

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

4 ALABAMA STATE CONFERENCE \*  
5 OF THE NAACP, \*  
6 Plaintiffs, \* 2:21-cv-1531-AMM  
7 vs. \* November 12, 2024  
8 WES ALLEN, in his official \*  
9 capacity as Alabama Secretary \*  
10 of State, et al., \*  
11 Defendant. \*  
12 \*\*\*\*\*  
13

14 TRANSCRIPT OF BENCH TRIAL  
15 VOLUME I  
16 BEFORE THE HONORABLE ANNA M. MANASCO  
17 UNITED STATES DISTRICT JUDGE  
18  
19  
20

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P R O C E E D I N G S

(In open court.)

THE COURT: Good morning, everybody. Thank you for moving into the jury box. I appreciate it. That will make it easier for the CSOs to know who is in the gallery and who is not.

I hope everyone is very comfortable in the Vance courthouse. This is the first use of this courtroom for anything other than a motion hearing or a quick proceeding in a really long time.

So if we encounter issues or hiccups, we will do our very best to address them as quickly as we can.

All right. I will take appearances first so that I can make sure I know who all is here.

Who all do we have for plaintiff?

MR. ROSBOROUGH: Good morning, Your Honor. Davin Rosborough for the plaintiffs.

THE COURT: All right. Good morning.

MR. ROSS: Good morning, Your Honor. Deuel Ross for the plaintiffs.

THE COURT: All right. Good morning.

MR. ROSS: Your Honor, behind me are our clients, Evan Milligan and Benard Simelton of the NAACP.

THE COURT: Excellent. Good morning to you both.

MR. HARRIS: Good morning, Your Honor. Dayton

1 Campbell-Harris for the plaintiffs.

2 THE COURT: All right. Good morning.

3 MR. BURKE: Good morning, Your Honor. Colin Burke for  
4 the plaintiffs.

5 THE COURT: Good morning.

6 MR. HEARD: Good morning, Your Honor. Bradley Heard  
7 for the plaintiffs.

8 THE COURT: Good morning.

9 MR. VAN LEER: Good morning, Your Honor. Jacob Van  
10 Leer for the plaintiffs.

11 THE COURT: Okay. Good morning.

12 MR. OLOFIN: Good morning, Your Honor. Victor Olofin,  
13 law clerk.

14 THE COURT: All right. Good morning.

15 MS. SADASIVAN: Good morning, Your Honor. Kathryn  
16 Sadasivan for the plaintiffs.

17 THE COURT: Good morning.

18 MS. HATTIX: Good morning, Your Honor. Laurel Hattix  
19 for the plaintiffs.

20 THE COURT: All right. Good morning.

21 MS. STEWART: Good morning, Your Honor. Shelita  
22 Stewart for the plaintiffs.

23 THE COURT: Good morning.

24 MS. ALLEN: Good morning, Your Honor. Amanda Allen  
25 for the plaintiffs.



1 THE COURT: Good morning.

2 MR. UNGER: Good morning, Your Honor. Jess Unger for  
3 the plaintiffs.

4 THE COURT: Good morning.

5 MR. GENBERG: Good morning, Your Honor. Jack Genberg  
6 for the plaintiffs.

7 THE COURT: GOOD MORNING.

8 MR. SHAPIRO: Good morning, Your Honor. Avner  
9 Shapiro.

10 THE COURT: Good morning.

11 MS. CARTER: Good morning, Your Honor. Brittany  
12 Carter for the plaintiffs.

13 THE COURT: All right. Good morning.

14 MR. JACKSON: Good morning, Your Honor. Sidney  
15 Jackson for the plaintiffs.

16 THE COURT: Good morning.

17 MS. LAWSEN: Good morning, Your Honor. Nicki Lawsen  
18 for the plaintiffs.

19 THE COURT: Good morning.

20 MR. ETTINGER: Good morning, Your Honor. Jay Ettinger  
21 for the plaintiffs. I believe I am the last one.

22 THE COURT: All right. Good morning.

23 All right. And who is running the AV presentation for the  
24 plaintiffs or is that lawyer run? You are the most important  
25 person for the plaintiffs in the room. Tell me your name

1 again.

2 MR. HUYNH: John Huynh.

3 THE COURT: All right. Good morning.

4 MR. HUYNH: Good morning.

5 THE COURT: Anybody else?

6 MR. ROSBOROUGH: That's all, Your Honor.

7 THE COURT: Okay. And for the defendant?

8 MR. DAVIS: Good morning, Judge. Jim Davis for  
9 defendant Secretary Allen.

10 THE COURT: Good morning.

11 MR. TAUNTON: Michael Taunton for the Secretary.

12 THE COURT: All right. Good morning.

13 MS. LANCASTER: Riley Lancaster for the Secretary.

14 THE COURT: All right. Good morning.

15 MR. SEISS: Ben Seiss for the Secretary.

16 THE COURT: Good morning.

17 MR. SMITH: Good morning, Your Honor. Brenton Smith  
18 for the Secretary.

19 THE COURT: All right. Good morning.

20 MR. WALKER: Good morning, Your Honor. Dorman Walker  
21 for the Secretary.

22 THE COURT: Good morning.

23 MR. GEIGER: And Soren Geiger for the Secretary.

24 THE COURT: All right. Good morning.

25 And who is running the AV presentation for the state?

1 MS. BYRD: Good morning, Your Honor. My name is Paige  
2 Byrd.

3 THE COURT: All right. Good morning. Thank you.  
4 Anybody else, Mr. Davis?

5 MR. DAVIS: That's it, Judge.

6 THE COURT: Okay. All right then. With further ado,  
7 we can begin. Is there anything we need to take up before I  
8 allow the plaintiffs to call their first witness?

9 MR. WALKER: Your Honor, we have a small discovery  
10 dispute that could be taken up now or before the NAACP  
11 testifies either way, as you prefer.

12 THE COURT: All right. I'm interested in the  
13 characterization of it as small.

14 MR. WALKER: We got a supplemental discovery response  
15 yesterday at 6:42, I believe. And our position is that it came  
16 simply too late for us -- it -- we had earlier issued -- do you  
17 want me to explain the issue?

18 THE COURT: Just have at it. I think we ought to just  
19 do it.

20 MR. WALKER: We had earlier back in the spring sent an  
21 interrogatory to the plaintiffs that asked them to identify  
22 with specificity the basis for their claims for standing for  
23 the claims that they sought. And they provided an  
24 interrogatory response that identified some individual and  
25 organizational members of the organizations in the NAACP,

1 provided some individual members, as well. And this deals with  
2 the NAACP.

3 Yesterday, however, at, like I say, a little after 6:00,  
4 6:45 or so, we got a supplemental response that identified four  
5 new individual members, three of the Huntsville area and one of  
6 the Montgomery area. And our position is that it is simply too  
7 late for us to follow up on those to do any of the discovery or  
8 investigation we would do to investigate the bona fides of  
9 their membership and therefore their ability to qualify the  
10 NAACP for standing.

11 And our request is under Rule 37(a), that the Court not  
12 allow that evidence to be used in trial because it's untimely.

13 THE COURT: All right. Mr. Rosborough?

14 MR. ROSBOROUGH: Mr. Ross will respond. Thank you,  
15 Your Honor.

16 THE COURT: Oh, thank you. Mr. Ross.

17 MR. ROSS: Hello, Your Honor. Under Rule 37, if the  
18 disclosure is either substantially justified or harmless, it's  
19 permissible.

20 We disclosed the members as soon as Mr. Simelton told us  
21 which members he may list. He told Mr. Walker the defendants  
22 in the deposition that the NAACP had 5,000 members, identified  
23 several members in the Huntsville area, but wasn't required or  
24 asked to disclose every single member of the NAACP, and in fact  
25 wouldn't be allowed to under Supreme Court precedent.

1       He -- the defendants, in fact, didn't ask any specific  
2 questions about the individual members that we did disclose.  
3 The information is simply their names and addresses. It's  
4 not -- you know, they're welcome to ask questions on  
5 cross-examination about that. But we don't think that this  
6 is -- presents any sort of issue beyond a harmless error that  
7 they can always ask questions about on cross.

8           THE COURT: All right. Mr. Walker?

9           MR. WALKER: Your Honor, I think every attorney  
10 realizes that being in the position of asking questions on  
11 cross-examination that you don't know the answer to is not --  
12 not what anyone would prefer. We should have received these  
13 names earlier if they were important. We didn't. And we're  
14 prejudiced to that extent.

15          THE COURT: All right. I'll take this under  
16 advisement, and we'll discuss it further at the appropriate  
17 time. This is not your first witness, I take it.

18          MR. ROSBOROUGH: No, Your Honor.

19          THE COURT: Okay. Anything else we need to take up?

20          MR. ROSBOROUGH: Not for the plaintiffs, Your Honor.

21          MR DAVIS: Nor for defendants.

22          THE COURT: All right. Plaintiffs, call your first  
23 witness.

24          MR. ROSBOROUGH: Good morning again, Your Honor. The  
25 plaintiffs call Dr. Baodong Liu as their first witness.

1 THE COURT: All right.

2 Dr. Liu, if you would join us at the witness stand right  
3 up here.

4 BAODONG LIU, PH.D.

5 having been first duly sworn by the Courtroom Deputy Clerk, was  
6 examined and testified as follows:

7 THE COURTROOM DEPUTY CLERK: Thank you. If you will  
8 be seated. Please speak loudly and clearly into the  
9 microphone. Please state your name and spell it for the court  
10 record.

11 THE WITNESS: My name is Baodong Liu. The first name,  
12 B-A-O-D-O-N-G. Last name, L-I-U.

13 THE COURT: Dr. Liu, good morning. It's taking us  
14 just a minute to get our evidentiary screenings working  
15 properly.

16 You may proceed.

17 MR. ROSBOROUGH: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. ROSBOROUGH:

20 Q Good morning, Dr. Liu. How are you today?

21 A Good morning. I am well. Thank you.

22 Q Dr. Liu, can you please tell the Court your current  
23 professional positions?

24 A I am a professor of political science from University of  
25 Utah.

1 Q And do you hold any other titles in your current role?

2 A Yes. I do. I am director of graduate studies. And I'm  
3 also presidential societal impact scholar, and I am affiliated  
4 with ethnic studies, as well.

5 Q What is the presidential societal impact scholar?

6 A It's an award given to five distinguished scholars all  
7 across campus for their contribution in making societal  
8 changes.

9 Q Let's take a look at PX-17.

10 Dr. Liu, do you see a document in front of you?

11 A I do not see anything in front of me.

12 THE COURT: Mr. Rosborough, it looks like you might  
13 be prepared to proceed the old-fashioned way. Is that right?

14 MR. ROSBOROUGH: I think I have paper copies of all of  
15 the exhibits I am going to use with him.

16 THE COURT: All right. Let's proceed with that while  
17 Sara works on the screen, and maybe this will be a short-lived  
18 hiccup.

19 MR. ROSBOROUGH: Thank you, Your Honor. May I  
20 approach the witness?

21 THE COURT: You may.

22 MR. ROSBOROUGH: Thank you.

23 THE WITNESS: Thank you.

24 BY MR. ROSBOROUGH:

25 Q Dr. Liu, do you recognize the document in front of you?

1 A Yes, I do.

2 Q And what is it?

3 A This is my CV.

4 MR. ROSBOROUGH: The plaintiffs move -- seek to move  
5 PX-17, Dr. Liu's CV into evidence.

6 THE COURT: Any objection, Mr. Davis?

7 MR. TAUNTON: No objection, Your Honor.

8 THE COURT: All right. Admitted. I'm sorry. I  
9 called on the wrong person, Mr. Taunton.

10 (Plaintiff Exhibit 17 admitted in evidence.)

11 BY MR. ROSBOROUGH:

12 Q Dr. Liu, can you please describe your educational  
13 background?

14 A Yes. I received my bachelor of law degree from a  
15 university in Shanghai, China. It's called East China  
16 University of Political Science and Law. And then I received a  
17 master in political science from Oklahoma State University.  
18 And then I received a Ph.D. also in political science from  
19 University of New Orleans.

20 Q And who did you study with when you were at the University  
21 of New Orleans?

22 A I studied political science under supervision of my  
23 dissertation chair, Dr. Richard Engstrom who is a prominent  
24 national scholar in voting rights and voting pattern studies.  
25 And he also advised me on not only academic work, but also



1 because of his role in federal voting rights cases, especially  
2 he was cited by the Supreme Court *Gingles* decision directly for  
3 his contribution.

4 Q And can you briefly describe your professional background?

5 A Yes. I have a Ph.D. in political science. My main area  
6 of interest is in voting patterns, especially I have studied  
7 race and other factors in voters' decision making process. And  
8 so I've studied -- I have studied federal, state, local  
9 elections all across America. In addition, my area of interest  
10 includes political methodology that allows scholars to study  
11 voting by using data collected at aggregate level. And I'm  
12 trained as a methodologist, as well.

13 Q If you had to summarize, how would you characterize your  
14 academic specialties?

15 A My specialties include teaching courses in political  
16 science, especially related to American politics, such as  
17 voting in the election, urban politics, political methodology,  
18 and as I said earlier, I also teach for affiliated program  
19 called ethnic studies. So I teach different racial groups'  
20 experiences in America. And I also have written software  
21 programs due to my specialty in methodology for scholars to use  
22 aggregate data to analyze voting patterns.

23 Q How many years approximately of experience do you have  
24 with these topics?

25 A More than 25 years.

1 Q Can you describe any significant books or articles that  
2 you have published dealing with voting behavior?

3 A Yes. My very first project was based on my dissertation  
4 project I did in my Ph.D. program in which I studied more than  
5 four decades of voting history in New Orleans for mayor and  
6 city council elections. And I won American Political Science  
7 Best Dissertation Award and also award from Southwestern  
8 Political Science Association, and that book is called *Race*  
9 *Rules*.

10 And then after that, based on my research after I got my  
11 Ph.D. in political science, I enlarged my research project into  
12 federal and state elections, and specifically I wrote a book  
13 about the 2008 presidential election. And in this book, I  
14 analyzed different states' voting patterns such as Alabama,  
15 where there was a significant racially-polarized voting pattern  
16 for President Obama in 2008. And that book is called *The*  
17 *Election of Barak Obama*.

18 Most recently, I wrote another book called *Political*  
19 *Volatility* in which I trace back all the way to the founding  
20 era of the republic all the way to modern era, especially along  
21 racial and religious lines about elections, and I develop  
22 theory on why two political parties experience political  
23 volatility in terms of different racial and religious groups'  
24 support for their electoral offices.

25 Q Have you held any positions on academic journals in your

1 field?

2 A Yes. I have served in many board positions, such as the  
3 editorial board for *Journal of Behavior and Social Sciences*.  
4 And I served as editorial board member for *Urban Affairs Review*  
5 and editorial advisor for *International Encyclopedia For*  
6 *Political Science*. And I just finished my term as a chair of  
7 Political Methodology for Southern Political Science  
8 Association.

9 Q Do you have a sense of approximately how many times you've  
10 testified as an expert witness over these years on topics  
11 dealing with racial polarization?

12 A I have served as expert witness in over a dozen cases, and  
13 I have provided my opinion on especially racially-polarized  
14 voting over 20 years.

15 Q And are you aware of any courts that have previously  
16 credited and relied upon your testimony?

17 A The supermajority of federal courts accepted my opinion.

18 Q And overall in your professional role and not just expert  
19 testimony, do you have a sense of approximately how many times  
20 you've performed racial polarization analyses?

21 A That's a good question. I think hundreds at least if not  
22 thousands times.

23 MR. ROSBOROUGH: Your Honor, the plaintiffs offer  
24 Dr. Baodong Liu as an expert in racial polarization analysis,  
25 voter behavior, and Ecological Inference.

1 THE COURT: Any objection?

2 MR. TAUNTON: No objection, Your Honor.

3 THE COURT: All right. Admitted.

4 BY MR. ROSBOROUGH:

5 Q All right. Let's take a look at PX-16.

6 Dr. Liu, do you recognize this document?

7 A Yes, I do.

8 Q And what is it?

9 A This is my original expert report for this case.

10 MR. ROSBOROUGH: At this time, plaintiffs seek to move  
11 PX-16, Dr. Liu's initial expert report into evidence.

12 THE COURT: Mr. Taunton?

13 MR. TAUNTON: No objection.

14 THE COURT: All right. Admitted.

15 (Plaintiff Exhibit 16 admitted in evidence.)

16 BY MR. ROSBOROUGH:

17 Q Dr. Liu, what were you initially asked to do in this case?

18 A I was asked to perform analysis on the elections in two  
19 regions of Alabama; namely, Huntsville and Montgomery regions,  
20 to see whether or not there is established pattern of  
21 racially-polarized voting.

22 And my second task was that I was asked to analyze the map  
23 provided by the plaintiff called Illustrative map in terms of  
24 the State Senate districts in those two regions as opposed to  
25 the Enacted map by the State Legislature.

1 Q And at a high level, can you summarize your opinions with  
2 respect to the areas of Alabama which you examined?

3 A Yes. At the high level, I would summarize there has been  
4 a consistent pattern of racially-polarized voting between black  
5 voters and white voters in both the elections involved in State  
6 Senate electoral offices, as well as statewide elections.

7 Q How, if at all, would you characterize the level of racial  
8 polarization in those areas?

9 A Could you repeat the question?

10 Q Yeah. How, if at all, would you characterize the level or  
11 degree of racial polarization in the areas in which you  
12 examined?

13 A The level of racially polarization voting in those two  
14 regions based on my empirical analysis has been significant.  
15 By that, I mean the black voters usually voted with a  
16 supermajority margin typically in the more than 80 sometimes  
17 90 percent of their vote for their preferred candidates.  
18 Without any exception, they -- those preferred candidates are  
19 black candidates in biracial elections.

20 On contrary, the white majority voters voted for their  
21 preferred candidates usually with exception -- without  
22 exception the white candidates in those same biracial elections  
23 with significant margin, as well.

24 And so the degree of difference is significant.

25 Q Okay. And we'll come back more specifically to your

1 opinions about them later, but did you analyze any reports from  
2 defendant's experts in this case?

3 A Yes.

4 Q And let's pull up PX-18.

5 A Thank you.

6 Q Dr. Liu, do you recognize this document?

7 A Yes, I do.

8 Q And what is it?

9 A This is my rebuttal report that is written to respond to  
10 the four experts.

11 MR. ROSBOROUGH: At this time, plaintiffs offer PX-18,  
12 Dr. Liu's rebuttal report into evidence.

13 THE COURT: Mr. Taunton?

14 MR. TAUNTON: No objection.

15 THE COURT: Admitted.

16 (Plaintiff Exhibit 18 admitted in evidence.)

17 BY MR. ROSBOROUGH:

18 Q Dr. Liu, which defense expert reports did you analyze?

19 A I analyzed the total four expert reports. They are the  
20 expert reports submitted by Dr. Hood, Dr. Reilly, Dr. Bonneau,  
21 and Dr. Trende.

22 Q And at a very high level, what aspect of the reports did  
23 you respond to?

24 A At the very high level, I responded to the reports by  
25 these four scholars, in terms of on the one hand, they do not

1 object the findings of my report on racially-polarized voting.  
2 On the other hand, they propose that it was a political party  
3 that contributed to the racially-polarized voting found in my  
4 report.

5 Q Okay. Dr. Liu, I'd like to turn, first, to how you  
6 examined racially-polarized voting.

7 But first, how do you define racially-polarized voting?

8 A I used a two-step operationalizing way to study  
9 racially-polarized voting. The first is that I look at the  
10 cohesiveness of black voters; i.e., I look at whether or not  
11 the majority of black voters voted for the same candidate in  
12 the biracial election.

13 And then in the second step, I look at whether or not the  
14 same candidate preferred by the majority black voters is also  
15 shared by the majority voters from the white voting group.

16 Q How do you treat or deal with racially-polarized voting or  
17 RPV results that show only narrow racial gaps versus those that  
18 show significant racial gaps?

19 A Oh, that's a very important question.

20 So once I use the two steps empirical procedure to  
21 establish indeed there is racially-polarized voting, meaning  
22 the majority of black voters voted for their candidate and that  
23 preference is not shared by the majority of white voters, then  
24 I look at the degree of the difference between the two.

25 If it's significant, I look at the level of degree of

1 difference that may lead to the final outcome of election, that  
2 is the defeat of black-preferred candidate. And that is a part  
3 of the *Gingles II* and *III* conditions.

4 Q And how, if at all, does the degree of racially-polarized  
5 voting affect your ultimate conclusions?

6 A It does affect my overall conclusion, because in Alabama,  
7 especially these two regions that I was asked to make my  
8 empirical investigation into, it's consistent that there is  
9 high level of racially-polarized voting in the biracial  
10 elections in these two regions, and the black-preferred  
11 candidates as a result of white bloc voting defeated in those  
12 elections.

13 Q What method do you use to estimate racial voting patterns?

14 A Since voting takes place in America in privacy, we can  
15 only use data collected at some aggregate level to  
16 statistically estimate the degree of difference between racial  
17 groups in their vote choice.

18 I used a particular method called Ecological Inference.

19 Q At a high level, can you explain what Ecological Inference  
20 is?

21 A Sure. The Ecological Inference method developed  
22 originally by a professor from Harvard University called Gary  
23 King. This method is a method that allows scholars to collect  
24 and use data to study elections such as the biracial elections  
25 in the two regions of Alabama to see whether that racial groups



1 vote differently, and the method uses two sources of data. One  
2 is the election outcome aggregated at precinct level, and the  
3 other source being the demographic data provided by the U.S.  
4 census.

5 Q Why do you choose this method in particular over any other  
6 empirical methods there may be to analyze racially-polarized  
7 voting?

8 A The Ecological Inference method or EI in short is a method  
9 that has been used by scholars all across the country,  
10 especially in voting rights litigations. It's agreed upon as  
11 the most advanced, robust, and reliable method compared to  
12 prior methods that were developed in 1950s or '60s.

13 And so those methods tend to produce, especially  
14 inaccurate and unreliable results of racially-polarized voting  
15 estimation.

16 Q How do you know that this method is the most, I believe  
17 you said advanced, robust, and reliable one to analyze  
18 racially-polarized voting?

19 A Not only was this method used by many scholars across the  
20 country in voting rights litigation approved by the Court, but  
21 also in academic research including my own research. I  
22 published an article in a journal by Harvard University that  
23 looked into the algorithm of this method compared to other  
24 prior methods. And I used empirical data to prove indeed this  
25 is the most accurate and reliable method in that article that I

1 just mentioned.

2 Q When you used Ecological Inference in this case and  
3 generally, how if at all, do you check your results?

4 A Yes. That's a very important question. As scholars of  
5 empirical research, we need to use all tools available to make  
6 sure that our estimations are reliable.

7 One particular advantage of EI is that it allows us as  
8 empirical scholars to use not only statistical tools based on  
9 the advanced algorithm, most proficient math formulation, but  
10 also visual tools such as tomographic tools and density tools  
11 to diagnose whether or not a particular given dataset that we  
12 used to engage in racially-polarized voting estimation has  
13 violated the basic assumption of the method itself.

14 Q Let's move on to the elections you analyzed.

15 What types of elections did you analyze in your initial  
16 report?

17 A I used the particular type called biracial endogenous  
18 elections first. By that, I mean, first, the biracial  
19 elections that involve both black and white candidates. And  
20 then the endogenous elections are those that are about the  
21 electoral office under legal dispute, in this case, i.e. the  
22 State Senate elections.

23 And then I expand my research into what we call biracial  
24 exogenous elections, that is, those elections that did not deal  
25 with the electoral office under dispute. These tend to be

1 statewide elections that about, say, governors or lieutenant  
2 Governors, or U.S. senator elections, and so on.

3 Q How many races did you analyze for your RPV analysis in  
4 your initial report?

5 A I analyzed three endogenous elections and 11 exogenous  
6 elections.

7 Q Over what period of time did the elections you analyzed  
8 cover?

9 A I focused on elections that took place in the last decade,  
10 so ten-year span.

11 Q Is there any significance to the last ten years, in terms  
12 of your focus?

13 A Oh, yes. It is very important to study elections that  
14 reveal patterns that can allow the Court to see possible future  
15 election results.

16 The last ten years are important, because they -- those  
17 are elections that produce results by the voters who presumably  
18 will vote continuously in the next decade or so.

19 So ten years allow us to make the projection, but also  
20 ten years is enough for us to see whether or not there's a  
21 pattern of voting by different racial groups.

22 Q And in your analysis, did you focus on any particular  
23 regions of the state of Alabama?

24 A Yes. I stated earlier Huntsville region is the one I  
25 looked at, and also Montgomery region is another region I look

1 at.

2 Q And why did you focus on those regions?

3 A These two regions are at the center of the legal dispute  
4 in this case. And so I need to look at elections that indeed  
5 involve voters in these two regions in order to report to the  
6 Court whether or not there is racially-polarized voting that  
7 may affect future elections.

8 Q When -- you mentioned statewide exogenous elections, I  
9 believe. So how, if at all, are you focusing on the Huntsville  
10 and Montgomery regions if you are analyzing statewide races?

11 A Yes. The first region, as I said, is Huntsville region.  
12 So what I looked at was the exact State Senate districts that  
13 are inside Huntsville region, i.e., State Senate Districts 2,  
14 3, 7, 8, and 9.

