

1 system in Alabama include Bishop State here in Mobile. So when
2 I was on the state school board, I worked with them. When I
3 was chancellor of post-secondary education I worked with them.
4 And by the way, including Tuskegee, and then when I got to
09:18:06 5 Congress, a congresswoman from North Carolina named Alma Adams
6 asked me to be a co-chair with her of the HBCU Congressional
7 Causas. So for five years I guess it was, I was the co-chair
8 of the HBCU Congressional Caucus.

9 Q Did you spend time working on community health centers?

09:18:33 10 A Oh, yes. We have several community health centers here in
11 the district. I've gotten to know them pretty well. I am very
12 impressed with the quality of health care that they provide to
13 their patients. And I was a strong advocate for them and
14 continue to be a strong advocate for them because I think that
09:18:56 15 they provide quality health care close near where people live,
16 so it's community plan, and it's the best way I think to get
17 primary health care to people in those communities. So I am a
18 strong supporter of community health center.

19 Q Back to your co-chairmanship on the HBCU caucus, I am not
09:19:21 20 suggesting this was the reason you did it, but did you receive
21 any recognition for your service in that area?

22 A I did. The Thurgood Marshall Fund gave me an award
23 three years. Probably one of the awards that I am the most
24 proud of. Thurgood Marshall Fund works to provide funding,
09:19:40 25 private funding to HBCUs across America. And I had no idea

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1 they were going to give me an award, and it just knocked me out
2 when they did. I remain in contact with them. I still
3 continue to work with them even though I am not in Congress
4 because I am a huge believer in HBCUs, and I think what the
09:19:59 5 Thurgood Marshall Fund is doing and the United Negro College
6 Fund, both of them together are doing great work for those
7 colleges, and I think they are important to America.

8 Q Just a few more questions, Mr. Byrne. And I will remind
9 you. We want to make sure the Court understands your testimony
09:20:15 10 that Ms. Decker can take it down. We will try to slow down
11 just a little. I want to -- when you were in Congress, did you
12 consider yourself to be the representative of both Republicans
13 and Democrats in your district?

14 A Yes.

09:20:30 15 Q Did you consider yourself to be the representative of both
16 the white and African-American constituents in your district?

17 A Absolutely, yes.

18 Q I want to share a screen now, Mr. Byrne. This is Milligan
19 Exhibit 5. It is the report of one of their experts, Dr. King,
09:20:57 20 and she is offering opinions on certain issues. I want to read
21 this introduction section into the record so you can get some
22 context. Dr. King writes, White law makers in Alabama learned
23 long ago to color mask their public statements, just as they
24 have learned to color mask the legislation intended to protect
09:21:22 25 their racial prerogatives.

1 Not since the high tide of brazen white supremacy when
2 George Wallace proclaimed, segregation forever, have public
3 figures been so bold.

4 MS. WELBORN: Mr. Davis, this is Dr. Bagley's report,
09:21:43 5 not Dr. King's report.

6 MR. DAVIS: I apologize for that confusion. Yes.
7 Thank you for the correction.

8 BY MR. DAVIS:

9 Q Then Mr. Bagley after giving some examples says this.

09:22:03 10 JUDGE MARCUS: I think you have to just -- as we
11 proceed, Mr. Davis, just take your time and speak right into
12 the speaker.

13 MR. DAVIS: Thank you, Judge.

14 BY MR. DAVIS:

09:22:16 15 Q I will read now an excerpt into the record from Milligan
16 Exhibit 5, the Bagley report.

17 Dr. Bagley writes, Representative Bradley Byrne of the
18 State's First Congressional District when he was vying for a
19 Senate seat aired a campaign ad in which he condemned black
09:22:36 20 people by placing their images in a fire.

21 The television spot begins with Byrne staring into a wood
22 fire in a backyard and lamenting the loss of his brother in the
23 armed services. He shifts to lamenting the course the country
24 is taking as the faces of black and brown people appear in the
09:22:56 25 fire. Former national football league quarterback Colin

1 Kaepernick appears in the fire as Byrne calls him an entitled
2 athlete dishonoring the American flag. Members of the
3 congressional caucus known as the Squad, Ilhan Omar and
4 Alexandria Ocasio Cortez appear in the fire and are accused of
09:23:17 5 attacking America and cheapening 9/11. No white people appear
6 in the fire.

7 My question to you, Mr. Byrne, is: Is there anything you
8 care to say in response?

9 A Yes, sir. That ad was about my brother. And the fire was
09:23:38 10 a fire in the fire pit at our hunting camp that he and I used
11 to sit around all the time. So that ad was about my brother.

12 Now, the fact that I'm contrasting a rich, NFL quarterback
13 named Colin Kaepernick who won't stand up during the national
14 anthem with my brother's service who made far less than Colin
09:24:01 15 Kaepernick makes and literally contracted a disease during one
16 of his deployments with the 20th Special Forces group that
17 killed him, I think that's a legitimate thing for me to raise.
18 I have grave disagreements with Representative Alexandria
19 Ocasio Cortez and Representative Omar. But I can tell you I
09:24:18 20 never had any negative interaction with either one of them.

21 Representative Alexandria Ocasio Cortez, actually, her
22 office was in my office building. And when she was relatively
23 new, she couldn't find her way to her office and literally
24 stopped me in the hallway and asked me, can you tell me where
09:24:36 25 my office is? I said, yes, ma'am, and I told her where it was.

1 And we sort of developed a personal rapport just because she
2 got to the moment of weakness, which we all have in Congress by
3 the way. It's easy to get lost in those buildings.

4 So we never really had a political conversation, but we
09:24:50 5 would have these personal sort of, you know, informal social
6 interactions. I disagree with her on the issues, but I don't
7 have any problems with her as a person.

8 The same is true for Ms. Omar. Now, Ms. Omar served on
9 the Education and Labor Committee with me. So we would have
09:25:07 10 interactions about education issues, and we had some
11 disagreements about -- but there was no -- that was really
12 about my brother. It was not about those other people. And
13 the fact that we used them was to simply contrast them and
14 their positions with the service that my brother had rendered
09:25:29 15 to our country.

16 Q Was it your intention to single out anyone because of
17 their race?

18 A No. I singled out Mr. Kaepernick because he won't stand
19 up during the national anthem, and there are plenty of black
09:25:43 20 athletes that stand up during the national anthem by the way.
21 I have noticed that's not as what a lot of people try to
22 portray it to be.

23 And I am singling out Ms. Alexandria Ocasio Cortez and
24 Ms. Omar because of their attacks against America. They attack
09:25:56 25 American values. And I think it's perfectly within the realm

1 of what's appropriate dialogue to say, I expect somebody that's
2 making this money as Colin Kaepernick to stand up during the
3 national anthem, and I don't think members of Congress should
4 be attacking the country.

09:26:12 5 Q Mr. Byrne, I want you to think of the people who are
6 involved in congressional campaigns, whether it's a candidate
7 or someone considering a run, that person's staff, volunteers,
8 and then I want you to assume that a couple of weeks before the
9 January 28th deadline, the congressional map changes from the
09:26:40 10 way it's usually been and what the Legislature passed to all of
11 a sudden it changes to something like what the plaintiffs are
12 representing excuse me -- what the plaintiffs are proposing.

13 Do you see any issues that would cause with congressional
14 campaigns?

09:26:57 15 A Yes, sir. First of all, we have primaries in four months,
16 general election in ten months. Once you turn the calendar to
17 the beginning of the year, you have that primary staring you in
18 the face, you have already set your campaign in place. You
19 already have your plan in place. You have already got
09:27:17 20 volunteers set up ready to go. You have got, you know, the
21 campaign ad messaging already worked out. And you are hitting
22 the ground running.

