.</p> <p>4 Q. Do you know when the first time a racial</p> <p>5 polarization analysis was conducted for any district</p> <p>6 for the congressional map?</p> <p>7 A. My understanding, they were sent off</p> <p>8 sometime after the bills at the end of the special</p> <p>9 session.</p> <p>10 Q. Do you know who requested that?</p> <p>11 A. I believe Mr. Walker.</p> <p>12 Q. And do you know why that request was</p> <p>13 made?</p> <p>14 A. Because we already had a lawsuit filed.</p> <p>15 We had a lawsuit filed against us before we ever</p> <p>16 filed a bill.</p> <p>17 Q. Who -- do you know who did the racial</p> <p>18 polarization analysis?</p> <p>19 A. No, ma'am.</p> <p>20 Q. Do you know if a consultant was hired to</p> <p>21 do it?</p> <p>22 A. There was somebody hired. I do not know</p> <p>23 who.</p> <p>24 Q. So just to be clear, nothing changed as</p> <p>25 a part of the maps after the racial polarization</p> <p style="text-align: right;">Page 110</p>	<p>1 and we would get that to them when we had the</p> <p>2 information.</p> <p>3 Q. Do you know if a racial polarization</p> <p>4 analysis had been done for congressional maps in</p> <p>5 previous redistricting cycles?</p> <p>6 A. I have no knowledge.</p> <p>7 Q. You don't remember from the 2001, 2002</p> <p>8 cycle if that happened?</p> <p>9 A. Remember we were under Section 5</p> <p>10 preclearance at the time. And once they called and</p> <p>11 said we had been precleared -- I had never heard the</p> <p>12 term before that.</p> <p>13 Q. Okay. So do you know when the racial</p> <p>14 polarization analysis for the congressional map was</p> <p>15 finished?</p> <p>16 A. I have not seen it.</p> <p>17 Q. You have not seen it?</p> <p>18 A. I have not seen it.</p> <p>19 Q. Okay. Have you asked to look at it?</p> <p>20 A. No, ma'am.</p> <p>21 Q. Have you talked to anyone about it?</p> <p>22 A. You.</p> <p>23 Q. So why don't you do the racial</p> <p>24 polarization analysis for all districts just as a</p> <p>25 matter of course? And I'm not talking -- I</p> <p style="text-align: right;">Page 112</p>

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1 understand there's a time crunch here. But in
2 general, why isn't it done for all of the districts
3 just because?
4 **A. I don't see a need for some of the**
5 **districts. They're not being challenged in court,**
6 **are they?**
7 Q. Well, Districts 1, 2, and 3 are also
8 being challenged.
9 **A. Okay.**
10 Q. And when you say you don't see a need,
11 why is that?
12 **A. If you're not challenging them in court,**
13 **I mean, I don't see the need to do an analysis on**
14 **them.**
15 Q. Okay. But four of seven districts are
16 being challenged in this lawsuit.
17 **A. Okay.**
18 Q. If you turn to Page 19, Senator
19 McClendon and Representative England have a
20 back-and-forth here about a number, 54 percent of
21 black voting age population for District 7. So 54
22 percent BVAP.
23 And Representative England is asking
24 that a racial polarization analysis be done. And
25 Senator McClendon says that he was told by

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1 Mr. Walker that a racial polarization analysis for
2 District 7 is unnecessary because District 7 has a
3 BVAP of around 54 percent.
4 Why would it be unnecessary to conduct a
5 racial polarization analysis if a district has a
6 BVAP of around 54 percent?
7 **A. I think you need to ask Senator**
8 **McClendon that. I didn't say that.**
9 Q. But do you have an opinion on that?
10 **A. No, ma'am.**
11 Q. Do you think that having a BVAP of
12 around 54 percent for a particular district is
13 important?
14 **A. I -- it's my understanding that's --**
15 **that's the plan that Congresswoman Sewell agreed to.**
16 Q. And what do you mean by that?
17 **A. Mr. Hinaman worked with the members of**
18 **congress, and they signed off on the map that he had**
19 **drawn and said they agreed to it and would accept**
20 **it. I was not privy to that conversation, though.**
21 **That's secondhand. I was just told that.**
22 Q. Who told you that?
23 **A. I don't remember.**
24 Q. So do you have any opinion on whether
25 District 7 should have a BVAP of around 54 percent?

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1 **A. No, ma'am, I have no opinion.**
2 Q. Do you know what the relationship is
3 between having a BVAP of 54 percent and the decision
4 to do a racial polarization analysis?
5 **A. No, ma'am.**
6 Q. Do you know at what percent of BVAP a
7 district would have that you would need to do a
8 racial polarization analysis?
9 **A. No, ma'am.**
10 Q. So would you agree with the statement
11 that if a black district has a BVAP of under 54
12 percent, that requires a racial polarization
13 analysis?
14 **A. I can't agree or disagree with that**
15 **statement. I think it depends on the district. But**
16 **I don't know.**
17 Q. What would -- what do you mean by
18 "depends on the district"?
19 **A. I've seen majority minority districts**
20 **elect nonminorities.**
21 Q. I would like to introduce another
22 exhibit. This is the transcript of the floor
23 debate, Plaintiff's Exhibit 5, on November 1st.
24 **A. All right.**
25

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1 (Plaintiff's Exhibit 5 was
2 marked for identification.)
3
4 Q. And if you'll flip to Page 20.
5 MR. WALKER: And, Kaitlin, I'll just put
6 on the record that we also have not had a chance to
7 check this. I don't have any reason to believe it's
8 inaccurate. But I just note that for the record.
9 MS. WELBORN: Yes. We will stipulate to
10 that for all of the transcripts.
11 MR. WALKER: Okay.
12 Q. So you're having a back-and-forth here
13 with Representative England who again is asking why
14 a racial polarization analysis was not done on
15 District 7.
16 And at the very bottom of the page, you
17 said, "We thought it was necessary, but they cut it
18 off, I think, at 51 percent. Anything under 51
19 percent they did it on. Anyone over that, they
20 didn't do it."
21 Do you know what you mean -- what you
22 meant by that statement?
23 **A. I don't remember. I really -- I think**
24 **that what I was talking about at that point was**
25 **trying to get something done rapidly, as fast as**

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<p>1 possible. And we didn't have time to do 140</p> <p>2 legislative districts, eight school board digits,</p> <p>3 and seven congressional districts given the time</p> <p>4 frame we had.</p> <p>5 Q. And the 51 percent is BVAP. I'll tell</p> <p>6 you that that.</p> <p>7 Okay. And when you said, "We thought it</p> <p>8 was necessary," do you know who you were referring</p> <p>9 to?</p> <p>10 A. I would assume it was Mr. Walker and</p> <p>11 Mr. Hinaman and myself.</p> <p>12 Q. Okay. And when you said they --</p> <p>13 A. Because on that floor -- at this time,</p> <p>14 I'm sure you have my talking points.</p> <p>15 Q. Yes.</p> <p>16 A. I was going -- I was using my talking</p> <p>17 points. And remember this was rapid fire, as fast</p> <p>18 as -- and I was -- this was late into the session.</p> <p>19 And Mr. England is a very skilled</p> <p>20 attorney and chairman of the democratic party. So</p> <p>21 he is quite, quite gifted in the way he can ask</p> <p>22 questions and get people that are not attorneys to</p> <p>23 answer them.</p> <p>24 Q. And so when you said that they cut it</p> <p>25 off at 51 percent, do you know who the "they" is?</p> <p style="text-align: right;">Page 117</p>	<p>1 A. That's a question I really can't -- I</p> <p>2 don't think there's a magic number that exists to</p> <p>3 guarantee the election or defeat of a minority</p> <p>4 candidate.</p> <p>5 Q. Is there some range?</p> <p>6 A. Again, I was told that Congresswoman</p> <p>7 Sewell was comfortable with the plan that had been</p> <p>8 presented and was in support of that plan. And the</p> <p>9 other members of congress were in support of it.</p> <p>10 Q. I would like to introduce Plaintiff's</p> <p>11 Exhibit 6, which is the final 2021 map for congress.</p> <p>12</p> <p>13 (Plaintiff's Exhibit 6 was</p> <p>14 marked for identification.)</p> <p>15</p> <p>16 Q. And District 7 is the one in brown.</p> <p>17 Would you agree that District 7 appears to be</p> <p>18 racially jerrymandered?</p> <p>19 A. I think just District 7 is in large part</p> <p>20 the same district that was drawn under the Reed</p> <p>21 Buskey, just adjusted for population increases.</p> <p>22 Q. And how would you describe the shape of</p> <p>23 District 7?</p> <p>24 A. Again, we try and maintain the core of</p> <p>25 existing districts. And this district was created</p> <p style="text-align: right;">Page 119</p>
<p>1 A. I would assume I was referring to</p> <p>2 Mr. Walker and Mr. Hinaman.</p> <p>3 Q. And how was that 51 percent number</p> <p>4 chosen?</p> <p>5 A. I'm sure I was just reading the talking</p> <p>6 point.</p> <p>7 Q. And who prepared those talking points?</p> <p>8 A. Mr. Walker and, I believe, Mr. Hinaman.</p> <p>9 Q. And did you discuss those talking points</p> <p>10 with either Mr. Walker or Mr. Hinaman?</p> <p>11 A. They were getting them to me as fast as</p> <p>12 they could. This was rapid fire.</p> <p>13 Q. What is your understanding of how you</p> <p>14 can tell whether minorities can elect their</p> <p>15 candidate of choice?</p> <p>16 A. In the congressional maps?</p> <p>17 Q. Yes.</p> <p>18 A. I don't really understand that question.</p> <p>19 Would you repeat it, please?</p> <p>20 Q. How can you tell whether minorities can</p> <p>21 elect their candidate of choice in a particular</p> <p>22 district?</p> <p>23 A. In a particular congressional district?</p> <p>24 Q. Well, any district. But in this case,</p> <p>25 yes, we're talking about a congressional district.</p> <p style="text-align: right;">Page 118</p>	<p>1 in 1992 by the Reed Buskey plan.</p> <p>2 MS. WELBORN: I would like to take just</p> <p>3 a short break. We might be finished. I just want</p> <p>4 to double-check.</p> <p>5 MR. WALKER: Would you like for us to</p> <p>6 leave the room?</p> <p>7 MS. WELBORN: Let's go off the record.</p> <p>8 THE VIDEOGRAPHER: We are off the</p> <p>9 record. The time is 12:33 p.m.</p> <p>10 (Recess was taken.)</p> <p>11 THE VIDEOGRAPHER: We are back on the</p> <p>12 record. The time is 12:40 p.m.</p> <p>13 MS. WELBORN: The Milligan plaintiffs</p> <p>14 are finished asking questions. I'm not sure if the</p> <p>15 Singleton or Caster plaintiffs have any questions</p> <p>16 for you. But after that, we can break for lunch and</p> <p>17 you'll be done.</p> <p>18 MR. WALKER: Yay.</p> <p>19 MS. WELBORN: Yay.</p> <p>20 MS. FAULKS: Do the Caster plaintiffs</p> <p>21 have any questions?</p> <p>22 MR. OSHER: Can you hear me?</p> <p>23 (Discussion held off the record.)</p> <p>24 EXAMINATION BY MR. OSHER:</p> <p>25 Q. I only have a few questions. So this</p> <p style="text-align: right;">Page 120</p>

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<p>1 should be -- this should be very quick. 2 Representative, thank you for your time. My name is 3 Daniel Osher. I am an attorney for the plaintiffs 4 in the Caster litigation. 5 You might have said this before. And I 6 apologize if you did, Representative. How long have 7 you served in the Alabama legislature? 8 A. I was first elected in 1994. I served 9 two terms. I left in 2002. And I was reelected in 10 2014 and '18. 11 Q. Okay. So that's roughly how many years? 12 A. 12. How many years total? I'll be 16 13 years in the legislature with a 12-year gap. 14 Q. Great. Thank you. 15 And have you been a member of the 16 republican party that whole time? 17 A. I've been an elected republican 18 official. But I've never been an official member of 19 the Alabama Republican Party. 20 Q. I understand. Have you always 21 considered yourself a republican? 22 A. Yes, sir. 23 Q. Based on your 16 years serving in the 24 legislature, in your view, do the views of members 25 of the democratic party in Alabama differ from the Page 121</p>	<p>1 A. I'm assuming that I've had numerous 2 conversations with both republicans and democrats, 3 yes. 4 Q. And do you have a general sense of how 5 one party views a major issue in Alabama as opposed 6 to another party? 7 A. I'm sure we differ on specific issues, 8 yes. 9 Q. Okay. So based on your 16 years serving 10 in the legislature, do the views of members of the 11 democratic party in Alabama generally differ from 12 the members of the republican party in Alabama 13 generally when it comes to affirmative action? 14 A. Again, your definition of affirmative 15 action I don't know. 16 Q. Policies implementing a preference for 17 individuals while considering their race. 18 A. I think given my history of being in the 19 Alabama legislature when the democrats were in 20 supermajority, it's a pretty wide spectrum across 21 political lines. 22 Q. So you're saying that the two major 23 parties in Alabama do not have the -- have the same 24 view when it comes to affirmative action? 25 A. I couldn't answer that. I've run across Page 123</p>
<p>1 members of the republican party in Alabama when it 2 comes to removing confederate monuments from public 3 spaces? 4 A. I mean, you're asking me to suppose what 5 other people are thinking. But I would say yes. 6 Q. And based -- based on your 16 years in 7 the legislature, do the views of members of the 8 democratic party in Alabama differ from the members 9 of the republican party in Alabama when it comes to 10 affirmative action? 11 MR. WALKER: Objection to form. Dan, 12 I'm not sure that we have a clear understanding of 13 what affirmative action is these days. 14 MR. OSHER: I didn't catch that, Dorman. 15 Can you say that again? 16 MR. WALKER: Yeah. I'm not sure that I 17 would have a clear understanding of what affirmative 18 action is these days. 19 MR. OSHER: Sure. 20 Q. Representative, in your 16 years of 21 service in the legislature, have you had an 22 opportunity to view what the general views of each 23 of the major parties in the state are? 24 A. On which issue? 25 Q. On various issues. Page 122</p>	<p>1 varying opinions in different members. 2 Q. Okay. Based on your 16 years in the 3 legislature, do the views of members of the 4 democratic party in Alabama generally differ from 5 members of the republican party in Alabama generally 6 when it comes to criminal justice reform? 7 A. I think -- I think there's a divide, 8 yes. But I know some -- some conservatives that are 9 in favor of criminal justice reform themselves. 10 Q. And just to clarify, you're saying that 11 there is a difference between the general views of 12 the democratic party -- members of the democratic 13 party and members of the republican party when it 14 comes to criminal justice reform? 15 A. There could be, yes. 16 Q. Is it -- in your view, is there a divide 17 between the members of the party or not? 18 A. I think some members hold different 19 opinions, yes. 20 Q. And the same question. Based on your 21 experience in serving in the legislature, do the 22 views of the members of the democratic party 23 generally in Alabama differ from the members of the 24 republican party generally in Alabama when it comes 25 to the view of whether there's a significant amount Page 124</p>

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<p>1 of discrimination against black individuals in the 2 state?</p> <p>3 A. Yes.</p> <p>4 MR. OSHER: Okay. That's all I have. 5 Thank you very much for your time, Representative.</p> <p>6 MR. WALKER: Thank you. Thank you, 7 Daniel.</p> <p>8 MS. FAULKS: Singleton plaintiffs, do 9 you have any questions?</p> <p>10 MR. BLACKSHER: Did I get called?</p> <p>11 MR. WALKER: You did. You did, Jim.</p> <p>12 MR. BLACKSHER: Well, thank you.</p> <p>13 EXAMINATION BY MR. BLACKSHER:</p> <p>14 Q. Representative Pringle, I hope you make 15 it back to Mobile before the night is over.</p> <p>16 A. Thank you. So do I.</p> <p>17 Q. I wouldn't want to stay in Montgomery 18 overnight if I could get back to Mobile on a Friday 19 night.</p> <p>20 A. See, we have a lot in common, 21 Mr. Blacksher.</p> <p>22 Q. Yeah.</p> <p>23 A. I'm not --</p> <p>24 Q. I just have a --</p> <p>25 MR. WALKER: Go ahead.</p> <p style="text-align: right;">Page 125</p>	<p>1 A. You were asking for a plan that had all 2 whole counties that created two opportunity 3 districts.</p> <p>4 Q. Did he tell you that the lawsuit 5 contended that the plan that was enacted in 2011 was 6 racially jerrymandered?</p> <p>7 MR. WALKER: I'm going to -- I'm going 8 to assert privilege. You might be able to ask that 9 question a different way, Jim. But I think the way 10 you've asked it, it calls -- or could call for an 11 attorney-client communication.</p> <p>12 Q. Okay. I lost you. All I see is a 13 telephone screen now. Oh, there you are up in the 14 corner.</p> <p>15 Let me ask it this way, Representative 16 Pringle. Were you aware and are you aware now that 17 the Singleton complaint alleged, when it was filed 18 September 27th, that the plan enacted in 2011 was 19 unconstitutional because it was racially 20 jerrymandered?</p> <p>21 A. Not specifically.</p> <p>22 Q. Okay. Were you aware that the state 23 attorney general's office had said in a lawsuit in 24 Birmingham in 2019 that the 2011 plan was racially 25 jerrymandered?</p> <p style="text-align: right;">Page 127</p>
<p>1 Q. I just have -- I have very few 2 questions.</p> <p>3 Representative Pringle, you said that -- 4 and I haven't been in on your whole discussion. I 5 confess I had to jump off on some other calls while 6 it was all going on. So I apologize if I go over 7 something that you've already spoken about.</p> <p>8 But I did hear you say with a smile on 9 your face that there was a lawsuit filed even before 10 you passed a plan. And that would be referring to 11 the Singleton case, right?</p> <p>12 A. I refer to it as the League of Women 13 Voters. But yes, sir.</p> <p>14 Q. The League of Women Voters. It was the 15 lawsuit that was advocating the League of Women 16 Voters whole county plan?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And who informed you that that 19 suit had been filed? It was Mr. Walker, wasn't it?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And did you get a chance to read the 22 complaint?</p> <p>23 A. No, sir.</p> <p>24 Q. And did Mr. Walker tell you what the 25 lawsuit was about?</p> <p style="text-align: right;">Page 126</p>	<p>1 MR. DAVIS: Object to the form.</p> <p>2 MR. WALKER: Jim, did you hear that 3 objection to form from Jim Davis?</p> <p>4 MR. BLACKSHER: Yes.</p> <p>5 MR. DAVIS: That's not what it said.</p> <p>6 Q. Are you aware that that is what the 7 complaint that Singleton filed alleged, that the 8 state attorney general had conceded in federal court 9 in 2019 that the 2011 plan was racially 10 jerrymandered? Were you aware of that?</p> <p>11 MR. DAVIS: Object to the form.</p> <p>12 MR. WALKER: Object to form.</p> <p>13 Q. You -- you can answer.</p> <p>14 MR. WALKER: I'm sorry. You can answer, 15 if you can.</p> <p>16 A. No.</p> <p>17 Q. You weren't aware of that.</p> <p>18 Were you aware -- did anyone tell you 19 that the lawsuit contended that when drawing a new 20 congressional plan with 2020 census data, that the 21 legislature had a constitutional obligation to 22 remedy a racial jerrymandering?</p> <p>23 A. No.</p> <p>24 Q. Okay. And as chair of the 25 reapportionment committee, you can testify that</p> <p style="text-align: right;">Page 128</p>

