

James McClendon
December 17, 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.,)	JAMES McCLENDON
)	
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:

JAMES McCLENDON,
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 17, 2021, commencing at 1:57 p.m.

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<p style="text-align: right;">Page 2</p> <p>1 IT IS FURTHER STIPULATED AND AGREED that the</p> <p>2 signature to and reading of the deposition by the</p> <p>3 witness is waived, the deposition to have the same</p> <p>4 force and effect as if full compliance had been had</p> <p>5 with all laws and rules of Court relating to the</p> <p>6 taking of depositions.</p> <p>7</p> <p>8 IT IS FURTHER STIPULATED AND AGREED that it</p> <p>9 shall not be necessary for any objections to be made</p> <p>10 by counsel to any questions, except as to form or</p> <p>11 leading questions, and that counsel for the parties</p> <p>12 may make objections and assign grounds at the time</p> <p>13 of the trial, or at the time said deposition is</p> <p>14 offered in evidence, or prior thereto.</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 4</p> <p>1 JULIE A. EBENSTEIN</p> <p>2 Attorney at Law</p> <p>3 American Civil Liberties Union Foundation</p> <p>4 125 Broad Street</p> <p>5 New York, New York 10004</p> <p>6 jebenstein@aclu.org</p> <p>7</p> <p>8 KAITLIN WELBORN</p> <p>9 Attorney at Law</p> <p>10 American Civil Liberties Union of Alabama</p> <p>11 P.O. Box 6179</p> <p>12 Montgomery, Alabama 36106</p> <p>13 kwelborn@aclualabama.org</p> <p>14</p> <p>15 FOR THE CASTER PLAINTIFFS: (Via Zoom)</p> <p>16 DAN OSHER</p> <p>17 Attorney at Law</p> <p>18 Elias Law Group</p> <p>19 10 G Street NE, Ste. 600</p> <p>20 Washington, DC 20002</p> <p>21 dosher@elias.law</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 KATHRYN SADASIVAN</p> <p>12 Attorney at Law</p> <p>13 NAACP Legal Defense & Educational Fund</p> <p>14 40 Rector Street, FL 5</p> <p>15 New York, New York 10006</p> <p>16 ksadasivan@naacpldf.org</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 FOR DEFENDANT JOHN H. MERRILL:</p> <p>2 JIM DAVIS</p> <p>3 Assistant Attorney General</p> <p>4 Office of the Attorney General</p> <p>5 501 Washington Avenue</p> <p>6 Montgomery, Alabama 36130</p> <p>7 jim.davis@alabamaag.gov</p> <p>8</p> <p>9 FOR THE DEFENDANTS JAMES McCLENDON & JAMES</p> <p>10 McCLENDON:</p> <p>11 DORMAN WALKER</p> <p>12 Attorney at Law</p> <p>13 Balch & Bingham</p> <p>14 105 Tallapoosa Street, Ste. 200</p> <p>15 Montgomery, Alabama 36104</p> <p>16 dwalker@balch.com</p> <p>17</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 Paige Ali, Videographer</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 I N D E X</p> <p>2 MS. SADASIVAN: 9-103</p> <p>3 MR. OSHER: 104-111</p> <p>4 MR. DAVIS: 111-114</p> <p>5</p> <p>6</p> <p>7 E X H I B I T L I S T</p> <p>8 PAGE</p> <p>9 Plaintiff's Exhibit 1 - 35</p> <p>10 (Talk points)</p> <p>11 Plaintiff's Exhibit 2 - 36</p> <p>12 (2011 reapportionment guidelines)</p> <p>13 Plaintiff's Exhibit 3 - 47</p> <p>14 (Montgomeryadvertiser.com)</p> <p>15 Plaintiff's Exhibit 4 - 61</p> <p>16 (Public hearing schedule)</p> <p>17 Plaintiff's Exhibit 5 - 64</p> <p>18 (2021 reapportionment guidelines)</p> <p>19 Plaintiff's Exhibit 6 - 76</p> <p>20 (Transcript of October 26, 2021)</p> <p>21 Plaintiff's Exhibit 7 - 94</p> <p>22 (Transcript of November 3, 2021)</p> <p>23 Plaintiff's Exhibit 8 - 100</p> <p>24 (Hall request for additional meetings)</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 Sadasivan for plaintiffs Evan Milligan, Shalela</p> <p>2 Dowdy, Letetia Jackson, Greater Birmingham</p> <p>3 Ministries, and the NAACP of Alabama.</p> <p>4 I'm still having trouble hearing you</p> <p>5 all, though. The audio is going out. Are you able</p> <p>6 to move the place where -- anything towards the</p> <p>7 witness, a phone, audio of some sort?</p> <p>8 (Discussion held off the record.)</p> <p>9 THE VIDEOGRAPHER: Okay. The attorneys</p> <p>10 that are on Zoom, if you'll do your introductions.</p> <p>11 MR. TURRILL: Michael Turrill of Hogan</p> <p>12 Lovells on behalf of the Milligan plaintiffs.</p> <p>13 MR. ROSS: Deuel Ross for the Milligan</p> <p>14 plaintiffs.</p> <p>15 MR. OSHER: Dan Osher for the Caster</p> <p>16 plaintiffs.</p> <p>17 MS. EBENSTEIN: Julie Ebenstein for the</p> <p>18 Milligan plaintiffs.</p> <p>19 THE VIDEOGRAPHER: Do you want to swear</p> <p>20 him in?</p> <p>21 JAMES MCCLENDON,</p> <p>22 having been duly sworn, was examined and testified</p> <p>23 as follows:</p> <p>24 THE REPORTER: Usual stipulations?</p> <p>25 MR. WALKER: Meaning that the only</p>
<p style="text-align: right;">Page 7</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 17, 2021, JAMES MCCLENDON, 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 Jim McClendon 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 17, 2021. The time is 1:57 p.m.</p> <p>18 All attorneys present, will you please</p> <p>19 state your names and whom you represent.</p> <p>20 MR. DAVIS: Jim Davis, Alabama Attorney</p> <p>21 General's Office, for Secretary of State John</p> <p>22 Merrill.</p> <p>23 MR. WALKER: Dorman Walker, Balch &</p> <p>24 Bingham, for Senator Jim McClendon.</p> <p>25 MS. SADASIVAN: This is Kathryn</p>	<p style="text-align: right;">Page 9</p> <p>1 objections that need to be made are to the form of</p> <p>2 the question. Yes, Katherine?</p> <p>3 MS. SADASIVAN: Yes.</p> <p>4 THE VIDEOGRAPHER: We are off the</p> <p>5 record. The time is 1:59 p.m.</p> <p>6 (Recess was taken.)</p> <p>7 THE VIDEOGRAPHER: We are back on the</p> <p>8 record. The time is 2:04 p.m.</p> <p>9 EXAMINATION BY MS. SADASIVAN:</p> <p>10 Q. Good afternoon, Mr. McClendon. My name</p> <p>11 is Kathryn Sadasivan and I work for the NAACP Legal</p> <p>12 Defense & Educational Fund. I represent the</p> <p>13 plaintiffs in this case, Milligan versus Merrill.</p> <p>14 Thank you for making yourself available for today's</p> <p>15 deposition.</p> <p>16 Do you understand that you're here today</p> <p>17 because you've been served with a notice of</p> <p>18 deposition and you are a defendant in Milligan</p> <p>19 versus Merrill in your official capacity as cochair</p> <p>20 of the Alabama permanent legislative committee on</p> <p>21 reapportionment?</p> <p>22 A. I do.</p> <p>23 Q. Before going any further, can you please</p> <p>24 state and spell your name for the record?</p> <p>25 A. James H. McClendon, M-c-C-L-E-N-D-O-N.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. And your first name, as well, please.</p> <p>2 A. J-A-M-E-S.</p> <p>3 Q. Have you ever been deposed before?</p> <p>4 A. Yes.</p> <p>5 Q. When?</p> <p>6 A. Roughly ten years ago during</p> <p>7 redistricting last time.</p> <p>8 Q. And what was your role in the</p> <p>9 litigation?</p> <p>10 A. I was house chairman of redistricting at</p> <p>11 that time.</p> <p>12 Q. Were you a defendant?</p> <p>13 A. Yes.</p> <p>14 Q. Were you -- have you been involved in</p> <p>15 any other cases?</p> <p>16 A. Any? No.</p> <p>17 Q. You are sworn and under oath. Do you</p> <p>18 understand that for purposes of my questioning, you</p> <p>19 must testify truthfully and as completely as</p> <p>20 possible as though we were before a judge in a</p> <p>21 courtroom?</p> <p>22 A. Yes.</p> <p>23 Q. Is there any reason you cannot give</p> <p>24 truthful and complete testimony today?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 12</p> <p>1 finish your answer, and I ask that you please wait</p> <p>2 until I finish my question before answering. Do you</p> <p>3 understand?</p> <p>4 A. I do.</p> <p>5 Q. If you don't understand a question that</p> <p>6 I ask, please just let me know, and I'll rephrase</p> <p>7 it. If at any point you recall additional</p> <p>8 information that is responsive to a question that I</p> <p>9 asked you earlier, please let me know, and I will</p> <p>10 allow you to clarify the record. Do you understand?</p> <p>11 A. I do.</p> <p>12 Q. Please do not guess or assume when</p> <p>13 answering. Be sure to state only that which you</p> <p>14 know to be true based on your personal knowledge.</p> <p>15 Will you do that?</p> <p>16 A. Yes.</p> <p>17 Q. You may hear your attorney, Mr. Walker,</p> <p>18 object to a question from time to time. His</p> <p>19 objections are being made for the record, and you</p> <p>20 are still required to answer my question unless you</p> <p>21 are instructed by your attorney not to answer. Do</p> <p>22 you understand?</p> <p>23 A. I'm not sure about that. Maybe say it</p> <p>24 again. Let me hear you say that one more time.</p> <p>25 Q. You may hear your attorney object to a</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Are you taking any medication that might</p> <p>2 affect your ability to understand the questions that</p> <p>3 I ask or provide answers to those questions?</p> <p>4 A. No.</p> <p>5 Q. Do you have any condition that would</p> <p>6 affect your ability to understand the questions that</p> <p>7 I ask and provide answers to the questions?</p> <p>8 A. No.</p> <p>9 Q. Do you understand that today's</p> <p>10 deposition is being conducted via web</p> <p>11 videoconference?</p> <p>12 A. Yes.</p> <p>13 Q. Do you understand that a court reporter</p> <p>14 is transcribing this deposition, meaning that they</p> <p>15 are writing down everything that you, your counsel,</p> <p>16 and I say today?</p> <p>17 A. Yes.</p> <p>18 Q. It's important that all of your answers</p> <p>19 are verbal. This will allow the court reporter to</p> <p>20 record our statements. The court reporter won't be</p> <p>21 able to record gestures or nodding. Do you</p> <p>22 understand?</p> <p>23 A. I do.</p> <p>24 Q. Likewise, it's important that we don't</p> <p>25 speak over one another. I will wait until you</p>	<p style="text-align: right;">Page 13</p> <p>1 question from time to time throughout this</p> <p>2 deposition. Those objections are made largely for</p> <p>3 the record. And you understand you are still</p> <p>4 required to respond to my question unless you are</p> <p>5 instructed by your attorney not to?</p> <p>6 A. Okay.</p> <p>7 Q. Do you understand that?</p> <p>8 A. I've got it.</p> <p>9 Q. Is that a yes?</p> <p>10 A. Yes.</p> <p>11 Q. Thank you.</p> <p>12 Since we're conducting this deposition</p> <p>13 remotely and we're not together in the same room, I</p> <p>14 ask that you please keep your cell phone off unless</p> <p>15 we are on a break. Can you do that?</p> <p>16 A. I understand.</p> <p>17 Q. Please don't refer to any documents or</p> <p>18 other materials during our conversation today. Will</p> <p>19 you do that?</p> <p>20 A. Did you say don't refer to any materials</p> <p>21 or documents today? Is that what you said?</p> <p>22 Q. Do you have any documents with you?</p> <p>23 A. I do not.</p> <p>24 MR. WALKER: Oh, did you mean don't look</p> <p>25 at any documents?</p>