23 So if you change my district on me with that little time,
24 it's going to put a substantial burden on my ability to refocus
09:27:33 25 my campaign, conduct my campaign, get volunteers, et cetera.

1 And particularly if you give me a new geographic area that I
2 haven't represented before, where I don't have, you know, the
3 natural contacts, et cetera, that's a huge problem for any
4 community. And I don't -- and that's true for any candidate,
09:27:52 5 Democrat, Republican, people that are long-time public office
6 holders, people that are brand new. It could be a tremendous
7 difficulty.

8 Q Mr. Byrne, you said you went to a public hearing where
9 some of these districts were at issue. Why did you go to the
09:28:13 10 public hearing? Why are you here today to talk to the Court
11 about districts?

12 A Number one, I am a citizen, so I have -- so I am not just
13 any citizen. I mean, I served on the state school board, held
14 a district for eight years. I served in the United States
09:28:33 15 House of Representatives representing one of the districts for
16 seven years. I have, you know, a unique set of understandings
17 about what it's like to represent these areas. And I felt like
18 I owed it to the system. I owed it to the public to stand up
19 and say -- as somebody that's actually done this work, these
09:28:51 20 districts the way I'm proposing them makes sense this way.

21 And the most important thing I was trying to say is keep
22 this particular community together. Keep these communities
23 together. Don't pull southwest Alabama apart because we work
24 together down here. Mobile area Chamber of Commerce doesn't
09:29:13 25 just do economic development for Mobile County. They also do

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1 it for Washington County.

2 JUDGE MARCUS: Let me stop you for a second,
3 Mr. Byrne. You cut out. The sound cut out for a minute. So
4 take your time and just repeat what you just said if you would,
09:29:29 5 please.

6 THE WITNESS: Yes, sir. What I have been the most
7 concerned about is that people that pull apart southwest
8 Alabama and have different parts being represented -- we work
9 together down here in southwest Alabama. The example I used
09:29:48 10 was the Mobile area Chamber of Commerce, the economic
11 development for both Mobile County and Washington County,
12 because we're so closely connected.

13 We need to stay together down here. We have a group
14 called CAP, Cultural Alabama partnership, that pulls together
09:30:05 15 these counties so that we have common representation, common
16 advocacy efforts with the Alabama Legislature and the members
17 of Congress. So keep us together. Don't pull us apart. Let
18 us be one group of people that work together for our region of
19 the state and maximize the benefits that we want to get for our
09:30:27 20 people down here.

21 MR. DAVIS: Thank you, Mr. Byrne. I have no further
22 questions and pass the witness at this time.

23 JUDGE MARCUS: Thank you, counsel. Cross-examination
24 in what order did you propose to proceed on behalf of Milligan
09:30:40 25 and Caster and the Singleton? And we leave that up to you.

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1 MS. WELBORN: I will be going first for the Milligan
2 plaintiffs, Your Honor.

3 JUDGE MARCUS: All right. And, Mr. Whatley, would you
4 be going second or the Caster folks going second?

09:30:57 5 MR. WHATLEY: Doesn't matter to me, Your Honor.

6 JUDGE MARCUS: I leave that up to you. So let's
7 begin --

8 MR. WHATLEY: I am happy for the Caster plaintiffs to
9 go second.

09:31:03 10 JUDGE MARCUS: All right. Thanks very much.

11 Ms. Welborn, you may proceed with your cross-examination.

12 MS. WELBORN: Thank you.

13 CROSS-EXAMINATION

14 BY MS. WELBORN:

09:31:10 15 Q Representative Byrne, my name is Kaitlin Welborn, and I
16 represent the Milligan plaintiffs. Good morning.

17 A Good morning.

18 Q So I'd like to talk about the current redistricting plan
19 first. You had no direct role in drawing the current

09:31:25 20 congressional map in Alabama, right?

21 A I didn't have any direct role, but I did testify before
22 the committee.

23 Q But other than that, you did not do anything to --

24 A That's correct.

09:31:37 25 Q -- help draw the congressional map?

1 A That's correct.

2 Q And you did not provide any input to Mr. Hinaman, the map
3 drawer?

4 A I did not know Mr. Hinaman.

09:31:49 5 Q I'm sorry?

6 A I don't think I know him.

7 Q Okay. And you did not speak with Representative Pringle
8 about the 2021 map?

9 A I did.

09:31:59 10 Q You did?

11 A Yes.

12 Q I'm sorry?

13 A He is the chair of the committee, and I testified before
14 the committee.

09:32:08 15 Q Okay. But did you speak to Representative Pringle outside
16 of the public hearing?

17 A I don't believe I did, no.

18 Q Okay. And did you not speak with Senator McClendon
19 outside of the public hearing?

09:32:22 20 A I don't believe I did, no.

21 Q And you did not speak with Secretary Merrill's expert
22 Thomas Bryan?

23 A No, ma'am.

24 Q Okay. You first ran for Congress in a special election in
09:32:34 25 2013, right?

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1 A That's correct.

2 Q And at that time, you had already held state office in
3 Alabama for some time as you had mentioned, right?

4 A That's correct.

09:32:44 5 Q So you were something of a known quantity to the voters in
6 your district?

7 A Well, I thought I was better known than I found out that I
8 was, but, yes, to some people, I was a known quantity.

9 Q And in the 2013 special election, your opponent,
09:33:05 10 Mr. LeFlore was black, right?

11 A That's correct.

12 Q And he lost to you by over 30 percent?

13 A I don't remember the percent.

14 Q And then you faced Mr. LeFlore again in the 2014 general
09:33:20 15 election?

16 A That's right.

17 Q And at that time, he lost to you by over 35 percent?

18 A Once again, I don't remember the percent.

19 Q Okay. As a congressional representative, don't you have
09:33:35 20 to focus on multiple issues all at once?

21 A You do.

22 Q And you have to learn about all of the issues that matter
23 to your constituents?

24 A You do, but there's some issue you know more about than
09:33:49 25 others to be honest with you. You can't be an expert on

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1 everything.

2 Q And some Representatives in Congress represent entire
3 states, right?

4 A That's true.

09:33:57 5 Q Is it impossible to be knowledgeable about, for example,
6 both the University of South Alabama and Troy University at the
7 same time?

8 A Well, you can be knowledgeable about them, but you can be
9 more knowledgeable about one than two.

09:34:15 10 Q Okay. Wouldn't having two congressional representatives
11 representing Mobile and Baldwin give the region even greater
12 influence in Congress?

13 A Well, the truth of the matter is if you have two different
14 ones, you don't have one that's just entirely focused on a
09:34:33 15 particular interest. So --

16 Q No. You have two that are focused on that area?

17 A Unfortunately, when you have two, you don't have the same
18 amount of focus. That's just the honest truth about it. So if
19 I am only concerned about the University of South Alabama, I
09:34:47 20 know I am the congressman for the University of South Alabama,
21 and they don't have anybody but me to go up there and do what
22 needs to be done for them. And so it really is better to have
23 just one than to have two that are sort of split and paying
24 attention to other things.

09:35:02 25 Q Representative Sewell and Palmer both live in Birmingham,

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1 right?

2 A I don't think -- I know Representative Sewell lives in
3 Birmingham. I think Representative Palmer lives outside of
4 Birmingham, but in the metro area.

09:35:24 5 Q In Jefferson County?

6 A Yeah.

7 Q Okay. Are you aware of any criticisms of either of those
8 representatives failing to adequately represent the rest of
9 their districts?