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1 there was no effort made by the reapportionment
2 committee to remedy any racial jerryandering in the
3 2011 claim; isn't that correct?
4 **A. I testified that Mr. Hinaman was**
5 **directed to draw those seven congressional districts**
6 **based on the guidelines of the committee.**
7 Q. Yeah. And no one informed you, and you
8 -- excuse me.
9 The committee never attempted to remedy
10 a racial jerryandering; is that correct?
11 **A. I did not know there was a --**
12 Q. Racial jerryandering?
13 **A. Yes.**
14 Q. Okay. Now, my understanding from your
15 testimony is that Mr. Walker advised you as chair of
16 the reapportionment committee that the congressional
17 redistricting plan had to have zero deviation; is
18 that correct?
19 **A. Yes.**
20 Q. So did anyone else give you that advice,
21 zero deviation?
22 **A. Mr. Hinaman.**
23 Q. So Mr. Hinaman advised you that the plan
24 had to be zero deviation?
25 **A. Well, Mr. Blacksher, was not the 2011**
Page 129

1 **and the 2002 plans all zero deviations, and the 1992**
2 **plan?**
3 Q. Well, what I asked -- the question was
4 did Mr. Hinaman advise you that it needed to be zero
5 deviation.
6 **A. Again, Mr. Hinaman has been part of this**
7 **for years. And I think every plan has been drawn to**
8 **zero deviation.**
9 Q. Okay. Does that mean that he did advise
10 you to keep it at zero deviation?
11 **A. Yes. Because all the other plans had**
12 **been drawn to zero deviation.**
13 Q. Okay. That's fine.
14 And did anyone besides Mr. Walker and
15 Mr. Hinaman advise the committee that the plan had
16 to keep a zero deviation?
17 **A. Not to my knowledge.**
18 Q. Did the -- did you as chair or did
19 anyone on the committee seek the advice of the
20 Alabama attorney general's office on whether it
21 needed to have zero deviation?
22 **A. I did not.**
23 Q. Are you aware of anyone on the
24 committee who did?
25 **A. No, sir.**
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1 Q. Are you aware of any -- anyone -- did
2 Mr. Walker, by the way, advise you that he had
3 consulted other lawyers to reach this opinion?
4 MR. WALKER: Jim, I'm going to object on
5 the grounds of privilege to that. You can ask it
6 some other way.
7 Q. I'm just trying to get everything you
8 knew or did not know about the requirement of zero
9 deviation.
10 And what I've heard you say,
11 Representative Pringle, is that you were aware,
12 since you've been involved in one way or the other
13 with redistricting, that it had been going on for
14 several decades, right?
15 **A. Zero deviation in congressional races?**
16 Q. Yes.
17 **A. Yes.**
18 Q. Okay. And when it came to drawing the
19 2020 plan, you were advised that that needed to
20 continue, zero deviation needed to continue. And
21 that advice came from Mr. Walker and Mr. Hinaman; is
22 that correct?
23 MR. WALKER: Objection to form to the
24 extent it calls for an attorney-client
25 communication.
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1 Q. But you can answer, I think.
2 MR. BLACKSHER: Counsel, can he answer?
3 Q. Okay. Let me ask another question.
4 Did Mr. Walker also advise you that in
5 order to comply with the Voting Rights Act, the
6 congressional redistricting plan had to have a
7 majority black district? Is that correct?
8 MR. WALKER: Objection, attorney-client
9 privilege.
10 Q. Well, that's in the talking points,
11 isn't it? Isn't that -- isn't the requirement of a
12 majority black district one of the things that's in
13 the talking points that you've exchanged with us
14 that you -- that you read from on the floor of the
15 legislature?
16 **A. I don't have any direct recollection of**
17 **that at this time.**
18 Q. So did anyone advise you, as chair of
19 the reapportionment committee, that in order to
20 comply with the Voting Rights Act, the plan had to
21 have one majority black district, at least one
22 majority black district?
23 MR. WALKER: Object to the question to
24 the extent it calls for an attorney-client
25 communication. Otherwise, you can answer.
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<p>1 A. We instructed Mr. Hinaman, quoting the 2 guidelines, to protect the core of the existing 3 districts to the extent possible and to draw it to 4 zero deviation.</p> <p>5 Q. Okay. Representative Pringle, there's 6 absolutely no mention of majority black in the 7 guidelines.</p> <p>8 So the question is: In complying -- the 9 guidelines say that you had to comply with the 10 Voting Rights Act, right?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. But it doesn't say majority 13 black, right?</p> <p>14 A. The guidelines, I don't recall them 15 saying that.</p> <p>16 Q. Right. So the question is: Were you 17 advised that to comply with the Voting Rights Act, 18 there had to be a majority black district?</p> <p>19 MR. WALKER: Objection that I've made 20 before to the extent it calls for attorney-client 21 communication. Otherwise, he can answer.</p> <p>22 A. Again, those plans are drawn in a 23 race-neutral manner based on the guidelines to 24 preserve the core of the existing congressional 25 districts.</p> <p style="text-align: right;">Page 133</p>	<p>1 understand that you needed to have a majority black 2 district.</p> <p>3 A. I understood that we needed to draw 4 districts to help protect the incumbent, yes.</p> <p>5 Q. And to you, that meant a majority black 6 district, protecting the incumbent. Is that your 7 answer?</p> <p>8 A. Well, I acquiesced to Mr. Hinaman who 9 met with the members of the congress and talked to 10 them about their districts and what they wanted and 11 how they wanted them drawn. And he presented a plan 12 to me that he said the members of congress agreed to 13 that were seeking reelection, that they had agreed 14 to.</p> <p>15 Q. Okay. Let's talk for just a second 16 about the League of Women Voters' whole county plan. 17 According to the talking points, you 18 were advised that that plan would be 19 unconstitutional because its deviation was too 20 large; isn't that correct?</p> <p>21 A. That was in my -- the analysis I 22 received, yes.</p> <p>23 Q. And that information came from whoever 24 wrote the talking points?</p> <p>25 A. Yes. That would be Mr. Hinaman and</p> <p style="text-align: right;">Page 135</p>
<p>1 Q. Yes, sir. I've heard that testimony. 2 My question, though, is were you advised 3 that the Voting Rights Act required there to be a 4 majority black district?</p> <p>5 MR. WALKER: Same objection.</p> <p>6 A. The Voting Rights Act requires that we 7 in no way intentionally nor unintentionally diminish 8 the ability of a protected class of minority 9 citizens from electing or defeating a candidate of 10 their choosing.</p> <p>11 Q. And did that mean a majority black 12 district?</p> <p>13 A. It means we had -- we drew a district 14 that would allow -- that maintained the core of an 15 existing minority district. But we did it in a 16 race-neutral way.</p> <p>17 Q. Your understanding of the requirement of 18 maintaining the cores and drawing a race-neutral 19 plan meant that you needed to end up with a majority 20 black district. Am I hearing you correctly?</p> <p>21 A. We -- we made every opportunity to 22 protect the incumbents who were seeking reelection.</p> <p>23 Q. That's not the question I asked you 24 about the incumbent.</p> <p>25 I asked if you were advised and did you</p> <p style="text-align: right;">Page 134</p>	<p>1 Mr. Walker.</p> <p>2 Q. Okay. And the talking points also 3 advised, didn't they, that the League of Women 4 Voters' plan would violate the Voting Rights Act 5 because it did not have a majority black district; 6 isn't that correct?</p> <p>7 A. It could potentially violate Section 2 8 by diminishing the ability of a protected class of 9 citizens from electing or defeating a candidate of 10 their choosing, yes.</p> <p>11 Q. I'm just asking if the talking points 12 said -- you know, I don't have them in front of me. 13 You've probably been looking at them all morning.</p> <p>14 A. Actually, I haven't.</p> <p>15 Q. The talking points actually said, didn't 16 it -- the talking points actually said that the 17 League of Women Voters' whole county plan would 18 violate the Voting Rights Act because it did not 19 have a majority black district.</p> <p>20 Now, did you -- did anyone else give you 21 that advice other than what was in the talking 22 points?</p> <p>23 MR. DAVIS: Object to the form.</p> <p>24 MR. WALKER: Object to the form.</p> <p>25 THE WITNESS: Can I answer?</p> <p style="text-align: right;">Page 136</p>

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1 MR. WALKER: You can answer to the
2 extent that you do not discuss any communication you
3 may have received from an attorney, in particular
4 one from the AG's office.
5 **A. I was reading the talking points that**
6 **you have before you.**
7 Q. Actually, I don't have them before me.
8 I'm sorry.
9 But in any event, let me -- let me wrap
10 this up this way. Was the -- was the committee ever
11 presented in writing a statement that the League of
12 Women Voters' whole county plan violated the Voting
13 Rights Act?
14 **A. If my memory serves me correctly, we did**
15 **not yet have the official League of Women Voters'**
16 **plan in the computer at the time of the committee**
17 **meeting. I think it was introduced later.**
18 Q. Okay. You're going to have to listen to
19 the question again.
20 MR. BLACKSHER: Could I ask the court
21 reporter to read the question back, please?
22 (Record read.)
23 **A. Was the committee ever presented --**
24 MR. WALKER: Was the committee ever
25 presented in writing.

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1 **A. I have no recollection of that.**
2 Q. Okay. Thank you.
3 And was the committee ever presented in
4 writing a statement that the League of Women Voters
5 -- I'm sorry. Let me strike that. Let me start
6 over.
7 Was the committee ever presented in
8 writing a statement that the congressional plan had
9 to have zero deviation?
10 **A. I don't understand the question.**
11 Q. Did the committee have in writing a
12 statement that the congressional plan had to have
13 zero deviation?
14 **A. The guidelines called for it, which has**
15 **been done for -- as you know, for years and years.**
16 **For decades, we've always drawn down to zero**
17 **deviation in congressional.**
18 Q. Okay. So the guidelines say that the
19 congressional plan must have minimal deviation.
20 **A. Which we interpret to be -- which we**
21 **interpret to be zero deviation just like it was, you**
22 **know, in 2011, 2002, 1992.**
23 Q. Okay. That's good.
24 So in other words, when you saw, as
25 chair of the committee, that the guidelines said

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1 "minimal deviation," you interpreted that on your
2 own as meaning zero deviation; is that correct?
3 **A. Based on my knowledge and history of**
4 **reapportionment, congressional reapportionment, and**
5 **the fact that we have drawn zero deviation**
6 **districts, yes, sir.**
7 Q. Okay. So that would -- and you reached
8 that conclusion independently of anybody's advice,
9 right?
10 **A. Well, Mr. Walker and Mr. Hinaman and I**
11 **all concurred that minimum deviation means zero.**
12 **And based on my readings, I would concur with that,**
13 **what I read.**
14 Q. Thank you, Representative Pringle.
15 Those are the only questions that I have.
16 **A. Mr. Blacksher, it's always a pleasure.**
17 Q. I hope to see you again soon.
18 **A. I'm sure you will.**
19 MR. WALKER: I think that can be
20 arranged.
21 MS. FAULKS: Dorman, with that, I think
22 that we are done. For lunch, how long do we want to
23 break?
24 MR. WALKER: Wait. Can we have 30
25 seconds to confer?

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1 THE VIDEOGRAPHER: We're off the record.
2 The time is 1:05 p.m.
3 (Recess was taken.)
4 THE VIDEOGRAPHER: We're back on the
5 record. The time is 1:08 p.m.
6 EXAMINATION BY MR. DAVIS:
7 Q. Representative Pringle, this is Jim
8 Davis. I represent Secretary Merrill in this
9 lawsuit. I have just a couple of follow-up
10 questions.
11 Did you instruct Mr. Hinaman to -- when
12 he drew a congressional plan, that it had to include
13 a majority black district?
14 **A. No.**
15 Q. Did you instruct him to include
16 districts with any particular demographics?
17 **A. No.**
18 Q. Are you aware of any member on the
19 reapportionment committee who gave him such
20 instructions?
21 **A. No.**
22 Q. Did you decide in advance that there had
23 to be a majority black district in Alabama's
24 congressional plan?
25 **A. No.**

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1 MR. DAVIS: Thank you. No other
2 questions.
3 THE VIDEOGRAPHER: This ends the
4 deposition of Chris Pringle. The time is now
5 1:09 p.m.
6
7 (DEPOSITION ENDED AT 1:09 P.M.)
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1 STATE OF ALABAMA)
2 JEFFERSON COUNTY)
3
4 I hereby certify that the above
5 proceedings were taken down by me and transcribed by
6 me using computer-aided transcription and that the
7 above is a true and correct transcript of said
8 proceedings taken down by me and transcribed by me.
9 I further certify that I am neither of
10 kin nor of counsel to any of the parties nor in
11 anywise financially interested in the result of this
12 case.
13 I further certify that I am duly
14 licensed by the Alabama Board of Court Reporting as
15 a Certified Court Reporter as evidenced by the ACCR
16 number following my name found below.
17 So certified on December 17, 2021.
18
19
20
21
22
23 LeAnn Maroney, Commissioner
24 ACCR# 134, Expires 9/30/25
25 505 North 20th Street, Suite 1250
Birmingham, AL 35203

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In The Matter Of:

Evan Milligan,et al v. John H.Merrill, et al.

Jim McClendon

December 17, 2021

US Legal

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3
4
5
6 EVAN MILLIGAN, et al.,)
7) CIVIL CASE NO.
8 Plaintiffs,) 2:2021-CV-01530-AMM
9 VS.) VIDEO DEPOSITION OF:
10 JOHN MERRILL, et al.,) JAMES MCCLENDON
11)
12 Defendants.)
13
14
15
16 S T I P U L A T I O N S
17 IT IS STIPULATED AND AGREED, by and between
18 the parties through their respective counsel, that
19 the deposition of:
20 JAMES MCCLENDON,
21 may be taken before LeAnn Maroney, Notary Public,
22 State at Large, at the law offices of Balch &
23 Bingham, 105 Tallapoosa Street, Montgomery, Alabama,
24 36104, on December 17, 2021, commencing at 1:57 p.m.
25

Page 1

1 IT IS FURTHER STIPULATED AND AGREED that the
2 signature to and reading of the deposition by the
3 witness is waived, the deposition to have the same
4 force and effect as if full compliance had been had
5 with all laws and rules of Court relating to the
6 taking of depositions.
7
8 IT IS FURTHER STIPULATED AND AGREED that it
9 shall not be necessary for any objections to be made
10 by counsel to any questions, except as to form or
11 leading questions, and that counsel for the parties
12 may make objections and assign grounds at the time
13 of the trial, or at the time said deposition is
14 offered in evidence, or prior thereto.
15
16
17 ***
18
19
20
21
22
23
24
25