15 So in those statewide elections, I only look at these  
16 State Senate districts and to see how these districts perform  
17 in different biracial elections, especially whether or not  
18 there's racially-polarized voting in these specific Senate  
19 districts.

20 And then I moved on to the Montgomery region. That region  
21 contains State Senate Districts 25 and 26. So I focus on those  
22 two Senate districts for that region.

23 Q You stated, I believe, that you only analyzed biracial  
24 elections in your initial report. Why is that?

25 A I especially looked at biracial elections instead of

1 uni-racial elections. Again, biracial elections are those that  
2 involve both black and white candidates. Uni-racial elections  
3 are different, and they don't involve candidates from both  
4 racial groups. They are either all black or all white.

5 So it's important to distinguish the two. And the most  
6 important reason being that in this case as an expert to  
7 provide my analysis to the Court for the voting rights  
8 litigation, and that role is to show to the Court that indeed  
9 when voters are given a choice between a black candidate and  
10 white candidate, what's their true preference. If you take  
11 away that choice, say, it's all white, then you don't know.  
12 That would be different if another black candidate were in the  
13 election.

14 So only through biracial elections can we tell the true  
15 preference. I would like to use this analogy that is if you  
16 want to know anybody's taste for fruit, say, between orange and  
17 apple, obviously, you have to give them a choice between apple  
18 and orange to see whether it's orange or apple. That's their  
19 preferred choice.

20 So for that reason, indeed, I follow this standard of  
21 using biracial elections.

22 Q Let's take a look at your actual analysis of the elections  
23 at issue. Let's go to Table 1 of your expert report, which is  
24 also plaintiffs' -- separately done as Plaintiffs' P-210.

25 Let me know when you have that in front of you.

1 A Yes. I have it.

2 Q Okay. First, can you explain to the Court what races  
3 you're analyzing in the table here?

4 A Table 1 is based on my analysis of what we call endogenous  
5 elections between 2018 and 2022.

6 Q And let's, for example, take a look at the bottom row of  
7 your table. And if you can just sort of walk us through it and  
8 identify what we're looking at here.

9 A Yeah. The bottom row of Table 1 reports the results of my  
10 RPV analysis on specifically 2018 State Senate District 7  
11 election.

12 So the first column gives you the black candidate's name  
13 and then second column white candidate's name. And the third  
14 column is the percent vote cast for the given black candidate.  
15 In this case, Deborah Barros. And then the next column is the  
16 level of support from black voting group for this black  
17 candidate. That is 85.7 percent.

18 And then next to that is white support for this black  
19 candidate at 27.9 percent. After that, I show whether or not  
20 in this table the black candidate won the particular election  
21 and whether that election based on my two-step  
22 operationalization is the racially-polarized voting or not.

23 So in this case, the black candidate lost the election.  
24 And it was a racially-polarized voting.

25 Q Looking at all three races in endogenous biracial

1 elections in this table, are there any patterns you observed  
2 here?

3 A Yes. Consistently, I found that in these endogenous  
4 elections, the racially-polarized voting pattern was there.  
5 And there's significant majority black voting for the candidate  
6 from their own racial group; that is, the black candidate in  
7 the race. And the white voters disagreed with their choice, so  
8 they're majority voting for the white candidate instead of the  
9 black candidate.

10 And the result of racially-polarized voting is that all  
11 black candidates in these three elections lost their elections.

12 Q Okay. Let's turn to Table 2 of your initial expert  
13 report, which we also have marked separately as PX-211.

14 A Yes. I'm here.

15 Q Okay. What does the chart here represent?

16 A Table 2 is a table I use to report RPV findings in  
17 Huntsville region in the 11 biracial elections at the statewide  
18 level exogenous elections.

19 Q And what types of races are you looking at here?

20 A I was looking at those statewide elections such as 2022  
21 governor election, 2022 U.S. Senate election, and so on and so  
22 forth, all the way back to the 2014 statewide elections, such  
23 as state audit election.

24 Q What is the range of support that you found for black  
25 candidates from black voters across that set of 11 elections?

1 A As you can see from the column toward the middle of this  
2 table, the black support for black candidates was significantly  
3 high at around 85 to 90, sometimes even 90-plus level.

4 Q And same question, in terms of what was the level of  
5 support across these races by white voters for the black  
6 candidate?

7 A For the same black candidates that were preferred by black  
8 voters, they didn't receive majority support from the white  
9 voting group. In fact, as you can see from the column next to  
10 the one I just indicated, the white support for black  
11 candidate, the level of support for these black candidates as  
12 low as teens, like 12, 13, 11, sometimes just close to  
13 20 percent, but not even 20 percent.

14 Q Based on your analysis of these races in the Huntsville  
15 area State Senate races you analyzed, what's your conclusion  
16 about the existence of racially-polarized voting in the greater  
17 Huntsville area?

18 A In all 11 biracial statewide elections, we see strong  
19 pattern of racially-polarized voting, and especially the white  
20 bloc voting enabled eventual loss of all the black-preferred  
21 candidates in these elections.

22 Q Okay. Let's now turn to Table 3 of your report, which is  
23 also separately marked as PX-212.

24 A Yes, I'm here.

25 Q Okay. What does this chart represent?



1 A Yeah. I'm using the same 11 biracial statewide elections  
2 to analyze the Montgomery region.

3 Q And what is the range of support for black candidates from  
4 black voters in these elections?

5 A As you can see, in this region, the black support for the  
6 black candidates in this 11 biracial statewide elections are  
7 even higher. They are in the 90s range, sometimes even more  
8 than 95 percent.

9 Q And what about the range of support for black candidates  
10 -- for those same black candidates from white voters in the  
11 Montgomery region across those 11 races?

12 A Across these 11 races, the white support for the same  
13 black-preferred candidates was so low, and they're in single  
14 digits sometimes, 7 percent, 8 percent, 9 percent also.  
15 Sometimes even 6 percent.

16 Q Based on your analysis, what is your conclusion about the  
17 existence of racially-polarized voting in the Montgomery area?

18 A Due to the consistent and highly racially-polarized voting  
19 pattern in the Montgomery region, the black candidates  
20 typically lost their elections. In this case, 7 of 11 lost.  
21 But in those elections they won, they -- they tend to win the  
22 Senate State District Number 26, which is the supermajority  
23 black districts. But in 25 -- State Senate 25 District, they  
24 lost completely.

25 Q Dr. Liu, let's now turn to your analysis of black voters'

1 opportunity to elect candidates of choice in the illustrative  
2 plan that you analyzed.

3 How did you approach evaluating whether black voters have  
4 an opportunity to elect their preferred candidates in the  
5 illustrative plan you reviewed in this case?

6 A The method we use is called effective analysis. By that,  
7 I mean there are two steps, as well. So what we do is to  
8 compare the racial configuration of one map versus the racial  
9 configuration of another and then look at how voters voted in  
10 the particular configuration.

11 So in this case, the illustrative map provided by the  
12 plaintiff show the specific districts racial -- especially the  
13 Black Voting Age Population proportion in all these districts.

14 And then the second step is to look at simply the vote  
15 tally for the same elections I analyzed before to see which  
16 candidate will win in the particular configuration. By  
17 comparing the results in the illustrative map with the result  
18 of the enacted map, one can make conclusion about whether or  
19 not one particular configuration has better opportunity for the  
20 black-preferred candidates to win.

21 Q Can you explain the extent to which you've, if at all,  
22 you've previously used this method for evaluating opportunity  
23 to elect in other cases?

24 A Yes. As an racially-polarized voting expert in voting  
25 rights litigations, we often are asked to provide our

1 professional opinion on whether particular district in a given  
2 plan would perform. So I have done that repeatedly.

3 Q Let's take a look at Table 6 in your report, which is also  
4 marked as PX-215.

5 A Yes. I'm here.

6 Q Okay. And this is the table titled Overall Performance in  
7 SD7 Based on 11 Elections, Compared.

8 How does illustrative State Senate District 7 compare to  
9 Enacted State Senate District 7?

10 A Yes. As you can see from Table 6, I compared the enacted  
11 plan with the plaintiffs' illustrative plan. And the one above  
12 is the enacted plan. First, what you can see from this table  
13 is whether in the 11 elections that I used in my prior RPV  
14 analysis still showed racially-polarized voting for the enacted  
15 plan.

16 As you can see from this table, indeed they are still  
17 racially polarized. Because based on the 11 elections, on  
18 average, white voters provided about 21.6 percent of their vote  
19 for the black-preferred candidates. And blacks provided more  
20 than 89 percent of their support for these same candidates. So  
21 it's racially polarized.

22 And do they win the elections as black-preferred  
23 candidates? As you can see from the enacted plan, 11 out of 11  
24 times, they were all defeated.

25 But the plaintiffs' plan at the bottom of this Table 6

1 show something different. That is, even though it's still  
2 racially polarized in that the black voters prefer the black  
3 candidates. The white voters don't. But zero out of 11 times,  
4 the black-preferred candidates were defeated. The reason is  
5 that the plaintiffs' plan has a different racial configuration  
6 for State Senate District 7.

7 Q Thank you, Dr. Liu.

8 Now, let's take a look at Table 9 from your report, which  
9 is also PX-218. And what are we looking at in this table?

10 A Yes. Similarly, I used the same effective analysis to  
11 analyze the differences between enacted plan and plaintiffs'  
12 illustrative plan in terms of Senate District 25.

13 Q Okay. And what were your conclusions from your comparison  
14 between Enacted State Senate District 25 and Illustrative State  
15 Senate District 25, in terms of opportunity to elect for black  
16 voters?

17 A Similar to what I found regarding State Senate District 7,  
18 is State Senate District 25 that enacted plan has a much worse  
19 performance for the black-preferred candidates, because 11 out  
20 of 11 times due to highly racially-polarized voting, the  
21 black-preferred candidates or BPCs lost. But for the  
22 plaintiffs' illustrative plan, on the other hand, 11 out of 11  
23 times, they won.

24 Q Combining your racial polarization analysis and  
25 opportunity to elect analysis, how, if at all, does racial bloc

1 voting in the greater Huntsville and Montgomery regions affect  
2 black voters' opportunity to elect preferred candidates?

3 A Based on my empirical investigation as I reported in my  
4 original report and in both RPV analysis and EA analysis, the  
5 racially-polarized voting typically result in the black defeat,  
6 especially in the enacted map. But the black-preferred  
7 candidates would perform better in addition to the State Senate  
8 District 26 in the enacted plan and would give realistic chance  
9 for black-preferred candidates to win.

10 In State Senate Districts 7 and 28, the plaintiffs'  
11 illustrative plan also provided the realistic chance for them  
12 to win.

13 Q And I think you said State Senate District 28 there. Is  
14 that the district you meant to name?

15 A Yes. Sorry. Thank you.

16 I meant the 26 was already provided by the enacted plan  
17 for the black-preferred candidates to win, not 28.

18 Q Okay. Let's take a look at DX-7.

19 Dr. Liu, what is the document you have in front of you?

20 A I have in front of me Dr. Trende's report.

21 Q Okay. Have you previously reviewed this report?

22 A Yes, I did.

23 Q Okay. Let's turn to page 25 of his report, which I  
24 believe is the section titled Effectiveness Analysis.

25 A Yes. I'm here.

1 Q What is your understanding of Dr. Trende's conclusion  
2 here?

3 A Yeah. In this section, which he called Effective  
4 Analysis, he made his own assumptions based on what he called  
5 my analysis to derive his conclusion as referred to the State  
6 Senate District 7, what he called the threshold for  
7 black-preferred candidates to win.

8 Q And what is your understanding of the methodology he used  
9 to look at that?

10 A He made two key assumptions about what typically takes  
11 place in State Senate District 7, and then he developed his own  
12 formula to use these assumptions to indicate that 25 percent of  
13 Black Voting Age Population will be enough for black-preferred  
14 candidates to win.

15 Q What is your reaction to the assumptions he used?

16 A His assumptions are not only unrealistic, but also not  
17 accurate, because his assumptions did not reflect what I said  
18 in my report, i.e., he first assumed that the black vote in the  
19 State Senate District 7 is almost uniform, like 100 percent,  
20 which was not what I found.

21 And secondly, more importantly, he assumed that the white  
22 crossover voting in State Senate District 7 is typically one  
23 third of the white electorate. That is certainly not what I  
24 said in my report.

25 As I stated earlier, based on my own expert report, that

1 the white vote in the State Senate District 7 is usually as low  
2 as 20-some percent, never more than 30 percent.

3 Q What effect, if at all, do you believe these assumptions  
4 had on Dr. Trende's conclusions about opportunity to elect?

5 A I used his formula based on his assumption. I  
6 demonstrated why that 25 percent as the threshold in his report  
7 is not accurate at all, because assuming that indeed as he said  
8 100 percent black support for black-preferred candidates,  
9 one-third white support for the same candidate. I showed his  
10 formula doesn't work, because the black-preferred candidates  
11 wouldn't win 50 percent plus one, a minimum level to guarantee  
12 success.

13 Q Okay. Let's turn to your opinions about defense expert  
14 Dr. Hood's and Dr. Reilly's comparison of black Alabamians to  
15 black voters in other states.

16 So let's look at DX-5 first, Dr. Hood's report.

17 Okay. And let's turn to page 3, the section titled Black  
18 Voting Patterns.

19 A Yes. I'm here.

20 Q What is your understanding of the analysis that Dr. Hood  
21 performed in this section?

22 A In this section, Dr. Hood called Black Voting Pattern,  
23 instead of disputing my finding of RPV, Dr. Hood compared  
24 different states; in particular, he used a threshold of at  
25 least 10 percent black population in a state. First of all, he

1 never explained why that threshold 10 percent or more in his  
2 report for this section.

3 And furthermore, he -- he basically used univariate  
4 analysis. By that, we mean something descriptive of one  
5 variable at a time to talk about so-called voting pattern.  
6 Rather than using the elections from the two regions under  
7 dispute in this case, he used the State.

8 And furthermore, surprisingly, he didn't follow his own  
9 recommendation about how to do racially-polarized voting  
10 analysis in federal voting rights litigation. He and his  
11 co-authors actually had a published article in a good journal  
12 called *Social Science Quarterly* in which they suggested, as all  
13 of us agreed, there should be RPV analysis or  
14 racially-polarized voting by using biracial elections. He  
15 didn't do anything of that.

16 Q What are your views about whether Dr. Hood's opinions in  
17 this section are informative of racial voting patterns in the  
18 Huntsville and Montgomery areas?

19 A They are not informative at all, because he never  
20 conducted an RPV analysis on his own. And he never disputed  
21 what I found in the two regions, in terms of RPV. Therefore,  
22 one should not use his report to draw any conclusion about any  
23 RPV-related results.

24 Q Let's now turn to DX-9, Dr. Reilly's expert report on page  
25 4.



1       So we're looking here at page 4, Voting and Electoral  
2       Partisanship by Race. What is your understanding of  
3       Dr. Reilly's analysis here?

4       A       Similar to Dr. Hood, Dr. Reilly proposed -- by using state  
5       comparison, he claimed that blacks typically voted for  
6       Democrats. And instead of disputing what I found in my report  
7       about racially-polarized voting, Dr. Reilly didn't do any RPV  
8       analysis in his report at all. And instead, he tried to say it  
9       is political party that explained why there's RPV in the first  
10      place. And he didn't explain why he used these states to make  
11      his case, not exactly the two regions that he focused on to  
12      analyze elections to make his case. Therefore, one cannot draw  
13      any conclusion by using his report that is party actually that  
14      played a role to explain RPV.

15      Q       What metric did Dr. Reilly use to -- in his analysis here?

16      A       Again, he didn't provide any justification in his  
17      analysis. He just included these states. Sometimes he -- he  
18      relied on indicators such as educational attainment. Other  
19      times he looked at prison population.

20             He assumed that these states are similar to Alabama. But  
21      he didn't have metrics specifically to allow scholars or court  
22      to see why that metrics should reveal what's going on in  
23      Alabama. In particular, whatever these states in terms of his  
24      indicators, they don't re -- that doesn't -- they don't reveal  
25      the exact racially-polarized voting in the first place. So one

1 cannot make conclusions about.

2 Q What if -- I'm sorry.

3 A Yeah. That's what I said. One cannot make conclusion  
4 about exactly how race play a role or not.

5 Q What, if at all, is the import of Dr. Reilly's decision to  
6 use partisan affiliation rather than voting patterns for his  
7 analysis?

8 A Could you repeat?

9 Q Yeah. What, if at all, is the import of Dr. Reilly's  
10 decision to use partisan affiliation rather than voting  
11 patterns for his analysis?

12 A As I said, he didn't use the real racial breakdown, the  
13 voting pattern to derive his conclusion. He used basically  
14 univariate descriptive statistic rather than as he claimed as a  
15 scholar doing multivariate analysis or control comparison. He  
16 focused on one variable at a time and especially descriptive  
17 statistics to make his claim.

18 Q Okay. Let's move on from Dr. Reilly's report.

19 Now, let's take a step back. Dr. Liu, in your initial  
20 report, can you explain to what extent your analysis was  
21 concerned with the reasons behind racial voting patterns?

22 A My initial report was based on the task of analyzing  
23 whether or not in the two regions of Alabama there's a pattern  
24 of racially-polarized voting. So I engaged in the empirical  
25 analysis EI methodology. It's not about motivation behind the

1 finding of racially-polarized voting. Therefore, I only focus  
2 on the empirical analysis of RPV pattern or lack of.

3 Q In your rebuttal expert report, did you change your  
4 approach?

5 A No. I didn't change my approach at all. My rebuttal  
6 report was simply used to respond to the four experts that  
7 claimed that it was political party that explained why RPV took  
8 place in the first place. So I analyzed their data to see  
9 whether their claim that political party played the role in  
10 determining RPV, and I found no evidence whatsoever.

11 Q Okay. Let's turn to Dr. Bonneau's expert report, DX-1.  
12 What is your understanding of Dr. Bonneau's opinions about your  
13 analysis in this case?

14 A My understanding of Dr. Bonneau's analysis of my report is  
15 that he didn't dispute my finding that there's RPV in the two  
16 regions of Alabama. Instead, he focused on why it happened.  
17 And he claimed that using his data political party was the  
18 reason for RPV pattern.

19 Q And we'll turn to the specifics in a second, but what is  
20 your high-level reaction to that assertion by Dr. Bonneau?

21 A That assertion of Dr. Bonneau was not supported by his own  
22 data. I performed a simple check on his data. I found  
23 actually race was more important than party.

24 Q Okay. Let's turn to that analysis.

25 On DX-1, Dr. Bonneau's report, let's turn to pages 9 and

1 10 looking at Alabama state legislative elections.

2 A Yes. I'm here.

3 Q What is your understanding of the analysis that  
4 Dr. Bonneau performed here?

5 A On page 9, he claimed that he examined the 2022 elections  
6 to the Alabama House of Representatives using the same methods  
7 and techniques that he did for State Supreme Court elections.  
8 And he said he found similar results; that is, black Democrats  
9 who lost contested seats for the State House averaged  
10 29.1 percent of the vote in the counties in which they run,  
11 while white Democrats, according to him, averaged only  
12 23.7 percent.

13 So he asserted, based on his analysis, the black Democrats  
14 performed better than white Democrats in state legislative  
15 elections and state judicial elections.

16 Q And before we get to your assessment of his results, do  
17 you have any opinions about Dr. Bonneau's data and methodology  
18 here?

19 A Yes. Dr. Bonneau used county-level data, which typically  
20 expert witnesses and political scientists in their academic  
21 research try to avoid to draw conclusion one way or another,  
22 because county level is simply too big. And there's problem  
23 with how, especially in this case, State legislative districts  
24 compared to county can play out.

25 For instance, if a county is so big that contains multiple

1 State Senate districts, Dr. Bonneau's dataset at the county  
2 level may double count the same county twice, sometimes even  
3 more than twice, because multiple districts are inside the  
4 county.

5 So his data has a lot of problem to begin with. So the  
6 conclusion from his data analysis is also very questionable.

7 Q Do you have any views about whether Dr. Bonneau's analysis  
8 here sheds light on racial voting patterns?

9 A No. Dr. Bonneau didn't do any RPV analysis. And he  
10 claimed the party played major role based on his data from a  
11 straight party straight ticket voting. And, in fact, if you  
12 look at his own data and do simple analysis, you can find  
13 that's actually not true.

14 Q So turning to your own analysis, what analysis did you  
15 conduct in response to Dr. Bonneau's report looking at state  
16 legislative elections?

17 A Right. Just like I read earlier from his own report, he  
18 claimed that black Democrats performed better than white  
19 Democrats in these elections.

20 I performed analysis on the State Senate elections, which  
21 are endogenous elections, as I explained earlier. I found  
22 actually race played major role instead of party. Because if  
23 we break these endogenous elections into biracial, meaning  
24 there is a black candidate and there is also a white candidate,  
25 his own county-level data showed that RPV exists in those

1 biracial elections. But when we change the data -- the  
2 elections into uni-racial, meaning it's all black or all white,  
3 meaning there's no choice between black and white, RPV  
4 disappeared by using his own county-level data.

5 So, therefore, the difference indeed is because of race,  
6 not the party. And more troubling is his county-level data  
7 contained errors, and especially coding error, which lead to  
8 wrong conclusion that the black Democrats are better than the  
9 white Democrats in those elections.

10 Once we correct his data errors, we actually find  
11 statistically black Democrats perform worse than white  
12 Democrats.

13 Q Okay.

14 A So his conclusion is wrong.

15 Q Sorry to interrupt you there.

16 Let's break this down a little bit. Let's look at Table 1  
17 from your rebuttal report, which is also marked as PX-221.

18 A Okay.

19 Q Just let me know when you're there.

20 A Okay. My own report, right?

21 Q Your own rebuttal report. That's right.

22 A Yes. I'm here.

23 Q Okay. So Table 1 from your rebuttal report titled  
24 Analysis of Racially-Polarized Voting in the Biracial State  
25 Senate Elections.

1           What are we looking at here?

2     A     Oh. This Table 1 is a report of my finding by using  
3     Dr. Bonneau's own county-level data for the State Senate  
4     biracial elections.

5     Q     And what is your conclusion from this data?

6     A     As you can see from this table, the black candidate was  
7     supported by black voters for about 64 percent level. And the  
8     black candidate, the same black candidate received only about  
9     29 percent from the white voting group. Therefore, it's  
10    racially polarized.

11    Q     Now, let's take a look at Table 2 from your rebuttal  
12    report, which is also PX-222.

13           Analysis of Racially-Polarized Voting in the Non-Biracial  
14    State Senate Elections. What are we looking at here?

15    A     Yes. This is a table that reported the RPV analysis based  
16    on the non-biracial or meaning the uni-racial State Senate  
17    elections.

18    Q     And what did you conclude from your analysis here?

19    A     Yeah. If we look at the same column that I just stated  
20    earlier for Table 1, one can see that the black voters and  
21    white voters pretty much agreed with each other on their  
22    choice. The black Democrats received much less. It's about 22  
23    to 25 percent. The Republican candidates received much more,  
24    around 75 percent.

25    Q     Now, if I'm not mistaken here, you used -- you testified

1 that you used Dr. Bonneau's own county-level data to perform  
2 this analysis, which I believe you criticized earlier.

3 How, if at all, does that affect your conclusions here?

4 A Yes. I did use Dr. Bonneau's report to respond to his  
5 claim that political party played a major role in producing the  
6 RPV results. So it's his data, this -- these two tables that  
7 you used -- that you just mentioned showed that by using his  
8 data, one can see that there's a difference between biracial  
9 and uni-racial elections.

10 So race play a role using his data.

11 Q Now, let's take a look in Dr. Bonneau's report at his  
12 analysis of a couple of primary elections.

13 Let's start with the Republican primary in State House  
14 District 73. Are you familiar with that section of his report?

15 A Yes, I am.

16 Q And what is your response to -- can you explain what  
17 analysis you believe -- first that he was performing here?

18 A Yeah. Actually, he didn't perform RPV analysis, as I  
19 stated earlier. But he mentioned State House elections,  
20 especially SD 73, because there is a Republican and black  
21 candidate that won the primary. So by using that, he claimed  
22 that it is -- it is possible for black Republican to win a  
23 competitive race. And that claim obviously is not backed by  
24 his own RPV analysis. He simply used the primary elections,  
25 which obviously take place within a political party.



1       So he's trying to claim that the black -- the black  
2 candidate can win, as well. It's not racially-polarized voting  
3 as I stated it in my report. By doing so, however, number one,  
4 as I said, he didn't perform RPV analysis here himself,  
5 therefore, there's no result from his report one can rely on to  
6 draw conclusions about RPV.

7       I instead --

8           MR. TAUNTON: Objection, real quick. This has  
9 happened just a couple of times. There's been a couple of  
10 times that he has testified to the legal relevance of  
11 particular conclusions, and we would just ask -- I think that's  
12 outside his expertise. I think that's inside the Court's  
13 purview. And I would ask that he contain himself to not legal  
14 conclusions.

15           MR. ROSBOROUGH: I didn't understand him to be  
16 testifying to legal relevance. I understood him to be  
17 testifying to the relevance as a scholar of racially-polarized  
18 voting.

19           MR. TAUNTON: To the degree that that is his  
20 testimony, Your Honor, no objection. I think he's testified a  
21 couple of times that he believed that if an RPV analysis is not  
22 being performed, then there could -- the analysis does not have  
23 legal weight or should not be given legal weight.