09:35:35 10 A I've never heard anybody criticize either one of them for
11 what they do for their district. Each one of them in their own
12 way do an excellent job for their district.

13 Q Okay. Are you aware that District 4 stretches across the
14 northern part of the state from Lamar and Tuscaloosa counties
09:35:53 15 all the way east to Etowah and Dekalb counties?

16 A I am. I believe that's Congressman Aderholt's district.

17 Q That's right. It's Congressman Aderholt.

18 And presumably, Representative Aderholt campaigns
19 everywhere in his district, right?

09:36:10 20 A I don't know where he campaigns, but Congressman Aderholt
21 like Congresswoman Sewell and Congressman Palmer, does an
22 excellent job in his district.

23 Q I would like to talk about the economics of the Mobile
24 area.

09:36:22 25 You spoke quite a bit about the port in Mobile. Does

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1 Republican Carl your successor also work to protect ship
2 building in Congress?

3 A Yes, ma'am. He is doing a good job.

4 Q Wouldn't you expect anyone who represented Mobile to work
09:36:39 5 to protect the ship building industry in Congress?

6 A Oh, I think that's true. The question is, once again,
7 it's bandwidth. How much time can you devote to that issue if
8 you have got other competing issues? So I can't say this about
9 Congressman Carl because I am not there with him all the time.
09:36:58 10 But for me, every day that I woke up in Congress, I was
11 concerned about that shipyard. And that's what it took because
12 there were all sorts of people trying to take the money away
13 from those programs that they were building ships for, for
14 other programs. And it was a fight every day just like the red
09:37:14 15 snapper fight was a fight every day.

16 Now, if I have got to worry about several other issues in
17 addition to those, I am not going to be as effective in that
18 fight as I would be if I'm focused on those.

19 Q Okay. But if the port in Mobile were in a different
09:37:30 20 district than CD 1, it would still be true that someone would
21 work to represent, you know, the ship -- protect the ship
22 building industry in Congress?

23 A I would think so, but I would think it would be a question
24 of how much time, how much effort, and how much priority they
09:37:46 25 put on it. And if they have got other things they are

1 competing with, it wouldn't be as much. That's just the nature
2 of things.

3 Q Okay. And other than the port, you mentioned a few other
4 industries such as Airbus and fishing, and said that those are
09:38:05 5 some of the largest industries in the Mobile area, right?

6 A Yeah. I also mentioned tourism and seafood, et cetera.

7 Q Okay. The largest industry in Mobile County is health
8 care; is that right?

9 A I guess if you put all the hospitals together, it might --
09:38:26 10 that might be true, yeah.

11 Q And the second largest industry is retail sales; is that
12 right?

13 A In terms of numbers of employees, that may be true. I
14 don't know about payrolls.

09:38:36 15 Q Okay. And the recent economic growth in Mobile County has
16 attracted more people to move to the Mobile area; is that
17 right?

18 A That's correct.

19 Q And people go to Mobile County from other counties to
09:38:50 20 work?

21 A Oh, yes. A lot of people do.

22 Q And to live?

23 A Yes.

24 Q And to shop?

09:38:57 25 A Oh, yes.

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1 Q And those people may come from Clarke County?

2 A Yes.

3 Q Conecuh County?

4 A Not too many people from Conecuh County.

09:39:10 5 Q Okay. What about Wilcox County?

6 A Not very many people from Wilcox County.

7 Q And migration from other areas would include people moving
8 from the area commonly known as the Black Belt, right?

9 A There are people that move here from the Black Belt, yes.

09:39:28 10 Q Okay. You don't know the level of migration into the
11 Mobile area in the past decade, do you?

12 A You mean where they came from?

13 Q The level of migration.

14 A The level. Oh, I couldn't quantify it for you, but we
09:39:45 15 have had migration.

16 Q Or the past 50 years?

17 A We have had migration the last 50 of years, yes.

18 Q But you don't know the level?

19 A No, I can't quantify for you.

09:39:56 20 Q And you don't have a breakdown of where those migrants
21 have come from?

22 A No, ma'am.

23 Q Are you aware of the racial disparities in the poverty
24 level in Mobile?

09:40:08 25 A You mean the percentage of people who are in poverty who

1 are black versus white?

2 Q Yes.

3 A I know that it's a higher percentage poverty among black
4 people than white people in Mobile County.

09:40:26 5 Q Are you aware that over 51 percent of people living below
6 the poverty line in Mobile County are black, even though only
7 36 percent of Mobile County is black?

8 A I don't know the figure precisely, but I wouldn't be
9 surprised if that was the case.

09:40:43 10 Q Okay. Are you aware that the Mobile City Council had to
11 be sued in the 1970s and 1980s to ensure black representation?

12 A I am well aware of that, yes, ma'am.

13 Q And are you aware that the Mobile County School Board had
14 to be sued in the 1970s and 1980s to ensure black
09:41:01 15 representation?

16 A I am well aware that, yes, ma'am.

17 Q You mentioned representative John Lewis and the
18 commemoration of the Selma to Montgomery March?

19 A Correct.

09:41:13 20 Q But you did not support the John Lewis Voting Rights
21 Advancement Act while you were in Congress, did you?

22 A I did not.

23 Q You are familiar with the area referred to as the Black
24 Belt, right?

09:41:29 25 A Oh, yes, ma'am.

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1 Q And the Black Belt is generally an area whose counties are
2 generally majority black, right?

3 A It's actually called the Black Belt because of the soil.
4 The soil is dark and rich there, so it's not called the Black
09:41:44 5 Belt of race or ethnicity.

6 Q That's not what I asked. Is it an area whose counties are
7 generally majority black?

8 A Yes. There are some exceptions to that, but yes, as a
9 region, it's majority black.

09:42:00 10 Q Okay. And in general, the Black Belt has lower income
11 levels than other areas of the state, right?

12 A Yes, ma'am, that's correct.

13 Q And it has lower education levels than other areas?

14 A There are exceptions to that, but that's true.

09:42:17 15 Q And it has worse health care and facilities than other
16 areas?

17 A I don't know that. I have toured hospitals in the Black
18 Belt, and there the number of good hospitals in Black Belt, so
19 I can't verify what you just said.

09:42:28 20 Q Okay. That's perfect, because I would like to talk about
21 health care now.

22 In December 2020, you were interviewed by al.com about
23 your time after Congress. Do you recall this interview?

24 A Well, yeah, I did a lot of interviews when I was a member
09:42:45 25 of Congress, but I do recall generally that interview.

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1 MS. WELBORN: Mr. Ang, could you bring up that
2 article?

3 BY MS. WELBORN:

4 Q Mr. Byrne, do you recognize this article?

09:42:55 5 A It's been a while since I've read it, but, yes, John
6 Sharp. I remember the article he wrote, yeah.

7 MS. WELBORN: Your Honor, we would like to mark this
8 document as Milligan Plaintiffs' Exhibit 55 for identification.

9 JUDGE MARCUS: Okay.

09:43:12 10 MS. WELBORN: Mr. Ang, could you flip to page 2,
11 please?

12 BY MS. WELBORN:

13 Q And, Republican Byrne, could you please read the paragraph
14 starting with, the daily data?

09:43:24 15 A The daily data that I've got in this -- which really
16 forced me to focus on the fact that there is a problem with the
17 ability of black people to be able to get good, primary health
18 care. One thing I have worked on in Congress and will continue
19 to be interested in, is how do we get primary health care to
09:43:43 20 black people? It's clear with the data we have is that black
21 people with underlying health conditions are disproportionately
22 affected by the novel Coronavirus virus. We should want
23 everyone in our communities to have real access to quality
24 primary health care.