Page 2

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Jim McClendon
12/17/2021

1 FOR DEFENDANT JOHN H. MERRILL:	1 I, LeAnn Maroney, a Court Reporter of
2 JIM DAVIS	2 Birmingham, Alabama, and a Notary Public for the
3 Assistant Attorney General	3 State of Alabama at Large, acting as commissioner,
4 Office of the Attorney General	4 certify that on this date, pursuant to the Federal
5 501 Washington Avenue	5 Rules of Civil Procedure and the foregoing
6 Montgomery, Alabama 36130	6 stipulation of counsel, there came before me on
7 jim.davis@alabamaag.gov	7 December 17, 2021, JAMES McCLENDON, witness in the
8	8 above cause, for oral examination, whereupon the
9 FOR THE DEFENDANTS JAMES McCLENDON & JAMES	9 following proceedings were had:
10 McCLENDON:	10 * * * * *
11 DORMAN WALKER	11 THE VIDEOGRAPHER: This marks the
12 Attorney at Law	12 beginning of the deposition of Jim McClendon in the
13 Balch & Bingham	13 matter of Evan Milligan, et al., versus John H.
14 105 Tallapoosa Street, Ste. 200	14 Merrill, et al., Civil Case Number 2:21-CV-01530-AMM
15 Montgomery, Alabama 36104	15 filed in the United States District Court for the
16 dwalker@balch.com	16 Northern District of Alabama. The date is December
17	17 17, 2021. The time is 1:57 p.m.
18	18 All attorneys present, will you please
19 ALSO PRESENT:	19 state your names and whom you represent.
20 Paige Ali, Videographer	20 MR. DAVIS: Jim Davis, Alabama Attorney
21	21 General's Office, for Secretary of State John
22	22 Merrill.
23	23 MR. WALKER: Dorman Walker, Balch &
24	24 Bingham, for Senator Jim McClendon.
25	25 MS. SADASIVAN: This is Kathryn
Page 5	Page 7
1 I N D E X	1 Sadasivan for plaintiffs Evan Milligan, Shalela
2 MS. SADASIVAN: 9-103	2 Dowdy, Letetia Jackson, Greater Birmingham
3 MR. OSHER: 104-111	3 Ministries, and the NAACP of Alabama.
4 MR. DAVIS: 111-114	4 I'm still having trouble hearing you
5	5 all, though. The audio is going out. Are you able
6	6 to move the place where -- anything towards the
7 E X H I B I T L I S T	7 witness, a phone, audio of some sort?
8	8 (Discussion held off the record.)
9	9 THE VIDEOGRAPHER: Okay. The attorneys
10 Plaintiff's Exhibit 1 - 35	10 that are on Zoom, if you'll do your introductions.
11 (Talk points)	11 MR. TURRILL: Michael Turrill of Hogan
12 Plaintiff's Exhibit 2 - 36	12 Lovells on behalf of the Milligan plaintiffs.
13 (2011 reapportionment guidelines)	13 MR. ROSS: Deuel Ross for the Milligan
14 Plaintiff's Exhibit 3 - 47	14 plaintiffs.
15 (Montgomeryadvertiser.com)	15 MR. OSHER: Dan Osher for the Caster
16 Plaintiff's Exhibit 4 - 61	16 plaintiffs.
17 (Public hearing schedule)	17 MS. EBENSTEIN: Julie Ebenstein for the
18 Plaintiff's Exhibit 5 - 64	18 Milligan plaintiffs.
19 (2021 reapportionment guidelines)	19 THE VIDEOGRAPHER: Do you want to swear
20 Plaintiff's Exhibit 6 - 76	20 him in?
21 (Transcript of October 26, 2021)	21 JAMES McCLENDON,
22 Plaintiff's Exhibit 7 - 94	22 having been duly sworn, was examined and testified
23 (Transcript of November 3, 2021)	23 as follows:
24 Plaintiff's Exhibit 8 - 100	24 THE REPORTER: Usual stipulations?
25 (Hall request for additional meetings)	25 MR. WALKER: Meaning that the only
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<p>1 objections that need to be made are to the form of 2 the question. Yes, Katherine? 3 MS. SADASIVAN: Yes. 4 THE VIDEOGRAPHER: We are off the 5 record. The time is 1:59 p.m. 6 (Recess was taken.) 7 THE VIDEOGRAPHER: We are back on the 8 record. The time is 2:04 p.m. 9 EXAMINATION BY MS. SADASIVAN: 10 Q. Good afternoon, Mr. McClendon. My name 11 is Kathryn Sadasivan and I work for the NAACP Legal 12 Defense & Educational Fund. I represent the 13 plaintiffs in this case, Milligan versus Merrill. 14 Thank you for making yourself available for today's 15 deposition. 16 Do you understand that you're here today 17 because you've been served with a notice of 18 deposition and you are a defendant in Milligan 19 versus Merrill in your official capacity as cochair 20 of the Alabama permanent legislative committee on 21 reapportionment? 22 A. I do. 23 Q. Before going any further, can you please 24 state and spell your name for the record? 25 A. James H. McClendon, M-c-C-L-E-N-D-O-N. Page 9</p>	<p>1 Q. Are you taking any medication that might 2 affect your ability to understand the questions that 3 I ask or provide answers to those questions? 4 A. No. 5 Q. Do you have any condition that would 6 affect your ability to understand the questions that 7 I ask and provide answers to the questions? 8 A. No. 9 Q. Do you understand that today's 10 deposition is being conducted via web 11 videoconference? 12 A. Yes. 13 Q. Do you understand that a court reporter 14 is transcribing this deposition, meaning that they 15 are writing down everything that you, your counsel, 16 and I say today? 17 A. Yes. 18 Q. It's important that all of your answers 19 are verbal. This will allow the court reporter to 20 record our statements. The court reporter won't be 21 able to record gestures or nodding. Do you 22 understand? 23 A. I do. 24 Q. Likewise, it's important that we don't 25 speak over one another. I will wait until you Page 11</p>
<p>1 Q. And your first name, as well, please. 2 A. J-A-M-E-S. 3 Q. Have you ever been deposed before? 4 A. Yes. 5 Q. When? 6 A. Roughly ten years ago during 7 redistricting last time. 8 Q. And what was your role in the 9 litigation? 10 A. I was house chairman of redistricting at 11 that time. 12 Q. Were you a defendant? 13 A. Yes. 14 Q. Were you -- have you been involved in 15 any other cases? 16 A. Any? No. 17 Q. You are sworn and under oath. Do you 18 understand that for purposes of my questioning, you 19 must testify truthfully and as completely as 20 possible as though we were before a judge in a 21 courtroom? 22 A. Yes. 23 Q. Is there any reason you cannot give 24 truthful and complete testimony today? 25 A. No. Page 10</p>	<p>1 finish your answer, and I ask that you please wait 2 until I finish my question before answering. Do you 3 understand? 4 A. I do. 5 Q. If you don't understand a question that 6 I ask, please just let me know, and I'll rephrase 7 it. If at any point you recall additional 8 information that is responsive to a question that I 9 asked you earlier, please let me know, and I will 10 allow you to clarify the record. Do you understand? 11 A. I do. 12 Q. Please do not guess or assume when 13 answering. Be sure to state only that which you 14 know to be true based on your personal knowledge. 15 Will you do that? 16 A. Yes. 17 Q. You may hear your attorney, Mr. Walker, 18 object to a question from time to time. His 19 objections are being made for the record, and you 20 are still required to answer my question unless you 21 are instructed by your attorney not to answer. Do 22 you understand? 23 A. I'm not sure about that. Maybe say it 24 again. Let me hear you say that one more time. 25 Q. You may hear your attorney object to a Page 12</p>

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1 question from time to time throughout this
2 deposition. Those objections are made largely for
3 the record. And you understand you are still
4 required to respond to my question unless you are
5 instructed by your attorney not to?

6 **A. Okay.**

7 Q. Do you understand that?

8 **A. I've got it.**

9 Q. Is that a yes?

10 **A. Yes.**

11 Q. Thank you.

12 Since we're conducting this deposition
13 remotely and we're not together in the same room, I
14 ask that you please keep your cell phone off unless
15 we are on a break. Can you do that?

16 **A. I understand.**

17 Q. Please don't refer to any documents or
18 other materials during our conversation today. Will
19 you do that?

20 **A. Did you say don't refer to any materials
21 or documents today? Is that what you said?**

22 Q. Do you have any documents with you?

23 **A. I do not.**

24 MR. WALKER: Oh, did you mean don't look
25 at any documents?

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1 Q. Do you have any -- if you don't have any
2 documents with you, please don't look at any
3 documents other than those that I will give you. Do
4 you understand that?

5 **A. I do.**

6 Q. Thank you. Sorry for all the
7 preparatory language.

8 Finally, if you need a break at any
9 time, please just let me know. If there's a
10 question pending, I just ask that you answer that
11 question before going on a break. Do you
12 understand?

13 **A. I do.**

14 Q. Thank you.

15 I'm going to ask you some background
16 questions to get to know you a little bit better.

17 What is your date of birth?

18 **A. 1-10-43.**

19 Q. That's January 10, 1943?

20 **A. Correct.**

21 Q. What's your address?

22 **A. 361 Jones Road, Springville, Alabama.**

23 Q. And your telephone number?

24 **A. (205)999-8096.**

25 Q. Is that a mobile phone number?

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1 **A. Correct. Yes, it is.**

2 MR. WALKER: Kathryn, can I ask that
3 this personal information be redacted with anything
4 you file with the court?

5 Q. Do you have any other phone numbers?

6 **A. Well, I do have a phone in my office in
7 the Alabama state house, but I'm not sure what the
8 number is.**

9 Q. Do you have an email account?

10 **A. I do. I have two.**

11 Q. And what are they?

12 **A. My personal email is
13 jimmcc@windstream.net. My senate email is
14 jim.mcclendon@alsenate.gov.**

15 Q. Do you have any personal social media
16 accounts?

17 **A. Facebook, yes.**

18 Q. You just have a Facebook account?

19 **A. Correct.**

20 Q. No Twitter?

21 **A. No Twitter.**

22 Q. And where were you born?

23 **A. Mobile, Alabama.**

24 Q. And where did you go to high school?

25 **A. Springville, Alabama.**

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1 Q. Where did you go to college?

2 **A. My undergraduate degree is from
3 Birmingham Southern College in Birmingham, and my
4 doctorate is from the University of Houston,
5 Houston, Texas.**

6 Q. And what is your doctorate in?

7 **A. Optometry.**

8 Q. And what courses did you take at
9 Birmingham Southern?

10 **A. Just pretty much premed-type courses.**

11 Q. And have you studied anywhere else?

12 **A. No, other than continuing education
13 courses required to maintain my optometry license.**

14 Q. So you are an optometrist?

15 **A. Correct. Yes, I am.**

16 Q. Have you -- are you married?

17 **A. I am.**

18 Q. How long have you been married?

19 **A. 26 years.**

20 Q. Congratulations.

21 Do you have kids?

22 **A. I do.**

23 Q. How many?

24 **A. One child.**

25 Q. One child. And how old are they?

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1 A. She is 50.
2 Q. And what does she do for a living?
3 A. A school teacher.
4 Q. In Alabama?
5 A. Yes.
6 Q. Where?
7 A. In the Jefferson County system.
8 Q. And where do you work?
9 A. I'm a -- I'm retired from optometry.
10 Q. So you are not employed currently?
11 A. As an optometrist, no, I am not.
12 Q. Are you employed anywhere currently?
13 A. Only as an Alabama senator.
14 Q. So you're working as an Alabama senator?
15 A. Well, I am a senator, and we do work
16 from time to time.
17 Q. Are you paid?
18 A. Yes.
19 Q. Do you know why you're here today?
20 A. Yes.
21 Q. Why?
22 A. A lawsuit concerning redistricting that
23 we just completed in the Alabama legislature.
24 Q. Did you read the complaint in the case
25 in which you're sitting for a deposition today?

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1 A. I didn't quite understand. Did you say
2 will you read or did you read?
3 Q. Did you read.
4 A. I have not read it, no.
5 Q. Do you know what the case is about?
6 A. Yes. This case has to deal with the
7 congressional districts.
8 Q. Are you represented by counsel today?
9 A. I am.
10 Q. Who is your counsel?
11 A. Dorman Walker.
12 Q. And how did you prepare for this
13 deposition today?
14 A. I came in yesterday and we met for a
15 couple of hours and we sort of talked about how this
16 works and what to expect. But that was the only
17 preparation.
18 Q. And who is "we"?
19 A. Jim Davis was here and Chris --
20 Representative Pringle was here and I was here. So
21 it was four of us present.
22 Q. So you -- the only preparation you did
23 for this deposition was to meet with Chris Pringle,
24 Jim Davis, and Mr. Walker yesterday for a few hours?
25 A. That is correct.

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1 Q. Did you review any documents?
2 A. Yes.
3 Q. Which documents?
4 A. There were two. Actually, I can't say I
5 reviewed them. I looked at the cover. One of them
6 had to do with the notes -- the bullet points we
7 used on the floor, in my case on the floor of the
8 senate.
9 And the other one -- I can't even
10 remember what the other one was. But I gave them
11 back to my attorney. I didn't take them home and
12 read them or study them.
13 Q. So I am going to try to drop in the chat
14 a document that I'll ask the court reporter to mark
15 as Exhibit 1. And I can show it on my screen, as
16 well.
17 Is this the document that you reviewed
18 in advance of your deposition today? Let me share
19 my screen.
20 Senator McClendon, is this the document
21 that you were referring to?
22 A. I really can't read that. I see talking
23 points -- okay. Scroll it up and let me see it.
24 Well, that looks similar. I don't know if that's
25 exactly the same document. But that's sort of the

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1 format that was used.
2 Q. I'll represent that this was produced in
3 this litigation and that I have given it to the
4 court reporter and hopefully you also have a copy.
5 And what was this document?
6 A. What you and I were just discussing was
7 talking points that I was provided by our attorney
8 when the issue of the congressional map came before
9 the senate as a body.
10 Q. And who gave you this document?
11 A. Pardon?
12 Q. Who gave that document to you?
13 A. One of the staff members of the
14 redistricting -- not committee, but the
15 redistricting department there in the state house.
16 Q. What is the difference between the
17 redistricting committee and the redistricting
18 department?
19 A. Well, the redistricting office is
20 staffed by state employees. And the redistricting
21 committee is composed of elected senators and
22 representatives.
23 Q. So you were given this document when?
24 A. Well, prior to it going on the floor for
25 debate, and not much sooner than that.

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1 Q. Prior to what going on the floor for
2 debate?

3 A. The congressional bill.

4 Q. And do you remember when that was?

5 MR. WALKER: Hang on. Kathryn, when you
6 say "this document," are you talking about Talking
7 Points for Likely Issues No. 1? Or are you talking
8 about the collection of talking points?

9 Q. Well, does that change your answer?

10 A. Well, I don't think it does. I got that
11 prior to the bill going on the floor for debate. In
12 fact, I may have gotten it prior to the committee --
13 the standing committee meeting. That would -- that
14 would make sense.

15 Q. And what standing committee meeting are
16 you talking about?

17 A. The bills that -- the redistricting
18 committee is considered an interim committee. And
19 the bills that come out of interim committees must
20 go to a standing committee before they can go to
21 rules in order to get on the floor.

22 So there was a standing committee --
23 which happened to be general fund -- that was
24 handling not only a general fund bill but all the
25 redistricting bills, as well. So that would have

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1 been the standing committee that this bill went to
2 after it came to the senate from the house.

3 Q. You said you reviewed the talking points
4 that we discussed. And what else before this
5 deposition?

6 A. What did I review? Well, no. The
7 talking points was the -- that was the purpose of
8 having the talking points, is I had a summary of the
9 main points that needed to be shared with the
10 standing committee members so they would be able to
11 vote however they wanted to.

12 Q. I'm sorry. I meant -- just going back,
13 what documents other than this talking points did
14 you look at to prepare for this deposition today?

15 A. Well, I looked at a number of documents
16 during the process of the bill going through the
17 redistricting committee. But there wasn't anything
18 in particular that I did to review that prior to the
19 meeting of the standing committee. They were all
20 summarized. So --

21 Q. For this deposition, though, you
22 mentioned that you met yesterday with Mr. Davis,
23 Mr. Walker, and Mr. Pringle and that you looked at
24 several documents.

25 A. Yes.

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1 Q. Besides the talking points, what other
2 documents did you look at?

3 A. It may have been a summary of this
4 lawsuit. But I'm not -- Kathryn, I'm really not --
5 I really don't remember what it was. I didn't pay
6 much attention to it.

7 Q. You say "a summary of this lawsuit."

8 Would you mind giving me a summary of this lawsuit?

9 A. I can't do it. Sorry. I wish I could.

10 Q. You testified earlier that you were a
11 party to a lawsuit in the last redistricting cycle;
12 is that correct?

13 A. Correct.

14 Q. Was that a redistricting case?

15 A. Yes.

16 Q. And you were deposed?

17 A. Yes.

18 Q. Did you testify at trial?

19 A. I'm sorry. I didn't understand you.

20 Q. Sorry. Did you testify at trial?

21 A. Yes.

22 Q. And what was that case about?

23 A. That case, I believe, was -- legislative
24 was the target, not congressional. The issue was --

25 Q. And when you say --

Page 23

1 A. I'm sorry.

2 Q. I'm sorry.

3 A. It's my turn?

4 My point is that case was not
5 congressional. That had do with house and senate
6 districts.

7 Q. And when you say "the target," you mean
8 what?

9 A. That the object, the goal of the case
10 was to challenge the way house and senate districts
11 were drawn.

12 Q. And do you remember under what law those
13 were challenged?

14 A. No.

15 Q. So let's talk about your career in
16 public service. When were you first elected to
17 public office?

18 A. 2001.

19 Q. And what were you elected -- where were
20 you elected?

21 A. What or where? Which one do you want?

22 I was elected --

23 Q. What district (inaudible.)

24 A. Alabama house of representatives, House
25 District 50.

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1 Q. And did you run as a -- with the support
2 of a political party?

3 A. Well, there was a primary with
4 republican -- I don't think the republican party
5 endorsed any of the republican candidates.

6 Q. You ran as a republican?

7 A. Yes, I did.

8 Q. Why did you run as a republican?

9 A. Why did I run as a republican? Is that
10 what you said?

11 Q. Yes, sir.

12 A. Because I am a republican.

13 Q. What does it mean to be a republican?

14 A. I would say the first word that comes to
15 mind would be "conservative." And that would be
16 socially conservative and fiscally conservative.

17 Q. And when you say "socially
18 conservative," what do you mean?

19 A. It has to do with policies that we make
20 that are conservative in nature.

21 Q. And what is a policy that is
22 conservative in nature?

23 A. I would say one of the things that
24 conservatives believe in is law and order.

25 Q. Okay. So how long did you serve in

Page 25

1 house district 50?

2 A. I served three four-year terms. I went
3 into office -- well, I went into office in 2021. So
4 three four-year terms.

5 Q. And are you currently a member of the
6 house of representatives?

7 A. No. I'm a member of the Alabama senate.

8 Q. And when were you first elected to the
9 Alabama senate?

10 A. It must have been '14. Yeah, 2014.

11 Q. Prior to --

12 A. Your turn.

13 Q. I'm so sorry. I said don't cut each
14 other off, and I'm cutting you off. I'm sorry.

15 A. I answered your -- 2014, which is the
16 answer to the question.

17 Q. Thank you. Sorry again.

18 What legislative committees have you
19 served on during your very long tenure in the
20 Alabama legislature?

21 A. Well, in the senate, I'm currently on
22 the health committee, I am on the general fund
23 committee, I am on the education trust fund
24 committee, and I am on education policy. And I
25 chair the health committee.

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1 Q. Those are all of the committees that you
2 have ever served on?

3 A. No. No. In the house, I served on
4 several different committees over three terms. And,
5 of course, I served on redistricting, as well, ten
6 years ago and became -- and was house chair of
7 redistricting.

8 Q. And when you say "redistricting," you
9 mean the permanent -- the Alabama legislative
10 committee on reapportionment?

11 A. That's exactly what I mean.

12 Q. Okay. So if I say redistricting for the
13 reapportionment committee or if you say those
14 things, you mean the permanent committee on
15 reapportionment?

16 Is that a yes?

17 A. You know, there's a little difference in
18 there. During the interim years when there's not
19 redistricting activity going on, there is a
20 permanent redistricting committee composed of three
21 members of the house and three of the senate.

22 And then as we approach the
23 redistricting time period where the activity goes
24 up, then -- then it converts over to 11 and 11 for
25 the actual process.

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1 Q. That makes sense. So it's the same
2 committee, just getting bigger or larger or smaller
3 based on the time period?

4 A. Correct.

5 Q. What was your role in Alabama's 2011
6 redistricting process?

7 A. I was house chairman.

8 Q. And what are the responsibilities of the
9 house chairman for redistricting?

10 A. Well, part of -- essentially part of a
11 leadership team that makes preparations for the
12 actual process, meets with the attorney and can meet
13 with the person that draws the maps, and begins
14 discussions and review, for example, of our
15 guidelines to see if they need to be updated or
16 changed, and also help time the scheduling of the
17 actual meeting of the full redistricting committee.