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<p style="text-align: right;">Page 14</p> <p>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?</p> <p>5 A. I do.</p> <p>6 Q. Thank you. Sorry for all the 7 preparatory language.</p> <p>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?</p> <p>13 A. I do.</p> <p>14 Q. Thank you.</p> <p>15 I'm going to ask you some background 16 questions to get to know you a little bit better.</p> <p>17 What is your date of birth?</p> <p>18 A. 1-10-43.</p> <p>19 Q. That's January 10, 1943?</p> <p>20 A. Correct.</p> <p>21 Q. What's your address?</p> <p>22 A. 361 Jones Road, Springville, Alabama.</p> <p>23 Q. And your telephone number?</p> <p>24 A. (205)999-8096.</p> <p>25 Q. Is that a mobile phone number?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Where did you go to college?</p> <p>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.</p> <p>6 Q. And what is your doctorate in?</p> <p>7 A. Optometry.</p> <p>8 Q. And what courses did you take at 9 Birmingham Southern?</p> <p>10 A. Just pretty much premed-type courses.</p> <p>11 Q. And have you studied anywhere else?</p> <p>12 A. No, other than continuing education 13 courses required to maintain my optometry license.</p> <p>14 Q. So you are an optometrist?</p> <p>15 A. Correct. Yes, I am.</p> <p>16 Q. Have you -- are you married?</p> <p>17 A. I am.</p> <p>18 Q. How long have you been married?</p> <p>19 A. 26 years.</p> <p>20 Q. Congratulations.</p> <p>21 Do you have kids?</p> <p>22 A. I do.</p> <p>23 Q. How many?</p> <p>24 A. One child.</p> <p>25 Q. One child. And how old are they?</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Correct. Yes, it is.</p> <p>2 MR. WALKER: Kathryn, can I ask that 3 this personal information be redacted with anything 4 you file with the court?</p> <p>5 Q. Do you have any other phone numbers?</p> <p>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.</p> <p>9 Q. Do you have an email account?</p> <p>10 A. I do. I have two.</p> <p>11 Q. And what are they?</p> <p>12 A. My personal email is 13 jimccc@windstream.net. My senate email is 14 jim.mcclendon@alsenate.gov.</p> <p>15 Q. Do you have any personal social media 16 accounts?</p> <p>17 A. Facebook, yes.</p> <p>18 Q. You just have a Facebook account?</p> <p>19 A. Correct.</p> <p>20 Q. No Twitter?</p> <p>21 A. No Twitter.</p> <p>22 Q. And where were you born?</p> <p>23 A. Mobile, Alabama.</p> <p>24 Q. And where did you go to high school?</p> <p>25 A. Springville, Alabama.</p>	<p style="text-align: right;">Page 17</p> <p>1 A. She is 50.</p> <p>2 Q. And what does she do for a living?</p> <p>3 A. A school teacher.</p> <p>4 Q. In Alabama?</p> <p>5 A. Yes.</p> <p>6 Q. Where?</p> <p>7 A. In the Jefferson County system.</p> <p>8 Q. And where do you work?</p> <p>9 A. I'm a -- I'm retired from optometry.</p> <p>10 Q. So you are not employed currently?</p> <p>11 A. As an optometrist, no, I am not.</p> <p>12 Q. Are you employed anywhere currently?</p> <p>13 A. Only as an Alabama senator.</p> <p>14 Q. So you're working as an Alabama senator?</p> <p>15 A. Well, I am a senator, and we do work 16 from time to time.</p> <p>17 Q. Are you paid?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know why you're here today?</p> <p>20 A. Yes.</p> <p>21 Q. Why?</p> <p>22 A. A lawsuit concerning redistricting that 23 we just completed in the Alabama legislature.</p> <p>24 Q. Did you read the complaint in the case 25 in which you're sitting for a deposition today?</p>