24           THE COURT: All right. I will consider it as it's  
25 appropriate.

1 MR. TAUNTON: Thank you, Your Honor.

2 BY MR. ROSBOROUGH:

3 Q All right. Dr. Liu, you -- please complete your answer.

4 A Yes. First of all, the primary elections that he used --  
5 especially SD 73 is not in the two regions under dispute.

6 I actually did an RPV analysis to show that the turnout  
7 level is so low in that election, it's below -- it's around  
8 5 percent. And the white turnout is as low as less than  
9 2 percent. So one should not draw conclusion from that low  
10 turnout, low publicity election about the overall picture of  
11 the two regions under dispute. And my RPV analysis show that  
12 it's so uncertain whether the white voters voted for the black  
13 Republican candidate in the first place or not.

14 Q Okay. Now, Dr. Liu, let's look at -- what is your  
15 understanding of what Dr. Bonneau looked at regarding the  
16 Democratic primary in House District 74 in his report?

17 A Yes. The -- again, I also performed the EI analysis, and  
18 I found that the turnout in the House District 74 is also very  
19 low. The white turnout in that is about 7 percent. The black  
20 turnout is about 5 percent.

21 So different from general elections that I analyzed in my  
22 report, these primary elections don't reveal the real  
23 competitive elections with sufficient turnout how they would  
24 provide opportunity for black voters to elect candidate of  
25 their choice at all.

1 Q In response to this analysis of primaries and any others  
2 you saw, did you yourself look at any primaries in your  
3 rebuttal report?

4 A Yes. I analyzed, like I said, SD 73 myself. And I also  
5 analyzed the 2000 presidential -- the 2020 -- I'm sorry -- 2016  
6 presidential Republican primary election where Dr. Ben Carson  
7 run for the Republican nomination. And I found that these  
8 primaries are not indicative of the true RPV in these two  
9 regions, and Dr. Ben Carson actually received a very, very low  
10 -- about 10 percent of vote in that election.

11 So I did do a few primary elections myself to respond to  
12 Dr. Bonneau's report. Furthermore, I looked at the mayor  
13 runoff election in the two regions.

14 Q Let's take a look at that actually. Let's pull up --  
15 let's take a look at Table 3 from your rebuttal report, which  
16 is also PX-223.

17 A Yes. I'm there.

18 Q Okay. What is -- what are we looking at here, Dr. Liu?

19 A So Table 3 is a table for me to report to the Court what  
20 happened in the three mayor runoff elections. The reason for  
21 me to report to the Court in this rebuttal is to show in the  
22 mayor runoff elections in which the parties in cue is taken  
23 away. Only racial cue remain. Because according to the rule  
24 for mayoral runoff in Alabama, in this case regardless which  
25 party, the top two vote getters participated in the runoff

1 election against each other.

2       So it's a greater opportunity for empirical scientists  
3 such as me to look at what happened in these runoff elections.  
4 And these are biracial elections, meaning there is indeed a  
5 black candidate running against a white candidate, thus, race  
6 does still play a role in these elections.

7 Q     Well, let's turn -- well, let me ask you first of course:  
8 What did you actually find? What did you conclude based on  
9 your analysis of the nonpartisan mayoral races you analyzed?

10 A     Sure. Tables A and B about the Montgomery mayor runoff  
11 elections in 2019 and 2023, as you can see from the very first  
12 column, the group of black and white, and then the black  
13 candidates vote in the second column, you can see that it's  
14 highly racially polarized in these runoff elections, i.e., that  
15 black candidates received about 21 percent of support from the  
16 white voting group and 87 percent from the black voting group  
17 in 2019 Montgomery mayor runoff.

18       The same pattern of racially-polarized voting takes place  
19 in the second 2023 Montgomery mayor runoff again. And also in  
20 2020, the Decatur mayor runoff, we see the same pattern.

21 Q     And so what, if anything, does that tell you from your  
22 analysis of these three elections about the respective roles of  
23 race and party?

24 A     So by using the available runoff elections that involve  
25 both black and white candidates, one can tell that when the

1 parties in cue is taken away, the racial cue is indeed a factor  
2 in these elections. The black candidates received much less  
3 support from the white voting group and much more support from  
4 the black group. So it's racially polarized.

5 Q Just a few more questions about Dr. Bonneau's analysis.

6 Let's turn back to Dr. Bonneau's report, which is DX-1,  
7 and let's go to page 9, paragraph 13 of Dr. Bonneau's report.

8 A Could you repeat?

9 Q Of course. So we're looking at Dr. Bonneau's expert  
10 report. And we are going to head to page 9, paragraph 13.

11 THE COURT: Mr. Rosborough, actually, is this a  
12 convenient spot for our morning break?

13 MR. ROSBOROUGH: I'm actually probably just about  
14 five minutes from finishing. So if you want to -- I am happy  
15 to take a break.

16 THE COURT: Let's finish if you're that close.

17 MR. ROSBOROUGH: Yeah.

18 MR. TAUNTON: Your Honor?

19 THE WITNESS: Page 9?

20 MR. TAUNTON: Your Honor, real quick, I have a feeling  
21 we are about to get to a segment here where obviously there's  
22 some strain just we have a lot of the same counsel, a lot of  
23 the same experts between this case and the Milligan case. But  
24 I think that maybe some of the opinions we're about to get from  
25 Dr. Liu were not -- I don't believe were actually disclosed in

1 this case.

2       You know, I don't know if that's something that counsel  
3 and I should discuss. I think maybe they were disclosed later  
4 after the discovery period had closed. We have not had an  
5 opportunity to discuss those opinions in this case.

6       MR. ROSBOROUGH: The same counsel, same parties and  
7 everyone were present during the Milligan deposition where --  
8 and there's no real dispute about the facts here. Dr. Bonneau  
9 admitted the errors he made. And so I will certainly ask  
10 Dr. Bonneau during his cross about it. But given that both  
11 parties have had a full opportunity to examine the basis of it  
12 and there's no actual dispute, I think it would be more  
13 informative and relevant for the Court to just have it out here  
14 as fully aired during the depositions. We have had two  
15 depositions of Dr. Liu and two of Dr. Bonneau in the last six  
16 or so months. And I think everyone's position is clear, and  
17 there's no surprise.

18       THE COURT: All right. Why don't I hear it, and then  
19 if you want to move to strike it, I will hear your motion to  
20 move to strike it.

21       MR. TAUNTON: Thank you, Your Honor.

22 BY MR. ROSBOROUGH:

23 Q     Okay. Dr. Liu, are you at paragraph 13 of Dr. Bonneau's  
24 report?

25 A     Yes.

1 Q Okay. Do you have any views on his regression model of  
2 Alabama State Supreme Court cases featuring losing Democratic  
3 candidates where he compares black and white candidate  
4 strength?

5 A I -- I reported in my rebuttal report that his analysis of  
6 so-called political party playing greater role is not based on  
7 controlled comparison. Truly holding party consistency whether  
8 race play a role or holding race consistent to see whether  
9 party play a role.

10 So I have opinion about the misuse of his method. Mainly  
11 he used correlation analysis to make his claim that party  
12 played a role. But correlation obviously is not causation.

13 Q Now, do you have any understanding based on your work  
14 regarding this regression model if Dr. Bonneau still holds the  
15 opinion that African-American candidates performed 4.3  
16 percentage points worse than white candidates?

17 A I did verification study after we -- I corrected the  
18 mistake he had in his original code in some counties. And then  
19 I performed the same regression. I found that is opposite  
20 result, actually black Democrats performed worse than white  
21 Democrats statistically. Statistically.

22 Q Okay. Let's move on to Dr. Bonneau's analysis of straight  
23 ticket voting.

24 What is your understanding of Dr. Bonneau's analysis about  
25 straight ticket voting?

1 A He used the county-level data about the Democratic party  
2 and Republican straight ticket voting results and claimed that  
3 most Alabama voters vote for party, not race.

4 Q Okay. And what is your reaction to that analysis first  
5 from a methodological perspective, if any?

6 A That analysis of straight party ticket voting is not based  
7 on actual racial breakdown; that is, to what extent black  
8 voters voted straight ticket as opposed to why voters vote  
9 straight ticket. Only by looking at aggregate level at a  
10 county level, one knows nothing about how different racial  
11 groups voted. So, therefore, one cannot make conclusion  
12 whether it's across board that party already replaced race as a  
13 main determinant.

14 Q Okay. And finally back to Dr. Bonneau's State Supreme  
15 Court analysis that we were just discussing with the data  
16 error.

17 Can you discuss any views you have about whether, in fact,  
18 there's statistical significance of black candidates performing  
19 worse than white candidates?

20 A The errors in his data indeed may produce results that are  
21 questionable. But he has to accept whatever the results from  
22 his own data. If he says the data is not correct, one should  
23 remove his data by using different kinds of data, such as  
24 precinct-level data, one major more valid conclusion because of  
25 better data available. But just based on his data alone, it is



1 clear that he didn't provide empirical and scientific evidence  
2 why political party already replaced race as the determinant of  
3 RPV. On the contrary, using his data, one finds that actually  
4 race played greater role.

5 Q So to summarize, Dr. Liu, after both of your reports and  
6 all of your analysis, what are your opinions about racial  
7 voting patterns in the Montgomery and Huntsville regions?

8 A In summary, it is clear in Huntsville and Montgomery  
9 regions, there has been a consistent pattern of  
10 racially-polarized voting. And the degree of the  
11 racially-polarized voting is so big that the white bloc voting  
12 typically enabled the defeats of black-preferred candidates in  
13 these competitive elections.

14 Q And do you have any view about the role that race plays  
15 above and beyond party in these choices?

16 A Yes. By looking at primary elections and, more  
17 importantly, the runoff mayoral elections, one can see that  
18 actually between race and party, the race remain as more robust  
19 explanation for why RPV takes place in the first place.

20 Q And finally, do you have any opinions about whether new  
21 districts such as plaintiffs' illustrative plans perform --  
22 allow black voters to elect candidates of choice compared to  
23 the enacted plans?

24 MR. TAUNTON: Objection. I believe he only conducted  
25 effective analysis of one of the plan.

1 MR. ROSBOROUGH: I'm sorry if I misstated. Let me  
2 re-ask the question.

3 BY MR. ROSBOROUGH:

4 Q Dr. Liu, from your analysis of plaintiffs' illustrative  
5 plan that you analyzed, do you have any conclusions about  
6 whether that plan performs better for black voters than the  
7 enacted plan?

8 A Yes, I do have opinion. Based on my analysis, the  
9 plaintiffs' illustrative plan has more opportunities for  
10 black-preferred candidates to win in State Senate Districts 7  
11 and 25, which were not available in the enacted plan.

12 MR. ROSBOROUGH: Thank you, Dr. Liu. I have no  
13 further questions at this time.

14 THE COURT: All right. Thank you.

15 All right. I think this is a good time for our morning  
16 break. It's 10:52. Let's come back at 11:05.

17 (Recess.)

18 THE COURT: All right. Be seated, please.

19 You may proceed.

20 CROSS-EXAMINATION

21 BY MR. TAUNTON:

22 Q Good morning, Dr. Liu.

23 A Good morning.

24 Q How are you?

25 A Good.

1 Q Michael Taunton for the Secretary of State. It's nice to  
2 see you in person this time.

3 A Thank you. You, too.

4 Q Just a few questions. You testified as to your CV  
5 earlier, right?

6 A Could you speak a little louder?

7 Q I'm sorry. I said you answered a bunch of questions about  
8 your CV earlier, correct?

9 A Yes.

10 Q And you also have a bachelor's of law from East China  
11 University in LLB; is that right?

12 A Yes.

13 Q That's a bachelor's degree equivalent, right?

14 A Correct.

15 Q You don't have a degree in American law, right?

16 A No.

17 Q You're not barred as an American lawyer?

18 A No.

19 Q You have a master's in political science from Oklahoma  
20 State?

21 A Yes.

22 Q A Ph.D. in political science from the University of New  
23 Orleans?

24 A Yes.

25 Q But you do not have any degrees in math or statistics,

1 correct?

2 A No.

3 Q Okay. I think you said that the majority of courts had  
4 given -- you have been certified as an expert many times,  
5 correct?

6 A Yes.

7 Q And the majority of courts have given your testimony  
8 weight, I think you said, right?

9 A Yes.

10 Q Are there any courts that have given your testimony little  
11 weight?

12 A Could you explain little weight?

13 Q Has any court either not relied on your testimony, find it  
14 unreliable or unhelpful?

15 A There is to my memory a couple of courts that -- that  
16 limited my testimony by saying that either the method or the  
17 data are questionable.

18 Q Okay. I want to talk just real briefly about your  
19 understanding, your understanding of *Gingles* and the *Gingles*  
20 case and the *Gingles* preconditions.

21 Now, is it your understanding that the three *Gingles*  
22 preconditions are necessary to succeed on a Voting Rights Act  
23 claim under Section 2?

24 MR. ROSBOROUGH: I am going to object, Your Honor.

25 This is sort of the flip side of defendant's objection. He is

1 asking Dr. Liu's legal views on case law.

2 MR. TAUNTON: Your Honor, I am not asking -- well, I  
3 am asking for his view of it, his understanding of it. The  
4 reason I think this is relevant is because I think it both  
5 colors the analysis he did. It colors his critique of other  
6 experts. And, Your Honor, I asked him that exact same question  
7 in his deposition. There was no objection, and he answered it.

8 THE COURT: Well, I mean, I don't need an expert to  
9 help me understand what *Gingles* means. I need an expert to  
10 help me understand whether it's satisfied.

11 MR. TAUNTON: Your Honor, I completely agree. I am  
12 not asking him to explain to you *Gingles*. I'm asking him to  
13 explain to you his understanding of *Gingles*, which I believe  
14 affects his analysis, and it affects his critiques.

15 THE COURT: All right. I will allow it. But if after  
16 hearing it, you may renew your motion or make a motion to  
17 strike -- renew your objection or make a motion to strike it if  
18 you want to.

19 BY MR. TAUNTON:

20 Q So I will ask the question again, Dr. Liu. Is it your  
21 understanding -- your understanding -- that the three *Gingles*  
22 preconditions are necessary to succeed on a Voting Rights Act  
23 claim under Section 2?

24 A I'm not an expert on legal matters. So if you're asking  
25 my own understanding, whether it's necessary, I believe they

1 are necessary.

2 Q Okay. And is it your understanding that those  
3 preconditions are sufficient to succeed on a Voting Rights Act  
4 claim?

5 A I don't understand the word sufficient. So obviously,  
6 legally if it means something very important. But, again, I  
7 cannot give you advice on what's sufficient and not sufficient  
8 in a legal way.

9 Q Well, again, I think I've -- maybe we have had this  
10 discussion before. And I think maybe you understood then. But  
11 I'll just explain it this way. When I say sufficient, if you  
12 prove the three *Gingles* preconditions, is it your understanding  
13 that that then you have succeeded on a voting rights state  
14 claim? Is that your understanding?

15 MR. ROSBOROUGH: I am going to object on grounds of  
16 relevance, as well, as lack of expertise in this area.

17 THE COURT: All right. He can answer as to his  
18 understanding, although I still am not sure that the objection  
19 will not ultimately be sustained. But I want to hear what he  
20 has to say to understand how you're about to use it.

21 MR. TAUNTON: From a relevant standpoint, when --  
22 particularly, when we look at his rebuttals, I think that his  
23 critiques are in large part based on his understanding of  
24 *Gingles*.

25 THE COURT: Okay.

1           THE WITNESS: I have a better understanding of  
2 necessary as I stated earlier. I think it's necessary in my  
3 opinion or my understanding, but I have no understanding or  
4 opinion on sufficient.

5 BY MR. TAUNTON:

6 Q Dr. Liu, did you give a deposition in this case on  
7 April 30th, 2024?

8 A I don't remember exact date.

9 Q Did you give a deposition in this case sometime in April?

10 A Yes. Yeah.

11 Q And you and I had that deposition over Zoom, right?

12 A Yes.

13 Q That was before a court reporter, correct?

14 A Yes.

15 Q And you were under oath?

16 A Yes.

17 Q Okay. Can I get to you look at -- and if we could -- our  
18 screen is working now, or do I need to bring it up a copy?

19 If we could go to page 76, beginning at line 2.

20 And if we can take a look, you know, just here real quick  
21 at -- I said line 2. Really, actually the question I'd asked  
22 you is line 8.

23 So and if you would like a minute to read this and refresh  
24 your recollection and then I can ask you the question again if  
25 you would prefer.

1 MR. ROSBOROUGH: I am going to object as improper  
2 impeachment: This is a different - substantively different  
3 question that he was asked and answered in the deposition. He  
4 answered it in terms of analyzing elections, not whether  
5 plaintiff can succeed.

6 MR. TAUNTON: The question is the same.

7 THE COURT: Yeah. The question is the same.

8 MR. TAUNTON: The answer may have been different.

9 THE COURT: If you believe the context is different, I  
10 think you can go into that on redirect. But the question that  
11 he asked previously: Is it your understanding that then you  
12 have succeeded on a voting rights claim? I mean, that was  
13 the...

14 MR. ROSBOROUGH: I will withdraw the objection for  
15 now. Thank you.

16 THE COURT: All right.

17 BY MR. TAUNTON:

18 Q So, Dr. Liu, I will ask this question again. Is it your  
19 understanding that the three *Gingles* precondition -- succeeding  
20 on the three *Gingles* preconditions is sufficient to succeed on  
21 a Voting Rights Act claim?

22 A Yes. I see this.

23 Q I'm asking you the question now. Is it your understanding  
24 that they are -- they are sufficient to succeed on a Voting  
25 Rights Act claim?



1 A Again, at this point in the court, when I'm asking a  
2 question about legally, whether it's sufficient, my answer is  
3 I'm not very sure. But as a scholar, I do have opinion on  
4 this.

5 Q Okay.

6 A Legally, I have no understanding of what is sufficient,  
7 because I don't understand the legal term sufficient well  
8 enough to give you a firm answer.

9 Q Okay. We can take that down.

10 So when I asked you this question though in April, you  
11 were clear on what the question was, and you did say yes; is  
12 that right?

13 A According to this, yes.

14 Q Okay. Now, let's turn to your initial report.

15 MR. ROSBOROUGH: I am going to go ahead and move to  
16 strike on relevance grounds.

17 THE COURT: All right. I'm going to deny that for  
18 now, but I will consider it for the weight that's appropriate.

19 BY MR. TAUNTON:

20 Q If we turn to your initial report. Now, conducting your  
21 initial RPV analysis, you only analyzed biracial elections,  
22 right?

23 A Correct.

24 Q Okay. Is it your understanding that the *Gingles*  
25 preconditions required you to look at biracial elections?

1 A Again, I cannot speak for the legal part of *Gingles*  
2 decision. As a scholar of RPV, my understanding of my role is  
3 that we should analyze biracial elections to provide our  
4 opinion on RPV.

5 Q I understand that. That's slightly different, again, than  
6 the question that I asked.

7 Is it your understanding -- is it your understanding that  
8 the *Gingles* preconditions requires to you look at biracial  
9 elections, that that's required by *Gingles*? Is that your  
10 understanding?

11 A My -- again, my memory is that the *Gingles* decision was  
12 made by endorsing the experts who used only biracial elections.

13 Q I'm not sure that that's fully responsive to my question  
14 or not. Again, I will ask this. Again, you gave a deposition  
15 in April, right?

16 A Yes.

17 Q And I mean, we can refresh -- let's do that.

18 Let's go to page 90 of that deposition, and beginning in  
19 line 5, my question is actually in line 9, and your answer is  
20 in line 12, and let you refresh your recollection.

21 So in that deposition, beginning at line 9, I ask you: Is  
22 it your understanding that the *Gingles* precondition analysis  
23 requires looking at biracial elections, right? And what was  
24 your answer on that occasion?

25 A That "A" is yes.

1 Q Okay. We can take that down.

2 So is it your understanding that *Gingles* requires  
3 analyzing how black voters and nonblack voters vote when they  
4 have an opportunity to compare white candidates with black  
5 candidates and make their voting decision?

6 A Could you repeat the question, please?

7 Q Well, I'm actually quoting there from page 6 of your  
8 initial report. But I will repeat the question, which is: Is  
9 it your understanding that *Gingles* requires analyzing how black  
10 voters and non-black voters vote when they have an opportunity  
11 to compare white candidates with black candidates and make  
12 their voting decision?

13 Let me ask the question a slightly different way.

14 I think earlier when you were talking to Mr. Rosborough,  
15 you talked about biracial elections allow white voters and  
16 black voters to express their true preferences, their true  
17 preferences. Is that what you said?

18 A Yes.

19 Q What did you mean by that, true preferences?

20 A I mean that when you don't have the choice, then even  
21 though you may have preference between two candidates which one  
22 you prefer, but that does not reflect your true preference when  
23 there is a choice between two different types of candidates --  
24 in this case, black candidate and white candidate.

25 Q When you say have the choice, you don't have the choice.

1 You are speaking specifically of the choice between a white  
2 candidate and black candidate, right?

3 A Yes.

4 Q Because voters have choices in other elections, too,  
5 right?

6 A Yes.

7 Q So and they may -- they may make their decision on things  
8 other than race, right?

9 A Yes.

10 Q Okay. So is it your understanding, then, that *Gingles*  
11 requires a focus on the race of the candidates and not simply  
12 on the race of the voters?

13 A Both.

14 Q Both. Both. So you do believe that the *Gingles*  
15 preconditions require an analysis of the race of the  
16 candidates?

17 A Yes.

18 Q Okay.

19 A Again, I'm not speaking for any knowledge on legal term.  
20 It's my understanding.

21 Q Okay.

22 A I want to emphasize that.

23 Q But, again, just real quick. Black voters can vote in  
24 elections where both candidates are of one race, right?

25 A Yes. They do have choices when it's uni-racial, but that

1 choice is categorically different from the choice when they do  
2 face a white candidate against a black candidate.

3 Q You say categorically different. Do you mean it's  
4 categorically different because you assume that voters always  
5 prefer a candidate who shares their race?

6 A No. I did not make that assumption.

7 Q If voting remained polarized when both candidates on a  
8 ticket were of one race, would that indicate that something  
9 other than the race of the candidate was driving voting  
10 patterns in that election?

11 A If it's a uni-racial election, the racial cue is taken  
12 away from voters when they make decisions. There are many  
13 things that voters can consider, but not race.

14 Q So let's flip in your report over to Table 1 on page 7. I  
15 believe you looked at this table earlier with Mr. Rosborough.

16 MR. TAUNTON: Can we blow up that table?

17 BY MR. TAUNTON:

18 Q And if we look at the fifth and sixth -- you may have to  
19 count -- I have to count. I am not that good at math. You are  
20 probably better at it.

21 If we look at the fifth and sixth columns from the left  
22 titled Black Support For Black Candidates and White Support For  
23 Black Candidates, you include in parenthesis underneath that,  
24 95 percent C.I.; right?

25 A Yes.

1 Q And that's a reference to the confidence interval?

2 A Yes.

3 Q Okay. And then in the table itself, same -- we will stick  
4 with the same column, you report a percentage, so if we're  
5 taking a look at the Senate race in Senate District 2 for 2022,  
6 it says 63 percent underneath blacks for black candidates,  
7 right? Correct?

8 A Yes.

9 Q And then underneath that, there is a -- in parenthesis,  
10 you provide a range, correct?

11 A Correct.

12 Q And is that range the confidence interval?

13 A Yes.

14 Q And in brief, what does that mean?

15 A Confidence interval is a term used by statistics to refer  
16 to the probability of making right kind of inference. So 95  
17 confidence interval is 95 out of 100 times that it's an  
18 accurate estimation.

19 Q Okay. So -- so it means that 90 -- if we were to run this  
20 100 times, 95 percent of those results would fall in that  
21 range?

22 A Yes.

23 Q Okay. But that doesn't necessarily mean that the true  
24 value is the same as the reported percentage. So if we are  
25 taking a look at again Senate District 2 for 2022, you have

1 63 percent, correct?

2 A Yes.

3 Q But the confidence interval doesn't tell us that the  
4 correct answer is 63 percent, right?

5 A The 63 percent is what we call the best point estimate,  
6 meaning it is most likely single number that reflects the  
7 reality.

8 Q So then the -- but report underneath that is the  
9 confidence interval which gives us a range that falls on either  
10 side of that point estimate, right?

11 A Correct.

12 Q Okay. And the 95 percent confidence interval just tells  
13 us that somewhere in that range, 95 percent of the time that's  
14 where the true value is?

15 A Yes. Could be as low as the low point, as high as the  
16 high point, everything between. That's 95 confidence interval.

17 Q Now, when you conducted your racially-polarized voting  
18 analysis, and we can shorthand that RPV, right?

19 A Yes.

20 Q When you conducted your RPV analysis, you did that using a  
21 methodology called Ecological Inference, correct?

22 A Yes.

23 Q Now, would you agree with me that any inference  
24 methodology involves the introduction of some kind of an  
25 assumption, right?

1 A Yes.

2 Q Yeah. They can be valid assumptions, invalid assumptions,  
3 but when we say inference, that's sort of implied, right?

4 A When we say inference, we are talking about by using data  
5 to infer what's likely the true reality.

6 Q And so, yeah, another way of putting that was conducting  
7 an RPV analysis is not as simple as just reporting the results  
8 of past elections, right?

9 A Correct. It's an inference.

10 Q Okay. Now, when you're conducting a racially-polarized  
11 voting analysis, EI involves assumptions that similar racial  
12 groups will on average vote similarly, right?