18 Q. Do you have any other responsibilities?

19 A. No. I think that pretty well summarizes
20 it. I'm sure there's some other things that we do
21 that are not big items. But I think that summarizes
22 the things worth discussing.

23 Q. And when you said you meet with the
24 attorney and you -- as the cochair, you meet with
25 the attorney and you meet with the person who draws

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1 the map, what do you -- what do you do during those
2 meetings? Or what is your role during those
3 meetings?

4 MR. WALKER: I'll instruct you not to
5 discuss anything that I may have told you or you may
6 have told me during those meetings.

7 A. Yes, ma'am. Do you mind me correcting
8 you on a phrase?

9 Actually, if you look at the law, there
10 is a house chair and a senate chair. They are not
11 cochair, although that seems to be a well-kept
12 secret. But now you know.

13 So now --

14 Q. The secret is out.

15 So as the house chair of the
16 redistricting committee, what do you mean -- what
17 was your responsibility with respect to your
18 meetings with the attorney and the meetings with the
19 person who draws the map?

20 MR. WALKER: Same instruction.

21 THE WITNESS: Okay. Well, stop me if I
22 go astray here.

23 MR. WALKER: Okay.

24 A. Of course, probably the single most
25 important role of the attorney is to help the

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1 elected members of this committee know what the law
2 is and what -- and keep us up to date on recent
3 court cases so we can do our best to be in
4 compliance with what the law says and what the
5 courts have subsequently interpreted.

6 Q. So as the house chair of the
7 reapportionment committee, what were -- what was
8 your role in those meetings?

9 A. Well, I guess my role was to be there
10 and to make sure that we stay -- are we -- I guess
11 we're talking generically here. We're not talking
12 about 2011 or 2021. Are we just talking about being
13 a chair, a redistricting chair? Is that what the
14 discussion is? Or are we talking about a certain
15 time period?

16 Q. So when I asked you what your
17 responsibilities were as house chair of the
18 reapportionment committee, you said, among other
19 things, you meet with the attorney, you meet with
20 the person who draws the map, meeting with the
21 reapportionment committee. And I'm just asking what
22 you meant by that as your role.

23 What was your role in those meetings
24 with the attorney and with the drawer?

25 A. To discuss the -- one of the issues, of

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1 course, is the time schedule on when we can carry
2 out the duties and when we need to carry out the
3 duties. And then another thing has to do with
4 making sure that we stay in compliance with the
5 courts and the law and recent court cases.

6 Q. Who selected the attorney?

7 MR. WALKER: At what time are you
8 talking about?

9 MS. SADASIVAN: In 2011.

10 A. I do not know the answer to that.

11 Q. Did you have any involvement in the
12 selection of the attorney --

13 A. No.

14 Q. -- for the reapportionment committee?

15 A. No.

16 Q. Did you have any role in the selection
17 of the demographer as the house chair of the
18 reapportionment committee?

19 A. No.

20 Q. Do you know who made the decision?

21 A. I do not.

22 Q. How were you selected to serve as the
23 house chair of the reapportionment committee?

24 A. By the speaker of the house.

25 Actually --

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1 Q. Who was that?

2 A. -- I was -- he selected me to be on the
3 committee. And then the house members on that
4 committee elected the house chair.

5 Q. I see. So you were elected by the other
6 house members of the reapportionment committee to
7 serve as the house chair?

8 A. Correct.

9 Q. And who was the senate chair of the
10 reapportionment committee in 2011?

11 A. Gerald Dial.

12 THE REPORTER: Gerald who?

13 A. D-I-A-L.

14 Q. And was the starting point -- what was
15 the starting point for drawing the congressional
16 maps in 2011?

17 A. The starting point would be the existing
18 lines.

19 Q. What existing lines?

20 A. The congressional lines that were
21 current at that time.

22 Q. And how did you go about deciding how to
23 update those lines based on the census data in 2011?

24 A. Actually, I didn't make those decisions.

25 Q. Who did?

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1 A. The map drawer met with and talked to
2 the members of the congressional delegation. And,
3 of course, once we had the data, the population
4 numbers, then they knew if a district needed to have
5 an increase or a decrease in population.
6 Q. Did the legislature conduct public
7 hearings in the redistricting process?
8 A. Yes.
9 Q. Following the (inaudible.)
10 A. What was the last thing you said?
11 Following?
12 Q. The 2010 census.
13 A. Yeah, the -- correct, we did have public
14 hearings.
15 Q. How many?
16 A. 22.
17 Q. And when did those hearings occur?
18 A. I just -- I do not remember. I don't
19 remember those dates.
20 Q. How many meetings did the
21 reapportionment committee hold in 2011?
22 A. I can't tell you exactly. I don't know
23 the exact number. I don't -- I don't remember the
24 exact number.
25 Q. Was it more than one?

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1 A. Yes.
2 Q. Was it more than two meetings?
3 A. I'm sorry? What was the last word you
4 said? It came out fuzzy.
5 Q. Was it more than two meetings?
6 A. I'm just guessing. And I can't answer
7 that question because I don't remember.
8 Q. What was the role of the reapportionment
9 committee in the map drawing process in 2011?
10 A. Are we talking congressional maps?
11 Q. Yes.
12 A. The role of the reapportionment
13 committee was to take the map that was submitted,
14 that was put together by the -- with the approval of
15 the congressional delegation, and to approve or
16 disapprove that map and submit it for introduction
17 to the legislature.
18 Q. And how did the committee go about
19 approving or disapproving of the map drawn?
20 A. A roll call vote.
21 Q. Were members given any guidance on how
22 to vote?
23 A. I don't quite understand that -- that
24 question, were they given guidance.
25 Q. Any information on how to vote or how to

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1 look at a map?
2 A. Well, the map and the data was put
3 before them at the committee meeting.
4 Q. I'm dropping into the chat and I will
5 ask the court reporter to mark as McClendon Exhibit
6 2 --
7 MR. WALKER: Kathryn, what was Exhibit
8 1? I'm sorry. Was that the talking points?
9 MS. SADASIVAN: Yes, sir.
10 MR. WALKER: Okay. Let me -- let me --
11 I'm your secretary in this. So let me take care of
12 it.
13 MS. SADASIVAN: Oh, thank you so much,
14 Dorman. I'm sorry about that. I appreciate it.
15 MR. WALKER: We're a full-service law
16 firm.
17 MS. WELBORN: I'm happy to play the
18 role.
19 MR. WALKER: Well, I've got them spread
20 out over here.
21
22 (Plaintiff's Exhibit 1 was
23 marked for identification.)
24
25 Q. Senator McClendon, do you have the

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1 document that I've asked the court reporter to mark
2 as McClendon Exhibit 2 in front of you?
3 MR. WALKER: I'm sorry. Which one is
4 it? Tell me.
5 A. Exhibit what?
6 MR. WALKER: No. Don't say anything.
7 Exhibit 2, just tell me what it is.
8 Q. Do you recognize the document in front
9 of you?
10 MS. WELBORN: What is the document,
11 Kathryn? Which one is it?
12 MS. SADASIVAN: I just dropped it into
13 the chat. It is the 2011 legislative
14 reapportionment committee guidelines.
15 MR. DAVIS: The chat is not going to
16 work because the system is pretty far away from us
17 all. Nobody can get to the chat easily.
18 MS. SADASIVAN: Okay. Would it help if
19 I pull it up so you can see it?
20 MR. WALKER: The May 2011 guidelines?
21 MS. SADASIVAN: This is the document
22 we're looking at.
23
24 (Plaintiff's Exhibit 2 was
25 marked for identification.)

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<p>1 2 Q. Do you recognize this document, Senator 3 McClendon? 4 A. Yes. It looks -- it looks familiar. 5 Q. How do you recognize this document? 6 A. The first part of what you said was cut 7 off. Say it again. 8 Q. How do you recognize this document? 9 A. How do I recognize it? I mainly 10 recognize it by the fact that it's reapportionment 11 committee guidelines. And I recall going through 12 that process and the adoption of those guidelines. 13 Q. Do you know who drafted the document? 14 A. Did I draft the document? 15 Q. Do you know who drafted the 2011 16 reapportionment -- 17 A. Do I know who drafted it. I think I 18 have a good idea. But I can't say that I'm a 19 hundred percent certain who drafted the document. 20 So the answer to the question would be no. 21 Q. Who do you think drafted it? 22 A. I imagine it was our attorney at the 23 time. But I'm just not sure about that. 24 Q. Can you read please on Page 1 under May 25 2011 the paragraph beginning with "Pursuant"? Page 37</p>	<p>1 Q. It's in the sentence beginning with 2 "Accordingly." 3 A. Yeah, I see it. 4 Well, that means the committee, the 5 reapportionment committee, adopted the guidelines, 6 had a vote and said that's our guidelines. 7 Q. Will you please go to page two and read 8 under numeral III Voting Rights Act, and read the 9 two paragraphs below it? 10 A. "Districts shall be drawn in accordance 11 with the laws of the United States and the State of 12 Alabama, including compliance with protections 13 against the unwarranted retrogression or dilution of 14 racial or ethnic minority voting strength. Nothing 15 in these guidelines shall be construed to require or 16 permit any districting policy or action that is 17 contrary to the U.S. Constitution or the Voting 18 Rights Act." 19 Number 2, "Redistricting plans are 20 subject to the preclearance process established in 21 Section 5 of the Voting Rights Act." 22 Q. I'm sorry. I'll just have you read Page 23 4, Paragraph 2 and 3 under Plans Produced by 24 Legislators. 2, 3, and 4. I apologize. 25 A. 2, 3, and 4 under Roman numeral V. Is Page 39</p>
<p>1 A. I see that. 2 Q. Could you read it, please? 3 A. To myself or to you? 4 Q. Out loud. Thank you. 5 A. "Pursuant to the constitution of the 6 United States and the Constitution of the State of 7 Alabama, the Alabama state legislature is required 8 to review 2010 federal decennial census data 9 provided by the U.S. Bureau of the Census to 10 determine if it is necessary redistrict Alabama's 11 congressional, legislative, and state board of 12 education districts because of population changes 13 since the 2000 census. 14 Accordingly, the following guidelines 15 for congressional, legislative, and state board of 16 education redistricting have been established by the 17 legislature's permanent joint legislative committee 18 on reapportionment, (hereinafter referred to as the 19 'reapportionment committee.')</p> <p>20 There you go. 21 Q. Thank you. 22 In the paragraph that you just read 23 where you said that the guidelines were established 24 by the committee, what does that mean? 25 A. Okay. Let me find it. Page 38</p>	<p>1 that what you're asking for? It must be. That's 2 the only 2, 3, and 4 on the page. 3 "A proposed redistricting plan will be 4 public information upon its introduction as a bill 5 in the legislative process, or upon presentation for 6 consideration by the reapportionment committee." 7 "Access to the legislative 8 reapportionment office computer system, census 9 population data, and redistricting work maps will be 10 available to all members of the legislature upon 11 request. Reapportionment office staff will provide 12 technical assistance to all legislators who wish to 13 develop proposals." 14 Number 4, "In accordance with Rule 23 of 15 the joint rules of the Alabama legislature (2011) 16 all amendments or revisions to the redistricting 17 plans, following introduction as a bill, shall be 18 drafted by the reapportionment office." 19 Q. I'm going to ask you to quickly scan the 20 lest of the guidelines and then let me know if you 21 followed those guidelines in 2011. 22 MR. WALKER: Objection to form. You may 23 answer the question. 24 A. Yes, ma'am, it's my belief that we 25 followed the guidelines. Page 40</p>

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1 Q. And how did you go about following the
2 guidelines in the map-drawing process?
3 A. Well, you just read the guidelines and
4 try to stay -- and try to do what it says.
5 Q. What action did you take to make sure
6 that the guidelines were followed?
7 A. What action did I take to make sure they
8 were followed. I consulted with the attorney and
9 with the person drawing the map to make sure that
10 they were following the rules that we had before us.
11 Q. And how did you do that?
12 A. I just looked them in the eye.
13 Q. You looked them in the eye and what?
14 A. And said, "Are we staying within the
15 guidelines?" I'm not even sure I said that. We did
16 -- we did talk about the importance of the
17 guidelines. And it was understood everybody would
18 use that as exactly what they're called, guidelines.
19 Q. And so when you said you talked about
20 the guidelines and that they were important, were
21 you explaining the guidelines to the demographer?
22 A. I was not explaining them, no. We would
23 talk about them from time to time. But it was just
24 so well known that we followed the guidelines.
25 That's what we did. That's our job.

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1 A. To keep the what demographics?
2 Q. The racial demographics.
3 A. Racial demographics. In 2011, you know,
4 I don't know the answer to that.
5 Q. Was it a primary goal to keep District 7
6 the same black population as in 2001?
7 A. I do not know the answer to that
8 question.
9 Q. Did you consider race in drawing any of
10 the districts in 2011?
11 A. No.
12 Q. Why was there only one district with a
13 majority black voting age population in 2011?
14 THE REPORTER: I'm sorry. Could you say
15 that question over?
16 Q. Why was there only one district with a
17 majority black voting age population in 2011?
18 A. Well, I -- I don't need to speculate. I
19 will say I do not know why.
20 Q. What is Section 5 of the Voting Rights
21 Act?
22 A. Section 5 has to do with racial
23 injustice or racial problems when it comes to
24 elections. And it provides some solutions to that.
25 Or remedy, I should say.

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1 Q. Do you know if anyone else talked to the
2 person -- the attorney or to the map drawer about
3 the guidelines?
4 A. Do I know? No, I do not.
5 Q. How many congressional redistricting
6 plans were considered by the reapportionment
7 committee in 2011?
8 A. I don't recall.
9 Q. How did the reapportionment committee
10 decide on which Alabama congressional map to
11 introduce?
12 A. We took the map that the members of the
13 congressional delegation had -- proved to be
14 satisfied with.
15 Q. That was the starting point in the 2001
16 map?
17 A. Yes.
18 Q. Was the goal in drafting to make sure
19 the congressional districts remained roughly the
20 same as in 2001?
21 A. One of the goals is that we keep the
22 core of the districts recognizable, or we attempt to
23 do that.
24 Q. Was it a primary goal to keep the same
25 racial demographics for each district?

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1 Q. What is a racial problem?
2 A. What is a racial problem? Are you
3 asking for an example or something? I don't quite
4 -- I don't understand your question, what is a
5 racial problem.
6 Q. I'm asking you what you meant by your
7 statement. Do you want your court reporter to read
8 your answer about what Section 5 is back?
9 A. To make sure that every -- every group,
10 subgroup, race had a fair opportunity to express
11 themselves at the polls.
12 Q. And why did Section 5 apply to Alabama?
13 THE REPORTER: I'm sorry. What?
14 Q. Why did Section 5 apply to Alabama?
15 A. You know, I could -- I could guess at
16 that. But I don't want to do that. So I'll say I
17 don't know.
18 Q. You don't know why Section 5 applied to
19 Alabama?
20 A. Like I said, I could guess at it. But I
21 don't want to do that. So I don't know.
22 Q. And I'm just asking you don't know why
23 Section 5 applied to Alabama?
24 A. Correct.
25 Q. The guidelines mention preclearance

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<p>1 under Section 5 of the VRA. What involvement did 2 you have in obtaining justice department 3 preclearance of a proposed congressional plan in 4 2011?</p> <p>5 A. None.</p> <p>6 Q. Did you have any role in proposing 7 judicial preclearance of the 2021 map?</p> <p>8 A. Did I have any -- I'm really having a 9 time understanding you. Did I have any -- okay. 10 Say that -- say that again, please, ma'am.</p> <p>11 Q. Did you have any role in proposing 12 judicial preclearance in the redistricting process 13 in 2011?</p> <p>14 A. No.</p> <p>15 Q. Did you introduce any proposed 16 redistricting plans for the Alabama congressional 17 delegation in 2011?</p> <p>18 A. I do not recall if the bill started in 19 the house or in the senate. I don't know. So I 20 can't answer the question.</p> <p>21 Q. Did you introduce any redistricting 22 bills in the 2011 legislative session?</p> <p>23 A. Any redistricting bill. So we've gone 24 outside of congressional.</p> <p>25 Yes, I'm sure I introduced the house Page 45</p>	<p>1 and then the number after it is SOS 001929. And 2 this is what the document looks like.</p> <p>3 MR. WALKER: Can you describe it, 4 please?</p> <p>5 THE WITNESS: Look up here.</p> <p>6 MR. WALKER: Oh, that. Okay. We've got 7 it.</p> <p>8</p> <p>9 (Plaintiff's Exhibit 3 was 10 marked for identification.)</p> <p>11</p> <p>12 Q. Do you recognize this document, Senator 13 McClendon?</p> <p>14 A. No.</p> <p>15 Q. I will represent to you that this is a 16 news article produced by the secretary of state, a 17 defendant in this case. In it, Brian Lyman is 18 discussing a plan put forward by Mr. Buskey which 19 would have created two majority minority districts. 20 And in this article, you were quoted as 21 saying -- on Page 2, the second paragraph on Page 2, 22 as saying, The Buskey plan would lead to 23 "retrogression," or a retreat from minority 24 population benchmarks set by the department of 25 justice. Under the Voting Rights Act, the DOJ must Page 47</p>
<p>1 bill in the house. I don't remember who did the BOE 2 bill, who started it. I don't remember who started 3 the congressional bill.</p> <p>4 Q. Did you consider a plan permitting two 5 majority minority districts in 2011?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. Why?</p> <p>8 A. It wasn't brought before us.</p> <p>9 Q. It wasn't brought before who?</p> <p>10 A. That is correct.</p> <p>11 Q. Who? You said, "It wasn't brought 12 before us." It wasn't brought before who?</p> <p>13 A. The redistricting committee.</p> <p>14 Q. Did you have the opportunity to consider 15 a map with two majority minority districts in the 16 legislature?</p> <p>17 A. No, I don't think so.</p> <p>18 Q. You did not?</p> <p>19 A. I don't remember that at all, if we did.</p> <p>20 Q. I'm going to -- I'm dropping it in the 21 chat, as well, in case it's helpful. I know it's 22 probably not.</p> <p>23 I am going to show you what I ask the 24 court reporter to mark as McClendon Exhibit 3. And 25 let me just share my screen quickly. It is exhibit, Page 46</p>	<p>1 approve the state's redistricting plan before it can 2 be implemented. If the redistricting plan retreats 3 from the justice department benchmarks, such as 4 reducing minority population in a 5 previously-approved congressional district, the 6 state must show that it had no discriminatory 7 purpose in the move and did not reduce minority 8 voters' effective exercise of the electoral 9 franchise.</p> <p>10 Does that sound familiar to you?</p> <p>11 MR. WALKER: Are you asking him if he 12 said that, or what?</p> <p>13 Q. I'm just asking if that helps refresh 14 your memory.</p> <p>15 A. Well, it provides a memory. I don't -- 16 I don't remember this.</p> <p>17 Q. So you don't know why you believed that 18 the map introduced by Representative Buskey would 19 have led to retrogression?</p> <p>20 A. So what did he introduce? No. I'm 21 really lost on trying to decipher this.</p> <p>22 Q. So is that -- did you say the quote that 23 I just read to you?</p> <p>24 A. I don't recall saying it. I don't 25 recall the article. Page 48</p>