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<p style="text-align: right;">Page 18</p> <p>1 A. I didn't quite understand. Did you say</p> <p>2 will you read or did you read?</p> <p>3 Q. Did you read.</p> <p>4 A. I have not read it, no.</p> <p>5 Q. Do you know what the case is about?</p> <p>6 A. Yes. This case has to deal with the</p> <p>7 congressional districts.</p> <p>8 Q. Are you represented by counsel today?</p> <p>9 A. I am.</p> <p>10 Q. Who is your counsel?</p> <p>11 A. Dorman Walker.</p> <p>12 Q. And how did you prepare for this</p> <p>13 deposition today?</p> <p>14 A. I came in yesterday and we met for a</p> <p>15 couple of hours and we sort of talked about how this</p> <p>16 works and what to expect. But that was the only</p> <p>17 preparation.</p> <p>18 Q. And who is "we"?</p> <p>19 A. Jim Davis was here and Chris --</p> <p>20 Representative Pringle was here and I was here. So</p> <p>21 it was four of us present.</p> <p>22 Q. So you -- the only preparation you did</p> <p>23 for this deposition was to meet with Chris Pringle,</p> <p>24 Jim Davis, and Mr. Walker yesterday for a few hours?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 20</p> <p>1 format that was used.</p> <p>2 Q. I'll represent that this was produced in</p> <p>3 this litigation and that I have given it to the</p> <p>4 court reporter and hopefully you also have a copy.</p> <p>5 And what was this document?</p> <p>6 A. What you and I were just discussing was</p> <p>7 talking points that I was provided by our attorney</p> <p>8 when the issue of the congressional map came before</p> <p>9 the senate as a body.</p> <p>10 Q. And who gave you this document?</p> <p>11 A. Pardon?</p> <p>12 Q. Who gave that document to you?</p> <p>13 A. One of the staff members of the</p> <p>14 redistricting -- not committee, but the</p> <p>15 redistricting department there in the state house.</p> <p>16 Q. What is the difference between the</p> <p>17 redistricting committee and the redistricting</p> <p>18 department?</p> <p>19 A. Well, the redistricting office is</p> <p>20 staffed by state employees. And the redistricting</p> <p>21 committee is composed of elected senators and</p> <p>22 representatives.</p> <p>23 Q. So you were given this document when?</p> <p>24 A. Well, prior to it going on the floor for</p> <p>25 debate, and not much sooner than that.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Did you review any documents?</p> <p>2 A. Yes.</p> <p>3 Q. Which documents?</p> <p>4 A. There were two. Actually, I can't say I</p> <p>5 reviewed them. I looked at the cover. One of them</p> <p>6 had to do with the notes -- the bullet points we</p> <p>7 used on the floor, in my case on the floor of the</p> <p>8 senate.</p> <p>9 And the other one -- I can't even</p> <p>10 remember what the other one was. But I gave them</p> <p>11 back to my attorney. I didn't take them home and</p> <p>12 read them or study them.</p> <p>13 Q. So I am going to try to drop in the chat</p> <p>14 a document that I'll ask the court reporter to mark</p> <p>15 as Exhibit 1. And I can show it on my screen, as</p> <p>16 well.</p> <p>17 Is this the document that you reviewed</p> <p>18 in advance of your deposition today? Let me share</p> <p>19 my screen.</p> <p>20 Senator McClendon, is this the document</p> <p>21 that you were referring to?</p> <p>22 A. I really can't read that. I see talking</p> <p>23 points -- okay. Scroll it up and let me see it.</p> <p>24 Well, that looks similar. I don't know if that's</p> <p>25 exactly the same document. But that's sort of the</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Prior to what going on the floor for</p> <p>2 debate?</p> <p>3 A. The congressional bill.</p> <p>4 Q. And do you remember when that was?</p> <p>5 MR. WALKER: Hang on. Kathryn, when you</p> <p>6 say "this document," are you talking about Talking</p> <p>7 Points for Likely Issues No. 1? Or are you talking</p> <p>8 about the collection of talking points?</p> <p>9 Q. Well, does that change your answer?</p> <p>10 A. Well, I don't think it does. I got that</p> <p>11 prior to the bill going on the floor for debate. In</p> <p>12 fact, I may have gotten it prior to the committee --</p> <p>13 the standing committee meeting. That would -- that</p> <p>14 would make sense.</p> <p>15 Q. And what standing committee meeting are</p> <p>16 you talking about?</p> <p>17 A. The bills that -- the redistricting</p> <p>18 committee is considered an interim committee. And</p> <p>19 the bills that come out of interim committees must</p> <p>20 go to a standing committee before they can go to</p> <p>21 rules in order to get on the floor.</p> <p>22 So there was a standing committee --</p> <p>23 which happened to be general fund -- that was</p> <p>24 handling not only a general fund bill but all the</p> <p>25 redistricting bills, as well. So that would have</p>

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<p style="text-align: right;">Page 22</p> <p>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.</p>	<p style="text-align: right;">Page 24</p> <p>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.</p>
<p style="text-align: right;">Page 23</p> <p>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 --</p>	<p style="text-align: right;">Page 25</p> <p>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</p>

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<p style="text-align: right;">Page 26</p> <p>1 house district 50?</p> <p>2 A. I served three four-year terms. I went</p> <p>3 into office -- well, I went into office in 2021. So</p> <p>4 three four-year terms.</p> <p>5 Q. And are you currently a member of the</p> <p>6 house of representatives?</p> <p>7 A. No. I'm a member of the Alabama senate.</p> <p>8 Q. And when were you first elected to the</p> <p>9 Alabama senate?</p> <p>10 A. It must have been '14. Yeah, 2014.</p> <p>11 Q. Prior to --</p> <p>12 A. Your turn.</p> <p>13 Q. I'm so sorry. I said don't cut each</p> <p>14 other off, and I'm cutting you off. I'm sorry.</p> <p>15 A. I answered your -- 2014, which is the</p> <p>16 answer to the question.</p> <p>17 Q. Thank you. Sorry again.</p> <p>18 What legislative committees have you</p> <p>19 served on during your very long tenure in the</p> <p>20 Alabama legislature?</p> <p>21 A. Well, in the senate, I'm currently on</p> <p>22 the health committee, I am on the general fund</p> <p>23 committee, I am on the education trust fund</p> <p>24 committee, and I am on education policy. And I</p> <p>25 chair the health committee.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. That makes sense. So it's the same</p> <p>2 committee, just getting bigger or larger or smaller</p> <p>3 based on the time period?</p> <p>4 A. Correct.</p> <p>5 Q. What was your role in Alabama's 2011</p> <p>6 redistricting process?</p> <p>7 A. I was house chairman.</p> <p>8 Q. And what are the responsibilities of the</p> <p>9 house chairman for redistricting?</p> <p>10 A. Well, part of -- essentially part of a</p> <p>11 leadership team that makes preparations for the</p> <p>12 actual process, meets with the attorney and can meet</p> <p>13 with the person that draws the maps, and begins</p> <p>14 discussions and review, for example, of our</p> <p>15 guidelines to see if they need to be updated or</p> <p>16 changed, and also help time the scheduling of the</p> <p>17 actual meeting of the full redistricting committee.</p> <p>18 Q. Do you have any other responsibilities?</p> <p>19 A. No. I think that pretty well summarizes</p> <p>20 it. I'm sure there's some other things that we do</p> <p>21 that are not big items. But I think that summarizes</p> <p>22 the things worth discussing.</p> <p>23 Q. And when you said you meet with the</p> <p>24 attorney and you -- as the cochair, you meet with</p> <p>25 the attorney and you meet with the person who draws</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Those are all of the committees that you</p> <p>2 have ever served on?</p> <p>3 A. No. No. In the house, I served on</p> <p>4 several different committees over three terms. And,</p> <p>5 of course, I served on redistricting, as well, ten</p> <p>6 years ago and became -- and was house chair of</p> <p>7 redistricting.</p> <p>8 Q. And when you say "redistricting," you</p> <p>9 mean the permanent -- the Alabama legislative</p> <p>10 committee on reapportionment?</p> <p>11 A. That's exactly what I mean.</p> <p>12 Q. Okay. So if I say redistricting for the</p> <p>13 reapportionment committee or if you say those</p> <p>14 things, you mean the permanent committee on</p> <p>15 reapportionment?</p> <p>16 Is that a yes?</p> <p>17 A. You know, there's a little difference in</p> <p>18 there. During the interim years when there's not</p> <p>19 redistricting activity going on, there is a</p> <p>20 permanent redistricting committee composed of three</p> <p>21 members of the house and three of the senate.</p> <p>22 And then as we approach the</p> <p>23 redistricting time period where the activity goes</p> <p>24 up, then -- then it converts over to 11 and 11 for</p> <p>25 the actual process.</p>	<p style="text-align: right;">Page 29</p> <p>1 the map, what do you -- what do you do during those</p> <p>2 meetings? Or what is your role during those</p> <p>3 meetings?</p> <p>4 MR. WALKER: I'll instruct you not to</p> <p>5 discuss anything that I may have told you or you may</p> <p>6 have told me during those meetings.</p> <p>7 A. Yes, ma'am. Do you mind me correcting</p> <p>8 you on a phrase?</p> <p>9 Actually, if you look at the law, there</p> <p>10 is a house chair and a senate chair. They are not</p> <p>11 cochairs, although that seems to be a well-kept</p> <p>12 secret. But now you know.</p> <p>13 So now --</p> <p>14 Q. The secret is out.</p> <p>15 So as the house chair of the</p> <p>16 redistricting committee, what do you mean -- what</p> <p>17 was your responsibility with respect to your</p> <p>18 meetings with the attorney and the meetings with the</p> <p>19 person who draws the map?</p> <p>20 MR. WALKER: Same instruction.</p> <p>21 THE WITNESS: Okay. Well, stop me if I</p> <p>22 go astray here.</p> <p>23 MR. WALKER: Okay.</p> <p>24 A. Of course, probably the single most</p> <p>25 important role of the attorney is to help the</p>

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<p style="text-align: right;">Page 30</p> <p>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</p>	<p style="text-align: right;">Page 32</p> <p>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?</p>
<p style="text-align: right;">Page 31</p> <p>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 --</p>	<p style="text-align: right;">Page 33</p> <p>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?</p>