09:44:01 25 Q Thank you.

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1 MS. WELBORN: And, Mr. Ang, could you flip to the last
2 page, please?

3 BY MS. WELBORN:

4 Q And, Representative Byrne, could you read the paragraph
09:44:11 5 starting with, many of us have access?

6 A Many of us have access to primary health care, and we take
7 that for granted, but for a disproportionate number of people
8 in the state, and a disproportionate number of black people,
9 that's not true. It's not good for our communities, for our
09:44:27 10 state, or our nation.

11 Q Thank you.

12 MS. WELBORN: And, Mr. Ang, you can take that down.

13 BY MS. WELBORN:

14 Q Representative Byrne, do you agree that it is difficult
09:44:37 15 for black people in Mobile County to get primary health care?

16 A Yes, ma'am.

17 Q And would you agree that it is difficult for black people
18 in the Black Belt to get primary health care?

19 A I don't know as much as the Black Belt as I do about
09:44:51 20 Mobile County, but I wouldn't be surprised if that was true.

21 Q Okay. Thank you. You are aware that the Affordable Care
22 Act allows states to opt in to Medicaid expansion, right?

23 A I am.

24 Q And you are aware that Governor Bentley convened a task
09:45:07 25 force that recommended that Alabama opt into Medicaid

1 expansion, right?

2 A I don't know about that.

3 Q Okay. But Alabama has not opted into Medicaid expansion?

4 A That's correct.

09:45:20 5 Q And if Medicaid were expanded in Alabama about, 220,000
6 more Alabamians would receive health care coverage; is that
7 right?

8 A No.

9 Q I'm sorry?

09:45:35 10 A I said no.

11 Q Okay. Do you have a different figure?

12 A No. I think what you are saying is they would be covered
13 by Medicaid, but it doesn't mean they would have access to
14 health care because there are not enough health care providers
09:45:51 15 to provide health care to.

16 Q I'm sorry. I'm talking about health care coverage, so
17 insurance?

18 A It's a difference between coverage and gaining health
19 care.

09:45:59 20 Q Okay. 220,000 more Alabamians would be covered by
21 Medicaid and have Medicaid insurance?

22 A Yes. But they wouldn't necessarily be able to get health
23 care because we don't have doctors that will take care of them.
24 We have --

09:46:14 25 Q Thank you.

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1 A We have one pediatrician in Escambia County, Alabama that
2 will take Medicaid patients because the level of pay is so low
3 for Medicaid. So you can have Medicaid and not be able to get
4 health care because there's no doctor to give it to you.

09:46:29 5 That's --

6 Q Okay. Thank you.

7 A -- why I support community health centers.

8 Q But of those 220,000 Alabamians who would be covered under
9 Medicaid in that they have Medicaid insurance, black people
09:46:44 10 would disproportionately be among those at those people, right?

11 A I don't know that figure. I couldn't -- I couldn't
12 quantify that.

13 Q And while you were in office, you opposed Medicaid
14 expansion, right?

09:46:55 15 A I did because I thought we should have community health
16 centers instead.

17 Q Okay. And Representative Sewell supports Medicaid
18 expansion?

19 A She does.

09:47:04 20 Q And that Alabama Black Legislative Caucus supports
21 Medicaid expansion?

22 A I don't know.

23 Q Okay. In Congress, you made opposition to the Affordable
24 Care Act a major priority; is that fair?

09:47:19 25 A I did.

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1 Q And you sponsored a 2015 bill to repeal the Affordable
2 Care Act?

3 A Repeal and replace.

4 Q And in 2017, you supported a budget resolution to appeal
09:47:32 5 the Affordable Care Act?

6 A That's correct.

7 Q Do you recall the American Health Care Act of 2017?

8 A I do.

9 Q And it sought to repeal the Affordable Care Act, as well,
09:47:44 10 right?

11 A Repeal and replace.

12 Q And you supported the American Health Care Act, right?

13 A Yes, because I thought it was going to give a better
14 health care system than the one that the Affordable Care Act
09:47:57 15 provided.

16 Q Okay. Thank you.

17 Do you know what percentage of black voters voted for you
18 in the 2014 and 2018 general elections?

19 A I don't.

09:48:07 20 Q Would it surprise you that in your 2014 election only
21 15 percent of black voters in District 1 voted for you?

22 A No.

23 Q And would it surprise you to know that in 2018 only
24 5.4 percent of black voters in District 1 voted for you?

09:48:29 25 A That would surprise me, yeah.

1 Q Okay.

2 MS. WELBORN: I believe I have no further questions,
3 but if I could please confer with my colleagues for a few
4 minutes.

09:48:40 5 JUDGE MARCUS: You may.

6 MS. WELBORN: Thank you.

7 We have no further questions. Thank you.

8 JUDGE MARCUS: All right. Thank you. And you may
9 proceed, Mr. Osher.

09:49:09 10 MR. OSHER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. OSHER:

13 Q Good morning, Representative. How are you?

14 A Good morning. I'm well, thank you.

09:49:17 15 Q Can you hear me okay?

16 A I can.

17 Q Great. My name is Dan Osher. I represent the Caster
18 plaintiffs in this lawsuit. I think we met a few years ago
19 during the *Chestnut* litigation where you testified. Do you
09:49:29 20 remember that?

21 A I do.

22 Q Great.

23 Representative, how long did you serve in Congress?

24 A Seven years.

09:49:38 25 Q And during that time and when you were campaigning, did

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1 you reach out to your constituents to try to learn what their
2 interests and needs were?

3 A Constantly.

4 Q I'm sorry. I didn't catch that answer.

09:49:52 5 A Constantly.

6 Q What about organizations that served your constituents,
7 did you reach out to meet with any such organizations?

8 A Typically, they would reach out to me. So somebody
9 reached out to me and said, will you come speak to our group,
09:50:05 10 or can we come meet with you? I would say, yes.

11 Q Okay. You mentioned Airbus during your testimony. That
12 is a pretty big presence in Mobile; isn't that right?

13 A Yes, sir.

14 Q Did you ever seek out a meeting to meet with
09:50:21 15 Representatives from Airbus?

16 A No. They sought out meetings with me.

17 Q So you never reached out to them during your candidacy or
18 serving Congress?

19 A I didn't have to. They reached out to me.

09:50:34 20 Q Fair enough.

21 What about Austal, did you ever reach out to them?

22 A Yes, sir, but that was part of the back and forth in
23 trying to get ships authorized and appropriated. So I would
24 initiate conversations with them and tell them this is what
09:50:50 25 just happened or what's about to happen.

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1 Q Sure. And that was a huge project in your district,
2 right? I believe you spent a lot of time on that?

3 A Yes, sir. A lot of time.

4 Q Any other of the companies that you identified in your
09:51:01 5 direct examination, did you reach out to any of those while you
6 were serving or campaigning?

7 A I would probably each reach out to the University of South
8 Alabama because I was on the education committee, and I was
9 trying to -- but in general, if I spoke with companies, that
09:51:22 10 would have been because they or somebody representing their
11 industry reached out to me.

12 Q Sure. Busy guy. I wouldn't dispute that. So you
13 testified in the *Chestnut* trial while you were in office you
14 never had a formal reading with the Alabama State Conference of
09:51:42 15 the NAACP; isn't that right?

16 A That's correct. They never reached out to me.

17 Q And you never reached out to them?

18 A No.

19 Q And you didn't know who the president of that organization
09:51:55 20 was when you testified in *Chestnut*; is that right?