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<p>1 Q. How about I give you a few minutes to</p> <p>2 look through the article, and then I'll ask you some</p> <p>3 questions again.</p> <p>4 MR. WALKER: Kathryn, we've been going</p> <p>5 for about an hour, and I need to step out for a</p> <p>6 second. Would you mind if we took a five-minute</p> <p>7 break?</p> <p>8 MS. SADASIVAN: If you don't mind, we'll</p> <p>9 just finish this question after Senator McClendon</p> <p>10 has a chance to look at it. And then after that, we</p> <p>11 can take a break.</p> <p>12 MR. WALKER: Certainly. No problem.</p> <p>13 MS. SADASIVAN: Thank you so much,</p> <p>14 Dorman.</p> <p>15 A. I'm ready when you are.</p> <p>16 Q. Do you have any reason to believe that</p> <p>17 quote is inaccurate?</p> <p>18 A. Now, what did you --</p> <p>19 MR. WALKER: Which quote?</p> <p>20 A. Yeah. My question is what quote are you</p> <p>21 talking about?</p> <p>22 Q. On Page 2 of the exhibit I just shared</p> <p>23 with you beginning with Rep Jim McClendon,</p> <p>24 R-Springville, who carried the plan in the house.</p> <p>25 There are two paragraphs where Senator McClendon is</p> <p style="text-align: right;">Page 49</p>	<p>1 A. I do not.</p> <p>2 MR. DAVIS: Are we breaking now?</p> <p>3 MS. SADASIVAN: No. I'm sorry. I asked</p> <p>4 a question.</p> <p>5 MR. DAVIS: And he answered it.</p> <p>6 Q. You don't recall seeing two majority</p> <p>7 minority districts in the Alabama congressional plan</p> <p>8 in 2011?</p> <p>9 A. I do not recall it.</p> <p>10 Q. Okay. Thank you so much.</p> <p>11 MR. SADASIVAN: We can take a break now.</p> <p>12 MR. WALKER: Thank you.</p> <p>13 THE VIDEOGRAPHER: We are off the</p> <p>14 record. The time is 3:09 p.m.</p> <p>15 (Recess was taken.)</p> <p>16 THE VIDEOGRAPHER: We are back on the</p> <p>17 record. The time is 3:22 p.m.</p> <p>18 Q. Senator McClendon, I just want to</p> <p>19 clarify really quickly Exhibit 3. You stated that</p> <p>20 you don't remember being interviewed for that</p> <p>21 article, right?</p> <p>22 A. I do not.</p> <p>23 Q. And you don't remember saying anything</p> <p>24 about retrogression?</p> <p>25 A. Yes. The answer is the same as it was</p> <p style="text-align: right;">Page 51</p>
<p>1 quoted. And I'm asking if you have any reason to</p> <p>2 believe that that quote is inaccurate.</p> <p>3 A. Well, there are no -- the only quotation</p> <p>4 marks are around the word "retrogression" and around</p> <p>5 the words "effective exercise of the electoral</p> <p>6 franchise." There's no -- I don't see where I was</p> <p>7 attributed a quote in those paragraphs.</p> <p>8 Q. Do you have any reason to believe that</p> <p>9 that paragraph discussing -- beginning with "Rep Jim</p> <p>10 McClendon" and continuing on until "This plan, as</p> <p>11 far as the justice department and Voting Rights Act</p> <p>12 goes, it's a failure," do you have any reason to</p> <p>13 believe that that is inaccurate?</p> <p>14 A. Well, the only part that has quotes is</p> <p>15 the one you just read. And I do not recall making</p> <p>16 that statement.</p> <p>17 Q. So you don't think that that was an</p> <p>18 accurate reflection of what you thought at the time?</p> <p>19 MR. WALKER: Objection to form. You may</p> <p>20 answer it.</p> <p>21 A. I just -- I don't recall making the</p> <p>22 statement.</p> <p>23 Q. And you don't recall having the</p> <p>24 opportunity to see two majority minority districts</p> <p>25 in a congressional plan?</p> <p style="text-align: right;">Page 50</p>	<p>1 before. I do not remember.</p> <p>2 Q. If there was a plan in 2011 that</p> <p>3 complied with all the districting principles and the</p> <p>4 guidelines and created two majority minority</p> <p>5 districts, would you have voted for it?</p> <p>6 A. Okay. Say that again. We're having a</p> <p>7 hard time.</p> <p>8 THE REPORTER: I think if you would slow</p> <p>9 down just a little bit, that would help.</p> <p>10 MS. SADASIVAN: If I come in a little</p> <p>11 bit, is this better?</p> <p>12 MR. WALKER: No. Slow down.</p> <p>13 Q. If there was a plan that complied with</p> <p>14 the redistricting guidelines and created two</p> <p>15 majority minority districts in 2011, would you have</p> <p>16 voted for it?</p> <p>17 A. Thank you. I -- I understood you very</p> <p>18 well.</p> <p>19 I would certainly have considered it and</p> <p>20 would -- but part of that is looking at what else is</p> <p>21 available. So I would have put it on the list for</p> <p>22 consideration, yes.</p> <p>23 Q. Let's move to the 2021 redistricting</p> <p>24 process.</p> <p>25 A. Good.</p> <p style="text-align: right;">Page 52</p>

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1 Q. What was your role in the
2 reapportionment committee in 2021?

3 A. Senate chair.

4 Q. And what were your responsibilities as
5 senate chair?

6 A. Pretty much the same as it was as house
7 chair, to confer with the attorney and the map
8 drawer, to help try to set the schedule of events as
9 they were going to unfold.

10 Q. And when you say "confer with the
11 attorney and map drawer, I'm not asking for
12 attorney-client information. But generally as
13 senate chair, what responsibilities did conferring
14 with the attorney and map drawer entail?

15 A. Well, for quite some time, we were
16 trying to decide when we could actually get started
17 on the process. And we spent a little bit of time
18 wondering when we were going to get the data. We
19 spent a lot of time wondering when we were going to
20 get the data. And we shared some speculation about
21 when it would show up. So we did the timing of the
22 -- and sequence of events is one of the things
23 initially that we talked about.

24 Q. And so conferring with the attorney and
25 the map drawer, you were trying to reach decisions

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1 about the timeline?

2 A. Correct.

3 Q. Anything else?

4 A. That's the main -- at that point, that
5 was the main thing, when can we get started.

6 Q. At what point?

7 A. Was that a question?

8 Q. Yes. You said "at that point." And I'm
9 just asking at what point was that the main --

10 A. That was prior to receiving the data
11 from the census bureau.

12 Q. And did your responsibilities to confer
13 with the attorney and the map drawer change after
14 you received census data?

15 A. I'm not sure I understand your question.
16 Do it again and let me listen carefully.

17 Q. You just shared that your
18 responsibilities before the census numbers came out
19 with respect to the attorney and the map drawer as
20 senate chair of the reapportionment committee was to
21 determine a timeline.

22 And I'm asking if your responsibilities
23 as senate chair of the reapportionment committee
24 with respect to conferring with the attorney and map
25 drawer changed once you received census data.

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1 A. Well, no. It was just part of a
2 continuum of setting the schedule and seeing when
3 things would work out, how things -- in what order
4 things needed to unfold in order to get the job done
5 in a timely manner.

6 Q. And other than you and the map drawer
7 and the attorney, who else was involved in that
8 decision-making?

9 A. Representative Pringle.

10 Q. Anybody else?

11 A. No.

12 Q. So you, the attorney, Representative
13 Pringle, and the map drawer determined when you
14 would begin the public hearings or the
15 reapportionment committee meetings?

16 A. Well, the staff, the reapportionment
17 staff, had some input into it. Although the public
18 hearings, we gave -- we gave a time frame to the
19 community -- the community college system. The
20 chancellor loaned us one of his personnel to help us
21 coordinate those public hearings. And so he's the
22 one that actually set up the dates, locations, and
23 times for the public hearings.

24 I think we told him we wanted to get
25 this done the first couple of weeks in September.

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1 And then one of the representatives asked for
2 additional meetings, so it spilled over into the
3 third week into September.

4 Q. So just going back to your role as
5 senate chair of the reapportionment committee and
6 your responsibilities to confer with the attorney
7 and the map drawer, what were -- the public hearings
8 -- strike that.

9 Going back to your role as senate chair
10 of the reapportionment committee and your
11 responsibilities to confer with the attorney and map
12 drawer, what other timelines did you discuss?

13 A. We also needed to be able to give some
14 idea as to when we would actually be prepared for a
15 legislative session, for the governor to call a
16 special session to consider redistricting.

17 Q. And how did you arrive at that
18 information of when that should be?

19 A. There was -- we just sort of projected
20 forward saying we need -- we'll need X amount of
21 time for the public hearings and then we'll need X
22 amount of time to meet with the legislators and the
23 congressional delegation and the board of education.

24 And then we basically set a timeline and
25 said we can -- and then at this point we'll be ready

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<p>1 to ask the governor to call a special session.</p> <p>2 Q. And were other members of the</p> <p>3 reapportionment committee besides House Chair</p> <p>4 Pringle involved in that decision?</p> <p>5 A. No.</p> <p>6 Q. When did you start planning for the 2021</p> <p>7 redistricting process?</p> <p>8 A. We probably started thinking about it a</p> <p>9 year and a half ahead of time or more, two years</p> <p>10 maybe ahead of time.</p> <p>11 Q. And what were the first steps that you</p> <p>12 took to prepare for the redistricting process?</p> <p>13 A. The first thing that I personally tried</p> <p>14 to figure out was what the timeline was going to be.</p> <p>15 And, of course, that proved to be futile because of</p> <p>16 the delay in receiving the data and another delay</p> <p>17 and another delay.</p> <p>18 Q. When was your first meeting on</p> <p>19 redistricting in 2021?</p> <p>20 A. You know, I don't know the date.</p> <p>21 Q. Do you know who it was with?</p> <p>22 A. Are you talking about the redistricting</p> <p>23 committee? Or who are -- what kind of meeting are</p> <p>24 you talking about?</p> <p>25 Q. I'm talking about a meeting between you,</p> <p style="text-align: right;">Page 57</p>	<p>1 to it.</p> <p>2 So we sort of had to work on that before</p> <p>3 we actually announced it. And I don't know the</p> <p>4 final date that we came out with it.</p> <p>5 Q. And that's Representative Laura Hall?</p> <p>6 A. Yes.</p> <p>7 Q. And there was no deadline to decide on</p> <p>8 public hearings?</p> <p>9 A. Well, there was a deadline. June 30th.</p> <p>10 Q. Who set the deadline?</p> <p>11 A. But on June -- I think it was June 29th,</p> <p>12 we received communication from her. So we sort of</p> <p>13 scrapped the deadline in order to the comply with</p> <p>14 her request.</p> <p>15 Q. Is there a time to determine public</p> <p>16 hearings set by law in Alabama?</p> <p>17 A. Ask that again, now.</p> <p>18 Q. Is there any law governing public</p> <p>19 redistricting hearings in Alabama?</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Was there any committee deadline or a</p> <p>22 committee -- rather a committee rule setting a</p> <p>23 deadline to determine public hearings?</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Who developed the deadline on</p> <p style="text-align: right;">Page 59</p>
<p>1 Senator McClendon, and any other person about</p> <p>2 redistricting in 2021.</p> <p>3 A. Okay. I don't know the answer to that</p> <p>4 question.</p> <p>5 Q. What role did you play in setting the</p> <p>6 schedule of the public hearings on redistricting?</p> <p>7 A. I talked to the chancellor of the</p> <p>8 two-year system and asked him to designate someone</p> <p>9 to work with our staff. And then they worked it out</p> <p>10 from there and came back with a schedule and a plan.</p> <p>11 Q. Did you review the locations of the</p> <p>12 public hearings?</p> <p>13 A. Yes, I looked at what they put together.</p> <p>14 And we were just about ready to announce it when</p> <p>15 Representative Hall requested that we add some more,</p> <p>16 which we did.</p> <p>17 Q. When were you preparing to announce the</p> <p>18 dates and locations of the public hearings?</p> <p>19 A. You know, I don't know why I would</p> <p>20 remember this, but I think June 30th was our target</p> <p>21 date to do that. And then I believe it was the day</p> <p>22 before we got a letter, an email maybe -- I didn't</p> <p>23 get it. The staff received communications from one</p> <p>24 of the members of our redistricting committee</p> <p>25 requesting that there be another half dozen added on</p> <p style="text-align: right;">Page 58</p>	<p>1 determining the time, location, and manner of public</p> <p>2 hearings?</p> <p>3 A. I think the staff, in conjunction with a</p> <p>4 representative from the community system, said we</p> <p>5 feel like we can get it done by this date, and</p> <p>6 actually communicated with members of the</p> <p>7 redistricting committee for suggestions and asked</p> <p>8 that they have those suggestions in by June 30.</p> <p>9 Q. When did you discuss public hearings</p> <p>10 with the reapportionment committee?</p> <p>11 A. When did who?</p> <p>12 Q. When did you discuss -- you or other</p> <p>13 members of the legislative delegation of the</p> <p>14 reapportionment committee discuss the public</p> <p>15 hearings?</p> <p>16 A. I don't know the answer.</p> <p>17 Q. What venues did you consider in</p> <p>18 Montgomery for public hearings?</p> <p>19 A. Well, we held one at the -- the public</p> <p>20 one was at the state house.</p> <p>21 Q. Were there any others?</p> <p>22 A. I don't know the answer to that. I</p> <p>23 don't have that schedule in front of me. I would be</p> <p>24 surprised if we had more than one, but I don't know</p> <p>25 for sure.</p> <p style="text-align: right;">Page 60</p>