13 A Could you repeat that question one more time?

14 Q What assumptions does EI involve about racial voting  
15 patterns?

16 A Oh. You are changing the question --

17 Q I did. I asked it a different way.

18 A Oh, okay. Could you repeat that last one you just asked?

19 Q So what assumptions does EI make concerning racial voting  
20 patterns?

21 A Oh, there are quite a few. For example, the data has to  
22 be distributed in certain way, and the parameters for the  
23 distribution is normally distributed. That's a pre-assumption.  
24 And also there is -- there's no other correlation between and  
25 among different precincts, and the assumption of EI also



1 includes that voters can vote at a different rate across  
2 different geographic units. So there are quite a few.

3 Q Is a way of sort of stating that, does EI assume that  
4 similar racial groups will vote similarly?

5 A Similar racial groups -- are you talking about say between  
6 two minority groups there are similar to each other? What do  
7 you mean similar groups?

8 Q So once we can -- that's fair.

9 Does EI involve -- does it make the assumption that a  
10 racial group will vote similarly?

11 A Actually, it's not. Because as I said, across different  
12 geographic unit, say, two precincts, one is located in the  
13 south, one is located in the north, they can vote very  
14 differently, even though the same racial group, say black group  
15 or white group in the north and south, they can vote  
16 differently.

17 Q Now, flipping to the reports that -- the elections you  
18 analyzed. Your initial report only analyzed three endogenous  
19 elections in the Huntsville area, right?

20 A Yes.

21 Q And I don't believe you analyzed any endogenous elections  
22 in Montgomery, correct?

23 A Yes. Correct.

24 Q Now, does the RPV analysis that you conducted in your  
25 opinion tell us anything about individual motivations, just

1 talking about your initial report?

2 A My initial report as I stated earlier is solely about  
3 whether or not one can establish empirically there's RPV, not  
4 of all motivations. So I didn't provide any opinion on that.

5 Q So if we look at Table 1 of your initial report on page 7,  
6 I think this is the same table we were just looking at -- this  
7 shows us the three endogenous biracial elections in the  
8 Huntsville area that you analyzed, right?

9 A Yes.

10 Q Okay. Let's look specifically at the Senate race that we  
11 were kind of discussing a second ago in Senate District 2 for  
12 2022, and that was between Kim Lewis and Tom Butler, right?

13 A Yes. Correct.

14 Q So in that fourth column, the percent of vote casts for  
15 black candidates it says, that means that Kim Lewis received  
16 44.4 percent of the total vote, correct?

17 A Yes.

18 Q Okay. And that's just data -- I presume that's data you  
19 got from the Alabama Secretary of State, right?

20 A That's from the data I received from the counsel's data  
21 team. I just simply aggregate all the precinct level results  
22 and make it the whole State Senate District 2. And that's the  
23 number I saw on my screen.

24 Q Okay. Fair enough.

25 So but that's reported -- that is actual reported election

1 results, right? That's not analysis -- additional analysis you  
2 conducted?

3 A It's automatic summation of all the data points in each  
4 precinct by simply aggregate them. So if you mean analysis by  
5 did I do any regression or EI, no, it's not. It's just simply  
6 --

7 Q That 44.4 percent isn't a number -- you didn't crunch math  
8 to come up to that number. That was reported results?

9 A Correct. It's simply a summation.

10 Q Okay. But then we do get to your analysis in the next two  
11 columns, right?

12 A Yes.

13 Q Okay. And we were talking just a minute ago about  
14 confidence intervals. So let's again look specifically at the  
15 Kim Lewis, Tom Butler race.

16 If I understand your testimony about the confidence  
17 intervals, this would mean that there's a possibility, right,  
18 that Kim Lewis may have received as much as 75 percent of the  
19 vote from black voters, correct?

20 A Again, the 63 is the point estimate. It's the most  
21 likely. And any confidence interval has this range. It can be  
22 as high as 75, as low as 52. 95 out of 100 times.

23 Q Is there anything reported here about, you know, where in  
24 that range the true value is most likely to have fallen?

25 A The true value fall exactly at the center, that is

1 63 percent.

2 Q Well, when you say the true value, I mean, we don't know  
3 that that's the true value, though, correct?

4 A Again, it's inference.

5 Q It could have been as high as 75 percent?

6 A Exactly.

7 Q And it could have been as low as 52 percent?

8 A Exactly.

9 Q Okay. And her white support, support from white voters  
10 could have been as high as 38 percent, right?

11 A Correct.

12 Q And as low as 12?

13 A Exactly.

14 Q Okay. Now, presuming for just a moment that 38 percent of  
15 white voters voted for Kim Lewis and 52 percent of black voters  
16 voted for Kim Lewis, would you still conclude, would you still  
17 conclude that this is racially-polarized voting?

18 A Yes.

19 Q Okay. So then just to be clear, RPV, what you're looking  
20 for is majorities, right?

21 A Yes.

22 Q Okay. All right. Now, if we look at the next row of this  
23 table. So Senate District 7 in 2022. This shows the results  
24 between the 2022 race and in Senate District 7 for Sam Givhan  
25 and Korey Wilson, correct?

1 A Yes.

2 Q And here same as above, your reporting, your projected  
3 percentages of both black and white who supported in this case  
4 Korey Wilson, right?

5 A Yes.

6 Q And this analysis showed RPV, right?

7 A Yes.

8 Q With white voters predominantly supporting the white  
9 candidate; is that right?

10 A Yes.

11 Q Who is Sam Givhan in this case, and black voters  
12 predominantly supporting the black candidate, who was Korey  
13 Wilson in this case?

14 A Correct.

15 Q Now, let's flip back in this report briefly to Figure 1 on  
16 page 5. And here -- actually, let's take a look just real  
17 quickly at the paragraph directly above that.

18 A Okay.

19 Q And you're analyzing this figure, right? You're analyzing  
20 the same race we just looked at, the 2022 election in Senate  
21 District 7?

22 A Right.

23 Q Okay. Now, let's look at the figure.

24 And so you're representing here -- with a graph, you're  
25 representing essentially the same election at least -- you're

1 representing the same election as what we looked at in the  
2 table, and here -- is that right?

3 A Yes.

4 Q Okay. And the red line represents black voters; is that  
5 correct?

6 A Yes.

7 Q And the green line represents white voters?

8 A Yes.

9 Q And the blue line -- okay, so this is a difference. The  
10 blue line here represents other minorities?

11 A Yes.

12 Q Okay.

13 A Nonwhite, nonblack.

14 Q Okay. And that wasn't represented in your earlier table,  
15 but we do have it broken down here, right?

16 A Right. So the EI algorithm produced results for white  
17 group, black group, and all others. And this is reflection  
18 visually --

19 Q And so these -- these curves, these lines on this table,  
20 is this representing the confidence interval?

21 A Not exactly. It's called density. Density chart.

22 Q Okay. But the outer boundaries of that, would they be  
23 roughly the same as the confidence level?

24 A Roughly the same. I'm sorry.

25 Q I will finish the question. And then --

1 A Okay. I apologize.

2 Q The outer boundaries of these lines, would they represent  
3 roughly the confidence interval that we were talking about  
4 earlier?

5 A Yes. So -- so the density chart is based on sampling. So  
6 the EI algorithm produced thousands and thousands of  
7 simulation. So one can specify a particular sample size. Say  
8 do 10,000 times of simulation. This is exactly the reflection  
9 of through the simulation how the sample is revealed.

10 Q Okay. So in the top box here, then, we have represented  
11 the votes for these three different racial or ethnic groups for  
12 Kim Lewis, right?

13 A Yes.

14 Q Korey Wilson. I'm sorry. And then we -- -- and that  
15 shows that a majority of black voters supported Korey Wilson?

16 A Yes. Correct.

17 Q And then in the middle box, we have a support for Sam  
18 Givhan, right?

19 A On the left, yes.

20 Q Well, right. So the middle box is showing how different  
21 --

22 A Oh, yes. You mean the middle. Now I understand your  
23 question. Yes. Correct.

24 Q Okay. Just so the record is clear, let me ask the  
25 question, and then you can respond.

1 A Yes.

2 Q So the middle box is showing how different racial groups  
3 voted for Sam Givhan, correct?

4 A Correct.

5 Q And this shows that a majority of white voters were  
6 supporting him, right?

7 A Yes.

8 Q Okay. And then in the bottom box, we have support for  
9 other candidates; is that right?

10 A Yeah. Writing -- the other -- the voters can write names  
11 other than Wilson and Givhan.

12 Q Okay. Right. So support for other candidates is  
13 represented --

14 A Yes.

15 Q -- in the bottom box?

16 A Yes. Correct.

17 Q And it shows that other minority groups other than black  
18 voters, other than white voters, other minorities primarily  
19 supported some third candidates; is that fair?

20 A Yeah. Overall you can see -- it's on the right side of  
21 this box at the bottom, but you do see the range of it -- it  
22 can be close to 50 percent or 100 percent.

23 Q Okay.

24 A So, in other words, it's a very uncertain estimation. And  
25 there's very wide range of possible values. But you are right,



1 the nonwhite, nonblack minority, which is a very small group,  
2 they, according to the EI estimation, tend to support this  
3 third-party candidate.

4 Q Okay. And the curve is broader, right? To your point,  
5 the curve is broader than it is for black voters or for white  
6 voters, right?

7 A Yes.

8 Q And that's because presumably we have fewer of them?

9 A Yes. Exactly. The sample size is too small for that  
10 group to allow EI to have a very precise estimation. The  
11 narrower one, the more precise estimation, the wider, the more  
12 uncertainty.

13 Q But nonetheless, you had enough minority, other minority  
14 voters in this analysis to come up with a range that they may  
15 have voted within, right?

16 A Yes.

17 Q Okay. And the majority at least -- potentially the  
18 significant or vast majority of these other minorities  
19 supported some candidate other than Sam Givhan or Korey Wilson?

20 A Yes. Correct.

21 Q Okay. Dr. Liu, was there a third candidate on the ballot  
22 in Senate District 7 in 2022?

23 A I don't recall. There's not such candidate.

24 Q Now, when you are conducting -- do you ever seek to verify  
25 your results?

1 A Yes. Every time. I verify -- like I said earlier whether  
2 the results according to the EI assumptions, is it possible  
3 that the data has any violation against the EI basic  
4 assumption. I always do that, yes.

5 Q So if you were seeking to verify the results of the -- of  
6 your analysis or the results -- start over.

7 If you were seeking to verify the election results for  
8 Senate District 7 in 2022, would you consider consulting the  
9 Secretary of State's results for that election?

10 A No.

11 Q Would you consult maybe Ballotpedia?

12 A No.

13 Q You wouldn't consult one of those to verify that you had  
14 the election results correct?

15 A No.

16 Q Okay.

17 A I rely on the data itself.

18 Q Let me ask this: When you say you rely on the data  
19 itself, what do you mean by that?

20 A So the data is in a structure that takes each precinct as  
21 a row. And the data has to be cleaned, verified by the data  
22 analytical team who works for the council. It's not my duty to  
23 verify whether that data is accurate based on the Secretary of  
24 State or whatever.

25 Q So again, I think I asked you a question about this at

1 your deposition in April.

2 A Yeah.

3 Q And I asked you what you would do to verify your data or  
4 your results. Do you recall any questions like that?

5 A Yes. Yes.

6 Q Do you recall that you may have told me that you would  
7 look at Ballotpedia?

8 A Yes. I look at the candidates who are in the race and  
9 roughly their background and stuff like that.

10 Q Do you look at the results?

11 A I mean, it's there. But again, it's not my duty to verify  
12 exactly whether that's in the data.

13 Q Do you look at who ran in a race?

14 A I look at simply who are the candidates and their racial  
15 identity according to, you know, Ballotpedia to see whether  
16 it's accurate.

17 Q Really come back to my core question here which is this:  
18 Do you recall whether there was a third candidate on the ballot  
19 in Senate District 7 in 2022?

20 A I don't recall.

21 Q I'd like to show you and see if it refreshes your  
22 recollection the Alabama Secretary of State's recorded results  
23 for Senate District 7 in 2022. And if you -- if we flip over  
24 -- this is these -- the certified results. If we look over on  
25 to page 2, do you see the reported results here for Senate

1 District 7 includes Korey Wilson and Sam Givhan?

2 A Yep.

3 Q Do you see a third party?

4 A There's a write-in.

5 Q So I will ask that question in a second. Do you see a  
6 third -- do you see any third candidate who was on the ballot  
7 and qualified for the election?

8 A No.

9 Q Okay. And you mentioned write-ins. How many write-in  
10 ballots were cast? Do you see that?

11 A Yeah. There's the third column write-ins.

12 Q And how many ballots was that?

13 A 52.

14 Q Out of how many total ballots?

15 A Here, about 30,000 for Sam Givhan, so 47 --

16 Q If I said a little more --

17 A I mean, it's less than 50,000 for sure.

18 Q If I said a little more than 46,000, would that seem about  
19 right?

20 A Yeah, yeah, yeah. Yep. Yeah.

21 Q So if we go back, then, to Figure 1 of your report, again,  
22 you reported here if we look at the bottom that the majority --  
23 and majority of other minority voters in this race, I guess  
24 cast in write-in ballots; is that right?

25 A That -- based on this chart, it seems to be the case.

1 Q Do you know what percentage of the Voting Age Population  
2 Senate District -- is other minority in Senate District 7?

3 A It's in the data I received from the analytical team for  
4 the counsel. So I don't know exactly the spot, what's the  
5 number.

6 Q Do you think it might be more than 52 people?

7 A I don't know.

8 Q Do you think that it might be a large enough Voting Age  
9 Population to cast more than one-tenth of a percent of votes in  
10 this election?

11 A Could you repeat the question, please?

12 Q I said: Do you think the other minority Voting Age  
13 Population in Senate District 7 might be large enough to cast  
14 more than one-tenth of 1 percent of the ballots in this  
15 election?

16 A This -- on the spot, I am not doing this quick  
17 calculation. But we already said earlier it's roughly 45,000  
18 people, voters, and then 25 is the number we had earlier. So  
19 25 divided by 45,000.

20 Q If I said that came to about --

21 A That's the proportion of the write-in vote ratio. I don't  
22 have the exact number for the other minorities. I have no  
23 obviously clear memory at this point about what's the number of  
24 other category.

25 Q Do you have any -- any idea whether it might be more than

1 52 people?

2 A I don't know. I mean, again, the data is not in front of  
3 me. So I cannot give you the number.

4 Q Just to be clear, again, looking at this Figure 1, you  
5 report here you reported that black voters voted for the black  
6 candidate, correct?

7 A Yes.

8 Q And that white voters voted for the white candidate,  
9 correct?

10 A Yes.

11 Q And that other minorities voted for some other unknown  
12 person, correct?

13 A Write-in, yes.

14 Q Okay. So, Dr. Liu, I have to ask: Did your analysis  
15 using EI have a hidden built-in assumption that racial groups  
16 would always tend to prefer candidates of their own racial  
17 group?

18 A No. There's no such assumption.

19 Q Let's go to your rebuttal report real quickly.

20 So you just answered my last question no. But in your  
21 initial report, you only analyzed biracial elections, correct?

22 A Correct.

23 Q Now, in your rebuttal report, you did analyze a few races  
24 that were not biracial, correct?

25 A Yes. In responding to Dr. Bonneau's report, yes.

1 Q And when did you that, you found that black voters then  
2 voted predominantly for Republicans, right?

3 A In that particular scenario, given the data from  
4 Dr. Bonneau, yes.

5 Q Right. So let's take a look real quick at Table 1 on page  
6 7 of your rebuttal report. Just real quick about this: This  
7 is an analysis you conducted of district -- Senate Districts  
8 12, 21, and 29 in the 2022 election, right?

9 A Yes.

10 MR. ROSBOROUGH: Objection -- oh.

11 BY MR. TAUNTON:

12 Q Are these -- your testimony earlier was unclear. Are  
13 these considered endogenous elections?

14 A These are for the elections that deal with the State  
15 Senate districts, so they are endogenous. This table is  
16 biracial, so that fits into that. The county-level data that  
17 Dr. Bonneau has is not necessarily for the electoral offices  
18 under dispute.

19 Q Yeah. You pointed out -- I have got the wrong table up.  
20 We need to look at Table 2.

21 So it may have been his objection.

22 So real quick. And this is just maybe a question for my  
23 own education, maybe it's helpful to the Court, too.

24 When you say endogenous elections, do you mean just State  
25 Senate elections, or do you mean specifically State Senate

1 elections in the contested areas?

2 A Yes. In the contested areas.

3 Q Okay. Now, Senate Districts 21 -- 12, 21, and 29 are not  
4 in the contested areas, correct?

5 A Correct.

6 Q Okay. So these are not truly endogenous elections?

7 A Right. According to my data selection standard.

8 Q Okay.

9 A Yes.

10 Q Now, in Table 2, you're analyzing non-biracial elections  
11 that featured a contest with a Republican and a Democrat,  
12 right?

13 A Yes.

14 Q Okay. And if we look at this table, you averaged your  
15 results across those three elections, right?

16 A Well, it's not I averaged. It's the districts that in  
17 Dr. Bonneau's table that fall into this non-biracial elections  
18 criteria. So I didn't do average. I simply combined them into  
19 the same, yes.

20 Q Okay. Fair enough. So it's aggregated though across the  
21 three?

22 A Exactly. Exactly.

23 Q Okay. And you report here that in these -- let me back  
24 up.

25 These are the only non-biracial elections you analyzed in



1 either your initial report or your rebuttal report; is that  
2 right?

3 A To my memory, yes.

4 Q Okay. So the only time that you removed -- the only time  
5 you looked at uni-racial elections, you found here that black  
6 voters supported the Republican candidate between 72.1 to  
7 77.7 percent; is that right?

8 A Yes.

9 Q Okay. Is that an unusual result to you?

10 A Well, it appears to be unusual, because obviously, the  
11 black candidates win more than majority black support. Again,  
12 this is from Dr. Bonneau's own data. I simply used his data to  
13 try to verify his claim that a party is a factor of race. It's  
14 not a factor.

15 So by using his data, I run the EI method I stated  
16 earlier. And this is the result. I simply faithfully report  
17 the results based on his data.

18 Now, I also acknowledged in my report that his data is  
19 very questionable to begin with. County-level data that may  
20 produce double counting problem, too big compared to some  
21 Senate districts, and so on and so forth. It's not  
22 precinct-level data that we use typically in courts for a  
23 voting rights litigation.

24 But anyway, I run his data. This is the result. Indeed  
25 it appears to be contrary to the usual patterns we see in our

1 own research, but it can -- let's just say it can be true, too,  
2 because sometimes voters, especially black voters, when they  
3 see that the Democratic party's candidate is not from their own  
4 racial group, so black Democrats may just stay home and they  
5 don't participate as much because they assume that Republican  
6 candidates will win, so they don't participate. And what's  
7 left is the Republican black voters that participated.

8       So this estimation may be a reflection of that.  
9 Obviously, there's no way for us to check whether that's indeed  
10 the case because the data itself can be questioned. So either  
11 way, Dr. Bonneau didn't provide any evidence by using his  
12 dataset to explain that all of a sudden race doesn't matter any  
13 more.

14 Q     So a couple follow-up questions on that. Real quick, just  
15 when we were looking earlier at the other minority voters in  
16 Senate District 7 in 2022, you indicated that the sort of wide  
17 confidence interval could be because we don't have that many  
18 votes, right?

19 A     Yeah.

20 Q     But here in Table 2, you have relatively tight confidence  
21 intervals for black voters, correct?

22 A     Yes.

23 Q     And does that indicate that, in fact, a number of black  
24 voters did vote in these elections?

25 A     Again, this is simply based on the EI result. I don't

1 know. Maybe indeed they -- the -- like I said, those wide  
2 range is based on the simulation process, which allow  
3 researchers to simulate election results 10,000 times, let's  
4 just say. It just happened to be wide in that simulation. In  
5 this, it's much closer.

6 And the EI just simply calculated what is likely the  
7 confidence interval.

8 Q Now, you indicated that you find these results may be a  
9 little unusual yourself. And you pointed, I believe a couple  
10 of times to, well, it may be a data issue, right?

11 A Well, I already said in my report Dr. Bonneau uses this  
12 questionable dataset, and he produced his analysis based on  
13 these counties that don't match State Senate districts.

14 Q Isn't it --

15 A So it's questionable. I -- again, I cannot speak for him.

16 Q Isn't it also a possibility that there's a problem with  
17 the calculation?

18 A It's a -- I mean, the EI method only takes whatever you  
19 give it to the method itself. The EI just faithfully uses  
20 algorithm and give you the result. So if the data is very  
21 questionable, the EI just run the result and give you the  
22 result.

23 Q So that's an interesting point. You said there, you know,  
24 you put the data in, and it runs you the results. So when you  
25 are conducting EI, is that something you are conducting by

1 hand?

2 A No. It's all by software program called EI.

3 Q And so really what the analysis that you are conducting  
4 here is you're running --

5 A Yes.

6 Q -- running a software, right?

7 A Yes.

8 Q And then --

9 A Correct.

10 Q -- you are reporting the results here?

11 A Exactly.

12 Q Okay. Now, let's talk about partisanship for a minute  
13 since we have just touched on this.

14 Let's flip back to your initial report for a minute.

15 We can go to page 7 and Table 1. But I'll just ask you  
16 this. Maybe we can shorten this a little bit.

17 Of the biracial elections that you analyzed in your  
18 initial expert report talking specifically about black  
19 candidates in those elections, the black candidates that you  
20 analyzed in those elections, how many of them were Democrats?

21 A All of them.

22 Q And of the biracial elections that you analyzed in your  
23 initial expert report, talking specifically now about the white  
24 candidates in those elections, how many of them were  
25 Republicans?

1 A All of them.

2 Q Okay. So you found racially-polarized voting in every  
3 single biracial elections that you analyzed, but in the only  
4 three non-biracial elections you analyzed, you didn't find  
5 racially-polarized voting, correct?

6 A Yes.

7 Q Okay. Again, Dr. Liu, I just have to ask: Does the RPV  
8 analysis or the EI software that you used have a hidden  
9 built-in assumption that racial groups will always tend to  
10 prefer candidates of their own racial group?

11 A No, not at all.

12 Q Let's go very briefly to your effectiveness analysis  
13 beginning on page 12 of your initial report.

14 Did you analyze whether a district, say Senate District 7  
15 could reliably elect a black-preferred candidate with less than  
16 50 percent Black Voting Age Population?

17 A Could you repeat that -- did I verify?

18 Q Did you analyze that? Did you look at whether or not a  
19 district could be drawn in the Huntsville area that would elect  
20 a black-preferred candidate at less than 50 percent Black  
21 Voting Age Population?

22 A Well, if you are asking my question -- if you are asking  
23 question about my effectiveness analysis, did I verify  
24 particular 50 percent or less, the answer is no. I simply  
25 looked at how the districts performed with a given plan.

1           So not specifically whether district that is less than  
2 50 percent Black Voting Age Population performed. That's not  
3 my question.

4 Q     Okay. You didn't analyze that, that wasn't something you  
5 looked at?

6 A     I analyzed whatever the districts based on the given plan  
7 for either elected plan or the illustrative plan, whatever that  
8 plan shows the RPV and final vote tally, that's all I did.

9 Q     If you conducted an effectiveness analysis on a district  
10 that had, say, 35 percent Black Voting Age Population, but it  
11 consistently elected the black-preferred candidate, would that  
12 have any impact on the way you thought about your  
13 racially-polarized voting analysis?

14 A     You are asking a very interesting hypothetical question.  
15 Obviously, I don't report to the Court based on any  
16 hypothetical situation, because they don't represent a reality.

17           I'm given the two plans. I simply look at the  
18 configuration and put the 11 elections, statewide election  
19 results into the configuration of those plans and give the  
20 results. That's all I did.

21 Q     All right. Let's turn, honest to goodness this time, to  
22 your rebuttal report, Plaintiffs' Exhibit 18.

23           Let's talk briefly -- actually --

24           MR. TAUNTON: Your Honor, I don't think that earlier  
25 Defendant's Exhibit 5, 9, or 1 or 7, I think all of them were

1 shown to the witness. I think he was asked questions about  
2 them, but I don't think they were introduced.

3 THE COURT: So all I have that I have admitted are  
4 Plaintiffs' 17, 16, and 18.

5 MR. TAUNTON: So I would ask just based on the prior  
6 testimony that we go ahead and introduce Defendant's Exhibit 5,  
7 9, 1, and 7.

8 THE COURT: All right. Defendant's 5, 9, 1, and 7.  
9 Any objection to their admission?

10 MR. ROSBOROUGH: No objection, Your Honor.

11 THE COURT: All right. They're admitted.

12 (Defense Exhibit 5 admitted in evidence.)

13 (Defense Exhibit 9 admitted in evidence.)

14 (Defense Exhibit 1 admitted in evidence.)

15 (Defense Exhibit 7 admitted in evidence.)

16 BY MR. TAUNTON:

17 Q First, let's discuss your critiques of Dr. Hood's report,  
18 page 2 of your rebuttal. I am really only going to have a few  
19 questions for you about this.

20 And I really actually only have one question concerning  
21 your critique of Dr. Hood. You understand that Dr. Hood did  
22 not conduct a racially-polarized voting analysis, correct?