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<p style="text-align: right;">Page 34</p> <p>1 A. Yes.</p> <p>2 Q. Was it more than two meetings?</p> <p>3 A. I'm sorry? What was the last word you</p> <p>4 said? It came out fuzzy.</p> <p>5 Q. Was it more that two meetings?</p> <p>6 A. I'm just guessing. And I can't answer</p> <p>7 that question because I don't remember.</p> <p>8 Q. What was the role of the reapportionment</p> <p>9 committee in the map drawing process in 2011?</p> <p>10 A. Are we talking congressional maps?</p> <p>11 Q. Yes.</p> <p>12 A. The role of the reapportionment</p> <p>13 committee was to take the map that was submitted,</p> <p>14 that was put together by the -- with the approval of</p> <p>15 the congressional delegation, and to approve or</p> <p>16 disapprove that map and submit it for introduction</p> <p>17 to the legislature.</p> <p>18 Q. And how did the committee go about</p> <p>19 approving or disapproving of the map drawn?</p> <p>20 A. A roll call vote.</p> <p>21 Q. Were members given any guidance on how</p> <p>22 to vote?</p> <p>23 A. I don't quite understand that -- that</p> <p>24 question, were they given guidance.</p> <p>25 Q. Any information on how to vote or how to</p>	<p style="text-align: right;">Page 36</p> <p>1 document that I've asked the court reporter to mark</p> <p>2 as McClendon Exhibit 2 in front of you?</p> <p>3 MR. WALKER: I'm sorry. Which one is</p> <p>4 it? Tell me.</p> <p>5 A. Exhibit what?</p> <p>6 MR. WALKER: No. Don't say anything.</p> <p>7 Exhibit 2, just tell me what it is.</p> <p>8 Q. Do you recognize the document in front</p> <p>9 of you?</p> <p>10 MS. WELBORN: What is the document,</p> <p>11 Kathryn? Which one is it?</p> <p>12 MS. SADASIVAN: I just dropped it into</p> <p>13 the chat. It is the 2011 legislative</p> <p>14 reapportionment committee guidelines.</p> <p>15 MR. DAVIS: The chat is not going to</p> <p>16 work because the system is pretty far away from us</p> <p>17 all. Nobody can get to the chat easily.</p> <p>18 MS. SADASIVAN: Okay. Would it help if</p> <p>19 I pull it up so you can see it?</p> <p>20 MR. WALKER: The May 2011 guidelines?</p> <p>21 MS. SADASIVAN: This is the document</p> <p>22 we're looking at.</p> <p>23</p> <p>24 (Plaintiff's Exhibit 2 was</p> <p>25 marked for identification.)</p>
<p style="text-align: right;">Page 35</p> <p>1 look at a map?</p> <p>2 A. Well, the map and the data was put</p> <p>3 before them at the committee meeting.</p> <p>4 Q. I'm dropping into the chat and I will</p> <p>5 ask the court reporter to mark as McClendon Exhibit</p> <p>6 2 --</p> <p>7 MR. WALKER: Kathryn, what was Exhibit</p> <p>8 1? I'm sorry. Was that the talking points?</p> <p>9 MS. SADASIVAN: Yes, sir.</p> <p>10 MR. WALKER: Okay. Let me -- let me --</p> <p>11 I'm your secretary in this. So let me take care of</p> <p>12 it.</p> <p>13 MS. SADASIVAN: Oh, thank you so much,</p> <p>14 Dorman. I'm sorry about that. I appreciate it.</p> <p>15 MR. WALKER: We're a full-service law</p> <p>16 firm.</p> <p>17 MS. WELBORN: I'm happy to play the</p> <p>18 role.</p> <p>19 MR. WALKER: Well, I've got them spread</p> <p>20 out over here.</p> <p>21</p> <p>22 (Plaintiff's Exhibit 1 was</p> <p>23 marked for identification.)</p> <p>24</p> <p>25 Q. Senator McClendon, do you have the</p>	<p style="text-align: right;">Page 37</p> <p>1</p> <p>2 Q. Do you recognize this document, Senator</p> <p>3 McClendon?</p> <p>4 A. Yes. It looks -- it looks familiar.</p> <p>5 Q. How do you recognize this document?</p> <p>6 A. The first part of what you said was cut</p> <p>7 off. Say it again.</p> <p>8 Q. How do you recognize this document?</p> <p>9 A. How do I recognize it? I mainly</p> <p>10 recognize it by the fact that it's reapportionment</p> <p>11 committee guidelines. And I recall going through</p> <p>12 that process and the adoption of those guidelines.</p> <p>13 Q. Do you know who drafted the document?</p> <p>14 A. Did I draft the document?</p> <p>15 Q. Do you know who drafted the 2011</p> <p>16 reapportionment --</p> <p>17 A. Do I know who drafted it. I think I</p> <p>18 have a good idea. But I can't say that I'm a</p> <p>19 hundred percent certain who drafted the document.</p> <p>20 So the answer to the question would be no.</p> <p>21 Q. Who do you think drafted it?</p> <p>22 A. I imagine it was our attorney at the</p> <p>23 time. But I'm just not sure about that.</p> <p>24 Q. Can you read please on Page 1 under May</p> <p>25 2011 the paragraph beginning with "Pursuant"?</p>

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<p style="text-align: right;">Page 38</p> <p>1 A. I see that.</p> <p>2 Q. Could you read it, please?</p> <p>3 A. To myself or to you?</p> <p>4 Q. Out loud. Thank you.</p> <p>5 A. "Pursuant to the constitution of the</p> <p>6 United States and the Constitution of the State of</p> <p>7 Alabama, the Alabama state legislature is required</p> <p>8 to review 2010 federal decennial census data</p> <p>9 provided by the U.S. Bureau of the Census to</p> <p>10 determine if it is necessary redistrict Alabama's</p> <p>11 congressional, legislative, and state board of</p> <p>12 education districts because of population changes</p> <p>13 since the 2000 census.</p> <p>14 Accordingly, the following guidelines</p> <p>15 for congressional, legislative, and state board of</p> <p>16 education redistricting have been established by the</p> <p>17 legislature's permanent joint legislative committee</p> <p>18 on reapportionment, (hereinafter referred to as the</p> <p>19 'reapportionment committee.')</p> <p>20 There you go.</p> <p>21 Q. Thank you.</p> <p>22 In the paragraph that you just read</p> <p>23 where you said that the guidelines were established</p> <p>24 by the committee, what does that mean?</p> <p>25 A. Okay. Let me find it.</p>	<p style="text-align: right;">Page 40</p> <p>1 that what you're asking for? It must be. That's</p> <p>2 the only 2, 3, and 4 on the page.</p> <p>3 "A proposed redistricting plan will be</p> <p>4 public information upon its introduction as a bill</p> <p>5 in the legislative process, or upon presentation for</p> <p>6 consideration by the reapportionment committee."</p> <p>7 "Access to the legislative</p> <p>8 reapportionment office computer system, census</p> <p>9 population data, and redistricting work maps will be</p> <p>10 available to all members of the legislature upon</p> <p>11 request. Reapportionment office staff will provide</p> <p>12 technical assistance to all legislators who wish to</p> <p>13 develop proposals."</p> <p>14 Number 4, "In accordance with Rule 23 of</p> <p>15 the joint rules of the Alabama legislature (2011)</p> <p>16 all amendments or revisions to the redistricting</p> <p>17 plans, following introduction as a bill, shall be</p> <p>18 drafted by the reapportionment office."</p> <p>19 Q. I'm going to ask you to quickly scan the</p> <p>20 lest of the guidelines and then let me know if you</p> <p>21 followed those guidelines in 2011.</p> <p>22 MR. WALKER: Objection to form. You may</p> <p>23 answer the question.</p> <p>24 A. Yes, ma'am, it's my belief that we</p> <p>25 followed the guidelines.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. It's in the sentence beginning with</p> <p>2 "Accordingly."</p> <p>3 A. Yeah, I see it.</p> <p>4 Well, that means the committee, the</p> <p>5 reapportionment committee, adopted the guidelines,</p> <p>6 had a vote and said that's our guidelines.</p> <p>7 Q. Will you please go to page two and read</p> <p>8 under numeral III Voting Rights Act, and read the</p> <p>9 two paragraphs below it?</p> <p>10 A. "Districts shall be drawn in accordance</p> <p>11 with the laws of the United States and the State of</p> <p>12 Alabama, including compliance with protections</p> <p>13 against the unwarranted retrogression or dilution of</p> <p>14 racial or ethnic minority voting strength. Nothing</p> <p>15 in these guidelines shall be construed to require or</p> <p>16 permit any districting policy or action that is</p> <p>17 contrary to the U.S. Constitution or the Voting</p> <p>18 Rights Act."</p> <p>19 Number 2, "Redistricting plans are</p> <p>20 subject to the preclearance process established in</p> <p>21 Section 5 of the Voting Rights Act."</p> <p>22 Q. I'm sorry. I'll just have you read Page</p> <p>23 4, Paragraph 2 and 3 under Plans Produced by</p> <p>24 Legislators. 2, 3, and 4. I apologize.</p> <p>25 A. 2, 3, and 4 under Roman numeral V. Is</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. And how did you go about following the</p> <p>2 guidelines in the map-drawing process?</p> <p>3 A. Well, you just read the guidelines and</p> <p>4 try to stay -- and try to do what it says.</p> <p>5 Q. What action did you take to make sure</p> <p>6 that the guidelines were followed?</p> <p>7 A. What action did I take to make sure they</p> <p>8 were followed. I consulted with the attorney and</p> <p>9 with the person drawing the map to make sure that</p> <p>10 they were following the rules that we had before us.</p> <p>11 Q. And how did you do that?</p> <p>12 A. I just looked them in the eye.</p> <p>13 Q. You looked them in the eye and what?</p> <p>14 A. And said, "Are we staying within the</p> <p>15 guidelines?" I'm not even sure I said that. We did</p> <p>16 -- we did talk about the importance of the</p> <p>17 guidelines. And it was understood everybody would</p> <p>18 use that as exactly what they're called, guidelines.</p> <p>19 Q. And so when you said you talked about</p> <p>20 the guidelines and that they were important, were</p> <p>21 you explaining the guidelines to the demographer?</p> <p>22 A. I was not explaining them, no. We would</p> <p>23 talk about them from time to time. But it was just</p> <p>24 so well known that we followed the guidelines.</p> <p>25 That's what we did. That's our job.</p>