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1 MS. SADASIVAN: I am going to drop into
2 the chat -- again, I know you all can't see it. So
3 I will share my screen.
4 But I would ask the court reporter to
5 mark it as McClendon Exhibit 4. It is a document
6 that says 2021 Legislative Reapportionment Public
7 Hearings Final.
8 Do you have that before you, Senator
9 McClendon?
10 MR. WALKER: Give me just a second.
11
12 (Plaintiff's Exhibit 4 was
13 marked for identification.)
14
15 MR. WALKER: Is this it? Is that what
16 she's showing?
17 THE WITNESS: That looks like it. It's
18 hard to tell. It does look similar to it.
19 MS. WELBORN: That's it.
20 A. Does yours start off with Drake State in
21 the upper left?
22 Q. Yes, sir.
23 A. Okay. Then we probably have -- I
24 probably have that document before me, yes.
25 Q. And can you look through that document
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1 and just see if you had any other public hearings in
2 Montgomery?
3 A. Well, I don't see any.
4 Q. Did you consider any historically black
5 colleges or universities when you were scheduling
6 the public hearings?
7 A. Well, I wasn't doing the considering.
8 It was the staff in the two-year college.
9 The original idea started with having
10 these meetings at our two-year colleges because they
11 are spread all over the state. And so that's why we
12 got a liaison from them to help schedule these
13 things.
14 So whether they -- I think I saw one
15 with Troy on here. And if I recall -- yeah, here is
16 one at Trojan Center Ballroom. And that's because
17 there was not a community college close by or
18 something like that.
19 So by and large, we focused on our
20 community college system to host us, to host these
21 meetings. So --
22 Q. How many meetings did --
23 A. I'm sorry. Go ahead. Your turn.
24 Q. I was just asking how many meetings did
25 the reapportionment committee hold in 2021?
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1 A. 22.
2 MR. WALKER: No. Meetings.
3 A. Oh, meetings. I can think of two
4 meetings that we had. I don't know if there was a
5 third or not.
6 Q. What were the dates of those meetings?
7 A. I'm thinking the first one was during
8 the legislative session, probably the very -- toward
9 the very end of the regular session, which would
10 have put it in May. We did it because we had -- you
11 know, everybody was in town.
12 And then the next meeting that I am
13 thinking about was held just prior to the special
14 session that was called for consideration of the
15 bills, the redistricting bills.
16 MS. SADASIVAN: So I am going to drop in
17 the chat an exhibit that I'll ask the court reporter
18 to mark as McClendon Exhibit 4. I'm going to pull
19 it up on my screen and share my screen with you so
20 you can see it.
21 MR. WALKER: I think this is five.
22 MS. SADASIVAN: I'm sorry. Five. Thank
23 you.
24 Q. Can you see my screen?
25 A. Reapportionment Committee Redistricting
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1 Guidelines, May 5th. Okay.
2
3 (Plaintiff's Exhibit 5 was
4 marked for identification.)
5
6 Q. Have you seen this document before,
7 Senator McClendon?
8 A. Give me a second to look at it. Yes.
9 It looks -- it looks familiar.
10 Q. Where have you seen this document
11 before?
12 A. Where? At the state house.
13 Q. How do you recognize it?
14 A. I'm just looking at -- well, I look at
15 the title, I look at the date, I look at the plus or
16 minus 5 percent, and some of the other topics. And
17 those all appear to be the guidelines that we --
18 that the redistricting or reapportionment committee
19 adopted prior to the map-making process.
20 Q. And did you endeavor to comply with
21 these policies in the 2021 redistricting --
22 A. Did I --
23 Q. -- process?
24 A. Did I try to comply with these policies?
25 Is that your question?
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<p>1 Q. Did you comply with these -- yes. Did 2 you comply with these policies in the 2021 3 redistricting process as senate chair of the 4 reapportionment committee?</p> <p>5 A. I did.</p> <p>6 Q. Section II f states, "Districts shall be 7 drawn in compliance with the Voting Rights Act of 8 1965, as amended. A redistricting plan shall have 9 neither the purpose nor the effect of diluting 10 minority voting strength, and shall comply with 11 Section 2 of the Voting Rights Act and the United 12 States Constitution."</p> <p>13 How did you go about complying with 14 Section 2 of the Voting Rights Act?</p> <p>15 MR. WALKER: Are you -- may I ask, 16 Kathryn, are you talking about for the congressional 17 plan?</p> <p>18 MS. SADASIVAN: I'm asking -- he said 19 Senator McClendon tried to comply with these 20 guidelines as senate chair of the redistricting 21 committee. I'm asking how in general did Senator 22 McClendon, as senate chair of the reapportionment 23 committee, go about ensuring compliance with this 24 particular policy.</p> <p>25 A. Well, subsequent to us adopting these Page 65</p>	<p>1 southerner, so I talk quickly, and I'm probably 2 using too many adjectives.</p> <p>3 I was asking you what is required to 4 determine whether a map complies with the Voting 5 Rights Act.</p> <p>6 A. Well, it's -- I would say it's a legal 7 opinion first to be familiar with the Voting Rights 8 Act and subsequent cases, and then to be able to 9 compare what we have produced, what's in front of 10 us, with the knowledge of the requirement of the 11 Constitution and the Voting Rights Act.</p> <p>12 Q. And when did you compare what was 13 produced by your demographer with the requirements 14 of the Voting Rights Act?</p> <p>15 A. I think probably every time we talked, 16 this was part of it. It came up in the conversation 17 as we went through the map-drawing process. And 18 both the attorney and the map drawer would be quick 19 to say that could -- that particular line moved over 20 there could be a problem, and we need to look at it.</p> <p>21 Q. And when you say "could be a problem," 22 you mean could be a problem under the Voting Rights 23 Act?</p> <p>24 A. Yes.</p> <p>25 Q. And what was your understanding of what Page 67</p>
<p>1 guidelines, then I was dependent on the attorney, 2 Dorman Walker, and the map drawer during the 3 process, once they started actually putting lines 4 down on paper, to stay inside those guidelines.</p> <p>5 Q. So your role was overseeing the 6 map-drawing process to ensure that it complied with 7 the guidelines?</p> <p>8 A. One of my goals was to be in compliance 9 with the Voting Rights Act of 1965. That was one of 10 my jobs. And, of course --</p> <p>11 Q. It was your job to ensure compliance 12 with the Voting Rights Act of 1965?</p> <p>13 A. Yes.</p> <p>14 Q. And how did you go about doing that?</p> <p>15 A. Well, I counted on these experts that 16 were working for me and working for the committee to 17 follow those guidelines and be familiar with the 18 court cases and with the law and with the rulings.</p> <p>19 Q. And what is required to determine if a 20 map complies with Section 2 of the Voting Rights 21 Act?</p> <p>22 A. Say that again. Once again -- something 23 about the audio. It could be me. But go ahead and 24 try it again.</p> <p>25 Q. It's probably me. I'm also a Page 66</p>	<p>1 was required to comply with the Voting Rights Act?</p> <p>2 A. Well, as far as what's in the Voting 3 Rights Act, I couldn't quote it. But that's why I 4 have an attorney.</p> <p>5 Q. How many times did you have a 6 conversation where the map drawer said if you move 7 this line, you could have a problem under the Voting 8 Rights Act?</p> <p>9 A. I can say I heard that several times.</p> <p>10 Q. And who did you hear that from?</p> <p>11 A. I heard it both from the attorney and 12 the map drawer, not necessarily at the same time.</p> <p>13 Q. You were --</p> <p>14 A. Pardon?</p> <p>15 Q. You were advised several times by your 16 attorney and by the map drawer that the way that a 17 particular line was drawn could violate the Voting 18 Rights Act?</p> <p>19 A. Or the way a line was proposed to go. 20 That was their job.</p> <p>21 Q. And did that occur with respect to the 22 congressional map?</p> <p>23 A. Not to my knowledge. Because I was not 24 involved in drawing the congressional map.</p> <p>25 Q. Who was involved in drawing the Page 68</p>

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<p>1 congressional map?</p> <p>2 A. The map drawer met with the</p> <p>3 congressional delegation or their representative</p> <p>4 sometimes in person, sometimes virtually like this,</p> <p>5 and really worked this out with the members of the</p> <p>6 congressional delegation.</p> <p>7 Q. Were the members of the congressional</p> <p>8 delegation responsible for ensuring that map</p> <p>9 complied with the Voting Rights Act?</p> <p>10 A. That's a good question. I don't know</p> <p>11 the answer to that question.</p> <p>12 Q. Were you responsible for ensuring that</p> <p>13 the congressional map complied with the Voting</p> <p>14 Rights Act?</p> <p>15 A. Yes. I would say that was one of my</p> <p>16 responsibilities.</p> <p>17 Q. In the conversations that you had</p> <p>18 regarding potential violations of the Voting Rights</p> <p>19 Act, did you or anyone else discuss racial</p> <p>20 polarization analysis?</p> <p>21 A. No. No.</p> <p>22 Q. Do you know what the basis for -- in</p> <p>23 these conversations when you heard there might be a</p> <p>24 potential Voting Rights Act violation, do you know</p> <p>25 what that was based upon?</p> <p style="text-align: right;">Page 69</p>	<p>1 communities of interest, communities that have a</p> <p>2 particularly common political interest, keep them</p> <p>3 together, keep them in the same whatever it is,</p> <p>4 house direct, congressional district, BOE district,</p> <p>5 if possible.</p> <p>6 Q. You said "common political interests."</p> <p>7 Is that your definition of community of interest?</p> <p>8 A. There's a -- there's a definition right</p> <p>9 here in whatever this is on Line 30. Line 30</p> <p>10 through 32 is a definition of communities of</p> <p>11 interest.</p> <p>12 Q. So you just mentioned a common political</p> <p>13 interest, and I was wondering if that was part of</p> <p>14 your definition of communities of interest.</p> <p>15 A. Oh, that's just one -- that's just one</p> <p>16 part of it, one part -- one way you could have a</p> <p>17 community of interest. There's a lot of different</p> <p>18 ways you can have a community of interest.</p> <p>19 Q. What do you consider to be communities</p> <p>20 of interest in Alabama?</p> <p>21 A. There are -- there's not a community of</p> <p>22 interest in Alabama. There are many communities of</p> <p>23 interest.</p> <p>24 Q. Such as?</p> <p>25 A. Well, a city. A city is a community of</p> <p style="text-align: right;">Page 71</p>
<p>1 A. Well, I think at different times there</p> <p>2 were different issues.</p> <p>3 Q. Such as?</p> <p>4 A. On the congressional side, I cannot --</p> <p>5 as far as the congressional districts go, I can't</p> <p>6 give you a single example because I simply wasn't</p> <p>7 involved in that process.</p> <p>8 Q. When did you adopt the guidelines that</p> <p>9 we're talking about right now?</p> <p>10 A. Maybe May the 5th of 2021. That's the</p> <p>11 date on the document. And that was one of the</p> <p>12 purposes of -- objectives of that particular meeting</p> <p>13 of the committee, was to have the guidelines in</p> <p>14 place before we got the data and before we started</p> <p>15 working with the elected officials.</p> <p>16 Q. So the third policy in Section II j</p> <p>17 (iii) in McClendon Exhibit 5 that we're talking</p> <p>18 about now, the May 5, 2021, redistricting criteria,</p> <p>19 says, "Districts shall respect communities of</p> <p>20 interest, neighborhoods, and political subdivisions</p> <p>21 to the extent practicable and in compliance with</p> <p>22 paragraphs a through l."</p> <p>23 What is your understanding of what that</p> <p>24 policy requires?</p> <p>25 A. Well, when possible, it's good to keep</p> <p style="text-align: right;">Page 70</p>	<p>1 interest.</p> <p>2 Q. Is Montgomery a community of interest?</p> <p>3 A. Yes. Montgomery is a city.</p> <p>4 Q. What are some other communities of</p> <p>5 interest?</p> <p>6 A. You can have parts of a city that are a</p> <p>7 community of interest. There are -- a county is a</p> <p>8 community of interest.</p> <p>9 Q. What is the black belt in Alabama?</p> <p>10 A. It's a geographic area pretty much</p> <p>11 across the middle of the state from east to west.</p> <p>12 And it has to do with the rich soil that's found in</p> <p>13 that area.</p> <p>14 Q. Do you know what counties are in the</p> <p>15 black belt?</p> <p>16 A. I couldn't name -- I could name a few</p> <p>17 counties. But I cannot -- I cannot name the</p> <p>18 counties in the black belt.</p> <p>19 Q. Is there anything other than the soil</p> <p>20 that might define the black belt?</p> <p>21 A. I don't know what you're fishing for.</p> <p>22 Q. I can ask the question again.</p> <p>23 What are other characteristics that you</p> <p>24 know of of the black belt?</p> <p>25 A. That's a better question.</p> <p style="text-align: right;">Page 72</p>

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1 Well, I think there's a perception that
2 there's a lower socioeconomic income level across
3 the black belt. There's probably -- there may be --
4 that would probably be the main thing.

5 Q. Do you consider the black belt a
6 community of interest?

7 A. No, not necessarily, because it's
8 multiple counties, multiple communities.

9 Q. Going back to your testimony earlier
10 about maintaining the core of districts. Does
11 maintaining the core of the existing congressional
12 districts require consideration of racial data?

13 A. Say that again and slow down again. I'm
14 not listening very fast today.

15 Q. I'm sorry. I'm speaking quickly. And I
16 like that term, "listening fast."

17 So what I asked was you testified
18 earlier that you were maintaining -- or attempting
19 to maintain the core of exhibiting districts in the
20 congressional map. And I'm asking whether that
21 requires the consideration of racial data.

22 A. Well, we don't -- no. We don't -- we
23 don't use racial data except after the fact.

24 Q. After what fact do you use racial data?

25 A. After the lines are drawn.

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1 Q. And how do you see that racial data when
2 you decide to look at it?

3 A. The software will produce that.

4 Q. What software?

5 A. The software used to draw the maps.

6 Q. Do you know what that software is?

7 A. Give me a multiple choice, and I'll give
8 it to you. Not right off the bat, no. You know,
9 it's like I know it when I see it. But, you know, I
10 never used it. But it's a new system for us. We
11 recently adopted it.

12 Q. When was the second meeting of the
13 reapportionment committee in 2021?

14 A. If, in fact, there were just the two
15 meetings, it would have been immediately -- let me
16 see. It would have been on the Tuesday prior to the
17 special session convening on a Thursday. So
18 whatever those dates are.

19 Q. Do you have reason to believe that there
20 was another meeting of the reapportionment committee
21 other than the two we're discussing now?

22 A. No, I don't. But I wouldn't be
23 surprised. But I just don't believe there was.

24 Q. I unfortunately don't have the exhibits
25 (inaudible) the meetings, so we'll just move on.

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1 So you said you met the Tuesday before
2 the Alabama special legislative session began on
3 redistricting?

4 A. Correct.

5 Q. And that was the second meeting in your
6 memory of the reapportionment committee?

7 A. That is -- I believe that is correct,
8 yes.

9 Q. Were there other meetings of the
10 reapportionment committee outside of those two to
11 draw the map that we're discussing today?

12 A. No, not of the -- not of the committee.
13 Not a regular committee meeting, no.

14 Q. What about a subset of the committee?

15 A. What about what?

16 MS. WELBORN: A subset.

17 Q. Were there other meetings of a subset of
18 the committee?

19 A. No.

20 Q. What was the agenda for your October
21 26th meeting, reapportionment committee meeting?

22 A. To select -- so is that the date,
23 October 26th? That was meeting number two?

24 A goal for that committee was to select
25 the bills, the maps, that would be introduced to the

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1 legislature on Thursday.

2 Q. And how many congressional maps did the
3 members of the reapportionment committee vote on?

4 A. I think just the one. But I can't -- I
5 can't swear to that.

6 Q. So when you say "select the map," you
7 mean to vote on the one map?

8 A. I can't remember if a substitute
9 congressional map was offered or not.

10 Q. I am going to drop into chat, and I will
11 share my screen, as well. I will represent to you
12 that this is a certified transcript of the October
13 26, 2021, meeting of the reapportionment committee.

14

15 (Plaintiff's Exhibit 6 was
16 marked for identification.)

17

18 Q. Do you see this?

19 A. I do.

20 MS. SADASIVAN: I'm going to ask
21 Mr. Walker if you would be so kind to mark this as
22 Exhibit 6.

23 MR. WALKER: I have done so. It is
24 marked.

25 MS. SADASIVAN: Thank you, sir.

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<p>1 Q. I'll let you quickly scan -- it's quite 2 a long document. I'll let you just scan through it. 3 And if you wouldn't mind just letting me know if 4 this looks familiar to you.</p> <p>5 A. Well, I've glanced through it. It looks 6 familiar. But it's really --</p> <p>7 Q. Okay. Again, I'll represent to you that 8 it's a transcript of the October 26, 2021, meeting 9 of the reapportionment committee, as you likely 10 remember. And as you can see from the transcript, a 11 considerable portion of the meeting was about racial 12 polarization analysis.</p> <p>13 What is your understanding of racial 14 polarization in voting?</p> <p>15 A. In this case, this -- this is an 16 additional evaluation or test of the data to any 17 place it's suspicious that there could be racial 18 discrimination. It's an extra test tacked on to 19 what we normally do to see if, in fact, we are in or 20 out of compliance with the Voting Rights Act and our 21 own guidelines and the court cases.</p> <p>22 Q. And what would give rise to suspicious 23 racial discrimination that would require a racial 24 polarization analysis?</p> <p>25 A. What would -- what would make you think Page 77</p>	<p>1 one of the committee members.</p> <p>2 Q. Who?</p> <p>3 A. It might have been Representative 4 England. I think that's who it was. I'm not a 5 hundred percent sure. I think he had a good bit to 6 say about it.</p> <p>7 Q. And why did -- what was your 8 understanding of why Representative England was 9 concerned about racially polarized voting?</p> <p>10 A. I didn't have an understanding of why he 11 was concerned. He just let it be known that he was 12 concerned.</p> <p>13 Q. Did anyone else express concerns about 14 racially polarized voting?</p> <p>15 A. I don't remember.</p> <p>16 Q. What was the conversation?</p> <p>17 A. I don't know. If we've got the 18 transcript, we can take a look at it.</p> <p>19 I think there was someone that may have 20 even suggested we should have evaluated all 140 21 races for this. I don't remember who that was.</p> <p>22 Q. So if you wouldn't mind turning to Page 23 17 of McClendon Exhibit 5.</p> <p>24 MS. WELBORN: I think it's Exhibit 6.</p> <p>25 Q. Exhibit 6. I apologize. Page 79</p>
<p>1 that that's an issue? Is that what you're asking, 2 that racial discrimination is an issue?</p> <p>3 I guess, you know, the first thing I 4 would say is if we had an incumbent minority person 5 and there was such a change in the composition of 6 the voters in that district, that that -- that 7 district may no longer have -- have less of a chance 8 of having a minority representative. That would be 9 -- I think that would be a red flag.</p> <p>10 Q. So a suspicious racial issue would be if 11 a minority representative were no longer able to win 12 an election in their district?</p> <p>13 A. Or threatened if they -- yeah. Roughly 14 what you said. I don't exactly agree word for word. 15 But yeah, that's the idea.</p> <p>16 Q. What is your understanding of why RPV -- 17 and when I say RPV, I mean racially polarized 18 voting. What is your understanding of why RPV was 19 discussed in the October 26th meeting?</p> <p>20 A. Wait a minute. I missed one word I 21 didn't understand. Why is it what in the meeting?</p> <p>22 MS. WELBORN: Discussed.</p> <p>23 A. "Discussed," is that the word you used?</p> <p>24 Q. Yes, sir.</p> <p>25 A. Oh, okay. Well, it was brought up by Page 78</p>	<p>1 A. I'm on Page 17. Yep, Smitherman.</p> <p>2 Q. All right. So you'll see that 3 Representative Laura Hall asked you about a racially 4 polarized voting study done.</p> <p>5 Can you read where it says Senator 6 McClendon beginning with "Because"?</p> <p>7 A. "Because of the black age voting 8 population in Congressional District 7, there was 9 not one needed because it was over 54 percent black 10 voting age population."</p> <p>11 Q. And then will you also read what 12 Representative Hall said in response?</p> <p>13 A. "So you're saying that we don't have a 14 black -- we don't have a polarization, racially 15 polarization study?"</p> <p>16 Q. And then please read your response.</p> <p>17 A. "None. Because the voting age" -- well, 18 I suspect that's a transcript error. "What is it? 19 I got it right here."</p> <p>20 "Because the voting age is 54." Don't 21 you think that's the VAP, 54, instead of the voting 22 age?</p> <p>23 Q. And then -- I'm sorry. Can you please 24 just read it as it is on the transcript, what 25 Representative Hall said after that beginning with Page 80</p>