21 A Yes, sir.

22 JUDGE MARCUS: Give him a chance to complete his
23 answer. You may proceed, Mr. Byrne.

24 THE WITNESS: I still don't know.

09:52:09 25 BY MR. OSHER:

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1 Q And you testified in *Chestnut* that you never held a
2 meeting with anyone from the Urban League while you were in
3 office, right?

4 A That's correct. They never reached out to me.

09:52:21 5 Q And you never reached out to them?

6 A That's right.

7 Q And you testified in *Chestnut* you never met with anyone
8 from the Southern Christian Leadership Conference; isn't that
9 right?

09:52:31 10 A Not that I am aware of.

11 Q And you testified in *Chestnut* that you never had a meeting
12 with anyone from the National Coalition of Black Civic
13 Participation; isn't that right?

14 A That's correct. Now, I think what I said in that trial
09:52:43 15 and I will say again today is I may have met with those people
16 when I was somewhere else. Like I may have met with them in
17 Selma during the pilgrimage, but I didn't meet with them as
18 members of organizations. It was part of a bigger meeting.

19 Q Of course. Understood. And you testified in *Chestnut*
09:53:03 20 that you never met with anyone from LULAC, the League of United
21 Latin American Citizens; isn't that right?

22 A That's correct.

23 Q And you testified in *Chestnut* that you didn't even know
24 what that organization was?

09:53:15 25 A That's correct.

1 Q And you further testified that you never paid attention to
2 what extent your black constituents supported or opposed you in
3 your congressional races; isn't that right?

4 A That's right. It didn't matter. I still had to represent
09:53:33 5 them, whether they voted for me or not.

6 Q Sure. But you didn't pay attention to whether they
7 actually supported or opposed you?

8 A No. Wouldn't matter.

9 Q So during your seven years in Congress, and I think you
09:53:47 10 already talked about this, you got to know the other members of
11 the Alabama delegation; isn't that right?

12 A Our delegation worked together very well, very closely.

13 Q And I -- in Ms. Welborn's cross-examination, you talked
14 about this a little bit, but I'd like to dig down a little
09:54:08 15 more.

16 MR. OSHER: Jeff, can I have you pull up Caster
17 Plaintiffs' Exhibit 12? Thanks.

18 BY MR. OSHER:

19 Q And, Representative, I will represent to you that this is
09:54:26 20 a map of the congressional plan that was in place I believe the
21 whole time that you were in office?

22 A That's correct.

23 Q Over a decade between 2012 and this year, or I should say
24 last year.

09:54:41 25 So Robert Aderholt represented District 4, right?

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1 A That's correct.

2 Q So looking at his district -- and let's see.

3 MR. OSHER: Jeff, could you focus in on the purple
4 district there? Yeah. Perfect.

09:54:59 5 BY MR. OSHER:

6 Q So looking at that district, it spans the width of the
7 state. It has corners in Colbert County in northwest down to
8 Lamar and Tuscaloosa counties, then over east to Etowah,
9 Marshall, and Dekalb County; isn't that right?

09:55:22 10 A Yes, sir.

11 Q Would you say that's an accurate description of that
12 description?

13 A Yes, sir.

14 Q Did Representative Aderholt ever express to you that it
09:55:32 15 was too difficult for him to travel to the different parts of
16 his district?

17 A No. I actually know that area fairly well because I have
18 campaigned in there twice running for statewide office, and
19 that area, it has an awful lot in common with one another.

09:55:49 20 Q Sure. That --

21 JUDGE MARCUS: Just let him finish his answer.

22 THE WITNESS: I said they're very similar.

23 BY MR. OSHER:

24 Q My apologies for -- I didn't mean to talk over you,
09:56:02 25 Representative.

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1 That wasn't my question. My question was: Did
2 Representative Aderholt ever express to you that it was too
3 difficult for him to travel to the different parts of his
4 district when he represented them?

09:56:13 5 A No. When you are in Congress and you are delegated to a
6 district like that, you do what you have to do, and I am sure
7 he does an excellent job of it.

8 Q And he is an effective representative of his district?

9 A Yes. Very much so.

09:56:28 10 Q And you testified that you got to know Representative
11 Sewell pretty well during your time in Congress?

12 A Actually, I knew her before I got to Congress. But she
13 and I worked very closely together when I was in Congress.

14 Q She is also a very effective Representative of her
09:56:42 15 district?

16 A Very effective.

17 MR. OSHER: Jeff, can we focus on District 7 in the
18 map?

19 BY MR. OSHER:

09:56:53 20 Q So, again, looking at this district, her district started
21 out in -- well, it goes down to the south in Clarke County,
22 then to Montgomery in the east, up to Birmingham in the
23 northeast in Jefferson County, and then over to Pickens County
24 in the west. Do you see that? Did I describe her district
09:57:13 25 accurately?

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1 A Yes.

2 Q In your time in Congress, did Representative Sewell ever
3 express to that you it was too difficult for her to travel to
4 the different parts of her district?

09:57:26 5 A She never said it was too difficult, but she said it was
6 pretty difficult.

7 Q When did she say that?

8 A On several different occasions. She would talk about what
9 her schedule was and how difficult it was for her to be able to
09:57:39 10 go from Birmingham to Clarke County to Lowndes County to
11 Choctaw County, just the difficulty in travel, and the fact
12 that, you know, she's got parts of Jefferson County an urban
13 county, parts of Montgomery County another urban county
14 together with the rural Black Belt counties. It's tough, it's
09:58:01 15 real tough on her, but she is very smart and very capable, and
16 she does -- she works hard.

17 Q And you said she's a very effective representative?

18 A Oh, yes very effective.

19 Q And let's look at District 3.

09:58:17 20 As you spoke a bit about earlier, looking at that district
21 -- and I'm sorry. Who represents District 3?

22 A It's Mike Rogers.

23 Q And he did the whole time you were in office; is that
24 right?

09:58:29 25 A Oh, yes. Yeah.

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1 Q So looking at his district, it has at least half of the
2 eastern border of the state running all the way up from
3 Cherokee County and all the way down to Russell County; isn't
4 that right?

09:58:41 5 A That's right.

6 Q Okay. Did Representative Rogers ever say to you that it
7 was too difficult for him to travel to the different parts of
8 his district?

9 A No. I think he felt like his district had a lot of
09:58:52 10 commonality -- not necessarily easy to get from Cherokee County
11 to Russell County, but the commonality of interests they had
12 made it a little bit easier on him.

13 He does have the Anniston Army Depot, so he is going to be
14 focused on that. But in Russell County, he has got people that
09:59:11 15 are across the river from a major Army base, so he's got that
16 to contend with, too. But he's a ranking member of the House
17 Armed Services Committee now, soon to be the chairman, and so
18 he will be in a unique position to help both of those.

19 Q Sure. That wasn't my question. My question was about the
09:59:29 20 difficulty of travel to the different parts of the district.

21 And --

22 A Yeah. He would say, I have had a long day or a long
23 couple of three days because I have to go from Cherokee County
24 all the way down to Pike Road in Montgomery. That's a long
09:59:44 25 way.

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1 Q But he's -- you think he's a very effective representative
2 in his district?

3 A Oh, yeah, yeah.

4 Q Okay.

09:59:51 5 MR. OSHER: You can take that down, Jeff, thank you.

6 BY MR. OSHER:

7 Q In your direct examination, do you recall talking to
8 Mr. Davis about how the illustrative plans that the plaintiffs
9 have offered in this case may result in no congressional
10 representative living in Mobile? Do you remember that?