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<p style="text-align: right;">Page 42</p> <p>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?</p>	<p style="text-align: right;">Page 44</p> <p>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</p>
<p style="text-align: right;">Page 43</p> <p>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.</p>	<p style="text-align: right;">Page 45</p> <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? 5 A. None. 6 Q. Did you have any role in proposing 7 judicial preclearance of the 2021 map? 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. 11 Q. Did you have any role in proposing 12 judicial preclearance in the redistricting process 13 in 2011? 14 A. No. 15 Q. Did you introduce any proposed 16 redistricting plans for the Alabama congressional 17 delegation in 2011? 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. 21 Q. Did you introduce any redistricting 22 bills in the 2011 legislative session? 23 A. Any redistricting bill. So we've gone 24 outside of congressional. 25 Yes, I'm sure I introduced the house</p>

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<p style="text-align: right;">Page 46</p> <p>1 bill in the house. I don't remember who did the BOE</p> <p>2 bill, who started it. I don't remember who started</p> <p>3 the congressional bill.</p> <p>4 Q. Did you consider a plan permitting two</p> <p>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</p> <p>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</p> <p>15 a map with two majority minority districts in the</p> <p>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</p> <p>21 chat, as well, in case it's helpful. I know it's</p> <p>22 probably not.</p> <p>23 I am going to show you what I ask the</p> <p>24 court reporter to mark as McClendon Exhibit 3. And</p> <p>25 let me just share my screen quickly. It is exhibit,</p>	<p style="text-align: right;">Page 48</p> <p>1 approve the state's redistricting plan before it can</p> <p>2 be implemented. If the redistricting plan retreats</p> <p>3 from the justice department benchmarks, such as</p> <p>4 reducing minority population in a</p> <p>5 previously-approved congressional district, the</p> <p>6 state must show that it had no discriminatory</p> <p>7 purpose in the move and did not reduce minority</p> <p>8 voters' effective exercise of the electoral</p> <p>9 franchise.</p> <p>10 Does that sound familiar to you?</p> <p>11 MR. WALKER: Are you asking him if he</p> <p>12 said that, or what?</p> <p>13 Q. I'm just asking if that helps refresh</p> <p>14 your memory.</p> <p>15 A. Well, it provides a memory. I don't --</p> <p>16 I don't remember this.</p> <p>17 Q. So you don't know why you believed that</p> <p>18 the map introduced by Representative Buskey would</p> <p>19 have led to retrogression?</p> <p>20 A. So what did he introduce? No. I'm</p> <p>21 really lost on trying to decipher this.</p> <p>22 Q. So is that -- did you say the quote that</p> <p>23 I just read to you?</p> <p>24 A. I don't recall saying it. I don't</p> <p>25 recall the article.</p>
<p style="text-align: right;">Page 47</p> <p>1 and then the number after it is SOS 001929. And</p> <p>2 this is what the document looks like.</p> <p>3 MR. WALKER: Can you describe it,</p> <p>4 please?</p> <p>5 THE WITNESS: Look up here.</p> <p>6 MR. WALKER: Oh, that. Okay. We've got</p> <p>7 it.</p> <p>8</p> <p>9 (Plaintiff's Exhibit 3 was</p> <p>10 marked for identification.)</p> <p>11</p> <p>12 Q. Do you recognize this document, Senator</p> <p>13 McClendon?</p> <p>14 A. No.</p> <p>15 Q. I will represent to you that this is a</p> <p>16 news article produced by the secretary of state, a</p> <p>17 defendant in this case. In it, Brian Lyman is</p> <p>18 discussing a plan put forward by Mr. Buskey which</p> <p>19 would have created two majority minority districts.</p> <p>20 And in this article, you were quoted as</p> <p>21 saying -- on Page 2, the second paragraph on Page 2,</p> <p>22 as saying, The Buskey plan would lead to</p> <p>23 "retrogression," or a retreat from minority</p> <p>24 population benchmarks set by the department of</p> <p>25 justice. Under the Voting Rights Act, the DOJ must</p>	<p style="text-align: right;">Page 49</p> <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>

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<p style="text-align: right;">Page 50</p> <p>1 quoted. And I'm asking if you have any reason to 2 believe that that quote is inaccurate. 3 A. Well, there are no -- the only quotation 4 marks are around the word "retrogression" and around 5 the words "effective exercise of the electoral 6 franchise." There's no -- I don't see where I was 7 attributed a quote in those paragraphs. 8 Q. Do you have any reason to believe that 9 that paragraph discussing -- beginning with "Rep Jim 10 McClendon" and continuing on until "This plan, as 11 far as the justice department and Voting Rights Act 12 goes, it's a failure," do you have any reason to 13 believe that that is inaccurate? 14 A. Well, the only part that has quotes is 15 the one you just read. And I do not recall making 16 that statement. 17 Q. So you don't think that that was an 18 accurate reflection of what you thought at the time? 19 MR. WALKER: Objection to form. You may 20 answer it. 21 A. I just -- I don't recall making the 22 statement. 23 Q. And you don't recall having the 24 opportunity to see two majority minority districts 25 in a congressional plan?</p>	<p style="text-align: right;">Page 52</p> <p>1 before. I do not remember. 2 Q. If there was a plan in 2011 that 3 complied with all the districting principles and the 4 guidelines and created two majority minority 5 districts, would you have voted for it? 6 A. Okay. Say that again. We're having a 7 hard time. 8 THE REPORTER: I think if you would slow 9 down just a little bit, that would help. 10 MS. SADASIVAN: If I come in a little 11 bit, is this better? 12 MR. WALKER: No. Slow down. 13 Q. If there was a plan that complied with 14 the redistricting guidelines and created two 15 majority minority districts in 2011, would you have 16 voted for it? 17 A. Thank you. I -- I understood you very 18 well. 19 I would certainly have considered it and 20 would -- but part of that is looking at what else is 21 available. So I would have put it on the list for 22 consideration, yes. 23 Q. Let's move to the 2021 redistricting 24 process. 25 A. Good.</p>
<p style="text-align: right;">Page 51</p> <p>1 A. I do not. 2 MR. DAVIS: Are we breaking now? 3 MS. SADASIVAN: No. I'm sorry. I asked 4 a question. 5 MR. DAVIS: And he answered it. 6 Q. You don't recall seeing two majority 7 minority districts in the Alabama congressional plan 8 in 2011? 9 A. I do not recall it. 10 Q. Okay. Thank you so much. 11 MR. SADASIVAN: We can take a break now. 12 MR. WALKER: Thank you. 13 THE VIDEOGRAPHER: We are off the 14 record. The time is 3:09 p.m. 15 (Recess was taken.) 16 THE VIDEOGRAPHER: We are back on the 17 record. The time is 3:22 p.m. 18 Q. Senator McClendon, I just want to 19 clarify really quickly Exhibit 3. You stated that 20 you don't remember being interviewed for that 21 article, right? 22 A. I do not. 23 Q. And you don't remember saying anything 24 about retrogression? 25 A. Yes. The answer is the same as it was</p>	<p style="text-align: right;">Page 53</p> <p>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</p>

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<p style="text-align: right;">Page 54</p> <p>1 about the timeline?</p> <p>2 A. Correct.</p> <p>3 Q. Anything else?</p> <p>4 A. That's the main -- at that point, that</p> <p>5 was the main thing, when can we get started.</p> <p>6 Q. At what point?</p> <p>7 A. Was that a question?</p> <p>8 Q. Yes. You said "at that point." And I'm</p> <p>9 just asking at what point was that the main --</p> <p>10 A. That was prior to receiving the data</p> <p>11 from the census bureau.</p> <p>12 Q. And did your responsibilities to confer</p> <p>13 with the attorney and the map drawer change after</p> <p>14 you received census data?</p> <p>15 A. I'm not sure I understand your question.</p> <p>16 Do it again and let me listen carefully.</p> <p>17 Q. You just shared that your</p> <p>18 responsibilities before the census numbers came out</p> <p>19 with respect to the attorney and the map drawer as</p> <p>20 senate chair of the reapportionment committee was to</p> <p>21 determine a timeline.</p> <p>22 And I'm asking if your responsibilities</p> <p>23 as senate chair of the reapportionment committee</p> <p>24 with respect to conferring with the attorney and map</p> <p>25 drawer changed once you received census data.</p>	<p style="text-align: right;">Page 56</p> <p>1 And then one of the representatives asked for</p> <p>2 additional meetings, so it spilled over into the</p> <p>3 third week into September.</p> <p>4 Q. So just going back to your role as</p> <p>5 senate chair of the reapportionment committee and</p> <p>6 your responsibilities to confer with the attorney</p> <p>7 and the map drawer, what were -- the public hearings</p> <p>8 -- strike that.</p> <p>9 Going back to your role as senate chair</p> <p>10 of the reapportionment committee and your</p> <p>11 responsibilities to confer with the attorney and map</p> <p>12 drawer, what other timelines did you discuss?</p> <p>13 A. We also needed to be able to give some</p> <p>14 idea as to when we would actually be prepared for a</p> <p>15 legislative session, for the governor to call a</p> <p>16 special session to consider redistricting.</p> <p>17 Q. And how did you arrive at that</p> <p>18 information of when that should be?</p> <p>19 A. There was -- we just sort of projected</p> <p>20 forward saying we need -- we'll need X amount of</p> <p>21 time for the public hearings and then we'll need X</p> <p>22 amount of time to meet with the legislators and the</p> <p>23 congressional delegation and the board of education.</p> <p>24 And then we basically set a timeline and</p> <p>25 said we can -- and then at this point we'll be ready</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Well, no. It was just part of a</p> <p>2 continuum of setting the schedule and seeing when</p> <p>3 things would work out, how things -- in what order</p> <p>4 things needed to unfold in order to get the job done</p> <p>5 in a timely manner.</p> <p>6 Q. And other than you and the map drawer</p> <p>7 and the attorney, who else was involved in that</p> <p>8 decision-making?</p> <p>9 A. Representative Pringle.</p> <p>10 Q. Anybody else?</p> <p>11 A. No.</p> <p>12 Q. So you, the attorney, Representative</p> <p>13 Pringle, and the map drawer determined when you</p> <p>14 would begin the public hearings or the</p> <p>15 reapportionment committee meetings?</p> <p>16 A. Well, the staff, the reapportionment</p> <p>17 staff, had some input into it. Although the public</p> <p>18 hearings, we gave -- we gave a time frame to the</p> <p>19 community -- the community college system. The</p> <p>20 chancellor loaned us one of his personnel to help us</p> <p>21 coordinate those public hearings. And so he's the</p> <p>22 one that actually set up the dates, locations, and</p> <p>23 times for the public hearings.</p> <p>24 I think we told him we wanted to get</p> <p>25 this done the first couple of weeks in September.</p>	<p style="text-align: right;">Page 57</p> <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>