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<p>1 "And"?</p> <p>2 A. "And you use District 7 as the basis for</p> <p>3 not having such a study done?"</p> <p>4 Q. And then please read your response.</p> <p>5 A. The black vote -- "The black VAP of the</p> <p>6 district is sufficient to where you don't need a</p> <p>7 study done."</p> <p>8 Q. Who makes the decision to undertake an</p> <p>9 RPV analysis?</p> <p>10 A. The attorney.</p> <p>11 Q. If you asked the attorney to undertake</p> <p>12 an RPV analysis, what would happen?</p> <p>13 A. We would discuss whether, in his</p> <p>14 opinion, the issue was actually there or not and</p> <p>15 needed to be decided and further information</p> <p>16 gathered on the outside. I mean, his job is not</p> <p>17 just to jump.</p> <p>18 Q. If you asked Mr. Walker to conduct an</p> <p>19 RPV analysis, would one be conducted?</p> <p>20 A. First, I don't think -- I would not ask</p> <p>21 Mr. Walker to do something. I would ask Mr. Walker,</p> <p>22 "What is your opinion? Do we need to do this or</p> <p>23 not?" That's how it works.</p> <p>24 Q. I understand. And if you asked him to</p> <p>25 undertake a racial polarization analysis, would one</p> <p style="text-align: right;">Page 81</p>	<p>1 A. You know, I don't know the answer to</p> <p>2 that question.</p> <p>3 Q. You don't know whether or not you could</p> <p>4 undertake --</p> <p>5 A. I don't know. The only way I would know</p> <p>6 is if I had exercised that and see how it worked</p> <p>7 out. But I've never exercised it, never thought</p> <p>8 about exercising it. So I don't know the answer to</p> <p>9 that.</p> <p>10 Q. You didn't think about asking for an RPV</p> <p>11 analysis when Representative England and</p> <p>12 Representative Hall asked for one to be undertaken?</p> <p>13 A. It's like -- it's highly probable that</p> <p>14 we discussed doing that afterwards, after the</p> <p>15 meeting. I may have discussed it with Mr. Walker.</p> <p>16 And if he had thought it was of value and worthwhile</p> <p>17 to do and would give us additional information that</p> <p>18 we needed, it would have been ordered. And if he</p> <p>19 had felt like it was an exercise in futility and a</p> <p>20 waste of time and money, he would have made that</p> <p>21 expression, as well.</p> <p>22 Q. And did you ask Mr. Walker to undertake</p> <p>23 an RPV analysis after the October 26th meeting?</p> <p>24 A. We may have talked about it. But I</p> <p>25 don't remember exactly doing that.</p> <p style="text-align: right;">Page 83</p>
<p>1 be undertaken?</p> <p>2 A. You know, that's a hypothetical. And</p> <p>3 I'm not going to do a hypothetical.</p> <p>4 Q. Do you have the power, as senate chair</p> <p>5 of the reapportionment committee, to ensure that the</p> <p>6 individuals, the attorney, and the map drawer, for</p> <p>7 example, comply with the Voting Rights Act?</p> <p>8 A. Well, yes. That's their responsibility.</p> <p>9 Q. And if you decided that you needed a</p> <p>10 racially polarized voting study done, could you</p> <p>11 insist that they undertake one?</p> <p>12 A. Well, once again, you're doing something</p> <p>13 hypothetical. I depend on Mr. Walker for his legal</p> <p>14 opinion and his experience. He's got many more</p> <p>15 years of experience than I do.</p> <p>16 And what I most likely do with him is</p> <p>17 say, "Dorman, what do you think about this? Do we</p> <p>18 need to do this or not? Does it make any sense?"</p> <p>19 Q. Senator McClendon, I understand that</p> <p>20 you're very personable and you rely on the opinions</p> <p>21 of your attorneys.</p> <p>22 What I'm asking you is if you have the</p> <p>23 power to insist, as senate chair of the</p> <p>24 reapportionment committee, that a racially polarized</p> <p>25 voting study be undertaken?</p> <p style="text-align: right;">Page 82</p>	<p>1 Q. How much did Alabama's population change</p> <p>2 between 2011 and 2021?</p> <p>3 A. I believe it increased about 5 percent.</p> <p>4 I think it went from 4.88 to a little over 5</p> <p>5 million, 5,020,000 or something like that.</p> <p>6 Q. In this redistricting cycle, was</p> <p>7 District 7 over or underpopulated?</p> <p>8 A. I think it was under. Yes, I'm sure it</p> <p>9 was under.</p> <p>10 Q. I'm going to go back to McClendon</p> <p>11 Exhibit 6. If you wouldn't mind please turning to</p> <p>12 Page 19.</p> <p>13 And if you could look at the second</p> <p>14 paragraph on the page after Representative England</p> <p>15 said, "It would appear that District 7 would look</p> <p>16 like that would need to be done," referring to an</p> <p>17 RPV analysis.</p> <p>18 He goes on, "So it appears to me that if</p> <p>19 we're doing this in the logical way, that District 7</p> <p>20 just -- as it appears on a map, would produce a</p> <p>21 certain percentage."</p> <p>22 And he asks, "And what is the</p> <p>23 relationship between the 54 percent that you're</p> <p>24 citing and the actual results or potential results</p> <p>25 of a racial polarization study? What is the</p> <p style="text-align: right;">Page 84</p>

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<p>1 relationship between the two?"</p> <p>2 A. Let me --</p> <p>3 Would you read your response?</p> <p>4 A. I'm sorry. I thought you were done. Go</p> <p>5 ahead.</p> <p>6 Q. Would you please read your response?</p> <p>7 A. Let me read this sentence you just read.</p> <p>8 So I would like to request that the study be done on</p> <p>9 District 7. And what is the relationship between</p> <p>10 the 54 percent that you're citing and a racial</p> <p>11 polarization study? What is the relationship?</p> <p>12 My response is, "I got no clue."</p> <p>13 Q. Does this seem like an accurate</p> <p>14 representation of your conversation in the meeting,</p> <p>15 the October 26 reapportionment committee meeting?</p> <p>16 A. I think it's fairly accurate. I've</p> <p>17 certainly found some errors in here. But it's</p> <p>18 probably close enough.</p> <p>19 Q. And do you still have no clue what the</p> <p>20 relationship between the 54 percent number that you</p> <p>21 cited earlier as not a threshold by which you would</p> <p>22 consider an RPV analysis and the actual or potential</p> <p>23 results of a racial polarization analysis?</p> <p>24 A. Okay. Give me -- break that up. That</p> <p>25 was a couple of questions. Give me the first one.</p> <p style="text-align: right;">Page 85</p>	<p>1 What did you mean by that?</p> <p>2 A. What I meant by that was it didn't look</p> <p>3 like it was -- that a minority congresswoman was at</p> <p>4 risk. If she wanted to be elected again -- and</p> <p>5 apparently she does -- there was nothing to suggest</p> <p>6 it was close enough to think there was a threat to</p> <p>7 her reelection.</p> <p>8 Q. And how is that related to the black</p> <p>9 voting age population in District 7 at 54 percent?</p> <p>10 A. Well, most of the voters are a minority.</p> <p>11 Q. And so you were assuming that black</p> <p>12 voters would vote for a black representative?</p> <p>13 A. That's pretty -- a pretty safe bet here</p> <p>14 in Alabama.</p> <p>15 Q. And where did the 54 percent number come</p> <p>16 from?</p> <p>17 A. Those -- those numbers are generated by</p> <p>18 the software when the district is drawn. But they</p> <p>19 are generated after the district is drawn.</p> <p>20 Q. Did you talk to Representative Sewell</p> <p>21 about the black voting age population in her</p> <p>22 district?</p> <p>23 A. No, I did not.</p> <p>24 Q. Did you talk to Representative Sewell</p> <p>25 about the congressional map?</p> <p style="text-align: right;">Page 87</p>
<p>1 Q. It's just one question, but it's long.</p> <p>2 I'm asking you if you still have no clue</p> <p>3 with respect to the question that Representative</p> <p>4 England asked you and that you just read?</p> <p>5 A. Here -- here's the issue.</p> <p>6 Representative England apparently was targeting that</p> <p>7 number of 54 percent of BVAP as if it were some sort</p> <p>8 of threshold of do or die.</p> <p>9 And even the courts, to my knowledge,</p> <p>10 have never come up with a number that says you've</p> <p>11 got to have this percent or you can't go below this</p> <p>12 percent. It's never happened.</p> <p>13 So when somebody picks out a number of</p> <p>14 54 percents and says that's good or bad, well,</p> <p>15 Congresswoman Sewell was happy with it. And she's</p> <p>16 probably got a whole lot more information on her</p> <p>17 electability in her own district than I have.</p> <p>18 Q. So I'm just going to point you back to</p> <p>19 Page 17 of the transcript of your October 26th</p> <p>20 meeting of the reapportionment committee where</p> <p>21 before Representative England brought that up, you</p> <p>22 had said, "Because of the black voting age</p> <p>23 population in Congressional District 7, there was</p> <p>24 not one needed," referring to an RPV analysis,</p> <p>25 because it was over 54 percent BVAP.</p> <p style="text-align: right;">Page 86</p>	<p>1 A. No, I did not.</p> <p>2 Q. How do you know that Representative</p> <p>3 Sewell was okay with the district, as you suggested,</p> <p>4 based on the BVAP?</p> <p>5 A. I was told that by the map drawer who</p> <p>6 interviewed Representative Sewell I think once in</p> <p>7 person and once virtually. Or it may have been a</p> <p>8 staff person. But they were okay with the district.</p> <p>9 Q. So you wanted to ensure that the BVAP in</p> <p>10 districts with a minority candidate representing</p> <p>11 them was not too low?</p> <p>12 A. Correct.</p> <p>13 Q. Did you take any steps to ensure that</p> <p>14 the BVAP in any district was not too high?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Who drew the maps for you in 2021?</p> <p>17 A. Randy Hinaman.</p> <p>18 Q. What is Randy Hinaman's role in the</p> <p>19 redistricting process?</p> <p>20 A. He's the map drawer.</p> <p>21 Q. When did you first meet with Mr. Hinaman</p> <p>22 about the redistricting cycle in 2021?</p> <p>23 A. In the spring of 2021, I guess. I</p> <p>24 don't -- I don't remember an exact date.</p> <p>25 Q. Who did you meet with Mr. Hinaman with?</p> <p style="text-align: right;">Page 88</p>

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1 A. I don't remember who was there.
2 Q. What was discussed?
3 A. Pardon me? What was what?
4 Q. What did -- what did you all discuss?
5 A. I would just guess. And I would say we
6 probably discussed when are we going to see the data
7 so we can go to work.
8 Q. Did you provide any instructions to
9 Mr. Hinaman in the spring of 2021?
10 A. No.
11 Q. Why not?
12 A. He was -- he was more experienced than
13 me.
14 Q. Did you provide Mr. Hinaman with any
15 materials throughout any of the process of him
16 drawing the 2021 Alabama maps?
17 A. No.
18 Q. Why?
19 A. There was no need to.
20 Q. Why was there no need to?
21 A. Well, he was the map drawer. He knew
22 his job.
23 Q. Where was his job description?
24 A. Where was his job description?
25 Q. Defined.

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1 A. You know, he -- I don't know the answer
2 to that.
3 MS. SADASIVAN: Would you mind if we
4 take a five-minute break?
5 THE VIDEOGRAPHER: We are off the
6 record. The time is 4:26 p.m.
7 (Recess was taken.)
8 THE VIDEOGRAPHER: We are back on the
9 record. The time is 4:37 p.m.
10 Q. Senator McClendon, thank you again for
11 sitting for the deposition and for your time.
12 Following up on McClendon Exhibit 6
13 where we were discussing the quote where you said
14 that because of the black voting age population in
15 Congressional District 7, there was not one needed
16 with respect to an RPV analysis because the district
17 was over 54 percent BVAP. That was the October 26th
18 meeting of the reapportionment committee.
19 Did Mr. Walker tell you that a racial
20 polarization analysis was unnecessary because
21 District 7 had a BVAP of 54 percent?
22 MR. WALKER: Object on the basis of
23 attorney-client privilege.
24 Q. Were you told that a racial polarization
25 analysis was unnecessary because District 7 had a

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1 BVAP of around 54 percent?
2 A. I was told that in any of the districts
3 that were drawn that needed this additional
4 analysis, it had been requested.
5 Q. Can you repeat your answer, please?
6 A. I was told that any of the districts
7 that needed additional analysis, that that analysis
8 had been requested.
9 Q. And were you told which districts
10 required analysis?
11 A. No.
12 Q. Did you know any criteria for which
13 districts required an analysis?
14 A. I did not know the criteria.
15 Q. When did you determine that your plan
16 didn't violate the Voting Rights Act?
17 A. Well, sometime -- sometime prior to
18 submitting it to the redistricting committee for
19 consideration. That was like part of the process,
20 to make sure we were in compliance before
21 introducing it for consideration for the other
22 committee members.
23 Q. And when did you submit the
24 congressional redistricting bill for consideration
25 by the reapportionment committee?

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1 A. The date -- the date we met that Tuesday
2 prior to the special session convening on Thursday.
3 Q. So you determined before the October
4 26th meeting that your map, the congressional
5 redistricting map you introduced, didn't violate the
6 VRA?
7 A. I felt confident that was the case, yes.
8 Q. Do you know if an RPV analysis was
9 conducted for Congressional District 1?
10 A. Do I know if it was conducted? Is that
11 your question?
12 No, I don't know if it was conducted.
13 Q. Who would know?
14 A. The attorney.
15 Q. And who is that?
16 A. His name is Dorman Walker.
17 Q. When did the special legislative session
18 on redistricting begin in Alabama in 2021?
19 A. The Thursday of that week following the
20 redistricting committee meeting. And I don't
21 remember what the date was.
22 Q. Did you do anything to prepare for the
23 special session?
24 A. Well, yes.
25 Q. What did you do to prepare for the

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<p>1 special session?</p> <p>2 A. I tried to get the -- first, we handled</p> <p>3 -- the senate handled the senate and the BOE map</p> <p>4 first. And so I wanted my information in place in</p> <p>5 my hand that I would present to the standing</p> <p>6 committee and ultimately to the senate floor. So my</p> <p>7 preparation was to have my bullet points convenient</p> <p>8 before those meetings.</p> <p>9 Q. Did you review any maps of two majority</p> <p>10 black districts in 2021?</p> <p>11 A. No.</p> <p>12 Q. Did you have the opportunity to vote on</p> <p>13 any two majority black congressional district plans</p> <p>14 in 2021?</p> <p>15 MR. WALKER: Did you say have the</p> <p>16 opportunity to vote?</p> <p>17 MS. SADASIVAN: Yes.</p> <p>18 MR. WALKER: Okay.</p> <p>19 A. There may -- I don't -- and I'm not</p> <p>20 certain. But I think one was introduced on the</p> <p>21 senate floor. But I'm not sure.</p> <p>22 Q. You think that a bill creating two</p> <p>23 majority minority districts was introduced on the</p> <p>24 senate floor?</p> <p>25 MR. WALKER: May.</p> <p style="text-align: right;">Page 93</p>	<p>1 congressional plan?</p> <p>2 Q. Let me just scroll down.</p> <p>3 I guess my question was initially -- and</p> <p>4 I'm seeing on Page 27 there's the beginning of a</p> <p>5 discussion between Senator McClendon and Senator</p> <p>6 Singleton.</p> <p>7 But I had first asked, Senator</p> <p>8 McClendon, if you could look through the transcript</p> <p>9 and see if it generally appears accurate of the</p> <p>10 senate floor debate on November 3, 2021, in the</p> <p>11 Alabama senate. I will represent to you that it's</p> <p>12 the transcript from the video that we received.</p> <p>13 A. And I'll accept that, that it is a</p> <p>14 transcript of the senate floor.</p> <p>15 Q. And in this transcript, you vote against</p> <p>16 a map introduced by Senator Singleton and Senator</p> <p>17 Hatcher. Can you --</p> <p>18 A. What page is that on?</p> <p>19 Q. I believe the motion is -- the</p> <p>20 substitute was offered by Senator Hatcher on Page</p> <p>21 39.</p> <p>22 A. Okay.</p> <p>23 Q. And Senator McClendon moved it for an up</p> <p>24 or down vote on Page 40, and then votes against it</p> <p>25 on Page 41. Do you see that?</p> <p style="text-align: right;">Page 95</p>
<p>1 A. May have been introduced on the senate</p> <p>2 floor. Introduced on the senate floor.</p> <p>3 Q. So I am dropping into the chat and I'll</p> <p>4 ask Mr. Walker to mark as Exhibit 7 or McClendon</p> <p>5 Exhibit 7 a document that is the transcript of the</p> <p>6 senate floor debate in Alabama on November 3, 2021.</p> <p>7 Do you recognize the document? It's on</p> <p>8 my screen so you can see it.</p> <p>9 MR. WALKER: Oh, okay. This is 7?</p> <p>10 MS. WELBORN: Yes.</p> <p>11 MS. SADASIVAN: Yes, sir.</p> <p>12</p> <p>13 (Plaintiff's Exhibit 7 was</p> <p>14 marked for identification.)</p> <p>15</p> <p>16 Q. And I have the exhibit pulled up, as</p> <p>17 well. Take a minute to look at it, Senator</p> <p>18 McClendon, please.</p> <p>19 A. What did you say?</p> <p>20 Q. Will you just take a minute to look at</p> <p>21 the transcript, and at the end confirm yes or no</p> <p>22 whether it generally appears accurate of the senate</p> <p>23 floor debate in 2021 on the various redistricting</p> <p>24 bills in the special legislative session.</p> <p>25 A. Where does this start dealing with the</p> <p style="text-align: right;">Page 94</p>	<p>1 A. Okay. Yeah, I do. I do.</p> <p>2 Q. Can you tell me why you voted against</p> <p>3 Senator Hatcher's two majority minority district</p> <p>4 plan?</p> <p>5 A. You know, if I recall correctly, his map</p> <p>6 pitted -- put two incumbent congressional members in</p> <p>7 the same district.</p> <p>8 Did you hear me?</p> <p>9 Q. I can. I asked you why you voted</p> <p>10 against Senator Hatcher's plan.</p> <p>11 A. And my response was that, among other</p> <p>12 things, the most blatant thing and easiest to notice</p> <p>13 was that he had put two incumbents in the same</p> <p>14 district.</p> <p>15 Q. You agree that the black voting age</p> <p>16 population of the state of Alabama is approximately</p> <p>17 27 percent of the state?</p> <p>18 A. Approximately.</p> <p>19 Q. Did that factor in to how you voted on</p> <p>20 Senator Hatcher's map?</p> <p>21 A. It had nothing to do with it.</p> <p>22 Q. Did you have the opportunity to vote on</p> <p>23 Senator Singleton's proposed map?</p> <p>24 A. I did.</p> <p>25 Q. And how did you vote?</p> <p style="text-align: right;">Page 96</p>