10:00:06

11 A Yes.

12 Q And I think -- I can't remember. It might have been
13 Mr. Davis or you said that that would be a tragedy?

14 A It would be a tragedy if we didn't have somebody from
10:00:16 15 Mobile representing the Mobile area, yeah.

16 Q Okay.

17 MR. OSHER: Jeff, could I have you pull up Defendants'
18 Exhibit 2, which I believe is Mr. Bryan's report that was
19 offered by the state in this case?

10:00:37

20 Can you go to page 27? Next page, please. And can you
21 zoom in on the Figure 5.6, Alabama enacted plan. Any way to
22 zoom in further.

23 BY MR. OSHER:

24 Q Representative, can you see that map?

10:01:08

25 A I can.

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1 Q Okay. I will represent to you that this is the current
2 enacted map, and it has dots as to where each of the current
3 Representatives live. Do you see that?

4 A I do.

10:01:19 5 Q Can you tell me which congressional representative
6 currently lives in Montgomery?

7 A I don't think anybody currently lives in Montgomery.

8 Q And you would agree that Montgomery is the third biggest
9 city in Alabama?

10:01:38 10 A Actually, now, I think it's the fourth.

11 Q Fair enough. You would say that Montgomery is a very
12 important city in the state of Alabama?

13 A Oh, yes, very important city.

14 Q Okay.

10:01:50 15 MR. OSHER: You can take that down, Jeff. Thank you.

16 BY MR. OSHER:

17 Q You spoke a bit about District 5 in the State Board of
18 Education plan. Do you remember that?

19 A I can't remember which district it was.

10:02:03 20 Q District 5 is the one that connects Montgomery to Mobile
21 with the Black Belt?

22 A Okay. I remember that one.

23 Q And up until a few years ago, Ella Bell represented that
24 district for a long time; is that right?

10:02:17 25 A She did, yes.

1 Q Did she ever express to you that it was too difficult for
2 her to represent a district that had both Montgomery and Mobile
3 in it?

4 A Yes.

10:02:27 5 Q When did she say that?

6 A I think I mentioned earlier that I would get phone calls
7 from people in her district at -- thinking I was their state
8 school board member. And asking me to come to meetings. And I
9 would call her and I would say, it's your district, not my
10:02:46 10 district. I don't want to do anything in your district you
11 don't know about. I said, do you want me to do something? She
12 said, would you please, because I cannot get down there. It's
13 too far me to get from Montgomery to there. I have other
14 things going on. And so I said, sure, I will be happy to do
10:02:59 15 it. So I would do that for her from time to time and for her
16 predecessor.

17 Q And if she was a member of Congress and you were also a
18 member of Congress and that sort of confusion arose, that would
19 -- the same thing would happen, right, you would talk to the
10:03:17 20 other member of the Congress and try to figure it out?

21 A Yes. But I got to be honest with you, that never happened
22 when I was in Congress. I guess people know who their
23 Congressman is. So I never got any calls from Terri Sewell's
24 district, for example, saying would you come meet with us
10:03:32 25 except for Clarke County because she and I shared Clarke

1 County.

2 Q And Clarke County is the only district -- I'm sorry -- the
3 only county that your district split last redistricting cycle,
4 right?

10:03:43 5 A That's right. And we had an understanding we would work
6 together in Clarke County, and there was never any issue.

7 Q Sure. Ella Bell extremely effectively represented that
8 district, right?

9 A I don't think I would agree with that.

10:04:01 10 Q Dr. Tommy Stewart succeeded Ella Bell to represent that
11 district?

12 A I -- yeah. I don't know him, but I -- I know the name.

13 Q Did you ever speak to Dr. Stewart?

14 A Not that I can recall.

10:04:19 15 Q What about Dr. Chestnut, who currently represents that
16 district?

17 A I don't recall having any interaction with Dr. Chestnut
18 either. I've been away from the state school board for a
19 while.

10:04:30 20 Q You voted to -- in Ms. Welborn's cross-examination, you
21 spoke about your efforts to repeal the Affordable Care Act;
22 isn't that right?

23 A That's right.

24 Q You testified in *Chestnut* that you never tried to
10:04:48 25 determine whether your black constituents wanted the Affordable

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1 Care Act to be stay in place, right?

2 A I didn't try to determine anybody's particular views on
3 that. I just listened to what people were telling me. And I
4 had a lot of people telling me they wanted to change it.

10:05:02 5 Q You never sought out the advice from the state conference
6 of the NAACP on that issue?

7 A I think I testified earlier I never had any interaction
8 with them consciously. I may have been in a room with some of
9 them and didn't know they were members of that organization.

10:05:16 10 Q And you never even tried to figure out what their position
11 was on the issue?

12 A No. I -- when it came to that issue, I had plenty of
13 people tell me what their positions was. I didn't have to
14 reach out to people.

10:05:30 15 Q In *Chestnut*, you testified that while you were in office
16 you never even tried to determine how many black constituents
17 you actually had; isn't that right?

18 A Well, I knew them in general, but I didn't know precisely.
19 I knew it was about 25 percent.

10:05:44 20 Q In fact, when you were asked about a percentage of your
21 district that was black during *Chestnut*, you said, it didn't
22 matter to me. Isn't that right?

23 A It didn't matter to me.

24 Q You voted against the First Step Act?

10:05:59 25 A You have to refresh me. I don't know what the First Step

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1 Act was.

2 Q The First Step Act was the criminal justice reform?

3 A Oh, yeah, yeah, yeah. I'm sorry. Yes, I did.

4 Q But you testified in *Chestnut* that you never tried to
10:06:15 5 determine whether your black constituents felt that that bill
6 would improve their lives, right?

7 A I never heard from anybody about that bill.

8 Q You didn't attempt to discern the Alabama NAACP's view on
9 the bill?

10:06:30 10 A I never had any interaction with them. Consciously
11 knowingly.

12 Q You spoke a bit about the various factories and plants
13 that are located in Mobile?

14 A (Nodded head.)

10:06:44 15 Q Do you recall that?

16 A That's right.

17 Q Are you aware that there are higher rates of cancer and
18 asthma among the black community in Mobile due to their
19 proximity to those factories and plants?

10:06:55 20 A I'm not, but I wouldn't argue with it. In general, I know
21 that we have an issue with regard to the quality of health care
22 that's been available to black people in Alabama in my
23 district.

24 Q Do you know who Alabama commemorates in Congress' Statuary
10:07:19 25 Hall?

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1 A Yes. It's Helen Keller, and it's -- I forgot his name --
2 a former Civil War general.

3 Q Joseph Wheeler?

4 A Yeah.

10:07:31 5 Q And Joseph Wheeler was a calvary general for the
6 Confederate Army; isn't that right?

7 A I know he was a general. I don't know if it was calvary
8 or not.

9 Q But he was on the Confederate side of the Civil War?

10:07:43 10 A Right. I know a lot more about Helen Keller than I know
11 about him.

12 Q Did you ever try to determine how your black constituents
13 felt about Alabama celebrating a Confederate general in the
14 halls of Congress?

10:07:53 15 A I never asked them, but I think I can guess.

16 Q You never reached out to?

17 A No.

18 Q And what is your guess as to how they would feel about it?

19 A I don't think they would like it. That's a decision by
10:08:08 20 the state, not a decision by Congress.

21 Q You would agree with me that members of Congress can use
22 their influence to try to change state policy?

23 A Some do. I didn't. I didn't think it was appropriate.

24 Now, when I was in the Legislature, I supported putting Helen
10:08:29 25 Keller's statute in there. I actually served on the committee

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1 that raised the money to put the statue there because I think
2 Helen Keller was a better representative of the state than the
3 person we had there before.