23 A Yes. That's what I indicated in my report.

24 Q Okay. Is it fair to say -- I think that your fundamental  
25 -- well, one of your fundamental critiques of Dr. Hood is you

1 don't understand how it is relevant, how his analysis is  
2 relevant to this case?

3 A I indicated that he brought in a lot of statistics that  
4 are not related to the two districts under dispute. So -- and  
5 he didn't do RPV analysis. So that's why I made that  
6 indication in my rebuttal report.

7 Q And it's your opinion that he should have conducted a  
8 racially-polarized voting analysis?

9 A It's based on everybody's -- I mean, to my knowledge --  
10 again, I cannot speak for everybody. But to my knowledge,  
11 experts witness in Section 2 litigations, at least you provide  
12 RPV analysis. That's indeed well-known fact. But I cannot  
13 speak for Dr. Hood why he did that. I just think that most, if  
14 not all, have performed RPV analysis.

15 Q And, again, you're not testifying as a legal expert in  
16 this case, right?

17 A No.

18 Q And so ultimately questions about, you know, what is  
19 legally relevant to this case, you are not offering any  
20 testimony on that?

21 A I am not here to offer any legal opinion.

22 Q Okay.

23 A Whatsoever.

24 Q Turning to your critiques of Dr. Reilly's report, do you  
25 dispute that your findings of racially-polarized voting in the



1 Huntsville and Montgomery regions could be caused by multiple  
2 factors?

3 A Could you please repeat the question?

4 Q Do you dispute that your findings of racially-polarized  
5 voting in the Huntsville and Montgomery regions could be caused  
6 by multiple factors?

7 A I am not disputing that.

8 Q Turning to your critique of Dr. Bonneau.

9 You critiqued him for not conducting an Ecological  
10 Inference analysis to measure the extent to which black voters  
11 voted for Democratic candidates, right?

12 MR. ROSBOROUGH: Objection. I think that  
13 mischaracterizes prior testimony.

14 THE COURT: I think he can say so if that's right.  
15 You can answer.

16 THE WITNESS: I disputed Dr. Bonneau's report by using  
17 the straight party ticket voting to make his point that it is  
18 political parties that play a role for the existence of RPV. I  
19 dispute that.

20 BY MR. TAUNTON:

21 Q I understand you had that critique. But did you also  
22 critique him, and we can turn to it, page 4 of your report,  
23 rebuttal report, the second paragraph of your critique of  
24 Dr. Bonneau, you critique him for conducting no Ecological  
25 Inference analysis to measure to the extent to which black

1 voters voted for Democratic candidates; is that right?

2 A Yes.

3 Q Okay. Now, is it your -- do you believe it was necessary  
4 for him to conduct such an analysis in this case?

5 MR. ROSBOROUGH: Objection. Vague.

6 THE WITNESS: Do I believe he conducted -- could you  
7 repeat?

8 BY MR. TAUNTON:

9 Q I said: Do you believe it was necessary for him to  
10 conduct such an analysis?

11 THE COURT: You may answer.

12 THE WITNESS: I may answer?

13 Oh, yes. I think it's our duty as experts for Section  
14 2 cases to at least show whether or not *Gingles*' second and  
15 third conditions are satisfied. Therefore, RPV analysis is  
16 essential.

17 BY MR. TAUNTON:

18 Q Okay.

19 A Yeah.

20 Q And, again, that's based on your understanding?

21 A That's my understanding.

22 Q Of the *Gingles* preconditions?

23 A Yes.

24 Q Okay.

25 A As RPV scholars -- if I can add that. Obviously, there

1 are other scholars, qualitative scholar, history scholar, they  
2 are not supposed to do RPV analysis. But like Dr. Bonneau,  
3 like me, we are quantitative scholar that analyze real voting  
4 patterns. I believe it's our duty to do RPV analysis.

5 Q In your rebuttal, you critiqued Dr. Bonneau's analysis of  
6 straight ticket voting, in part, by suggesting that straight  
7 ticket voting has been an increasingly Republican phenomenon;  
8 is that right?

9 A Yes. By using, again, his own data. I showed two figures  
10 that reflect that -- that statement that I made.

11 Q And I presume that that's based on Table 1 from  
12 Dr. Bonneau's report is that -- let me do this: Before I ask  
13 you questions, let's go to Dr. Bonneau's report, Defendant's  
14 Exhibit 1, page 4, Table 1.

15 And so that critique, the critique that straight ticket  
16 voting has been an increasing Republican phenomenon, is that  
17 based on the results he reports in this table?

18 A No. It's based on his data. I simply used his data. I  
19 even mentioned what is the dataset's name that I relied on  
20 directly from him. I run simply his data to show Figure 1 and  
21 Figure 2.

22 Q Okay. So we will take a look at Figure 1 in a second.  
23 But if we take a look at Table 1 from Dr. Bonneau's report,  
24 this reports that in 2018, 26.8 percent of ballots were cast  
25 straight ticket for Democrat; is that right?

1 A Yes.

2 Q Okay. Now, does that mean -- do you understand that to  
3 mean that 26.8 percent of people who voted for Democrats voted  
4 by straight ticket or --

5 A I'm not responding to this table. Again, I am not here to  
6 testify what he means. So I'm just using his data to run the  
7 two figures. At the county level, you see the decline.

8 Q I understand. But this is his data, right? We're looking  
9 at his data here, right?

10 A Right.

11 Q Okay. So do you understand when he says 26.8 percent  
12 straight ticket Democrat, do you understand that to be  
13 26.8 percent of people who voted for Democrats voted straight  
14 ticket Democrat, or do you understand that to mean 26.8 percent  
15 of all ballots cast were straight ticket Democrat?

16 A I don't know. Again, I'm not responding to this table.  
17 You have to ask him what he means.

18 Q So you don't know, then, when you say looking at this  
19 table, you -- if you are relying on this table, you would not  
20 say that straight ticket voting is an increasingly Republican  
21 phenomenon based on this table?

22 A Well, this table simply has this final column which has  
23 this heading percent straight Democrat. One can -- as you  
24 said, it could be meaning 26.8 percent of the Democrats that  
25 cast their vote, or among the straight ticket voters, there are

1 26.8 percent Democrat. I don't know.

2 Q So he supplies here in the first -- well, really the  
3 second column, he says total ballots cast, right?

4 A Yes.

5 Q Do you understand that to be a --

6 A Right.

7 Q -- do you understand that to be a report of all ballots  
8 cast in the election in 2018?

9 A Yeah. Again, I give it -- it's his number, so whatever it  
10 says, so...

11 Q That's fine. We're looking at his data?

12 A Yes.

13 Q But do you understand him to be reporting here that 1. --  
14 a little more than 1.7 million ballots were cast in 2018?

15 A Correct.

16 Q Okay. Now, if I were to divide 462,065 votes, and then I  
17 were to divide that by the total number of ballots cast, do you  
18 think I might come up with a number that's about 26.8 percent?

19 A Again, I mean, I'm not calculating here. I don't have a  
20 calculator here. So whatever you say, I take it.

21 Q If I told you that was correct, would that sound about  
22 right?

23 A Again, I'm not responding to this Table 1. I'm using his  
24 data to calculate exactly in those counties what happened.

25 So this is the overall, saying that he put here, I take it

1 all these calculations are correct.

2 It looks pretty -- pretty good to me in my --

3 Q Okay. And then we see -- so, assuming that's correct --  
4 really, I'm trying to get to a different question here.

5 Assuming that's correct, we see that there are fewer  
6 ballots being cast by percentage, there are fewer ballots being  
7 cast straight ticket Democrat in 2020 and 2022 than there were  
8 in 2018, correct?

9 A Well, in terms of percentage. But the total number is  
10 increased for the straight Democrat to 596,786.

11 Q Correct. And but a smaller percentage?

12 A Right.

13 Q Of total ballots cast?

14 A Right.

15 Q But higher number of ballots actually being cast in 2020?

16 A Right.

17 Q Which was a presidential election year, right?

18 A Yes. Correct.

19 Q Given that what he's reporting here, 26.8 percent is 25.6  
20 percent, 21 percent that that is of all ballots cast?

21 A Yes.

22 Q Is it possible -- is it possible that, in fact, what we're  
23 seeing here is just fewer ballots being cast for Democrats by  
24 percentage?

25 A I don't get your question. Could you repeat it?

1 Q Let me ask it this way: Is it possible that while the  
2 percentage of total ballots cast straight Democrat, while that  
3 decreased, the percentage of straight tickets -- straight  
4 ticket ballots cast for Democrats is actually a higher  
5 percentage of ballots cast for Democrats?

6 A There are multiple parts of your hypothetical situation.

7 So I'm not sure I complete follow your question. But as I  
8 said --

9 Q I can rephrase it.

10 A Yeah. I mean, these are numbers, which is clear that a  
11 total number of straight Democrat here in 2020, that's 596,000.  
12 That's obviously bigger than the 2018 number that is at  
13 462,000. But the total percent straight Democrat in the final  
14 column, that's declined.

15 I mean, I'm trying to get your question, but I don't know  
16 whether I am following you.

17 Q I probably didn't ask it very well. Let me just ask a  
18 simpler question this way: This data does not tell us the  
19 percentage of Democratic straight ticket ballots cast compared  
20 to the total number of Democratic ballots cast, does it?

21 A Again, I can do this verification by putting these numbers  
22 in my calculator to see what's exactly. But just given the  
23 face value, I think it's possible, like you said.

24 Q Okay. And so the shrinking percentage of Democratic  
25 straight ticket ballots cast between 2018 to 2022 compared to

1 all ballots cast could be explained by fewer Democratic votes  
2 being cast in the state, correct?

3 A Again, I don't have calculator here. I take it it's  
4 possible.

5 Q Okay. And that would be true -- let's go real quick back  
6 to your rebuttal report, you reference it a few times, to page  
7 5, Table 1.

8 And, here, you conducted your own analysis based on  
9 Dr. Bonneau's --

10 A Exactly.

11 Q -- data, correct?

12 A Yes. I wanted to look at these counties simply. I just  
13 simply look at these counties based on his numbers.

14 Q But you're reporting here Democratic straight ticket  
15 voting, right?

16 A Yes.

17 Q And you show a decrease by percentage?

18 A Yes.

19 Q Question I believe I asked you in your deposition is:  
20 What is your denominator here? Is it all votes cast for  
21 Democrats, or is it all votes cast?

22 A There are those numbers in his data. I don't recall the  
23 exact column. I simply do math 101. I mean, there's no  
24 statistical assumption whatsoever. I don't recall the exact  
25 denominators, column, name.



1 Q I'm not --

2 A Numerator. I don't remember that.

3 Q I am not asking for an exact number or anything like that.

4 A Right.

5 Q I'm just asking: Is this reporting Democratic straight  
6 ticket voting compared to all ballots cast in the election?

7 A I don't recall on the spot exactly what calculation I did.  
8 I can certainly go back home and get the dataset and get the  
9 column name and tell you exactly how I calculated. I just  
10 don't remember. It's from this table for sure.

11 Q Okay. So I guess coming back to maybe the original point.  
12 When you say that straight ticket voting is an increasingly  
13 Republican phenomenon, you can't put that in the context of  
14 whether that compared to all votes, or whether that's votes  
15 cast for Democrats?

16 A Again, I'm just using his data and calculated the  
17 percentage of Democratic that cast particular voting. This is  
18 the result. And it's declined for the Democrats.

19 So my main critique of his report is actually he can  
20 simply do a racial breakdown in terms of black Democrats, white  
21 Democrats, black Republican, white Republican, and then do  
22 control comparison. And that way we can indeed see whether  
23 straight ticket voting reflect the party become much more  
24 important as opposed to race.

25 What he did was simply get some tally of the straight

1 ticket voting at county level and then state level making claim  
2 that, look, most people already vote straight ticket. That, to  
3 me, is not a scientific way to demonstrate how race should be  
4 compared to party in scientific study. So that's all I'm  
5 criticizing here.

6 Q Thank you, Dr. Liu. I'm not sure that was responsive at  
7 all to my question. But I will go back and ask this question  
8 again. And, again, we can look at your deposition if it would  
9 be helpful and would refresh your recollection.

10 But do you think that -- try to make this point -- that  
11 the denominator you used for conducting this analysis was all  
12 votes cast, not all votes cast for Democrats?

13 A I have to go back home and check --

14 Q Okay. That's fine.

15 A -- to find the exact answer.

16 Q We can do that.

17 If we go to page 262 of your deposition in April, which is  
18 in volume 2, because we lost our court reporter. And it was  
19 late in the day. And we were talking a lot back and forth.  
20 But I asked the question, I asked the question beginning at  
21 line 17: My question is this, very simple question: I'm just  
22 curious about what your denominator is. We're talking about  
23 Figure 1.

24 Then if we look at page 263, and we can read your whole  
25 answer if you would like. But beginning at line 7, do you say

1 here, for instance, Figure 1, I just simply used his data in  
2 the Excel sheet for these -- in counties Huntsville or even in  
3 terms of Democratic straight ticket vote -- straight ticket  
4 ratio among all votes cast. All votes cast. Does that sound  
5 right?

6 A Yes.

7 Q Okay. So you think that the analysis you were conducting  
8 was not an analysis of the percentage of Democrats who vote by  
9 straight ticket; instead it was analysis of the percentage of  
10 straight ticket Democrat votes compared to all votes; is that  
11 right?

12 A Which line are you reading on this? Because you were --

13 Q I looked at line 7.

14 A Yeah. Line 7, I said I just simply used his data in his  
15 Excel sheet.

16 Q Okay. That's not my question, though. My question is  
17 about the denominator, what you did with that data. What was  
18 the denominator. And if you look down in line 11, do you  
19 indicate that it was all votes cast?

20 A Line 11? I don't see line 11. Oh.

21 Q Line 11. Oh, it may look like it says 1. I think it's  
22 highlighted for you. I think it's partially cut off.

23 A What's your question, please, one more time.

24 Q My question was: So the -- if we go back to Figure 1 --  
25 can do that -- if we go back to Figure 1, the analysis that you

1 were conducting was an analysis of the percentage of votes cast  
2 by straight ticket Democrat compared to all votes cast in those  
3 elections; is that right?

4 A Again, I don't recall on the spot what exactly columns in  
5 his table that I used. I have to go back and check in detail  
6 and give you the exact column. And then to say the two -- to  
7 let you know whether it's total votes cast or not.

8 Q All right. Let's turn to Table 3 of your rebuttal report  
9 on page 9.

10 And here you were analyzing certain mayoral races in  
11 Montgomery and then one in Decatur, correct?

12 A Yes.

13 Q Okay. And the two Montgomery mayoral races, one was in  
14 2019, and one was 2023, right?

15 A Yes.

16 Q And those are off years for elections, right?

17 A Those --

18 Q Those are off years for elections, right?

19 A Yeah.

20 Q There's no federal election that fell in -- unless it was  
21 a special election, there's no federal election that fell in  
22 2019 or 2023, right?

23 A These are mayor elections.

24 Q Right.

25 A Yeah. They are in the region under dispute, yes.

1 Q So what was the turnout in these races?

2 A I don't remember. I can give you the numbers if you want.

3 Q You don't report the numbers here?

4 A No.

5 Q Okay. Do you remember what numbers were? Any idea? Do  
6 you have any idea what the numbers were?

7 A I don't remember. The Ecological Inference software  
8 program that I run called EI automatically calculate turnout  
9 for both racial groups as well.

10 Q Was that something that was important to you to determine  
11 whether or not there was a high turnout in these races?

12 A Yes. I took a look at first to see whether it's at least  
13 sizeable.

14 Q Okay. Dr. Bonneau, this may be my last question. What is  
15 one-third of 75?

16 A I'm sorry. I couldn't hear clear. Did you say  
17 Dr. Bonneau?

18 Q I'm sorry. I probably did say that, and I apologize for  
19 that.

20 Dr. Liu, what is one-third of 75?

21 A 25 percent.

22 Q Okay.

23 MR. TAUNTON: Your Honor, may I consult for just a  
24 moment?

25 THE COURT: You may.

1 MR. TAUNTON: All right. Just a few more questions.

2 BY MR. TAUNTON:

3 Q Dr. Liu, when you were conducting RPV analysis, you are  
4 looking for whether a majority of a racial group supports a  
5 political candidate, right?

6 A Yes.

7 Q Okay. What if you get a point estimate of -- a point  
8 estimate of 51 percent, are you willing to conclude that there  
9 is majority support for that candidate based on the point  
10 estimate of 51 percent?

11 A Thank you for that great question. Let me explain.

12 51 percent obviously is a good number that satisfied  
13 majority, okay? But in reality, 51 percent is a number we  
14 don't see at all. Why? Because when we have a 51 percent  
15 point estimation based on the EI algorithm, as we said earlier,  
16 there is also uncertainty estimation meaning 95 percent  
17 confidence interval. And that 95 confidence interval can go  
18 below 51 percent easily, because it's very close to 50 percent.

19 So in that situation, the uncertainty will tell me that my  
20 estimation is very questionable to assert that it is already a  
21 majority support.

22 So usually the uncertainty estimation let me correct my  
23 initial finding that there is a majority support for a given  
24 candidate.

25 Q So if the confidence interval then fell below 50 percent,

1 would you be willing to conclude that racially-polarized voting  
2 existed?

3 A I would faithfully report that even though the number is  
4 51 percent, but uncertainty made it below 50 percent, I don't  
5 have sufficient empirical evidence to conclude that is racially  
6 polarized.

7 MR. TAUNTON: Your Honor, I don't have anymore  
8 questions.

9 THE COURT: All right. Is there any redirect?

10 MR. ROSBOROUGH: Your Honor, plaintiffs have no  
11 redirect.

12 THE COURT: All right. I have a few questions for the  
13 witness, but I do not want to proceed with my questions if the  
14 lawyers would prefer that I not.

15 So, Mr. Taunton for the state, do the lawyers have any  
16 objections to me asking questions?

17 MR. TAUNTON: Not at all.

18 THE COURT: Okay. Mr. Rosborough?

19 MR. ROSBOROUGH: No objections, Your Honor.

20 THE COURT: Okay. All right.

21 Dr. Liu, I have a few questions. I am going to ask you to  
22 wait just a second after my question so that if any of the  
23 lawyers have objections to my question, they can make  
24 objections to my question. And I would encourage the lawyers  
25 to make objections to my question if they're objectionable.

1 And I will also share with you that I, of course, was not  
2 present at your deposition and I have not reviewed a copy of  
3 it. So I may ask questions about matters that were discussed  
4 in your deposition, and if so, if you need to look at a copy of  
5 it or you want to tell me that, that's fine.

6 THE WITNESS: Okay.

7 THE COURT: But I think some of my questions may seem  
8 very fundamental or basic to you, and I want to share that it's  
9 probably because I don't have a copy of your deposition.

10 EXAMINATION BY THE COURT

11 Q All right. So the first question -- and I may need help  
12 on the tables, please. If somebody could pull up Table 3 in  
13 Dr. Liu's original report.

14 Okay. Dr. Liu, tell me how you -- how it is that you --  
15 hang on. There we go. All right. Help me understand -- we  
16 lost it. Great. There it is -- how you determined the  
17 information in the cells in this table?

18 A Oh, yeah. Information regarding the elections, Your  
19 Honor, you're asking?

20 Q Well, the elections and the candidates.

21 A Yes. So I follow the standards of using biracial  
22 elections first. So it has to have a white candidate and a  
23 black candidate.

24 Q Okay.

25 A That's a criteria I follow. And in this table, I looked



1 at the region that is under dispute. So Montgomery. So I also  
2 looked at the biracial elections that take place in the  
3 Montgomery region. In this particular case, the Senate  
4 District 25 and the Senate District 26.

5 So what I did was to use only the data in my spreadsheet  
6 that concerned rows for SD25 and SD26 in these 11 statewide  
7 elections involving a black candidate and a white candidate.

8 Q All right. I noticed that the header says black, I think  
9 it's abbreviated, but black-preferred candidate.

10 A Yes.

11 Q And white-preferred candidate.

12 A Yes.

13 Q It's obvious enough to me how you decided who the black  
14 candidate was and who the white candidate was. How did you  
15 decide who the black-preferred candidate was and the white  
16 preferred candidate was?

17 A Thank you, Your Honor. This is a great question.

18 I used this heading because I already run the RPV, and I  
19 found that black preferred this particular candidate because  
20 the majority of the black voters voted for this particular  
21 candidate. So I simply put this candidate's name there in this  
22 column.

23 THE COURT: All right. And then Bradley Byrne is in  
24 one of the columns, but that must be a typographical error.  
25 Has there been any effort to check that? Does a lawyer want to

1 comment on that?

2 MR. ROSBOROUGH: I think that came up at the  
3 deposition. It was the wrong name in there.

4 THE WITNESS: Oh, yeah. That's the wrong name. Now I  
5 remember this. Sorry.

6 THE COURT: Okay.

7 THE WITNESS: It was the wrong name there, yes.  
8 Right.

9 THE COURT: All right.

10 BY THE COURT:

11 Q Because you have analyzed only biracial elections, does  
12 the analysis that you have performed ever have the ability to  
13 label a white candidate as a black-preferred candidate?

14 A Yes. In my practice as expert witness, sometimes I do see  
15 that, but not in this case.

16 Q Because there were black candidates and white candidates  
17 in all of the elections you analyzed in this table?

18 A May I ask you to repeat the question?

19 Q So this table includes only biracial elections?

20 A Yes.

21 Q And you found that in every biracial election, the  
22 black-preferred candidate was a black candidate?

23 A Yes.

24 Q All right. You were asked several questions about a  
25 hidden built-in assumption. Do you remember those?

1 A Yes. If I recall correctly, I was asked whether  
2 Ecological Inference method developed by professor Gary King of  
3 Harvard University has this built-in assumption that voters  
4 only vote candidates for their own racial group candidate. The  
5 answer is no. EI doesn't make any assumption. EI simply asks  
6 what's the data at the precinct level and then calculate for  
7 each group which one is the majority winner.

8 So it doesn't have any assumption whatsoever.

9 Q And I understood your answer about EI.

10 A Yeah.

11 Q I'm asking a question about your dataset in this case.

12 A Okay.

13 Q So is the fact that you opined that in all of your  
14 observations the black-preferred candidate was a black  
15 candidate --

16 A Yes.

17 Q -- the product of the 11 biracial elections you observed  
18 rather than being a hidden assumption of EI?

19 A Yes. Thank you, Your Honor. That's a great question.

20 I didn't make that assumption. It's simply the results  
21 that show that. That's why I provide opinion.

22 The black-preferred candidates are indeed black  
23 candidates. Black voters prefer them rather than white  
24 candidates.

25 Q All right.

1 A That's based on the findings.

2 Q Okay.

3 MR. ROSBOROUGH: Your Honor, can I just ask maybe one  
4 question that might help clarify a little bit?

5 THE COURT: That would be great.

6 REDIRECT EXAMINATION

7 BY MR. ROSBOROUGH:

8 Q Dr. Liu, can you explain to the Court whether you ran your  
9 racially-polarized voting analysis before or after you created  
10 this table?

11 A After.

12 Q Okay. And so when you created the column headers here,  
13 can you explain whether -- to what degree you already had an  
14 understanding of what the data reflected about  
15 racially-preferred candidates?

16 A Yeah. So I did have these headings. I simply fill in the  
17 names based on whatever the EI results showed. So when I fill  
18 in these cells for specifically Table 3, I had no  
19 pre-assumption whatsoever.

20 Q And one more follow-up perhaps.

21 Dr. Liu, using -- analyzing biracial elections, can you  
22 explain whether it's possible that a black-preferred candidate  
23 was indeed a white candidate?

24 A Could you repeat that?

25 Q Sure. In analyzing biracial elections --

1 A Right.

2 Q -- is it possible for the results of your EI analysis to  
3 show that the black-preferred candidate is indeed a white  
4 candidate?

5 A Yes. It's possible.

6 Q And are -- and have you --

7 MR. ROSBOROUGH: I'll leave it there.

8 THE COURT: All right.

9 MR. ROSBOROUGH: Thank you.

10 MR. TAUNTON: Your Honor, if I could just one, maybe  
11 two --

12 THE COURT: Certainly.

13 MR. TAUNTON: -- follow-up questions.

14 RECROSS-EXAMINATION

15 BY MR. TAUNTON:

16 Q Was the black-preferred candidate in this table in every  
17 race also a Democrat?

18 A Yes, they are.

19 Q And was the white-preferred candidate also a Republican?

20 A Yes, in this table, it was.

21 Q Did you analyze any race in your initial report where the  
22 Republican was black and the Democrat was white?

23 A In my initial report, I didn't have any of that kind of  
24 situation. But in my rebuttal, I did.

25 Q Okay.

1 MR. TAUNTON: That's all I have.

2 THE COURT: That's all I have. Does anybody have  
3 anything else? Is there any reason I may not excuse Dr. Liu?

4 All right.

5 Dr. Liu, thank you for being with us this morning. You  
6 are excused.

7 (Witness excused.)

8 THE COURT: All right. I think we have reached a  
9 natural time for our lunch break. It's 12:47. Can we be back  
10 at 1:30 without crunching folks? Is that a reasonable plan?

11 Do we have a witness for 1:30?

12 MR. ROSBOROUGH: Yes. We will have a witness for  
13 1:30, Your Honor.

14 THE COURT: All right. Let's reconvene at 1:30.

15 (Recess.)