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<p style="text-align: right;">Page 58</p> <p>1 Senator McClendon, and any other person about 2 redistricting in 2021. 3 A. Okay. I don't know the answer to that 4 question. 5 Q. What role did you play in setting the 6 schedule of the public hearings on redistricting? 7 A. I talked to the chancellor of the 8 two-year system and asked him to designate someone 9 to work with our staff. And then they worked it out 10 from there and came back with a schedule and a plan. 11 Q. Did you review the locations of the 12 public hearings? 13 A. Yes, I looked at what they put together. 14 And we were just about ready to announce it when 15 Representative Hall requested that we add some more, 16 which we did. 17 Q. When were you preparing to announce the 18 dates and locations of the public hearings? 19 A. You know, I don't know why I would 20 remember this, but I think June 30th was our target 21 date to do that. And then I believe it was the day 22 before we got a letter, an email maybe -- I didn't 23 get it. The staff received communications from one 24 of the members of our redistricting committee 25 requesting that there be another half dozen added on</p>	<p style="text-align: right;">Page 60</p> <p>1 determining the time, location, and manner of public 2 hearings? 3 A. I think the staff, in conjunction with a 4 representative from the community system, said we 5 feel like we can get it done by this date, and 6 actually communicated with members of the 7 redistricting committee for suggestions and asked 8 that they have those suggestions in by June 30. 9 Q. When did you discuss public hearings 10 with the reapportionment committee? 11 A. When did who? 12 Q. When did you discuss -- you or other 13 members of the legislative delegation of the 14 reapportionment committee discuss the public 15 hearings? 16 A. I don't know the answer. 17 Q. What venues did you consider in 18 Montgomery for public hearings? 19 A. Well, we held one at the -- the public 20 one was at the state house. 21 Q. Were there any others? 22 A. I don't know the answer to that. I 23 don't have that schedule in front of me. I would be 24 surprised if we had more than one, but I don't know 25 for sure.</p>
<p style="text-align: right;">Page 59</p> <p>1 to it. 2 So we sort of had to work on that before 3 we actually announced it. And I don't know the 4 final date that we came out with it. 5 Q. And that's Representative Laura Hall? 6 A. Yes. 7 Q. And there was no deadline to decide on 8 public hearings? 9 A. Well, there was a deadline. June 30th. 10 Q. Who set the deadline? 11 A. But on June -- I think it was June 29th, 12 we received communication from her. So we sort of 13 scrapped the deadline in order to the comply with 14 her request. 15 Q. Is there a time to determine public 16 hearings set by law in Alabama? 17 A. Ask that again, now. 18 Q. Is there any law governing public 19 redistricting hearings in Alabama? 20 A. Not to my knowledge. 21 Q. Was there any committee deadline or a 22 committee -- rather a committee rule setting a 23 deadline to determine public hearings? 24 A. Not to my knowledge. 25 Q. Who developed the deadline on</p>	<p style="text-align: right;">Page 61</p> <p>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</p>

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<p style="text-align: right;">Page 62</p> <p>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?</p>	<p style="text-align: right;">Page 64</p> <p>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?</p>
<p style="text-align: right;">Page 63</p> <p>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</p>	<p style="text-align: right;">Page 65</p> <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? 5 A. I did. 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." 13 How did you go about complying with 14 Section 2 of the Voting Rights Act? 15 MR. WALKER: Are you -- may I ask, 16 Kathryn, are you talking about for the congressional 17 plan? 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. 25 A. Well, subsequent to us adopting these</p>

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<p style="text-align: right;">Page 66</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. 5 Q. So your role was overseeing the 6 map-drawing process to ensure that it complied with 7 the guidelines? 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 -- 11 Q. It was your job to ensure compliance 12 with the Voting Rights Act of 1965? 13 A. Yes. 14 Q. And how did you go about doing that? 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. 19 Q. And what is required to determine if a 20 map complies with Section 2 of the Voting Rights 21 Act? 22 A. Say that again. Once again -- something 23 about the audio. It could be me. But go ahead and 24 try it again. 25 Q. It's probably me. I'm also a</p>	<p style="text-align: right;">Page 68</p> <p>1 was required to comply with the Voting Rights Act? 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. 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? 9 A. I can say I heard that several times. 10 Q. And who did you hear that from? 11 A. I heard it both from the attorney and 12 the map drawer, not necessarily at the same time. 13 Q. You were -- 14 A. Pardon? 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? 19 A. Or the way a line was proposed to go. 20 That was their job. 21 Q. And did that occur with respect to the 22 congressional map? 23 A. Not to my knowledge. Because I was not 24 involved in drawing the congressional map. 25 Q. Who was involved in drawing the</p>
<p style="text-align: right;">Page 67</p> <p>1 southerner, so I talk quickly, and I'm probably 2 using too many adjectives. 3 I was asking you what is required to 4 determine whether a map complies with the Voting 5 Rights Act. 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. 12 Q. And when did you compare what was 13 produced by your demographer with the requirements 14 of the Voting Rights Act? 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. 21 Q. And when you say "could be a problem," 22 you mean could be a problem under the Voting Rights 23 Act? 24 A. Yes. 25 Q. And what was your understanding of what</p>	<p style="text-align: right;">Page 69</p> <p>1 congressional map? 2 A. The map drawer met with the 3 congressional delegation or their representative 4 sometimes in person, sometimes virtually like this, 5 and really worked this out with the members of the 6 congressional delegation. 7 Q. Were the members of the congressional 8 delegation responsible for ensuring that map 9 complied with the Voting Rights Act? 10 A. That's a good question. I don't know 11 the answer to that question. 12 Q. Were you responsible for ensuring that 13 the congressional map complied with the Voting 14 Rights Act? 15 A. Yes. I would say that was one of my 16 responsibilities. 17 Q. In the conversations that you had 18 regarding potential violations of the Voting Rights 19 Act, did you or anyone else discuss racial 20 polarization analysis? 21 A. No. No. 22 Q. Do you know what the basis for -- in 23 these conversations when you heard there might be a 24 potential Voting Rights Act violation, do you know 25 what that was based upon?</p>