4 Q Oh, you're referring to the Joseph Wheeler statue, or the
10:08:44 5 one that was replaced by Helen Keller?

6 A The one replaced by Helen Keller.

7 Q You didn't take any action in the Legislature to remove
8 the Joseph Wheeler statue or replace it with something else?

9 A No. We were kind of focused on Helen Keller when I was in
10:08:57 10 the Legislature.

11 Q Speaking of your time in the Legislature, when did you
12 serve in the Senate?

13 A From November of 2002 to May of 2007.

14 Q During that time, I imagine you went to the Alabama
10:09:15 15 Capitol pretty often?

16 A Yes, sir.

17 Q Did you often walk by the monument to Confederate soldiers
18 and sailors that sits in front of the Capitol?

19 A If I did, I didn't pay any attention to it. I didn't know
10:09:30 20 that we had one.

21 Q So you sort of turned a blind eye to it?

22 A I was busy doing other things. I wasn't paying attention
23 to stuff like that.

24 Q Were you aware that while you were there, the memorial was
10:09:40 25 surrounded by flags of the Confederate states?

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1 A I don't remember that, either.

2 Q Is it your contention that that shrine to the Confederacy
3 does not exist in front of the Capitol?

4 A Oh, no. I'm not saying they don't. I just never paid any
10:09:58 5 attention to them.

6 Q So you never tried to determine whether your black
7 constituents had a problem with that sitting at the foot of the
8 Capitol?

9 A I never had a discussion with any constituent about that.

10:10:08 10 Q And is your assumption that you described earlier the same
11 here that you would think that your black constituents probably
12 did not appreciate that?

13 A If they even knew about it.

14 Q Representative, you would agree that the poverty rate
10:10:32 15 among black Alabamians is significantly higher than it is among
16 white Alabamians?

17 A I know it's higher. I don't know I can say it's
18 significantly higher.

19 Q Am I right that when you testified in *Chestnut*, you
10:10:44 20 actually said you didn't know if that was the case, right?

21 A No. But I wouldn't be surprised if it was higher.

22 Q Understood. I will represent to you that the poverty rate
23 is more than double among black Alabamians than it is white
24 Alabamians.

10:11:06 25 What about child poverty rates? Do you know if there's a

1 disparity there?

2 A I don't. I don't know what the child poverty rate is.

3 Q Would it surprise you if it was nearly triple among black
4 Alabamians than it is white Alabamians?

10:11:19 5 A It would not.

6 Q Household average income, do you know if that's lower
7 among black Alabamians than white Alabamians?

8 A I don't know, but I would not be surprised if it were.

9 Q Same with unemployment rate, do you know if it's -- if
10:11:35 10 it's higher than among black Alabamians than white Alabamians?

11 A I don't know, but I wouldn't be surprised if it were.

12 Q I will represent to you that it's more than double among
13 black Alabamians than white Alabamians. Does that surprise
14 you?

10:11:48 15 A Yeah, that kind of does surprise me.

16 Q Okay. Do you have any reason to dispute that?

17 A No. I am just saying -- I don't have the data in front of
18 me, so I am not going to try to guess at the data, but as I
19 come around and looked at this as an industry down in this part
10:12:08 20 of the state, there are plenty of black people that work in
21 every industry that we have got down here. And that doesn't
22 surprise me because 25 percent of the people that live down
23 here are black and expected to be in the work force, and they
24 are.

10:12:21 25 Q Representative you are a little quiet now, if you wouldn't

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1 mind speaking up.

2 A Okay.

3 Q Thank you.

4 A I will move a little closer.

10:12:30 5 Q I will represent to you that one of the Caster plaintiffs'
6 experts in this case reported that the black unemployment rate
7 among -- the black Alabamian unemployment rate is 7.8 percent,
8 and that for white Alabamians, it's 3.8 percent. So the -- so
9 he reports that it's more than double among black Alabamians?

10:12:51 10 A I don't know.

11 Q So assuming the figures that I discussed there are true,
12 you would agree that those disparities stem from Alabama's
13 centuries' long discrimination against black people in the
14 state?

10:13:04 15 A I think the problems that are facing the black community
16 with regard to all these issues is a function of the failure of
17 the state of Alabama to provide a quality education to them.

18 Q Does that have -- is that rooted in the discrimination
19 that Alabama had against black individuals?

10:13:23 20 A No. It's rooted in the overall failure to the Alabama
21 public education system, which -- white people just not as much
22 as it affects black people. It's the reason I got in public to
23 begin with is because I thought the biggest problem facing
24 Alabama was our inability to provide quality education to all
10:13:41 25 of our citizens, and we're still not doing enough. And it's

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1 having these effects that I think hurt everybody in Alabama,
2 but particularly the people who are not getting that quality
3 education.

4 Q So is it your testimony that the disparities that I have
10:13:56 5 described have no roots in the centuries' long discrimination
6 that Alabama, the entrenched discrimination in Alabama against
7 black individuals?

8 A I don't know that I can say that there's no effect. But
9 what I'm saying is, is that the single biggest problem, the
10:14:15 10 thing that's the biggest cause for them is our failure to
11 provide quality education to everybody in the state. We live
12 in a time when you're going to be valued by what you know and
13 what you do with what you know. And if we don't provide
14 quality education to all of our people, they won't get the
10:14:32 15 economic value in their lives that they need. If they don't
16 have the economic value in their lives, they can't afford
17 quality health care and all these other stuff. So I continue
18 to believe today as I did when I ran for state school board in
19 1994, if you want to address all the other issues, fix the
10:14:48 20 education system in the state.

21 Q You agree with me that Alabama had for a very long time a
22 strictly segregated education system?

23 A Oh, yes, sir, absolutely. To our great shame, we did
24 that.

10:15:03 25 Q Just a few more questions, Representative.

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1 You testified on direct about the -- the campaign ad. Do
2 you recall that?

3 A Yes.

4 Q Your campaign ad.

10:15:17 5 I understand your testimony that that ad was intended to
6 be primarily about your brother; is that right?

7 A That's correct.

8 Q So regardless of your intent, do you know how that ad was
9 perceived among your black constituents?

10:15:29 10 A I don't know that I ever had a discussion with a black
11 person about that ad.

12 Q You didn't hear any feedback from the black community or
13 the press on this?

14 A Not that I can recall.

10:15:44 15 Q You understand, don't you, that images of black people in
16 a fire could trigger a connection in the minds of some to the
17 more horrific eras of racial discrimination in Alabama?

18 A No.

19 Q You would agree that in Alabama, there is a horrific
10:16:03 20 history of lynching black Americans?

21 A Yes, sir.

22 Q And that history included burning black individuals alive?

23 A Never heard of that.

24 Q You would also agree, wouldn't you, that Alabama has had a
10:16:17 25 history of bombing and burning down houses occupied by black

1 Alabamians?

2 A Yes, sir. To our great shame.

3 Q You would also agree that the KKK used burning crosses to
4 terrorize black individuals in Alabama?

10:16:31 5 A Yes, sir. To our great shame, they did that.

6 MR. OSHER: Your Honor, if I can just have a minute.

7 JUDGE MARCUS: You may.

8 BY MR. OSHER:

9 Q Just one more question, Representative. Sitting here
10:17:11 10 today, do you understand how the images included in that ad
11 might be viewed negatively by the black community?

12 A No.

13 MR. OSHER: That's all I have. Thank you.

14 JUDGE MARCUS: All right. Thank you. And who will be
10:17:25 15 conducting cross-examination for the Singleton plaintiffs?