16 THE COURT: All right. Next witness for the  
17 plaintiffs?

18 MR. BURKE: Good afternoon, Your Honor. Colin Burke  
19 for the plaintiffs.

20 Before we call our next witness, we would like to request  
21 a closed courtroom for when our next witness testifies about  
22 her address. And we were wondering if you had a preference for  
23 rather we do that at the beginning of her direct or at the end  
24 of her direct.

25 THE COURT: Let's do it at the end, and maybe that

1 will line up with an afternoon break. How does that sound?

2 MR. BURKE: That sounds great. Thank you.

3 THE COURT: Is there any objection to that? I should  
4 have asked. I assumed the answer is no.

5 Did I hear you say we will stipulate to the address or to  
6 the closed courtroom?

7 MS. LANCASTER: To the address.

8 THE COURT: To the address? Okay. Then there will be  
9 no need to close the courtroom. Thank you.

10 MR. BURKE: Plaintiff calls Mary Peoples to the stand.

11 THE COURT: All right.

12 MARY PEOPLES

13 having been first duly sworn by the Courtroom Deputy Clerk, was  
14 examined and testified as follows:

15 THE COURTROOM DEPUTY CLERK: Please state and spell  
16 your name for the Court record. Please speak loudly and  
17 clearly into the microphone.

18 THE WITNESS: Mary Peoples, P-E-O-P-L-E-S.

19 DIRECT EXAMINATION

20 BY MR. BURKE:

21 Q Good afternoon, Ms. Peoples. When were you born?

22 A I was born [REDACTED], 1944.

23 Q And what race do you identify as?

24 A Black.

25 Q And what city do you live in?

1 A Huntsville, Alabama.

2 Q And what area of Huntsville do you live in?

3 A The northwest side of the town.

4 Q And what county is that in?

5 A Madison County.

6 Q And how long have you lived in Huntsville?

7 A Basically all my life except the times where I moved out  
8 of state for jobs or following a husband, ex-husband, whatever.

9 Q And when did you move back to Huntsville?

10 A I moved back to Huntsville permanently in October 1985.

11 Q And do you have family in Alabama?

12 A Yes.

13 Q And where is your family in Alabama?

14 A I have family in Alabama in Madison County, areas like  
15 Huntsville, Harvest, Triana, Toney; Hoover, Alabama; Decatur,  
16 Alabama; Somerville, Alabama.

17 Q And how long have your ancestors lived in Alabama -- lived  
18 in Huntsville? Excuse me.

19 A My ancestors on my mother's side have lived in Alabama  
20 since slavery.

21 Q And where in Alabama did they live during that time?

22 A During that time, they lived in what is now called  
23 Redstone Arsenal. Before it was a federal installation, it was  
24 farmland owned by -- a lot of black farmers owned land in that  
25 area that is now Redstone Arsenal.



1 Q And what happened to that land?

2 A When the government wanted it as a government installation  
3 to do what -- the munitions they wanted to do, they bought out  
4 all the farmers. They bought the land, and the farmers  
5 relocated elsewhere in Madison County.

6 Q And during that time, did your family go to school?

7 A At the time that my mother's family lived in that area --  
8 it was called Mullins Flat at that time. That was a black  
9 community. She went to a school that was on that property  
10 called Horton School. It was the only school built there that  
11 was erected there for blacks.

12 Q Okay. Thank you for that context.

13 Are you registered to vote?

14 A Yes.

15 Q And what State Senate district do you live in?

16 A District 7.

17 Q And are you a member of any organizations?

18 A Yes.

19 Q Which organizations?

20 A I'm a member of the Huntsville Madison County chapter of  
21 the NAACP, and I'm also a member of the Huntsville Madison  
22 County chapter of Blacks In Government.

23 Q Great.

24 And where were you born?

25 A I was born in Talucah, Alabama.

1 Q Okay. And where did you grow up?

2 A I grew up in Madison County, Alabama.

3 Q And where did you attend high school?

4 A I attended high school at Council Training School.

5 Q And when did you graduate from that high school?

6 A I graduated in 1961.

7 Q And was your high school racially segregated?

8 A Yes.

9 Q And was your elementary school racially segregated?

10 A Yes.

11 Q And then where did you go to college?

12 A Alabama A&M University.

13 Q And while in college, did you participate in any political  
14 activities?

15 A Yes.

16 Q Which activities?

17 A I participated and joined with the Student Nonviolent and  
18 Coordinating Committee called -- known as SNCC -- in organizing  
19 marches and city and demonstrations at lunch counters. And I  
20 sat in at lunch counters.

21 Q And can you describe a little bit of your experience at  
22 the sit-ins and marches during that time?

23 A Yes. In our organization, the way we organized, we met at  
24 the black Baptist church downtown on the corner of Church  
25 Street as they called it. And that's where we had our speeches

1 and rallies before we left the church. Then we would go march  
2 downtown to some of the restaurants that we wanted to sit in.

3 Of course, when we got to one of the restaurants across  
4 from the courthouse, they always saw us coming, and they locked  
5 the door. So we could not get in.

6 But that's where we marched from, our staging area.

7 We also went to some other restaurants located a little  
8 further out. One particular that I recall that we -- that I  
9 sat in at was the Woolworth store.

10 Q And did you say this -- your marches occurred in Madison  
11 County?

12 A Yes.

13 Q And your sit-ins also occurred in Madison County?

14 A Yes.

15 Q Okay. Thank you.

16 And was Alabama A&M a black school?

17 A Yes.

18 Q And after graduating college, can you briefly walk me  
19 through your career trajectory?

20 A After I graduated from college in 1965, I had a minor in  
21 business administration, so I applied for a job with the IBM  
22 Corporation. I was hired by the corporation as a clerk typist  
23 secretary. And I worked in that position for about five years  
24 before I resigned and quit and moved with my husband at the  
25 time to North Carolina.

1 I moved to an area in North Carolina called Scotland Neck.  
2 I taught school in elementary education courses for the summer.  
3 And then I taught high school at Scotland Neck High School for  
4 about three months teaching history and civics. Then I decided  
5 I didn't like it very much, and I decided to move back home.

6 So I moved back home to Huntsville, Alabama. And when I  
7 moved back home, I applied for and got a job working for a  
8 federally-funded program called the Concentrated Employment  
9 Program. I was teaching adult basic education courses to  
10 underemployed young black people.

11 After that, I stayed there about three years. I was  
12 continuously applying for a position in the federal government,  
13 basically trying to get a job at Redstone Arsenal because, that  
14 was kind of like the place for a career. But they had a freeze  
15 on, so I didn't get a job there, but I did get picked up by the  
16 Equal Employment Opportunity Commission in Birmingham.

17 The Birmingham district office was my first federal job.  
18 And I was hired as an investigator in that office investigating  
19 discrimination complaints based on violation of Title VII of  
20 the Civil Rights Act.

21 I stayed in that job for about three years. And when I  
22 got married again, I relocated to Belmont, California, where my  
23 husband's job took us. And I worked for a temporary agency  
24 there for a while as a secretary just to have something to do  
25 and stayed there for about off and on in the months totaled up

1 to maybe two years.

2 Then we relocated back to Birmingham and then to  
3 Philadelphia. I stayed in Philadelphia temporarily because of  
4 his job off and on for a couple of years. I did not work,  
5 because at that time, I had another child, and I became a  
6 homemaker, so to speak. And I did not work for a while until  
7 we moved back to Birmingham permanently.

8 Then I applied for a job. And I got a job working with  
9 the Social Security Administration, which was the southeastern  
10 payment center that is located here in Birmingham. I worked  
11 for them for about three years continuously trying to wait  
12 until the freeze was lifted at EEOC to go back to EEOC.

13 It was finally lifted. So I went back to EEOC again  
14 working there in my old position as -- this time, as an  
15 investigator and a conciliator.

16 I stayed there for a while. And I was continuously trying  
17 to get back home where family was. So it took me about  
18 two years applying. And then I did get a job at Redstone  
19 Arsenal for this command that was looking for a person in EEO.  
20 I accepted the position. And I moved to red -- I moved to  
21 Huntsville, Alabama for that job in October 1985 working for  
22 that command on Redstone Arsenal. And I stayed with that  
23 command about 33, 34 years until I retired.

24 Q Thank you for that.

25 And while you worked at the EEOC, did you see evidence of

1 continued discrimination against black people?

2 A When I worked with EEOC?

3 Q Uh-huh.

4 A Yes. That was a part of my job as an investigator was to  
5 investigate the cause and effect of discriminatory practices,  
6 hiring, promotions, segregated job classifications. And, yes,  
7 I proposed findings of discrimination to the district director  
8 who was the one initially at the legal review made the finding  
9 to the charging party. And then the charging party, of course,  
10 was given a right to sue to take the case to federal court if  
11 they wanted to.

12 So, yes, I did find discrimination. And my territory was  
13 the state of Alabama and Tennessee. We covered Alabama and  
14 Tennessee. So I did issue some findings during the time that I  
15 worked for the EEOC district office in Birmingham.

16 Q Okay. Thank you.

17 And do you have children, Ms. Peoples?

18 A Yes.

19 Q And where did your children grow up?

20 A My oldest son grew up, oh, a little bit -- he was 5 when I  
21 moved to Birmingham -- from Huntsville to Birmingham. And then  
22 we -- he grew up sort of in the Hoover area in Birmingham a  
23 while going to schools in Hoover where my second husband and I  
24 moved.

25 And then he attended high school at Berry High School,

1 which was the school that the kids in Hoover went to.

2 And then he attended Shades Valley, which was another  
3 school that he attended. And he left Berry and went to another  
4 school, stayed there a little while.

5 By that time, I got the job in Huntsville. We moved back.  
6 So the youngest did not go to school there. He started  
7 elementary school in Huntsville after we moved back to  
8 Huntsville. Both of them attended high school in Huntsville.

9 Q Okay. And did they attend public high schools in  
10 Huntsville?

11 A Yes.

12 Q And which high school was that or high schools?

13 A Johnson High School. They both attended Johnson High  
14 School.

15 Q And to be clear, what public school system was Johnson  
16 High School a part of?

17 A Huntsville City Schools system.

18 Q Okay. And at the time that they attended, what were the  
19 racial demographics of that high school?

20 A Predominantly black.

21 Q Do you have a sense of how predominantly black?

22 A 90 to 95 percent.

23 Q Okay. And, Ms. Peoples, do you go to church?

24 A Yes.

25 Q And what is the name of your church?

1 A Restoration Church South Huntsville Campus.

2 Q And what are the racial demographics of your church?

3 A Predominantly black.

4 Q Do you have a sense of how -- the percentage?

5 A Maybe 90 to 95 black, 5 percent white.

6 Q And do you go to a community center?

7 A Pardon?

8 Q Do you go to a community center in Huntsville?

9 A Yes.

10 Q And which community center is that?

11 A I go to the Robert "Bob" Harrison Wellness Community  
12 Center that is located in my neighborhood.

13 Q And who is Bob Harrison?

14 A Robert Bob Harrison was the first black elected to the  
15 Madison County Commission, when they got a seat on the  
16 commission. He in that position applied for and got federal  
17 money to build that center, and he chose to build it in my  
18 neighborhood.

19 Q And about when was he elected into office?

20 A I don't recall the exact time, because he's been deceased  
21 a while. I don't recall when he got elected, but he was the  
22 first black on the Madison County Commission. I can't recall  
23 totally when he got elected.

24 Q Do you have a sense of whether it was after you moved back  
25 to Huntsville permanently?



1 A Oh, yes. It was after I moved back permanently to  
2 Birmingham because I saw him out campaigning a lot.

3 Q Do you know how many black commissioners there are now?

4 A Yes. One.

5 Q Thank you.

6 And to get back to the Bob Harrison Center, why do you  
7 generally go to the Bob Harrison Community Center?

8 A I go there for the physical strength training that I need.  
9 And also I go to -- I use a facility for meetings for the  
10 beautification club that I am the president of.

11 Q Okay.

12 A And I go over there sometimes to eat lunch. They provide  
13 lunch for seniors.

14 Q And what are the racial demographics of the Harrison  
15 Center?

16 A Of the center attendees? Is that the question?

17 Q Uh-huh.

18 A Predominantly black.

19 Q Okay. Thank you.

20 And earlier you said you attended Alabama A&M for college;  
21 is that correct?

22 A Yes.

23 Q And where is Alabama A&M located?

24 A Well, it's located now what they call Huntsville, Alabama.  
25 But the time I went to school, it was Normal, Alabama, because

1 they have a post office box up there. So basically, it's  
2 Huntsville, Alabama.

3 Q Okay. And what area of Huntsville is that?

4 A It's on the north side of town.

5 Q Okay. And what is your familiarity with that area?

6 A Oh, very familiar with that area, because I went to school  
7 there. I went to high school -- my high school was bottom of  
8 the hill. My college was at the top of the hill. So I spent a  
9 considerable amount of years there in that area. And I still  
10 do. I still do.

11 Q Okay. And do you know the racial demographics of that  
12 neighborhood today?

13 A It's predominantly black.

14 Q Okay. And do you have a sense of what that area may have  
15 in common with Jackson County?

16 A In my opinion, I don't think it has very much in common  
17 with Jackson County at all.

18 Q And why don't you think it has anything in common?

19 A I think in terms of the educational level, educational  
20 opportunities offered, job opportunities offered, skill set of  
21 the people that are there in the community.

22 Q Okay. Thank you.

23 And earlier you said that you worked at Redstone Arsenal,  
24 correct?

25 A Correct.

1 Q And based on your experience, what cities did your  
2 co-workers tend to live in?

3 A My co-workers in my command that I worked for came from  
4 surrounding areas -- Huntsville, Decatur, Guntersville, Arab,  
5 Athens. Those areas. They got jobs. That was the premier job  
6 to get was at Redstone Arsenal.

7 Q And in your experience, how common was it for co-workers  
8 to say come from Decatur?

9 A Oh, not common, because it's not that far at all to drive.  
10 It's a straight shot from Decatur to Huntsville.

11 Q Did you mean not uncommon or --

12 A Not uncommon for them to come. Some drove further than  
13 that to work at Redstone.

14 Q Thank you. And do you ever travel to Decatur?

15 A Yes, I have traveled. Yes, I've traveled to Decatur.

16 Q And why do you generally go to Decatur?

17 A Shopping. Shopping center that was there. Shopping for a  
18 car. Things like that.

19 Q And do you watch the local news in Huntsville?

20 A Yes.

21 Q And in watching the local news, how often do you see  
22 stories about Decatur?

23 A Often. The local news covers all of the cities  
24 surrounding Huntsville, not just Decatur, Athens, Arab,  
25 Scottsboro. They cover the news in all of the areas, including

1 Decatur. And I have seen news from Decatur on the local news.

2 Q Great. Thank you.

3 And earlier you said that you were a member of the BIG  
4 chapter of Huntsville Madison County; is that correct?

5 A Yes.

6 Q And what is BIG?

7 A BIG stands for Blacks In Government.

8 Q Okay.

9 A BIG is a 501(c)(3) nonprofit organization that was founded  
10 in 1975 in Washington D.C. by a group of employees working for  
11 the Department of Health, Education, and Welfare out of their  
12 need to expose discrimination in the federal government against  
13 black federal workers. When they formed this organization and  
14 incorporated it in D.C., they were authorized to establish  
15 chapters throughout the United States, which they did, chapters  
16 and regions throughout the United States and overseas. And I  
17 applied for and received permission to start a chapter in  
18 Huntsville, Alabama.

19 Q And what does Blacks In Government do generally?

20 A Blacks In Government at the national level does a lot of  
21 things concerning their goals and objectives. They are an  
22 advocacy organization. They are an advocate of black  
23 government workers -- state, federal, and local workers -- or  
24 any person who believes they have been discriminated against  
25 because of their race, religion, sex, et cetera.

1       They also provide professional training for their members  
2 to help them grow towards receiving career promotions in their  
3 jobs. They provide scholarships to their members to go back to  
4 school to get further education. They also -- BIG also helps  
5 with community projects in communities at each city that they  
6 attend and they go to have a conference. They have some type  
7 of activity they donate something to the city that they've been  
8 to.

9       BIG also has programs that they assist their employees  
10 with monetary assistance for attorney fees who file cases in  
11 district court. They also have a program called the Agency  
12 Compliance and Review Program where they teach their chapters  
13 how to review federal agencies to ensure that they are  
14 complying with local EEO regulations. That's a part of their  
15 mantra to do that.

16       And they recognize people all the time in the military  
17 sector, in the private sector. They give recognition at their  
18 national conferences for people who have made contributions to  
19 their city, their country, their organizations and also federal  
20 heads of departments, as well, if they have used as guest  
21 speakers.

22       Q     And what is your current role in Blacks In Government?

23       A     My current role in Blacks In Government. I am the  
24 president of the local chapter at Huntsville Madison County  
25 chapter. I am the executive vice-president of the southeast

1 region part of Blacks In Government that covers eight southern  
2 states.

3 Q And how long have you been involved in BIG?

4 A 34 years.

5 Q Okay. And you kind of spoke earlier about what the  
6 national BIG does. What does your chapter of BIG do?

7 A My local chapter?

8 Q Uh-huh.

9 A Based on our goals and objectives that we try to establish  
10 each year, we try to carry out the goals of the organization.  
11 To address each goal, we have a program. And the program to  
12 address the one dealing with racial discrimination, we have  
13 established an agency compliance review program, where we ask  
14 -- we've targeted Redstone Arsenal. We asked all the  
15 commanders or commanding generals to give us EEO data on their  
16 demographics, promotion statistics, hiring statistics, and also  
17 at what grade levels are these people working. That's one part  
18 of what we do.

19 For the community outreach, we do community outreach, we  
20 have programs for the community that we invite, and we partner  
21 with the local branch of the NAACP to do that. We have had in  
22 the past invited the district office director for the  
23 Birmingham EEOC who came to Huntsville and brought his entire  
24 staff, did a program, presented a very excellent program for  
25 the community on what they did, what discrimination was.

1       We're doing another program with the Office of Federal  
2 Contract Compliance to do the same thing, because we have a lot  
3 of federal contractors in Huntsville that have a lot of  
4 employees, and they rake in a lot of money.

5       That's just a few of the things we -- I mean, I could go  
6 on and on. I guess you don't want to hear all of that.

7 Q     You sound busy.

8       And in your own words, why do you see a need for a BIG  
9 chapter in Madison County today?

10 A     I see a need today -- any time when someone contacts me,  
11 who is working for a federal agency that has no representation,  
12 no union, no representation, and they have to file an EEO  
13 complaint and they don't know what to do. And being an  
14 advocate for them, we want to be there for anybody who has that  
15 type of issue. And we do have some agencies at Redstone  
16 Arsenal that are like that. And we want to be there for them.  
17 And what we do is we meet with management to try to resolve the  
18 issue or address the issues that come up for them.

19       So as long as we get some contact from people who raise  
20 allegations of discrimination and file, I feel we're justified  
21 in our existence.

22 Q     Great. Thank you.

23       And do you know how many people work at Redstone?

24 A     Redstone Arsenal is -- it's not a strange place. It's a  
25 big place. I would say if you're counting contractors, it

1 depend on who you're counting. Contractors and government  
2 workers altogether -- I have heard people say this. I don't  
3 have my stats in front of me. I used to know this when I  
4 worked at NNEO. But up to like maybe 30, 30, 40,000 people.

5 Q And thank you for that.

6 And moving on. Have you ever contacted any of your  
7 representatives in the State Legislature?

8 A No.

9 Q You've never contacted any of your state representatives  
10 in the State Legislature?

11 A Yes. Representatives, I have.

12 Q Yes. And why did you -- or who did you contact?

13 A Representative Laura Hall and Representative Anthony  
14 Daniels.

15 Q And why did you contact them?

16 A I contacted Ms. Hall first time for her to be a guest  
17 speaker at one of our programs that we were presenting in our  
18 chapter. And also we nominated her to receive one of our  
19 awards. We presented her with an award.

20 I contacted Mr. Daniels for the same thing. But at the  
21 time, he was running for Congress, and we played telephone tag,  
22 and we never caught up with each other.

23 Q Uh-huh.

24 And to be clear, what race are Representative Hall and  
25 Representative Daniels?



1 A They're both black.

2 Q Okay. Thank you.

3 MR. BURKE: May I have a moment to confer with my  
4 counsel?

5 THE COURT: You may.

6 MR. BURKE: Thank you. Great. Thank you.

7 BY MR. BURKE:

8 Q Just two more questions.

9 So how many commissioners are there in Huntsville?

10 A I think we have seven.

11 Q And when did you retire from Redstone Arsenal?

12 A January 2020.

13 Q Okay.

14 MR. BURKE: Thank you. That's all my questions.

15 THE COURT: All right.

16 MS. LANCASTER: May I proceed.

17 THE COURT: You may.

18 CROSS-EXAMINATION

19 BY MS. LANCASTER:

20 Q Good afternoon, Ms. Peoples.

21 A Good afternoon.

22 Q You have lived in the Madison County area a majority of  
23 your life?

24 A That's correct.

25 Q You moved to the Huntsville area when you were just

1 2 years old?

2 A That's correct.

3 Q And you stayed there throughout your high school?

4 A Yes.

5 Q And you went to college in the Huntsville area?

6 A Yes.

7 Q And you received a bachelor of science degree from Alabama  
8 A&M?

9 A Yes.

10 Q You also mentioned on direct that you moved around a bit,  
11 correct?

12 A Correct.

13 Q You spent some time in North Carolina?

14 A Correct.

15 Q You spent a few years here in Birmingham, Alabama?

16 A Correct.

17 Q And some time out of state?

18 A Yes.

19 Q And it was around 1985 that you moved to the Huntsville  
20 area for good?

21 A Yes.

22 Q Around that time, you bought a house?

23 A Yes.

24 Q And you've been here ever since?

25 A Yes.

1 Q I want to talk to you about your time with the EEEO at the  
2 Redstone Arsenal.

3 When you were hired, you started out as an equal  
4 opportunity specialist; is that correct?

5 A Correct.

6 Q And when you started with the EEEO, the Redstone Arsenal  
7 compensated their employees based on a General Schedule pay  
8 system, correct?

9 A At the time I started?

10 Q Yes, ma'am.

11 A Yes.

12 Q And this is also known as the GS payment system?

13 A Yes.

14 Q And when you started with the EEEO, you started as a GS-11  
15 employee; is that correct?

16 A Yes, that's correct. I'm a stickler for making --

17 THE WITNESS: May I make a correction to what she  
18 said?

19 Q I can ask it this way.

20 A It's not the EEO. I did not work for the Equal Employment  
21 Opportunity Commission. I worked for a command in its EEO  
22 office. Equal Employment Opportunity office.

23 Q Okay.

24 A That's where I worked. And I was an equal employment  
25 manager in that office. And I managed programs. And, yes, I

1 did start as a GS-11.

2 Q Okay. Thank you for that correction.

3 When you were working for this command, you started as a  
4 GS-11 employee?

5 A Yes.

6 Q And under the GS pay scale, it -- this pay system has a  
7 range from 1 to 15; is that correct?

8 A A pay scale? Are you referring to steps?

9 Q Steps. Yes. Are there -- does this GS pay system include  
10 15 steps?

11 A I don't know if I totally recall 15. 10, I do. I don't  
12 know if I recall 15.

13 Q During your time in this office, you were promoted to a  
14 director position, correct?

15 A Subsequently, yes.

16 Q And when you were promoted, you -- the EEOO no longer  
17 followed the General System payment, correct?

18 A Are you asking me only when I was promoted that it went to  
19 another system? The answer is no.

20 We went to a pay banding system when I was a GS-13, and it  
21 changed to the pay bending system then. I became an NH-03 as  
22 -- from 13 to NH-03.

23 Now, the promotion subsequently happened, and I was  
24 promoted to an NH-04, at which rate, I retired.

25 Q And under this pay banding system, is the NH-04 level the

1 highest level?

2 MR. BURKE: Objection. This is beyond the scope of  
3 the direct. We didn't say anything about how much Ms. Peoples  
4 was paid or what band she was in.

5 MS. LANCASTER: Your Honor, this is cross-examination.  
6 I'm just exploring Ms. Peoples's time in the EEOO command,  
7 which was brought up on direct examination.

8 THE COURT: All right. I will allow it, but we need  
9 to make sure we stay within the scope of direct or another  
10 permissible scope.

11 BY MS. LANCASTER:

12 Q Just if -- to make the record clear, when you -- when you  
13 were within an NH-4, were you at the highest level under this  
14 pay banding system?

15 A Well, when I was NH-04?

16 Q Yes, ma'am.

17 A No.

18 Q Ms. Peoples, on direct, you talked about your involvement  
19 with the organization Blacks In Government?

20 A Yes.

21 Q And that is referred to as BIG?

22 A Yes.

23 Q And BIG operates overall on a national level?

24 A Yes, it does.

25 Q And it also has regional and chapter levels?

1 A Yes.

2 Q And you currently serve as the Huntsville Madison chapter  
3 president?

4 A Huntsville Madison County chapter president.

5 Q You -- and you actually started this chapter organization  
6 within the Huntsville County area?

7 A Yes.

8 Q And the mission of BIG is equity, excellence, and equal  
9 opportunities, correct?

10 A Part of it, yes.

11 Q And one way that BIG instills its mission is engaging in  
12 different projects and programs, including at the county level,  
13 correct?