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<p style="text-align: right;">Page 70</p> <p>1 A. Well, I think at different times there 2 were different issues. 3 Q. Such as? 4 A. On the congressional side, I cannot -- 5 as far as the congressional districts go, I can't 6 give you a single example because I simply wasn't 7 involved in that process. 8 Q. When did you adopt the guidelines that 9 we're talking about right now? 10 A. Maybe May the 5th of 2021. That's the 11 date on the document. And that was one of the 12 purposes of -- objectives of that particular meeting 13 of the committee, was to have the guidelines in 14 place before we got the data and before we started 15 working with the elected officials. 16 Q. So the third policy in Section II j 17 (iii) in McClendon Exhibit 5 that we're talking 18 about now, the May 5, 2021, redistricting criteria, 19 says, "Districts shall respect communities of 20 interest, neighborhoods, and political subdivisions 21 to the extent practicable and in compliance with 22 paragraphs a through l." 23 What is your understanding of what that 24 policy requires? 25 A. Well, when possible, it's good to keep</p>	<p style="text-align: right;">Page 72</p> <p>1 interest. 2 Q. Is Montgomery a community of interest? 3 A. Yes. Montgomery is a city. 4 Q. What are some other communities of 5 interest? 6 A. You can have parts of a city that are a 7 community of interest. There are -- a county is a 8 community of interest. 9 Q. What is the black belt in Alabama? 10 A. It's a geographic area pretty much 11 across the middle of the state from east to west. 12 And it has to do with the rich soil that's found in 13 that area. 14 Q. Do you know what counties are in the 15 black belt? 16 A. I couldn't name -- I could name a few 17 counties. But I cannot -- I cannot name the 18 counties in the black belt. 19 Q. Is there anything other than the soil 20 that might define the black belt? 21 A. I don't know what you're fishing for. 22 Q. I can ask the question again. 23 What are other characteristics that you 24 know of of the black belt? 25 A. That's a better question.</p>
<p style="text-align: right;">Page 71</p> <p>1 communities of interest, communities that have a 2 particularly common political interest, keep them 3 together, keep them in the same whatever it is, 4 house direct, congressional district, BOE district, 5 if possible. 6 Q. You said "common political interests." 7 Is that your definition of community of interest? 8 A. There's a -- there's a definition right 9 here in whatever this is on Line 30. Line 30 10 through 32 is a definition of communities of 11 interest. 12 Q. So you just mentioned a common political 13 interest, and I was wondering if that was part of 14 your definition of communities of interest. 15 A. Oh, that's just one -- that's just one 16 part of it, one part -- one way you could have a 17 community of interest. There's a lot of different 18 ways you can have a community of interest. 19 Q. What do you consider to be communities 20 of interest in Alabama? 21 A. There are -- there's not a community of 22 interest in Alabama. There are many communities of 23 interest. 24 Q. Such as? 25 A. Well, a city. A city is a community of</p>	<p style="text-align: right;">Page 73</p> <p>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.</p>

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<p style="text-align: right;">Page 74</p> <p>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.</p>	<p style="text-align: right;">Page 76</p> <p>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.</p>
<p style="text-align: right;">Page 75</p> <p>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</p>	<p style="text-align: right;">Page 77</p> <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. 5 A. Well, I've glanced through it. It looks 6 familiar. But it's really -- 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. 13 What is your understanding of racial 14 polarization in voting? 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. 22 Q. And what would give rise to suspicious 23 racial discrimination that would require a racial 24 polarization analysis? 25 A. What would -- what would make you think</p>

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<p style="text-align: right;">Page 78</p> <p>1 that that's an issue? Is that what you're asking, 2 that racial discrimination is an issue? 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. 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? 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. 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? 20 A. Wait a minute. I missed one word I 21 didn't understand. Why is it what in the meeting? 22 MS. WELBORN: Discussed. 23 A. "Discussed," is that the word you used? 24 Q. Yes, sir. 25 A. Oh, okay. Well, it was brought up by</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I'm on Page 17. Yep, Smitherman. 2 Q. All right. So you'll see that 3 Representative Laura Hall asked you about a racially 4 polarized voting study done. 5 Can you read where it says Senator 6 McClendon beginning with "Because"? 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." 11 Q. And then will you also read what 12 Representative Hall said in response? 13 A. "So you're saying that we don't have a 14 black -- we don't have a polarization, racially 15 polarization study?" 16 Q. And then please read your response. 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." 20 "Because the voting age is 54." Don't 21 you think that's the VAP, 54, instead of the voting 22 age? 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</p>
<p style="text-align: right;">Page 79</p> <p>1 one of the committee members. 2 Q. Who? 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. 7 Q. And why did -- what was your 8 understanding of why Representative England was 9 concerned about racially polarized voting? 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. 13 Q. Did anyone else express concerns about 14 racially polarized voting? 15 A. I don't remember. 16 Q. What was the conversation? 17 A. I don't know. If we've got the 18 transcript, we can take a look at it. 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. 22 Q. So if you wouldn't mind turning to Page 23 17 of McClendon Exhibit 5. 24 MS. WELBORN: I think it's Exhibit 6. 25 Q. Exhibit 6. I apologize.</p>	<p style="text-align: right;">Page 81</p> <p>1 "And"? 2 A. "And you use District 7 as the basis for 3 not having such a study done?" 4 Q. And then please read your response. 5 A. The black vote -- "The black VAP of the 6 district is sufficient to where you don't need a 7 study done." 8 Q. Who makes the decision to undertake an 9 RPV analysis? 10 A. The attorney. 11 Q. If you asked the attorney to undertake 12 an RPV analysis, what would happen? 13 A. We would discuss whether, in his 14 opinion, the issue was actually there or not and 15 needed to be decided and further information 16 gathered on the outside. I mean, his job is not 17 just to jump. 18 Q. If you asked Mr. Walker to conduct an 19 RPV analysis, would one be conducted? 20 A. First, I don't think -- I would not ask 21 Mr. Walker to do something. I would ask Mr. Walker, 22 "What is your opinion? Do we need to do this or 23 not?" That's how it works. 24 Q. I understand. And if you asked him to 25 undertake a racial polarization analysis, would one</p>

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<p style="text-align: right;">Page 82</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 84</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 83</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 85</p> <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>

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<p style="text-align: right;">Page 86</p> <p>1 Q. It's just one question, but it's long. 2 I'm asking you if you still have no clue 3 with respect to the question that Representative 4 England asked you and that you just read? 5 A. Here -- here's the issue. 6 Representative England apparently was targeting that 7 number of 54 percent of BVAP as if it were some sort 8 of threshold of do or die. 9 And even the courts, to my knowledge, 10 have never come up with a number that says you've 11 got to have this percent or you can't go below this 12 percent. It's never happened. 13 So when somebody picks out a number of 14 54 percents and says that's good or bad, well, 15 Congresswoman Sewell was happy with it. And she's 16 probably got a whole lot more information on her 17 electability in her own district than I have. 18 Q. So I'm just going to point you back to 19 Page 17 of the transcript of your October 26th 20 meeting of the reapportionment committee where 21 before Representative England brought that up, you 22 had said, "Because of the black voting age 23 population in Congressional District 7, there was 24 not one needed," referring to an RPV analysis, 25 because it was over 54 percent BVAP.</p>	<p style="text-align: right;">Page 88</p> <p>1 A. No, I did not. 2 Q. How do you know that Representative 3 Sewell was okay with the district, as you suggested, 4 based on the BVAP? 5 A. I was told that by the map drawer who 6 interviewed Representative Sewell I think once in 7 person and once virtually. Or it may have been a 8 staff person. But they were okay with the district. 9 Q. So you wanted to ensure that the BVAP in 10 districts with a minority candidate representing 11 them was not too low? 12 A. Correct. 13 Q. Did you take any steps to ensure that 14 the BVAP in any district was not too high? 15 A. Not to my knowledge. 16 Q. Who drew the maps for you in 2021? 17 A. Randy Hinaman. 18 Q. What is Randy Hinaman's role in the 19 redistricting process? 20 A. He's the map drawer. 21 Q. When did you first meet with Mr. Hinaman 22 about the redistricting cycle in 2021? 23 A. In the spring of 2021, I guess. I 24 don't -- I don't remember an exact date. 25 Q. Who did you meet with Mr. Hinaman with?</p>
<p style="text-align: right;">Page 87</p> <p>1 What did you mean by that? 2 A. What I meant by that was it didn't look 3 like it was -- that a minority congresswoman was at 4 risk. If she wanted to be elected again -- and 5 apparently she does -- there was nothing to suggest 6 it was close enough to think there was a threat to 7 her reelection. 8 Q. And how is that related to the black 9 voting age population in District 7 at 54 percent? 10 A. Well, most of the voters are a minority. 11 Q. And so you were assuming that black 12 voters would vote for a black representative? 13 A. That's pretty -- a pretty safe bet here 14 in Alabama. 15 Q. And where did the 54 percent number come 16 from? 17 A. Those -- those numbers are generated by 18 the software when the district is drawn. But they 19 are generated after the district is drawn. 20 Q. Did you talk to Representative Sewell 21 about the black voting age population in her 22 district? 23 A. No, I did not. 24 Q. Did you talk to Representative Sewell 25 about the congressional map?</p>	<p style="text-align: right;">Page 89</p> <p>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.</p>

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<p style="text-align: right;">Page 90</p> <p>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</p>	<p style="text-align: right;">Page 92</p> <p>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</p>
<p style="text-align: right;">Page 91</p> <p>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?</p>	<p style="text-align: right;">Page 93</p> <p>1 special session? 2 A. I tried to get the -- first, we handled 3 -- the senate handled the senate and the BOE map 4 first. And so I wanted my information in place in 5 my hand that I would present to the standing 6 committee and ultimately to the senate floor. So my 7 preparation was to have my bullet points convenient 8 before those meetings. 9 Q. Did you review any maps of two majority 10 black districts in 2021? 11 A. No. 12 Q. Did you have the opportunity to vote on 13 any two majority black congressional district plans 14 in 2021? 15 MR. WALKER: Did you say have the 16 opportunity to vote? 17 MS. SADASIVAN: Yes. 18 MR. WALKER: Okay. 19 A. There may -- I don't -- and I'm not 20 certain. But I think one was introduced on the 21 senate floor. But I'm not sure. 22 Q. You think that a bill creating two 23 majority minority districts was introduced on the 24 senate floor? 25 MR. WALKER: May.</p>