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<p>1 A. A nay.</p> <p>2 Q. And why did you vote nay?</p> <p>3 A. I think the blatant problem with his map</p> <p>4 was that no minority candidate had a majority</p> <p>5 district. He had --</p> <p>6 Q. And when you say a minority candidate</p> <p>7 had a majority district, what do you mean?</p> <p>8 A. I think he drew two districts they</p> <p>9 called opportunity districts. But no minority</p> <p>10 candidate had a majority of the voters in either of</p> <p>11 those districts.</p> <p>12 Q. With respect to Senator Hatcher's map,</p> <p>13 you said you voted against it because two incumbents</p> <p>14 were paired?</p> <p>15 A. I think that is -- I think that's</p> <p>16 correct.</p> <p>17 Q. And what is -- in terms of your</p> <p>18 understanding of the law, what is a more important</p> <p>19 criteria for a map proposed by the Alabama</p> <p>20 legislature? Compliance with federal law and the</p> <p>21 Voting Rights Act or ensuring incumbents are not</p> <p>22 paired?</p> <p>23 A. You're asking me to say what's most</p> <p>24 important among those three or what takes precedent?</p> <p>25 Is that what your question is?</p> <p style="text-align: right;">Page 97</p>	<p>1 hearings occurred between the hours of 9:00 a.m. and</p> <p>2 5:00 p.m.</p> <p>3 A. Most all of them did. I guess there's</p> <p>4 one exception to that. And that would have been the</p> <p>5 meeting at the state house in Montgomery.</p> <p>6 Q. How many public hearings were held at</p> <p>7 the same time as another public hearing?</p> <p>8 A. Zero.</p> <p>9 Q. In other words, how many public hearings</p> <p>10 overlapped with another one of the public hearings?</p> <p>11 A. Zero.</p> <p>12 Q. No public hearings occurred at the same</p> <p>13 time as another public hearing?</p> <p>14 A. Correct.</p> <p>15 Q. And when did you finalize the times of</p> <p>16 the public hearings?</p> <p>17 A. It would have been sometime in July,</p> <p>18 early July. Actually, it was done twice. The first</p> <p>19 time, it was targeted to be completed by June 30th.</p> <p>20 And then we added six more, and that just tacked</p> <p>21 them on the end. So it was in the early part of</p> <p>22 July.</p> <p>23 Q. So you added six more why?</p> <p>24 A. Representative Hall requested it.</p> <p>25 Q. How did she request additional hearings?</p> <p style="text-align: right;">Page 99</p>
<p>1 Q. Yes, sir.</p> <p>2 A. Well, you always have to assume that</p> <p>3 federal law supersedes state law. But in this case,</p> <p>4 it was -- it didn't matter. It was just -- it was</p> <p>5 an -- it was an inappropriate situation.</p> <p>6 Actually, what happens when you pit two</p> <p>7 incumbents, suddenly the redistricting committee is</p> <p>8 picking winners and losers. And that should be up</p> <p>9 to the voters.</p> <p>10 Q. The reapportionment committee -- just to</p> <p>11 go back a little bit to the public hearings that you</p> <p>12 held on redistricting. How many were there?</p> <p>13 A. Still 28.</p> <p>14 Q. And how many occurred between the hours</p> <p>15 of 9:00 and 5:00?</p> <p>16 A. Well, I don't know. I would have to --</p> <p>17 I would have to go back. I think most -- most of</p> <p>18 them did, yeah.</p> <p>19 Q. If I say the McClendon exhibit, I'm</p> <p>20 afraid I will get it wrong. But it has the schedule</p> <p>21 of the public hearings.</p> <p>22 A. That would be Number 4.</p> <p>23 Q. Thank you, sir.</p> <p>24 A. Okay. What is your question, now?</p> <p>25 Q. I asked how many of the 28 public</p> <p style="text-align: right;">Page 98</p>	<p>1 A. Email.</p> <p>2 Q. Sir, I am going to drop in the chat and</p> <p>3 I will share my screen and ask Mr. Walker if he</p> <p>4 could please mark this as, I believe, McClendon</p> <p>5 Exhibit 7.</p> <p>6 MR. WALKER: Eight.</p> <p>7 MS. SADASIVAN: Eight. Gosh. Why am I</p> <p>8 always one off? It's Friday.</p> <p>9 Q. So I'm showing you what I've asked</p> <p>10 Mr. Walker to mark as McClendon Exhibit 8. I'm</p> <p>11 scrolling down to the bottom where it says RC</p> <p>12 045704.</p> <p>13 MS. WELBORN: Kathryn, can you scroll</p> <p>14 all the way up? We don't know what the document is.</p> <p>15 MS. SADASIVAN: So the document says RC</p> <p>16 045697. This was produced by Mr. Walker yesterday.</p> <p>17 MS. WELBORN: What does it look like on</p> <p>18 the first page so we can figure out which one it is?</p> <p>19 MS. SADASIVAN: It looks like this.</p> <p>20 MR. WALKER: Okay.</p> <p>21</p> <p>22 (Plaintiff's Exhibit 8 was</p> <p>23 marked for identification.)</p> <p>24</p> <p>25 A. Is this -- okay. Exhibit 8.</p> <p style="text-align: right;">Page 100</p>

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1 MR. WALKER: She's turned it back a page
2 or two.
3 Q. So if you look on Page 12 of the exhibit
4 that Mr. Walker handed you, it's marked at the
5 bottom with Bates number RC 045712.
6 A. 712. Okay. I've got 712. What page?
7 Q. 045712. It's page 12 of that PDF.
8 A. 712. I've got Page 1.
9 Q. Do you recognize on Page -- I guess the
10 page that we just landed on, did you recognize the
11 document that you're looking at, Mr. McClendon?
12 A. Yes. Well, I have it in front of me.
13 Let me look at it.
14 Yes, I've seen this before.
15 Q. Where have you seen it before?
16 A. I probably -- I probably received a copy
17 of it, of the email.
18 Q. What is this that you're looking at?
19 A. This is Representative Hall, I guess.
20 Yes. This is when she made a request for additional
21 meetings. And she sent that to the staff office and
22 they forward a copy to me.
23 Q. So in her email that we're looking at
24 right now, Representative Hall says, "During the May
25 5th committee meeting, members agreed to hearing
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1 locations that would not require constituents to
2 travel more than one county. However, the proposed
3 location map will require interested parties to
4 travel significant distances to participate."
5 Going down, it says, "While it may not
6 be feasible for all committee members to attend
7 every public hearing, the proposed schedule requires
8 members to 'pick and choose' hearings and will not
9 have the full benefit of the public hearing
10 testimony and discussion of any alternative maps
11 introduced."
12 On the second page -- on the following
13 page, which is Bates number RC 045713,
14 Representative Hall says, "In addition, the timing
15 of each hearing is unsatisfactory. Hearings held
16 during working days cannot be viewed objectively as
17 providing the opportunity for public input."
18 How did you respond to Representative
19 Hall's concerns about the timing of the public
20 hearings?
21 A. I think I called my attorney and
22 basically said, "How do you want to handle this?
23 What do you think we need to do?" And --
24 MR. WALKER: Do not discuss what I said
25 to you.
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1 A. But I cannot discuss what he said to me.
2 Q. You stated earlier that the time and
3 manner of the public hearings is not governing by
4 Alabama law, correct?
5 A. Not to my knowledge.
6 Q. So when Representative Hall asked for
7 other times for the public hearings, was there any
8 legal constraints to the times that you could select
9 for the public hearings?
10 A. Not to my knowledge.
11 Q. Why did you not change the times of the
12 public hearings based on this email?
13 A. That was being -- we used our staff and
14 we used our liaison from the community college
15 system to contact the local community colleges and
16 locations and to see what would work out for
17 everybody involved. And that's how it came about.
18 MS. SADASIVAN: I think that's all the
19 questions I have. The Singleton and the Caster
20 plaintiffs may have questions.
21 MR. OSHER: I have a few questions.
22 Jim, if you want to go first for Singleton, you're
23 more than welcome to. He might not be on.
24 Okay. Senator, give me one moment, sir.
25
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1 EXAMINATION BY MR. OSHER:
2 Q. Senator McClendon, can you hear me?
3 A. I can hear you very well.
4 Q. Oh, well that's a surprise. That never
5 happens. Thank you for your time today. I just
6 have a few questions.
7 I believe -- am I correct that you were
8 in the room when Representative Pringle was taking
9 his deposition?
10 A. You are correct.
11 Q. Or I should say was having his
12 deposition taken.
13 And so I assume that you heard the
14 questions that I asked him. Is that correct?
15 A. That is correct.
16 Q. I'm just going to ask you the same
17 questions.
18 How long have you been serving in the
19 Alabama legislature?
20 A. 19 years.
21 Q. 19 years. And have you been a member of
22 the republican party that whole time?
23 A. Well, I've always run as a republican.
24 And I believe I've been a dues-paying member of the
25 county republican group that whole time.
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1 Q. And have you -- have you always been a
2 member of the republican party?

3 A. Well, "always been" goes back a long
4 way. I think I've been a member of the republican
5 party as long as I've been a candidate or an elected
6 official.

7 Q. And how long does that date back until
8 in the -- in the past?

9 A. 2001.

10 Q. Okay. Based your 19 years serving in
11 the legislature, in your view, do the views of the
12 members of the democratic party in Alabama generally
13 differ from the members of the republican party in
14 Alabama when it comes to the issue of removing
15 confederate monuments from public spaces?

16 A. You know, I think if you make that broad
17 and say generally, I think I can agree with that
18 statement. There -- there are definitely
19 exceptions. But I think with the "general" in
20 there, I can say I generally agree with your
21 statement.

22 Q. So the answer to my question was yes?

23 A. Yes.

24 MR. WALKER: Objection to form. He
25 answered that he can generally agree.

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1 Q. My question was do the members of the
2 democratic party, generally do their views generally
3 -- I should start over.

4 Do the views of the members of the
5 democratic party generally differ from the views of
6 the members of the republican party in Alabama
7 generally when it comes to removal of confederate
8 monuments in public spaces?

9 A. I think I can agree with that.

10 Q. You think you can agree? Can you give
11 me a yes or no answer on that question?

12 MR. DAVIS: Objection, asked and
13 answered.

14 THE WITNESS: So objection, what does
15 that mean for me?

16 MR. WALKER: That means you don't
17 answer.

18 Q. Well, it doesn't mean you don't answer.
19 I believe that's a form objection.

20 MR. WALKER: Excuse me. Forgive me.

21 You're right. Sorry, Dan.

22 MR. OSHER: That's okay.

23 Q. Senator, if you wouldn't mind answering
24 the question.

25 A. Yes.

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1 Q. Thank you. I appreciate it. A few
2 more.

3 Based on your 19 years in the Alabama
4 legislature, do the views of the members of the
5 democratic party in Alabama generally differ from
6 the members of the republican party in Alabama when
7 it comes to the issue of affirmative action?

8 A. And we'll get back to the discussion you
9 had earlier on affirmative action. I'm not even
10 exactly sure of a definition of affirmative action.
11 I remember hearing that term some years ago. But it
12 hasn't been around in a while. So I'm real hesitant
13 about answering that question.

14 One other thing I would like to point
15 out. You're talking about members of the democratic
16 party, members of the republican party, right?

17 That's who you're asking me about.

18 Well, I don't attend any of the
19 democratic party meetings. Now, I know a lot of
20 democrats that are in the legislature. So I'm more
21 likely to have a feeling for a democratic rather
22 than a member of the democratic party. Do you
23 understand what I'm saying?

24 Q. So let me ask you this: In your 19
25 years serving in the -- in the Alabama legislature,

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1 have you worked with your democratic party -- your
2 democratic party colleagues on issues related to
3 pending legislation?

4 A. Yes.

5 Q. And have you worked with republican
6 members of the Alabama legislature on pending
7 legislation and other issues?

8 A. Yes.

9 Q. And in that time, have you gained a
10 general view of what the democratic party in Alabama
11 supports and what the republican party in Alabama
12 supports?

13 A. Yes.

14 Q. Okay. So you -- in terms of affirmative
15 action, let's define affirmative action as giving
16 preference to individual -- considering individual
17 race when making certain decisions about admission
18 to programs or access to benefits.

19 Using that definition, based on your
20 experience in the legislature, do the views of the
21 democratic party in Alabama generally differ from
22 the members -- the views of the members of the
23 republican party in Alabama?

24 A. I really don't have an opinion on that.

25 And the reason is the issue simply has not come up,

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<p>1 it's not in front of me, and I have no experience 2 with members of the democrats or the republicans on 3 that issue. So I can't speak for something that 4 hasn't happened.</p> <p>5 Q. Sure. 6 Based of your experience in the Alabama 7 legislature, do the views of members of the 8 democratic party in Alabama generally differ from 9 the members of the republican party in Alabama when 10 it comes to criminal justice reform?</p> <p>11 A. Okay. And your question is they have 12 disparate or different views? Republicans have 13 different views from democrats on criminal justice 14 reform? That's your question, correct?</p> <p>15 Q. As a general matter, correct.</p> <p>16 A. As a general matter, I agree with that 17 statement.</p> <p>18 Q. And based on your experience in the 19 legislature, do the views of the members of the 20 democratic party in Alabama differ from the views of 21 the members of the republican party in Alabama when 22 it comes to whether there is a significant amount of 23 discrimination against black residents of the state 24 today?</p> <p>25 A. Once again, I need to take a party</p> <p style="text-align: right;">Page 109</p>	<p>1 MR. DAVIS: Any questions from the 2 Singleton plaintiffs?</p> <p>3 I've got just a couple.</p> <p>4 EXAMINATION BY MR. DAVIS:</p> <p>5 Q. Hello, Senator.</p> <p>6 A. Hello.</p> <p>7 Q. Jim Davis representing Secretary 8 Merrill.</p> <p>9 Senator, how many members are there of 10 the Alabama senate?</p> <p>11 A. 35.</p> <p>12 Q. And do they all have a vote on 13 legislation?</p> <p>14 A. Yes, they do.</p> <p>15 Q. Does that include redistricting 16 litigation?</p> <p>17 A. That is correct.</p> <p>18 Q. Excuse me. I said "litigation." I 19 meant legislation.</p> <p>20 A. Legislation.</p> <p>21 Q. Do all senators' votes count the same?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know why any other member of the 24 Alabama senate voted for or against a redistricting 25 plan?</p> <p style="text-align: right;">Page 111</p>
<p>1 business out. I see the party as these two 2 organizations. These people I know claim to be 3 democrats. Some of them claim to be republicans. 4 Whether they belong to -- are active in a party or 5 not, I have no idea.</p> <p>6 Now let's go back to the heart of your 7 question, and I'll try to answer it. With that in 8 mind, ask me your -- ask me your question. What is 9 the topic here?</p> <p>10 Q. The fourth topic that I'm asking if the 11 members -- if the views of the members of the 12 democratic party generally differ from the views of 13 the members of the republican party generally.</p> <p>14 Based on your experience working in the 15 legislature with members of both parties, do their 16 views generally differ when it comes to the issue of 17 whether there is a significant amount of 18 discrimination against black residents of Alabama 19 today?</p> <p>20 A. Yes.</p> <p>21 MR. OSHER: Thank you very much. That's 22 all I have for you. Thank you for your time, 23 Senator.</p> <p>24 A. You're very welcome.</p> <p>25 MR. WALKER: Are we done?</p> <p style="text-align: right;">Page 110</p>	<p>1 A. No. That's an individual decision.</p> <p>2 Q. And how many members are there of the 3 Alabama house of representatives?</p> <p>4 A. 105.</p> <p>5 Q. And they all have votes on legislation?</p> <p>6 A. They certainly do.</p> <p>7 Q. Including redistricting legislation?</p> <p>8 A. Correct.</p> <p>9 Q. And their votes all count the same as 10 one anothers?</p> <p>11 A. That's correct.</p> <p>12 Q. Do you know why any member of the 13 Alabama house of representatives voted for or 14 against any plan, any redistricting plan?</p> <p>15 A. No. That's an individual decision.</p> <p>16 Q. Did you instruct Randy Hinaman to be 17 sure to include a majority black district in an 18 Alabama congressional plan draft?</p> <p>19 A. I did not.</p> <p>20 Q. Did you decide ahead of time that 21 Alabama's plan must include a majority black 22 district?</p> <p>23 A. I did not.</p> <p>24 Q. Was your understanding that those 25 districts, when drafted, would be done so without</p> <p style="text-align: right;">Page 112</p>

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<p>1 consideration of race?</p> <p>2 A. That is correct.</p> <p>3 Q. To the best of your knowledge, was that,</p> <p>4 in fact, how it was done?</p> <p>5 A. That is exactly how it was done.</p> <p>6 MR. DAVIS: Thank you, Senator.</p> <p>7 A. You're welcome.</p> <p>8 MR. WALKER: Do we have anything</p> <p>9 further?</p> <p>10 MS. SADASIVAN: Nothing from the</p> <p>11 Milligan plaintiffs. Thank you, Senator, for your</p> <p>12 time and sitting for the deposition. I appreciate</p> <p>13 it.</p> <p>14 MR. OSHER: Nothing from the Caster</p> <p>15 plaintiffs. Thank you all.</p> <p>16 MR. WALKER: Kathryn, I need to get to</p> <p>17 you, in addition to my privilege log, the final</p> <p>18 statement of -- you know, the sheet where I state</p> <p>19 the request for production and then I state</p> <p>20 underneath the documents. Can I get that to you on</p> <p>21 Monday? You've got all the documents. I just need</p> <p>22 to give you the sheet that says which ones refer to</p> <p>23 which of your requests.</p> <p>24 THE REPORTER: Are we on the record?</p> <p>25 MS. WELBORN: Can we go off the record</p> <p style="text-align: right;">Page 113</p>	<p>1 STATE OF ALABAMA)</p> <p>2 JEFFERSON COUNTY)</p> <p>3</p> <p>4 I hereby certify that the above</p> <p>5 proceedings were taken down by me and transcribed by</p> <p>6 me using computer-aided transcription and that the</p> <p>7 above is a true and correct transcript of said</p> <p>8 proceedings taken down by me and transcribed by me.</p> <p>9 I further certify that I am neither of</p> <p>10 kin nor of counsel to any of the parties nor in</p> <p>11 anywise financially interested in the result of this</p> <p>12 case.</p> <p>13 I further certify that I am duly</p> <p>14 licensed by the Alabama Board of Court Reporting as</p> <p>15 a Certified Court Reporter as evidenced by the ACCR</p> <p>16 number following my name found below.</p> <p>17 So certified on December 17, 2021.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 <u>LeAnn Maroney, Commissioner</u></p> <p>23 ACCR# 134, Expires 9/30/25</p> <p>24 505 North 20th Street, Suite 1250</p> <p>25 Birmingham, AL 35203</p> <p style="text-align: right;">Page 115</p>
<p>1 now?</p> <p>2 MR. WALKER: Yeah, sure.</p> <p>3 THE VIDEOGRAPHER: This ends the</p> <p>4 deposition of Jim McClendon. The time is now</p> <p>5 5:12 p.m.</p> <p>6</p> <p>7 (DEPOSITION ENDED AT 5:12 P.M.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 114</p>	

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