14 A I don't understand what you mean by including at the  
15 county level.

16 Q There are programs put on by BIG at the national level and  
17 at the county level, right?

18 THE COURT: You may answer the question if you  
19 understand it, as far as you can based on your personal  
20 knowledge. And if you don't understand it, you can ask for it  
21 to be clarified.

22 THE WITNESS: I don't quite understand it, really,  
23 because Blacks In Government is a national organization. Under  
24 the national organization, you have regions, then you have  
25 chapters. All have their own programs to support the national

1 organization.

2 If you look at the mission of BIG, the mission of BIG --  
3 and it was founded to represent federal, state, and local  
4 government employees. So any programs or national training  
5 programs put on by the national is open to all of those  
6 employees and private industry people, as well, if they want to  
7 go.

8 So any programs that we would put on for our chapter are  
9 open to city, county, private sector people, anybody who wants  
10 to attend.

11 Does that answer your question?

12 BY MS. LANCASTER:

13 Q It does. One of these programs that BIG has put on  
14 includes professional development seminars?

15 A Yes.

16 Q And the Huntsville County chapter recently -- or the  
17 Huntsville County chapter put on a professional development  
18 seminar sponsored by Redstone Arsenal?

19 A No. Not sponsored by -- Redstone Arsenal does not sponsor  
20 anything for our chapter.

21 Q Did Redstone Arsenal help put on professional development  
22 seminars?

23 A Under the auspices of their offices in Redstone, they had  
24 them under different organizations or the personnel office, but  
25 there's no connection with Redstone Arsenal sponsoring anything

1 with our Blacks In Government chapter for professional  
2 development.

3 Q You testified -- you gave testimony in a deposition in  
4 this case. Do you remember that?

5 A Ma'am, it was so long, 149 pages. I can't say that I  
6 recall. You would have to show me in writing.

7 Q Understandable. You beat me to my next question.

8 If I were to show you some of the deposition testimony,  
9 would it help you refresh your recollection on these areas?

10 A It certainly would. I'm not getting any younger.

11 MS. LANCASTER: Could we pull up Ms. Peoples's  
12 deposition Page 74?

13 THE COURT: It should come up on your computer. I'm  
14 looking to see. It's not up just yet.

15 BY MS. LANCASTER:

16 Q We're going to get a paper copy for you, Ms. Peoples.

17 THE COURT: Actually, I don't think any of us have it.  
18 I don't have it. Does anybody else have it?

19 I have got a copy if it's a numbered exhibit. Somebody  
20 can tell me what the number is.

21 Give us just a minute. We are going to restart the  
22 system.

23 MR. ROSS: Your Honor, we can show her the electronic  
24 copy if that's helpful.

25 THE COURT: Let's see if our reboot works, and if it



1 doesn't, then we will move on with paper.

2 There we go.

3 THE WITNESS: Hey. We cooking now. That's good.

4 THE COURT: You may proceed.

5 MS. LANCASTER: Is it possible to have the last  
6 question re-read into the record.

7 (Whereupon, the Court Reporter read back the pending  
8 question.)

9 BY MS. LANCASTER:

10 Q So, Ms. Peoples, before we were figuring out our technical  
11 difficulties, we were talking about the Redstone Arsenal  
12 sponsorship with different professional development seminars.

13 And you -- I believe you testified that you -- you're not  
14 sure if the Redstone Arsenal sponsors these different events?

15 A No. I said they did not sponsor Blacks In Government  
16 professional development seminars. We did that ourselves.

17 I'm not saying Redstone Arsenal entities did. The  
18 personnel office did. But they don't sponsor Blacks In  
19 Government professional development seminars.

20 Q So the personnel office within the Redstone Arsenal, is  
21 that what you're referring to?

22 A Yes. They have -- they have had seminars and on their  
23 own, and I don't know about other entities out there having  
24 professional government seminars, yes, because personnel has to  
25 the training component. So they have, yes. But that has

1 nothing to do with our Blacks In Government chapter.

2 Q Okay. And we can take this down.

3 I want to continue with the professional development  
4 seminars but on by BIG.

5 These professional development seminars involved -- these  
6 were a project within BIG, correct?

7 A Yes.

8 Q It included seminars?

9 A Yes.

10 Q And an awards gala, was that part of this project?

11 A Restate the last statement you just said.

12 Q When you're putting on the professional development  
13 projects, was an award's gala that was hosted, was this part of  
14 the professional development program?

15 A No, ma'am. It was not. It was a special program.

16 Q Another way that BIG carries on its mission is providing  
17 scholarships to local students, correct?

18 A We have a -- provided scholarships to local students in  
19 the past, our local chapter. National organization does, too.

20 Q Local students to the Madison County area?

21 A Yes.

22 Q You would agree with me that the Huntsville Madison County  
23 chapter of BIG has been successful?

24 A I would like to think so. We took a hit with COVID.

25 We're recuperating from COVID. But I would like to think so,

1 that we survived 34 years, so that says something in itself to  
2 me.

3 Q And am I correct that at one point, the Huntsville Madison  
4 County chapter was the largest chapter in the southeast region?

5 A No, it's not.

6 Q At one point, was it the largest chapter?

7 A Yes. Several years ago.

8 Q On direct, you mentioned that you reached out to local  
9 representatives?

10 A Yes.

11 Q To be clear, you did not reach out to any senators?

12 A At the time, I did not know who they were.

13 Q Do you consider yourself to be politically active?

14 A No, not really. I keep track of things.

15 Q You've testified previously that to a degree you would  
16 consider yourself previously active politically?

17 A Politically active. I do that so by voting, supporting a  
18 particular candidate that I believe in.

19 Q You mentioned Mr. Robert Harrison on direct?

20 A Yes.

21 Q Did you participate in his campaign?

22 A No.

23 Q When I say politically active, you are active in civic  
24 affairs?

25 A Yes.

1 Q Through your involvement with BIG, you participate in  
2 voter education?

3 A We partner with the NAACP for voter registration drives.  
4 We are a nonpartisan organization, so we just encourage people  
5 to vote, get out and vote.

6 Q On direct, you also mentioned traveling to Decatur,  
7 Alabama, correct?

8 A Correct.

9 Q When was the last time that you traveled to Decatur,  
10 Alabama?

11 A I can't really recall. As the older I get, I don't drive  
12 very much on these roads, so I don't recall after I retired  
13 from work in 2020.

14 Q Before you retired from work, do you recall how frequently  
15 you went to Decatur, Alabama?

16 A No, not really. I don't recall how frequently I went, but  
17 I have gone over there, but I don't recall the frequency.

18 Q A few questions ago, you testified that you did not reach  
19 out to your local senators, you did not know who your local  
20 senators were at the time?

21 A Yes.

22 Q Was there a way that you could find out who your local  
23 senators were?

24 A I suppose so, but I don't really know other than ask one  
25 of my state representatives. I suppose I could have asked

1 them. But, no, I really never thought about it in a sense,  
2 because I did not have any burning issue that I would probably  
3 present to them.

4 Q You mentioned on direct that you reached out to two  
5 different representatives, both of which were black, correct?

6 A Correct.

7 Q Did you reach out to any white representatives?

8 A There are none -- no white representatives for my district  
9 that I live in, so, no.

10 Q Ms. Peoples, you would agree with me that today,  
11 Huntsville is different than when you grew up?

12 A Oh, yes, it is, thank God. Yes, it is.

13 Q Things have changed?

14 A Things have changed.

15 Q Some things have improved?

16 A Some things have improved, but not all.

17 Q You're familiar with Mr. Kenny Anderson, correct?

18 A Yes, I am.

19 Q He is the City of Huntsville's chief officer for  
20 diversity, equity, and inclusion?

21 A No, not now.

22 Q Did he previously hold that role?

23 A Yes. He retired recently. He previously held the role,  
24 but he retired.

25 Q Do you know who holds that role today?

1 A Nobody that I know of. I have not heard any announcement.  
2 I do not know if they will keep the job because of the ruling  
3 in Alabama about cancelling diversity and inclusion programs.  
4 So we're waiting to see whether or not the mayor is going to  
5 fill the position.

6 MS. LANCASTER: A minute to confer with counsel, Your  
7 Honor?

8 THE COURT: Sure.

9 MS. LANCASTER: I have no further questions at this  
10 time.

11 THE COURT: Thank you.

12 Plaintiffs' counsel, is there any redirect?

13 MR. BURKE: Yes, Your Honor.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION

16 BY MR. BURKE:

17 Q Ms. Peoples, would you agree that though your BIG chapter  
18 has been successful, it hasn't ended discrimination in Madison  
19 County?

20 A Yes, I would agree with that.

21 Q And have your local senators ever reached out to BIG?

22 A No.

23 Q And have they asked to speak at any BIG events?

24 A No.

25 MR. BURKE: May I have moment to confer with counsel?

1 THE COURT: You may.

2 MR. BURKE: No more questions from us. Thank you so  
3 much, Ms. Peoples.

4 THE COURT: All right. Is there any reason why I may  
5 not excuse Ms. Peoples?

6 MS. LANCASTER: None from us, Your Honor.

7 MR. BURKE: None from us.

8 THE COURT: All right. Ms. Peoples, thank you for  
9 being with us today. And you're excused from the witness  
10 stand.

11 Thank you.

12 (Witness excused.)

13 THE COURT: Plaintiffs, you may call your next  
14 witness.

15 MR. ROSS: One moment, Your Honor. Plaintiffs call  
16 Benard Simelton.

17 BENARD SIMELTON

18 having been first duly sworn by the Courtroom Deputy Clerk, was  
19 examined and testified as follows:

20 THE COURTROOM DEPUTY CLERK: Please speak loudly and  
21 clearly into the microphone. State your name and spell it for  
22 the Court record.

23 THE WITNESS: Sure. Benard Simelton, B-E-N-A-R-D,  
24 Simelton, S-I-M-E-L-T-O-N.

25

1 DIRECT EXAMINATION

2 BY MR. ROSS:

3 Q Good afternoon, Mr. Simelton.

4 A Good afternoon.

5 Q What race do you identify as?

6 A African-American.

7 Q When were you born?

8 A [REDACTED], 1954.

9 Q Where were you born?

10 A A little town called Cooperville, Mississippi.

11 Q When did you graduate from high school?

12 A 1972.

13 Q Where did you go to high school?

14 A There are two different high schools. I went to Lions  
15 Consolidated High School, then Faulkner High School.

16 Q Okay. Before you went to Faulkner, were your schools  
17 segregated?

18 A Yes.

19 Q And when did you go to Faulkner?

20 A 1969.

21 Q Where do you live now?

22 A Harvest, Alabama.

23 Q What county is that in?

24 A Limestone -- I live in Limestone County side of Harvest.

25 Q How far is Harvest from Huntsville?



1 A It's about two or three miles from the Huntsville city  
2 limits.

3 Q And how long have you lived in Huntsville, Alabama?

4 A Since -- Harvest --

5 Q Excuse me. Sorry. How long have you lived in Harvest?

6 A Since 2002.

7 Q Okay. And how long have you lived in Alabama?

8 A Since 2001.

9 Q Are you registered to vote?

10 A Yes.

11 Q Are you retired?

12 A Yes.

13 Q What was your career before you retired?

14 A I served my country 23 years United States Air Force. And  
15 then I worked for 16 years as a defense -- with a defense  
16 contractor in Huntsville, Alabama.

17 Q Thank you for your service.

18 Are you affiliated with the Alabama State Conference of  
19 the NAACP?

20 A Yes.

21 Q If I call the Alabama State Conference of the NAACP either  
22 the Alabama NAACP or just the NAACP, will you understand what I  
23 mean?

24 A Yes.

25 Q Thank you.

1 What is your affiliation with the Alabama NAACP?

2 A I am the president.

3 Q How long have you served as president?

4 A Since 2009.

5 Q How did you become president of the Alabama NAACP?

6 A I was elected to the position.

7 Q Who elected you?

8 A Delegates to the 2009 state convention.

9 Q Okay. And were those delegates members of the Alabama  
10 NAACP?

11 A Yes.

12 Q Okay. What are your duties as president of the NAACP?

13 A Well, my duties are to ensure that our units are carrying  
14 out the mission and goals and directives of the NAACP, and also  
15 we work to ensure the political, educational, economic rights  
16 of those who are being underserved and particular people of  
17 color, African-Americans.

18 Q Okay. And how do you go about carrying out the mission of  
19 the NAACP? What kind of activities or projects do y'all  
20 undertake?

21 A Yeah. We engage in protests. We engage in rallies. We  
22 engage in press conferences. And also we work with  
23 organizations or companies that may be discriminated against  
24 individual. And also we work with law enforcement agencies, as  
25 well.

1 Q What kind of work do you do with law enforcement agencies?

2 A Well, kind of two things. If someone comes to us and  
3 complain about a law enforcement -- unfair treatment, you know,  
4 we work with the agency to try and find out the truth and also  
5 try to find the person an attorney that would represent them if  
6 we feel they have been unfairly treated by a law enforcement  
7 agency.

8 And also we ask the law enforcement -- law enforcement  
9 agency to participate in -- one of our programs in particular  
10 we call SWAG -- Stronger Without a Gun. We ask them to  
11 participate in that and come and talk to our audience about,  
12 you know, the need for them to, you know, not have guns.

13 Q For the police not to have guns?

14 A Yeah. No. Not for the police.

15 Q For the people?

16 A Yeah. The individuals.

17 Q Sorry. Okay. I think I asked you how the NAACP carries  
18 out its mission, but I didn't ask you what is the NAACP's  
19 mission?

20 A Well, I mean, basically, to protect the civil and human  
21 rights of individuals in the community.

22 Q Okay. Are you paid for your work with the Alabama NAACP?

23 A No, I'm not.

24 Q Okay. Can you please describe the organizational  
25 structure of the Alabama NAACP?

1 A Sure. We are a subcomponent, suborganization of the  
2 national NAACP. And we are a -- the state conference and  
3 within the state conference, we have college chapters. We have  
4 branches. And we have youth councils.

5 And on the state level, we have an executive committee  
6 that's similar to a board of directors. And in that, we have a  
7 president, three vice-presidents, secretary, assistant  
8 secretary, a treasurer, an assistant treasurer, and we also  
9 have what we call executive committee members at large who are  
10 elected at large. And then we have people on the executive  
11 committee who are appointed to the executive committee by their  
12 volunteering to serve a chair person of our standing  
13 committees.

14 Q About how many people are a part of the state executive  
15 committee?

16 A We have about 35 members.

17 Q I think you mentioned a unit. What is a NAACP unit?

18 A A unit is a -- again, a suborganization of the national  
19 organization. And sometimes when we refer to units, we're  
20 talking about the collectively -- collective state conference  
21 college chapter, branches, and youth council when we say the  
22 units of the Alabama NAACP, and then we talk about all those  
23 collectively. We're not talking about a specific one.

24 Q Okay. How many active units are there in the Alabama  
25 NAACP?

1 A There's about 40 -- somewhere, 40, 43, somewhere in there.

2 Q About how many active adult branches are there?

3 A We've got about 35 branches, active branches.

4 Q And about how many units are college or youth chapters?

5 A Youth chapter we have about seven, eight, that are active.

6 And then we have a couple -- three youth councils that are  
7 active.

8 Q I'm sorry.

9 A Three youth council that are active.

10 Q And how many college chapters, did you say?

11 A I said seven or eight.

12 Q Okay. Do each of the units have a president?

13 A Yes.

14 Q How often do you meet with the unit presidents?

15 A We meet once a month -- I mean, once a week. And then  
16 quarterly, we meet in person.

17 Q Does the Alabama NAACP have an active branch in Madison  
18 County?

19 A Yes.

20 Q What area does the Huntsville Madison County branch cover?

21 A The entire county of Madison.

22 Q Okay. Does that include the cities of Huntsville and the  
23 city of Madison and all the cities within Madison County?

24 A Yes.

25 Q Okay. Does the Alabama NAACP have an active unit in

1 Morgan County?

2 A Yes.

3 Q Okay. What areas or cities does the Morgan County branch  
4 cover?

5 A It covers the entire county of Morgan.

6 Q Does it include the city of Decatur?

7 A Yes.

8 Q Is the Alabama NAACP a membership organization?

9 A Yes.

10 Q How does an individual become a member of the Alabama  
11 NAACP?

12 A The person generally fills out an application and pay a  
13 membership fee depending on the type of membership they want,  
14 whether it's just regular adult or a life membership.

15 Q Okay. And how are the dues distributed when someone pays  
16 a fee? What happens to that money?

17 A Well, it's -- if you pay it to a branch, then the branch  
18 retains -- no. The branch retains 40 percent. They send  
19 60 percent to the national. And then the national sends a  
20 portion of that back to us -- back to the state conference.

21 Q Okay. What, if any, difference is there between being a  
22 member of the Alabama NAACP and being a member of a local  
23 Alabama unit?

24 A In order for a person to be a member of the -- well,  
25 everyone that's a member of a unit within the state of Alabama

1 is a member of the Alabama state conference.

2 Q Okay. Thank you.

3 A By association.

4 Q What information does the application form collect?

5 A It generally collects, of course, your name, your phone  
6 number, address, e-mail address, and it also asks if you are a  
7 registered voter.

8 Q Okay. And is collecting those records part of the Alabama  
9 NAACP's regular business practice?

10 A Repeat the question.

11 Q Sure. The Alabama NAACP collects information about  
12 whether their members are registered to vote as a part of its  
13 regular business practices, correct?

14 A Our units collect that information and then will share it  
15 with us.

16 Q Okay. Thank you.

17 Did you review any records today to prepare for your  
18 testimony?

19 A Yes.

20 Q What did you review?

21 A I reviewed the -- my statement. I reviewed the complaint.  
22 I reviewed the map, proposed map.

23 Q I think maybe I was unclear.

24 What Alabama NAACP records did you review for your  
25 testimony?

1 A Oh, okay.

2 Yeah. The membership unit reports and the -- some of the  
3 information about the status of our units.

4 Q Okay. Thank you.

5 About how many members does the Alabama NAACP have?

6 A About 5,000.

7 Q About what percentage of the Alabama NAACP members are  
8 registered to vote?

9 A We would say probably somewhere between 85 and 90 percent.  
10 And because our youth council members are not old enough to  
11 register -- at least the majority -- majority of those are not  
12 old enough to register. So and we have some members that are  
13 previously incarcerated that are not eligible to register, so,  
14 but about 90 -- somewhere between 90 and 95 percent, I would  
15 say.

16 Q Okay.

17 A That are really eligible.

18 Q Okay. And how do you know that about 90, 95 percent of  
19 your members are registered to vote?

20 A Yeah. We -- discussion during our meetings, quarterly  
21 meeting or a weekly meeting that we have we talk about, you  
22 know, our members being registered to vote and making sure that  
23 they are registered to vote.

24 Q Okay. About what percentage of the Alabama NAACP's  
25 membership is African-American?



1 A I would say probably 95 percent.

2 Q And how do you know that?

3 A Again, by attendance at meetings and on our conference  
4 calls, as well as just discussion about that during our  
5 meetings, you know, how many people we have that are of  
6 Hispanic, Asian, and whites, you know, other nationalities.

7 Q How many NAACP members are there in the Huntsville branch?

8 A Approximately 350.

9 Q Okay. And about what percentage of those members are  
10 black registered voters?

11 A I would say the same percentage as, you know, that  
12 95 percent to 90, 95 percent.

13 Q What are the names of some of the roles of some of the  
14 members in Huntsville?

15 A Yes. Mary Jones Moore, she's the president. Kesha L.  
16 Hendrix, she's the vice-president. And Randy Kelly, he's the  
17 political action chair.

18 Q Does Ms. Hendrix have a role within the state conference  
19 of the NAACP?

20 A Yes, she does.

21 Q What is her role?

22 A She's economic chair, and she -- and by her being the  
23 economic chair, she serves on our executive committee.

24 Q Thank you.

25 About how many NAACP members are there in the Decatur

1 branch?

2 A About 75.

3 Q About what percentage of those members are black  
4 registered voters?

5 A I would say probably about 90 percent. They had an  
6 increase in white voters in -- voters other than black  
7 recently, so I would say probably about 90 percent.

8 Q What's your understanding of why that Decatur branch has  
9 had an increase in white membership recently?

10 A Well, it was because of the murder of Steve Perkins by a  
11 Decatur police officer. Let me strike that.

12 There was -- the shooting of a -- Steve Perkins by a  
13 Decatur police officer.

14 Q Who shot Mr. Perkins?

15 A A police officer.

16 Q Okay. And why, in your estimation, did that result in an  
17 uptick in membership there?

18 A Well, it brought a lot of people out in protest and  
19 because it was -- they felt that it was an unlawful shooting,  
20 because Mr. Perkins was on his property defending his property  
21 and he was shot. And so there was a lot of protests, and a lot  
22 of people from all nationality or races that joined in, in the  
23 protests.

24 Q Were they protesting anything in particular?

25 A Well, they was protesting the shooting of Mr. Perkins.

1 Q Okay. Did members feel that the shooting was racially  
2 discriminatory?

3 A Yes.

4 Q Okay. What is the name of the Decatur branch president?

5 A Rodney Gordon.

6 Q Where does Mr. Gordon live?

7 A In Decatur.

8 Q In the city of Decatur?

9 A Yes. In the city limits.

10 Q What's the race of Mr. Gordon?

11 A African-American.

12 Q Do you know whether he's registered to vote?

13 A Yes.

14 Q Yes, he is?

15 A Yes, he is.

16 Q Okay. Do the Huntsville and Decatur branches hold any  
17 events?

18 A Yes, they hold events.

19 Q What kind of events do the Huntsville and Decatur branch  
20 of the NAACP hold?

21 A Of course, they hold galas or banquets. They do hold  
22 rallies, protests, and those things.

23 Q Okay. About how far are the city of Huntsville and  
24 Decatur?

25 A Probably about 15 miles or so.

1 Q Okay. So we're talking about events -- Huntsville NAACP  
2 when they have events, do they invite members of the Decatur  
3 NAACP?

4 A Yes, they do.

5 Q Do they invite them to rallies and protests and things?

6 A Yes, they do. And banquets and things like that.

7 Q Okay. And vice versa, does the Decatur branch invite the  
8 Huntsville branch to attend its events?

9 A Yes.

10 Q Okay. What's your understanding of why the two units may  
11 invite one another to participate in events?

12 A Well, one, is that we share the common interest of, you  
13 know, ensuring our political and economic and social rights are  
14 protected. And so when we come together as an organization, we  
15 are stronger. And additionally, you know, we learn from each  
16 other because what's happening in Decatur, what's happening in  
17 Huntsville could affect, you know, each other's cities or, you  
18 know, communities.

19 Q In your role as president, do you attend events for the  
20 Huntsville NAACP?

21 A Yes.

22 Q About how often?

23 A Probably about four, five a year, somewhere in there.

24 Q Okay. What about for the Decatur NAACP?

25 A About what now?

1 Q What about for the Decatur NAACP, do you attend events for  
2 them?

3 A Yes. A couple events over in Decatur.

4 Q Sure. How often?

5 A About two or three a year.

6 Q Okay. Do local state legislators ever come to these  
7 events?

8 A You say do legislators local?

9 Q Yes.

10 A Yes.

11 Q Okay. Who?

12 A Primarily Representatives Daniels and Hall.

13 Q Okay. Of the Huntsville Decatur events that you have  
14 attended, which of any white legislators have you seen there?

15 A I have not seen any white legislators at any of the  
16 Decatur events that I have attended. And I don't think I've  
17 seen any at the Huntsville Madison County branch events either.

18 Q Do you ever travel to Decatur for non-NAACP activities?

19 A Yes.

20 Q What kind of activities do you go to Decatur for?

21 A Well, my wife's a realtor, so she goes over there for  
22 business. And sometimes, I travel with her. Occasionally go  
23 over there to get something to eat, or occasionally I will meet  
24 with a city council member over there.

25 Q About how often do you do that?

1 A Probably total of about three, four times a year,  
2 somewhere in there.

3 Q Okay. What church do you attend?

4 A Indian Creek Primitive Baptist Church.

5 Q And where is that located? Where is that church located?

6 A What's what?

7 Q Where is that church located?

8 A 380 Indian Creek Road.

9 Q In Huntsville?

10 A Huntsville, yes.

11 Q Okay. What, if any, role do you have at your church?

12 A Deacon at the church.

13 Q What are your responsibilities as deacon?

14 A Just the spiritual care of the people that are assigned to  
15 my particular ward.

16 Q What is a ward?

17 A A ward is a group of people based on -- just based on  
18 their last names that are assigned to the different deacons for  
19 the deacons to help with their, you know, spiritual care.

20 We're not preachers, so don't get me wrong on that. But if  
21 they need something, we are there to support them, pray with  
22 them during, you know, the time of need and things like that.

23 Q Do any of your ward members live in Decatur?

24 A Yes. I have one that lives in Decatur.

25 Q What's the racial makeup of your church?

1 A Probably 98 percent African-American.

2 Q Okay. Have you attended other churches in Huntsville?

3 A Yes.

4 Q About how many Huntsville churches have you attended?

5 A Since I've been there?

6 Q Yes, sir.

7 A Probably about 30, 30 or more churches, you know.

8 Q In your experience, are the churches that you visited  
9 mostly one race or another?

10 A Yes.

11 Q Okay. Have you ever been to a predominantly white church?

12 A Yes.

13 Q On what occasion have you had to go to a white church --  
14 predominantly white church?

15 A A funeral, and also our church has kind of a relationship  
16 with a predominantly white church where we -- on Thanksgiving  
17 -- well, around Thanksgiving, they come to our church one year,  
18 and then we go to their church, you know, the following year,  
19 and our pastor preach at their service, and their pastor preach  
20 at our service.