16 MR. WHATLEY: Your Honor, I am Joe Whatley. I will.

17 JUDGE MARCUS: All right. Thank you, Mr. Whatley, and
18 you may proceed.

19 MR. WHATLEY: Thank you.

10:17:35 20 CROSS-EXAMINATION

21 BY MR. WHATLEY:

22 Q Mr. Byrne, it's good to see you again. I have a few
23 questions.

24 First of all, I, along with other counsel, I represent the
10:17:47 25 Singleton plaintiffs. Are you familiar with the whole county

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1 plan that the Singleton plaintiffs have proposed, Singleton
2 plan number one?

3 A I don't know if it's the Singleton plan, but I have seen a
4 map that shows whole counties.

10:18:03 5 Q Okay. And are you aware that that plan keeps Mobile
6 County whole?

7 A The map that I saw kept Mobile County whole.

8 Q And you would agree that's a good thing?

9 A That's a good thing. What I was concerned about was that
10:18:23 10 it added Andalusia and the county that Andalusia is in and took
11 away Washington County and Monroe County. I don't think that's
12 a community of interest between Covington County which is where
13 Andalusia is and Mobile.

14 Q Okay. We will talk about that in a second.

10:18:35 15 A Okay.

16 Q But it also kept Mobile and Baldwin counties together, the
17 two Gulf counties?

18 A It did.

19 Q And that was something you viewed to be crucial, correct?

10:18:43 20 A Yes.

21 Q Okay. And you know when you are drawing districts you
22 have to keep the population -- you have to have an eye on the
23 population. What you have -- how equal it has to be is a
24 question the judges will decide. But you know that you have to
10:18:58 25 look to population of counties when you are drawing districts,

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1 correct?

2 A That's correct.

3 Q And by putting Covington in instead of Washington and
4 Monroe, they came -- the Singleton plaintiffs came to districts
10:19:14 5 that had relatively equal population, correct?

6 A That's correct. It has some flaws other than that, but,
7 yes, it does do that.

8 Q And you would also agree that Covington and Escambia
9 counties have some commonalities, correct?

10:19:29 10 A Yes. But Escambia County is not the core of the district.

11 Q I'm sorry. I couldn't hear you?

12 A I'm sorry. Escambia County is not the core of the
13 district. And the part of Escambia County that is closest to
14 Covington County, which is Brewton and east Brewton, not really
10:19:48 15 Atmore, which on the other end of Escambia County, clearly much
16 more to Mobile.

17 Q And the county seat in Escambia County?

18 A Brewton.

19 Q Remind me where that is?

10:19:58 20 A It's Brewton.

21 Q Okay. In that eastern end of the county that's closer to
22 Covington?

23 A That's right.

24 Q And not far from Andalusia?

10:20:04 25 A That's right.

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1 Q Okay.

2 MR. WHATLEY: Let's pull up Caster Exhibit 12. And go
3 down so we can see the southern part of that, Suzanne.

4 BY MR. WHATLEY:

10:20:26 5 Q This is the current district -- I think you just testified
6 the district that -- District 1 is the one you served in this
7 configuration?

8 A That's correct.

9 Q Okay. Now, I will tell you as a preliminary matter both,
10:20:42 10 Mr. Hare and I grew up in Monroeville. And my mother and his
11 parents still live in Monroeville. So let's spend a little bit
12 of time talking about your testimony about Monroe County.

13 Now, Monroe County -- in Monroe County, the economy is
14 largely or in many respects built around the tree; isn't that
10:21:10 15 right? You have paper mills, you have the timber business
16 especially in the northern part of the county. It's -- that's
17 a huge part of the county -- economy; isn't that right?

18 A It's a significant part of it, yes.

19 Q Okay. And they don't have ship building in Monroe County,
10:21:27 20 for example?

21 A No. But you have people from Monroe County that work in
22 the shipyards.

23 Q True. People commute. But they don't do it in Monroe
24 County?

10:21:34 25 A They don't do it in Monroe County, no.

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1 Q And, in fact, between 2010 and 2020, between the two
2 censuses, Monroe County lost a significant part of its
3 population, didn't it, what, around 15 percent?

4 A I don't know the exact percent, but they did lose a
10:21:52 5 significant amount of population.

6 Q Okay. And in Monroe County or at least Monroeville also
7 has a tourist element to its economy, doesn't it?

8 A It does. They try to attract people there because it's
9 the home of Harper Lee, who you probably knew.

10:22:10 10 Q Right. And you brought up Truman Capote in your direct
11 testimony. Were you aware that Truman was the other boy, To
12 Kill a Mockingbird?

13 A Yes.

14 Q Not Harper Lee's brother obviously, but the other boy in
10:22:30 15 To Kill a Mockingbird?

16 A Yes.

17 Q And what you're saying -- in Monroeville, especially
18 pre-COVID and we hope post-COVID, a lot of the economy is built
19 around the Mockingbird, it's built around Harper Lee and Truman
10:22:48 20 Capote and attracting tourists to Monroeville based on that?

21 A They're trying to develop more tourism off of that, yes.
22 I don't know to what extent they have been successful.

23 Q Well, you know at least pre-COVID and even last year to
24 some extent they have a -- the To Kill a Mockingbird play and
10:23:05 25 attract hundreds -- attract thousands of people into

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1 Monroeville to see the Mockingbird play?

2 A Yes, they do. In fact, I've seen it three or four times
3 and got to be on the jury one time.

4 Q Okay. And that -- especially in the spring is a big part
10:23:22 5 of the economy?

6 A In the spring, I would think it would be, yeah.

7 Q Okay. And you mentioned that you attended a town hall
8 meeting in Beatrice, right?

9 A Yeah. Yeah.

10:23:37 10 MR. WHATLEY: And, Suzanne, can you make the District
11 1 larger?

12 BY MR. WHATLEY:

13 Q Is kind of in the northeastern corner of Monroe County?

14 A I don't know -- yeah, I guess that's northeastern.

10:24:03 15 Q And one of the things that's important in Beatrice's
16 economy is hunting camps. You mentioned you were at you a
17 hunting camp, at your hunting camp, but hunting camps are big
18 up there, right?

19 A Yes.

10:24:19 20 Q Okay. And I think you said the northern part of Monroe
21 County is a predominately black area, right?

22 A Yes.

23 Q And, in fact, especially the northern half of Monroe
24 County is considered to be part of the Black Belt, right?

10:24:32 25 A I don't know that.

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1 Q You don't know that.

2 Do you know that both its population and its economy have
3 a lot of similarities to the rest of the Black Belt, correct?

4 A I don't think I would agree with that. It has some
10:24:52 5 interesting unique industries there. You mentioned tourism, in
6 terms of the Mockingbird, but also there's a plant there that
7 does pre-manufactured concrete walls. It's another plant there
8 that makes the cardboard containers that are used to package
9 various goods including some of the craft beer that are made in
10:25:21 10 Mobile. So I don't know other counties in the Black Belt that
11 have those sort of more advanced industries.

12 Q Yes, sir. I'm sorry. Did I cut you off?

13 A No. I finished.

14 Q Okay. You were talking about the precast concrete. You
10:25:40 15 were talking about Gate or Gate-Lazenby?

16 A Yes.

17 Q Okay. What I was really focused on is more the part of
18 the county north of Monroeville?

19 A Okay.

10:25:49 20 Q And Gate-Lazenby -- I don't mean to make this personal,
21 but I worked my way through college working there. But north
22 of Gate-Lazenby is also south of Monroeville, right?

23 A Yes.

24 Q Okay. And north of --

10:26:06 25 A But in Monroe County.

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