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<p style="text-align: right;">Page 94</p> <p>1 A. May have been introduced on the senate 2 floor. Introduced on the senate floor. 3 Q. So I am dropping into the chat and I'll 4 ask Mr. Walker to mark as Exhibit 7 or McClendon 5 Exhibit 7 a document that is the transcript of the 6 senate floor debate in Alabama on November 3, 2021. 7 Do you recognize the document? It's on 8 my screen so you can see it. 9 MR. WALKER: Oh, okay. This is 7? 10 MS. WELBORN: Yes. 11 MS. SADASIVAN: Yes, sir. 12 13 (Plaintiff's Exhibit 7 was 14 marked for identification.) 15 16 Q. And I have the exhibit pulled up, as 17 well. Take a minute to look at it, Senator 18 McClendon, please. 19 A. What did you say? 20 Q. Will you just take a minute to look at 21 the transcript, and at the end confirm yes or no 22 whether it generally appears accurate of the senate 23 floor debate in 2021 on the various redistricting 24 bills in the special legislative session. 25 A. Where does this start dealing with the</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Okay. Yeah, I do. I do. 2 Q. Can you tell me why you voted against 3 Senator Hatcher's two majority minority district 4 plan? 5 A. You know, if I recall correctly, his map 6 pitted -- put two incumbent congressional members in 7 the same district. 8 Did you hear me? 9 Q. I can. I asked you why you voted 10 against Senator Hatcher's plan. 11 A. And my response was that, among other 12 things, the most blatant thing and easiest to notice 13 was that he had put two incumbents in the same 14 district. 15 Q. You agree that the black voting age 16 population of the state of Alabama is approximately 17 27 percent of the state? 18 A. Approximately. 19 Q. Did that factor in to how you voted on 20 Senator Hatcher's map? 21 A. It had nothing to do with it. 22 Q. Did you have the opportunity to vote on 23 Senator Singleton's proposed map? 24 A. I did. 25 Q. And how did you vote?</p>
<p style="text-align: right;">Page 95</p> <p>1 congressional plan? 2 Q. Let me just scroll down. 3 I guess my question was initially -- and 4 I'm seeing on Page 27 there's the beginning of a 5 discussion between Senator McClendon and Senator 6 Singleton. 7 But I had first asked, Senator 8 McClendon, if you could look through the transcript 9 and see if it generally appears accurate of the 10 senate floor debate on November 3, 2021, in the 11 Alabama senate. I will represent to you that it's 12 the transcript from the video that we received. 13 A. And I'll accept that, that it is a 14 transcript of the senate floor. 15 Q. And in this transcript, you vote against 16 a map introduced by Senator Singleton and Senator 17 Hatcher. Can you -- 18 A. What page is that on? 19 Q. I believe the motion is -- the 20 substitute was offered by Senator Hatcher on Page 21 39. 22 A. Okay. 23 Q. And Senator McClendon moved it for an up 24 or down vote on Page 40, and then votes against it 25 on Page 41. Do you see that?</p>	<p style="text-align: right;">Page 97</p> <p>1 A. A nay. 2 Q. And why did you vote nay? 3 A. I think the blatant problem with his map 4 was that no minority candidate had a majority 5 district. He had -- 6 Q. And when you say a minority candidate 7 had a majority district, what do you mean? 8 A. I think he drew two districts they 9 called opportunity districts. But no minority 10 candidate had a majority of the voters in either of 11 those districts. 12 Q. With respect to Senator Hatcher's map, 13 you said you voted against it because two incumbents 14 were paired? 15 A. I think that is -- I think that's 16 correct. 17 Q. And what is -- in terms of your 18 understanding of the law, what is a more important 19 criteria for a map proposed by the Alabama 20 legislature? Compliance with federal law and the 21 Voting Rights Act or ensuring incumbents are not 22 paired? 23 A. You're asking me to say what's most 24 important among those three or what takes precedent? 25 Is that what your question is?</p>

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<p style="text-align: right;">Page 98</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 100</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 99</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 101</p> <p>1 MR. WALKER: She's turned it back a page</p> <p>2 or two.</p> <p>3 Q. So if you look on Page 12 of the exhibit</p> <p>4 that Mr. Walker handed you, it's marked at the</p> <p>5 bottom with Bates number RC 045712.</p> <p>6 A. 712. Okay. I've got 712. What page?</p> <p>7 Q. 045712. It's page 12 of that PDF.</p> <p>8 A. 712. I've got Page 1.</p> <p>9 Q. Do you recognize on Page -- I guess the</p> <p>10 page that we just landed on, did you recognize the</p> <p>11 document that you're looking at, Mr. McClendon?</p> <p>12 A. Yes. Well, I have it in front of me.</p> <p>13 Let me look at it.</p> <p>14 Yes, I've seen this before.</p> <p>15 Q. Where have you seen it before?</p> <p>16 A. I probably -- I probably received a copy</p> <p>17 of it, of the email.</p> <p>18 Q. What is this that you're looking at?</p> <p>19 A. This is Representative Hall, I guess.</p> <p>20 Yes. This is when she made a request for additional</p> <p>21 meetings. And she sent that to the staff office and</p> <p>22 they forward a copy to me.</p> <p>23 Q. So in her email that we're looking at</p> <p>24 right now, Representative Hall says, "During the May</p> <p>25 5th committee meeting, members agreed to hearing</p>

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<p style="text-align: right;">Page 102</p> <p>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.</p>	<p style="text-align: right;">Page 104</p> <p>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.</p>
<p style="text-align: right;">Page 103</p> <p>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</p>	<p style="text-align: right;">Page 105</p> <p>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.</p>

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<p style="text-align: right;">Page 106</p> <p>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.</p>	<p style="text-align: right;">Page 108</p> <p>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,</p>
<p style="text-align: right;">Page 107</p> <p>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,</p>	<p style="text-align: right;">Page 109</p> <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. 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? 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? 15 Q. As a general matter, correct. 16 A. As a general matter, I agree with that 17 statement. 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? 25 A. Once again, I need to take a party</p>

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<p style="text-align: right;">Page 110</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. 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? 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. 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? 20 A. Yes. 21 MR. OSHER: Thank you very much. That's 22 all I have for you. Thank you for your time, 23 Senator. 24 A. You're very welcome. 25 MR. WALKER: Are we done?</p>	<p style="text-align: right;">Page 112</p> <p>1 A. No. That's an individual decision. 2 Q. And how many members are there of the 3 Alabama house of representatives? 4 A. 105. 5 Q. And they all have votes on legislation? 6 A. They certainly do. 7 Q. Including redistricting legislation? 8 A. Correct. 9 Q. And their votes all count the same as 10 one anothers? 11 A. That's correct. 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? 15 A. No. That's an individual decision. 16 Q. Did you instruct Randy Hinaman to be 17 sure to include a majority black district in an 18 Alabama congressional plan draft? 19 A. I did not. 20 Q. Did you decide ahead of time that 21 Alabama's plan must include a majority black 22 district? 23 A. I did not. 24 Q. Was your understanding that those 25 districts, when drafted, would be done so without</p>
<p style="text-align: right;">Page 111</p> <p>1 MR. DAVIS: Any questions from the 2 Singleton plaintiffs? 3 I've got just a couple. 4 EXAMINATION BY MR. DAVIS: 5 Q. Hello, Senator. 6 A. Hello. 7 Q. Jim Davis representing Secretary 8 Merrill. 9 Senator, how many members are there of 10 the Alabama senate? 11 A. 35. 12 Q. And do they all have a vote on 13 legislation? 14 A. Yes, they do. 15 Q. Does that include redistricting 16 litigation? 17 A. That is correct. 18 Q. Excuse me. I said "litigation." I 19 meant legislation. 20 A. Legislation. 21 Q. Do all senators' votes count the same? 22 A. Yes. 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 113</p> <p>1 consideration of race? 2 A. That is correct. 3 Q. To the best of your knowledge, was that, 4 in fact, how it was done? 5 A. That is exactly how it was done. 6 MR. DAVIS: Thank you, Senator. 7 A. You're welcome. 8 MR. WALKER: Do we have anything 9 further? 10 MS. SADASIVAN: Nothing from the 11 Milligan plaintiffs. Thank you, Senator, for your 12 time and sitting for the deposition. I appreciate 13 it. 14 MR. OSHER: Nothing from the Caster 15 plaintiffs. Thank you all. 16 MR. WALKER: Kathryn, I need to get to 17 you, in addition to my privilege log, the final 18 statement of -- you know, the sheet where I state 19 the request for production and then I state 20 underneath the documents. Can I get that to you on 21 Monday? You've got all the documents. I just need 22 to give you the sheet that says which ones refer to 23 which of your requests. 24 THE REPORTER: Are we on the record? 25 MS. WELBORN: Can we go off the record</p>

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1 now?

2 MR. WALKER: Yeah, sure.

3 THE VIDEOGRAPHER: This ends the
4 deposition of Jim McClendon. The time is now
5 5:12 p.m.

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7 (DEPOSITION ENDED AT 5:12 P.M.)

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1 STATE OF ALABAMA)

2 JEFFERSON COUNTY)

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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

LeAnn Maroney, Commissioner

23 ACCR# 134, Expires 9/30/25

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