21 Q Other than that experience -- that annual experience, your  
22 church is 98 percent black, though, correct?

23 A Yes.

24 Q Okay. What highway do you travel when you go from  
25 Huntsville to Decatur?

1 A Interstate 65, which turns into Highway 20, but -- 565.

2 I'm sorry. Interstate 565, which turns into Highway 20.

3 Q Okay. Are there certain hours you try to avoid 565?

4 A Yes.

5 Q What hours are those?

6 A Rush hours in the morning, and from I would say probably  
7 6:30 to 8:30, 9:00 o'clock, and then in the evening from about  
8 3:30 until about 5:30, 6:00 o'clock, somewhere in there.

9 Q Why do you avoid those hours?

10 A Well, it's rush hour, and traffic is backed up, you know,  
11 and it's almost -- it is bumper to bumper. No almost. It is  
12 bumper to bumper.

13 Q What's your understanding of why traffic is backed up on  
14 that particular highway?

15 A Well, in the morning, a lot of people trying to get into  
16 Huntsville, you know. And in the afternoons, lot of people  
17 trying to get out of Huntsville to go back to their homes, you  
18 know, Decatur and other communities.

19 Q Okay. To your knowledge, what's being done to address  
20 that traffic on the highway there?

21 A Well, recently, they've announced that the -- they're  
22 adding another lane to 565 in each direction.

23 Q What's your understanding of why that lane is being added?

24 A Well, to help eliminate some of the traffic -- well,  
25 actually help people get in to Huntsville quicker and out of



1 Huntsville quicker so traffic won't be backed up. And also it  
2 reduces accidents especially in the winter time when --

3 Q When that lane's been added?

4 A It's being added.

5 Q Between Huntsville and Decatur?

6 A Yeah. It's not completely between Huntsville and Decatur,  
7 but it's a certain stretch of 565.

8 Q Okay. What's your understanding of why there's been an  
9 increase in traffic between Decatur and Huntsville?

10 A It's primarily the growth in the Huntsville area. There's  
11 a lot of growth that is taking place.

12 Q Okay. What kind of growth have you seen in the  
13 Huntsville?

14 A Well, there's, like the Huntsville -- the Toyota Mazda  
15 factory. There's Amazon. There's new defense industries that  
16 are located in Huntsville to really meet the demand of the  
17 workforce there.

18 Q What, if any, economic ties are there between Huntsville  
19 and Decatur?

20 A Well, certainly the job industry that's there in  
21 Huntsville. And I will say that there's some in Decatur, as  
22 well. They have an increase in industry in Decatur. But most  
23 of it, of course, is moving into the Huntsville area. So --  
24 and they have, you know, the convention center where a lot of  
25 concerts occur. Also the -- the Huntsville has a -- well,

1 actually, it's in Madison, but Madison and Huntsville almost  
2 together.

3 But Madison has the semi-pro baseball team, and they do  
4 have a hockey team there, as well as a -- a -- I guess you  
5 would call it a semi-pro soccer team opened in Huntsville, as  
6 well. It attracts people, you know, across the north Alabama.

7 Q Is there a part of Huntsville that is in your experience  
8 that's predominantly black and a part of Huntsville that's  
9 predominantly white?

10 A Yes. Northwest Huntsville is referred to as the  
11 African-American area, and south Huntsville is mostly where  
12 whites.

13 Q Are there hospitals in Huntsville?

14 A Yes.

15 Q Are there any hospitals in north Huntsville?

16 A Well, no.

17 Q Okay. What industries do Huntsville and Decatur share?

18 A Really anything to do with the defense industry. Again,  
19 whether that's something to do with missile defense or space  
20 development, the Army has several, you know, contract --  
21 several -- I guess a lot of industry there.

22 Q Yeah. Okay. Is there an airport in Huntsville?

23 A Yes.

24 Q Okay. About how far is the Huntsville airport from the  
25 city of Decatur?

1 A It's about 15 miles.

2 Q Okay. If someone was traveling from -- to Decatur, what  
3 airport would you recommend they fly into?

4 A The Huntsville International Airport.

5 Q Why would you recommend that airport?

6 A Well, it's the closest airport to -- closest, you know,  
7 major airport to those cities.

8 Q Okay. Do you watch the local TV news?

9 A Yes.

10 Q Does your local news report on what's happening in  
11 Decatur?

12 A Yes, it does.

13 Q Does it also report on things that are happening in  
14 Huntsville?

15 A Yes.

16 Q Do you read any newspapers?

17 A Yes, I do.

18 Q What newspapers do you read?

19 A Athens News Carrier, Decatur Daily occasionally, Speakin'  
20 Out News, and sometimes Huntsville Times, mainly Huntsville  
21 Times online.

22 Q Does the Athens News Carrier report on events happening in  
23 Huntsville and Decatur?

24 A Yes, it does.

25 Q What is Speakin' Out News?

1 A It's a black newspaper in Huntsville.

2 Q Okay. Does Speakin' Out News report on news events in  
3 Huntsville and Decatur?

4 A Yes, it does.

5 Q Okay. Does the NAACP ever issue press releases?

6 A Yes.

7 Q Okay. If the NAACP wants to inform people in Huntsville  
8 about something that's going on, what news outlets do you all  
9 contact?

10 A Well, we contact the four major TV stations, the radio  
11 stations, and, of course, send it to newspapers.

12 Q What newspapers?

13 A Speakin' Out News, Huntsville Times, and occasionally,  
14 we'll send it to the Athens News Courier, as well.

15 Q What about the Decatur Daily?

16 A Yes. Decatur Daily.

17 Q Okay. And what if the NAACP is trying to notify people in  
18 Decatur? What news -- excuse me -- what news outlets do you  
19 send a press release to?

20 A Well, again, the TV stations, the black-owned radio  
21 stations, as well as, Decatur Daily Newspaper.

22 Q Okay. You mentioned --

23 A Athens Courier.

24 Q You mentioned some sports teams earlier, the minor league  
25 team in Huntsville area. In your experience, who attends the

1 -- those games, those minor league team games?

2 A People all over north Alabama.

3 Q People from Decatur?

4 A Yes.

5 Q People from Huntsville and Madison?

6 A Yes. And Athens.

7 Q Are there any colleges or universities in Madison County?

8 A Yes, there are.

9 Q What colleges and universities?

10 A There's Oakwood, Alabama A&M, Faulkner University has a  
11 small campus there, University of Alabama Huntsville, and  
12 there's -- Calhoun Community College has a campus in  
13 Huntsville.

14 Q What, if any, Alabama NAACP college chapters have branches  
15 at those schools?

16 A Well, we have -- Oakwood College has a chapter, as well as  
17 Alabama A&M has a chapter, college chapter.

18 Q Based on your experience with your membership, what --  
19 from where do those schools tend to draw their students?

20 A I don't know the specific demographics, but they draw from  
21 all -- certainly all over north Alabama.

22 Q From Decatur and Huntsville?

23 A Yeah, Decatur, yeah, and Huntsville.

24 Q Does Alabama NAACP have members in Montgomery County?

25 A Yes.

1 Q What are the names of some of the members in Montgomery  
2 county?

3 A Lillian Jefferson. She's the current president of the  
4 metro Montgomery branch, and James Lovejoy, he's a member of  
5 the branch there. And he also serves on our executive  
6 committee as a veteran affairs chair for the Alabama State  
7 Conference.

8 Q Mr. Simelton, who is Jerry Burnett?

9 A Jerry Burnett is a member of the Huntsville Madison County  
10 branch. And he has previously served as president of the  
11 Huntsville Madison branch and also served on the executive  
12 committee for the Alabama State Conference.

13 Q Okay. Who's Bobby Diggs?

14 A Bobby Diggs is -- he was previous president of the  
15 Lawrence County branch. And he served for -- as our security  
16 chair for a while for the Alabama State Conference.

17 Q Okay. And, to your knowledge, are the folks that you just  
18 named black registered voters?

19 A Yes.

20 Q Okay. Mr. Simelton, has the Alabama NAACP been involved  
21 in voting rights lawsuits?

22 A Voting rights lawsuits?

23 Q Yes, sir.

24 A Yes.

25 Q In your experience, have any of those lawsuits ever

1 resulted in a settlement?

2 A Yes.

3 Q Okay. What, if any, of those lawsuits that settled had to  
4 do with voter registration?

5 A There was back in -- I think it's probably 2012, '13, we  
6 were involved in a lawsuit against the State of Alabama for  
7 noncompliance with the National Voter Registration Act. And we  
8 worked with the Department of Human Resources and the Medicaid  
9 office to get them to become compliance with the National Voter  
10 Registration Act by offering their customers, if you will, that  
11 came to see them the opportunity to register to vote or to if  
12 they, you know, needed something along that line, to make sure  
13 that they were registered to vote. And also to put signage up  
14 in their facility informing the clients that they -- when they  
15 came there, that they could, you know, ask and get voter  
16 registration information.

17 Q Is your understanding -- why was the Alabama NAACP  
18 involved in that settlement?

19 A Well, I mean, we were involved in the settlement because  
20 we were a party to the --

21 Q Why was the NAACP interested in sort of having Alabama  
22 comply with the National Voter Registration Act?

23 A Well, it's part of our mission to make sure our citizens  
24 there are eligible to vote, that they are registered to vote,  
25 and that they have opportunity to, you know, register to vote

1 anytime, anywhere they can, you know. We offer voter  
2 registration at our churches and place like that, so, you know,  
3 the National Voter Registration Act requires the states to be  
4 in compliance, that they offer that, so...

5 Q And is it -- prior to that settlement, what's your  
6 understanding of Alabama's compliance with the National Voter  
7 Registration Act?

8 A They were not compliant.

9 Q Okay. Could the settlement have been as recent as 2015 --  
10 the settlement that you mentioned, could have been as recent as  
11 2015?

12 A It could have been, yeah.

13 Q Okay. Was the Alabama NAACP involved in any other voting  
14 rights lawsuits this past year?

15 A Yes.

16 Q Okay. What lawsuits has the Alabama NAACP been involved  
17 in this year?

18 A Well, the absentee voting on SB-1 as well as the voter  
19 purge.

20 Q What is SB-1?

21 A SB-1 was a legislation passed by the Legislature that  
22 prevented organizations like the NAACP from assisting  
23 individuals with their absentee ballot application unless we  
24 were next of kin. And so that's kind of it in a nutshell.

25 Q Okay. What's your understanding of what happened with



1 that lawsuit?

2 A Well, there was an injunction -- well, I mean -- yes,  
3 there was injunction issued, and we were able to assist those  
4 individuals with the applications.

5 Q Which individuals were you -- are you able to assist?

6 A Really anyone that asked, but, specifically, you know,  
7 some people that, you know, in nursing homes and places like  
8 that, that could not -- that need assistance with their  
9 absentee application.

10 Q People who asked who have disabilities or have trouble  
11 reading; is that right?

12 A Oh, yes.

13 Q Okay.

14 A Yeah.

15 Q And why was the Alabama -- do you believe that SB-1 had a  
16 racially disparate impact?

17 A Yes.

18 Q Why do you believe that?

19 A Because through our work, we find that it seemed to be  
20 more significant number of African-Americans that will need  
21 assistance with helping them to not only read, but also  
22 understand the -- what is required on the application and how  
23 to get it submitted to the proper authorities.

24 Q Okay. So you mentioned another lawsuit, I think. What  
25 was the other lawsuit that the Alabama NAACP was involved in

1 this year?

2 A The purging of voters from voter rolls.

3 Q What's your understanding of how many voters were purged  
4 from the voter rolls?

5 A Well, the number that was reported I think was 3,200 --  
6 3,250, somewhere in that number.

7 Q Do you believe that the voter purge had racially disparate  
8 impact?

9 A Well, if we had the names, I could probably give you more  
10 definitive answer. But I don't know who they are.

11 Q Let me ask a different question. Why was the Alabama  
12 NAACP involved in the voter purge lawsuit?

13 A Well, because we believe that there may be a disparate  
14 impact to African-Americans being purged.

15 Q Why did you believe that there may have been a racially  
16 disparate impact on African-Americans?

17 A Because it seems that any time, anything to do with voting  
18 rights, it typically have a more significant impact on black  
19 voters. So we requested a list of names so that we could reach  
20 out to those individuals to help them either comply with the  
21 law or find out if they, in fact, were, you know, noncitizen s.

22 Q Did anyone reach out to you about the voter purge or --  
23 reach out to the Alabama NAACP, I should say?

24 A Yeah. We received several phone calls about people who's  
25 -- who had previously been registered to vote, and their names

1 had all of a sudden come up. And they had to fill out a new  
2 registration form, whether they were part of the list or not, I  
3 don't know. We don't know. But they did reach out to us.

4 Q In your understanding, the people who reached out to you,  
5 were they -- what race were they?

6 A They were African-Americans.

7 Q And to your understanding, were those individuals citizens  
8 or not?

9 A Yes. Yes.

10 Q Yes, they were citizens?

11 A Yes. They were citizens.

12 Q Okay. What's your understanding of what happened with the  
13 voter purge lawsuit?

14 A Well, they were -- the Secretary of State was ordered to  
15 notify all those that received these notifications and to  
16 restore their names to the voter rolls.

17 Q Okay. What are some of the major Civil Rights issues that  
18 the Alabama NAACP works on at the state level?

19 A Well, you just mentioned several of them -- voting rights  
20 issues. We also work on criminal justice -- unfair sentencing  
21 of particular people of color to, you know, incarceration. We  
22 also work on education, ensuring that our -- particularly our  
23 students of color are not being really harmed by the punishment  
24 that they're receiving, because it's certainly a disparate  
25 impact to African-Americans that are receiving the harshest

1 punishment from our school system. And also to ensure that our  
2 schools, particular public schools, are providing adequate  
3 education and that the dollars -- public dollars are not going  
4 to private schools.

5 Q Okay. What, if any, issues around healthcare does the  
6 Alabama NAACP work on?

7 A We work on AIDS, we worked on expansion of Medicaid in the  
8 state of Alabama, and just access to adequate medical care,  
9 because so many of our hospitals are closing. And a lot of our  
10 people are having to drive longer distance to get to, you know,  
11 hospitals or medical care.

12 Q When you say our people, do you mean African-Americans?

13 A African-American people, yeah.

14 Q What, if any, Huntsville-based legislators have you met  
15 with about those Civil Rights issues that you have just  
16 discussed?

17 A I met with Anthony Daniels again and Laura Hall to talk  
18 about -- especially Representative Hall talking about  
19 healthcare issues.

20 Q Have any Huntsville-based white legislators ever reached  
21 out to you to discuss those Civil Rights issues?

22 A No.

23 Q Mr. Simelton, why is the NAACP a plaintiff in this  
24 lawsuit?

25 A We are a plaintiff because we want to ensure that

1 African-American votes are being heard and that we are not  
2 being either packed into a particular district where we can't  
3 have a voting strength -- I mean, where we can't have voting  
4 power, and at the same thing with cracking, where they are  
5 spread out so much that we won't have a voting power.

6 And on the packing, they tend to pack people in so that we  
7 can only elect one person to represent us and not have more  
8 than one person, you know, to represent us -- represent blacks,  
9 African-Americans.

10 Q Thank you.

11 MR. ROSS: Your Honor, I have the addresses of the  
12 members that he just listed. I don't know if they're willing  
13 to stipulate or how we want to handle it, if we want to close  
14 the courtroom to go over it or --

15 THE COURT: I tell you what, this is a great time for  
16 our afternoon break. It's 3:26. Why don't we come back at  
17 3:45, and that will give y'all long enough to break and  
18 hopefully long enough to discuss.

19 (Recess.)

20 THE COURT: Please be seated.

21 All right.

22 Mr. Ross, what can you report on the addresses?

23 MR. ROSS: We conferred with the defendants, and  
24 they're willing to stipulate to the addresses of the members  
25 that were named in Mr. Simelton's testimony.

1 THE COURT: Excellent. Thank you. Can I ask y'all to  
2 please file just an updated statement of undisputed facts, and  
3 you can redact what you need to redact and then submit an  
4 unredacted one separately.

5 MR. ROSS: Thank you.

6 THE COURT: If someone will remind me, I just need a  
7 joint motion to file it under seal, the unredacted ones, and I  
8 can sign off on that quickly.

9 MR. ROSS: Thank you, Your Honor.

10 THE COURT: Great. Thank you.

11 MR. ROSS: Passing the witness.

12 THE COURT: Excellent. Thank you.

13 CROSS-EXAMINATION

14 BY MR. TAUNTON:

15 Q Good afternoon, Mr. Simelton.

16 A Good afternoon.

17 Q Coming back to -- you testified a little bit to your  
18 background. You didn't grow up in Alabama, right?

19 A Okay. I can't hear you.

20 Q I'm sorry.

21 THE COURT: I was going to say, Mr. Taunton, if you  
22 will just get it in your line of sight.

23 BY MR. TAUNTON:

24 Q I said you didn't grow up in Alabama, right?

25 A Grow up?

1 Q Grow up.

2 A No.

3 Q Okay. And you moved to Harvest, Alabama around 2001; is  
4 that correct?

5 A Yeah. 2002 was actually when moved to Harvest, but I  
6 moved to Alabama in 2001.

7 Q Okay. Did you move to the Huntsville area in 2001 maybe  
8 or?

9 A Yes.

10 Q Okay. So you were in Huntsville area in 2001, moved to  
11 Harvest in 2002?

12 A Yes.

13 Q Now, you got involved in the NAACP -- real quick on that,  
14 in depositions, we were call it the NAACP, and I think today we  
15 have been calling it the NAACP. Is there a preference?

16 A Well, the NAACP is the preference, but either way. We  
17 don't get upset one way or the other.

18 Q I will use the preferred names.

19 So you got involved in the NAACP prior to moving to  
20 Harvest, Alabama, right?

21 A Yes.

22 Q And when was that? When did you get involved with the  
23 NAACP?

24 A Now, you talking about in Alabama or NAACP in general?

25 Q In general.

1 A That was in '96, '97 time frame in Albuquerque, New  
2 Mexico.

3 Q And you hadn't lived in Alabama at that time; is that  
4 right?

5 A You say I had not?

6 Q Had not.

7 A No, I had not lived in Alabama.

8 Q So your reasons for becoming involved with NAACP were not  
9 tied to your experiences in north Alabama; is that right?

10 A No.

11 Q Okay. You testified a little bit about the structure of  
12 the state conference and the Alabama NAACP, right?

13 A Yes.

14 Q So does joining a local unit -- does becoming a member of  
15 a local unit also make you a member of the state conference?

16 A It makes you a member by association of the state  
17 conference.

18 Q And what do you mean by that?

19 A The same way with the national organization. The  
20 individual membership card states that unit they belong to, but  
21 because you are in the state of Alabama by association with the  
22 NAACP, you are a member of the state conference, and you are a  
23 member of the national organization.

24 Q Okay. So maybe just two follow-up questions. I think we  
25 talked about this a little bit in your deposition. But there's



1 no way for a person to join just the state conference of the  
2 NAACP, right?

3 MR. ROSS: Objection. Objection. Misconstruing his  
4 testimony.

5 THE COURT: Okay. Well, he can tell him if he is.

6 MR. ROSS: Sure.

7 THE WITNESS: Repeat the question again.

8 BY MR. TAUNTON:

9 Q Ignore what your prior testimony was. I'm asking you the  
10 question now. Is there a way -- is there a way for a person to  
11 join just the state conference of the NAACP without being  
12 involved in a local unit?

13 A No. There's not.

14 Q Okay. So but the state conference considers -- does it  
15 consider all people who have joined local units and are in good  
16 standing with local units to be members of the state  
17 conference?

18 A Yes.

19 Q Okay. Yes which -- I'm sorry. I asked a compound  
20 question. That was my fault. Let me ask it differently.

21 Does the state conference consider all members in good  
22 standing of local units in the state of Alabama to also be  
23 members of the state conference?

24 A You said of the state conference?

25 Q Yes, sir.

1 A Yes.

2 Q Okay. Thank you.

3 You testified a little bit earlier about the Decatur and  
4 Huntsville branches of the NAACP and some of the events they  
5 held, right?

6 A Yes.

7 Q Do those branches hold events together, like are they  
8 jointly sponsored?

9 A No. Typically, one organization will hold the event and  
10 invite the other.

11 Now, there are occasions when they may held a common  
12 interest of an item issue that they come together to jointly  
13 speak out on that particular issue.

14 Q Okay. Would that be with an event or with a press  
15 release, or when you say speak out, what do you mean?

16 A Yeah. A press conference.

17 Q Okay. When is the last example you can think of that  
18 happening?

19 A Last -- was it last year? I think it was last year, maybe  
20 year before last we came together to speak out on Congressman  
21 Mo Brooks.

22 Q Okay.

23 A Issue. And this year -- this year we came out to speak  
24 about Senator Tuberville position on the veterans not -- not  
25 veterans, but not promoting military officers.

1 Q The -- you mentioned that the Decatur branch might hold an  
2 event and invite the Huntsville branch or vice versa, right?

3 A Okay. I'm still having difficulty understanding.

4 Q I'm sorry.

5 You said that the Decatur branch might hold an event and  
6 invite the Huntsville chapter or maybe vice versa, right?

7 A Yes.

8 Q Does the Decatur branch always invite the Huntsville  
9 chapter to its events?

10 A No.

11 Q Does the Huntsville chapter always invite the Decatur  
12 branch to its events?

13 A And let me back up. When I say no, it's not a formal  
14 invitation. There are some things they send a formal  
15 invitation. Other things if they wanted to attend, then, you  
16 know, they contact the president and say, well, we'd like to  
17 attend. But they don't always send a formal invitation to  
18 them.

19 Q So I guess maybe two follow-up questions to that, if the  
20 Decatur branch were hosting an event, could somebody from --  
21 I'm trying to think where else y'all have branches. Do y'all  
22 have a branch in Cullman County?

23 A What county?

24 Q Do you have a branch in Cullman County?

25 A Cullman, no.

1 Q Or Marshall County?

2 A Yes.

3 Q Okay. So could somebody from the Marshall County unit of  
4 the NAACP attend an event that's sponsored by the Decatur  
5 branch?

6 A If it was, you know, open to the public. I mean, if it's  
7 not a closed meeting or something like that, but typically  
8 events are open. They could buy a ticket to -- if it's a gala  
9 or something like that, or if it's a press conference, you  
10 know, they can attend. But they may not be able to speak. But  
11 they can attend for support.

12 Q So when you were speaking with counsel about invitations,  
13 you know, Morgan County inviting -- or Decatur inviting  
14 Huntsville or Huntsville inviting Decatur, were those formal  
15 invitations or informal invitations that you were talking  
16 about?

17 A I was talking about formal invitation.

18 Q Okay. And how often does the Decatur branch send a formal  
19 invitation to the Huntsville branch, would you estimate?

20 A I would say, you know, a couple of times a year.

21 Q Okay. And how often would you estimate that the  
22 Huntsville branch sends a formal invitation to the Decatur  
23 branch?

24 A Probably similar.

25 Q Okay. You testified briefly about being a deacon in your

1 church, right? Being a deacon in your church, correct?

2 A Yes.

3 Q Okay. And you mentioned that as part of your duties as  
4 part of your service there, you have a ward of -- a group of  
5 individuals that you help shepherd, right?

6 A Yes.

7 Q And one of those individuals you said lives in Decatur,  
8 correct?

9 A Yes.

10 Q How large is your ward?

11 A We have about I would say about 50 -- about 50 people.

12 Q Okay. To your knowledge, do -- does anybody else in your  
13 ward live in Decatur?

14 A No. No.

15 Q Okay. You were talking a little bit about the ethic  
16 makeup of the Huntsville region, right?

17 A Yes.

18 Q And I think you said that south Huntsville was  
19 predominantly white; is that right?

20 A Well, again, that's kind of what people kind of referred  
21 to the southern part of Huntsville as the white area, you know.  
22 I haven't done any analysis to see if the numbers are correct,  
23 but that's generally what people refer to, and it appears that  
24 way.

25 Q And is Decatur north or south of Huntsville?

1 A Is Decatur --

2 Q Is Decatur south of Huntsville?

3 A It's more west.

4 Q Southwest?

5 A Yes.

6 Q Okay.

7 A Yeah.

8 Q You testified a little bit about the NAACP's involvement  
9 in a ballot harvesting lawsuit fairly recently, correct?

10 MR. ROSS: Objection. There's no testimony about  
11 ballot harvesting.

12 BY MR. TAUNTON:

13 Q SB-1. You testified about a lawsuit to enjoin SB-1, which  
14 was targeted at what I guess the State characterized as ballot  
15 harvesting; is that fair?

16 A Yes. We were involved in SB-1.

17 Q Okay. I'm just talking about that lawsuit. I'm trying to  
18 identify the lawsuit so we're talking about the same thing,  
19 okay?

20 A Yes.

21 Q Were -- now, you said that an injunction was eventually  
22 issued in that case, right?

23 A Yes.

24 Q Now, weren't a lot of the claims in that case, though,  
25 dismissed?

1 A Yes -- well, yes.

2 Q And the injunction applied specifically to individuals who  
3 were handicapped, such as blind or illiterate; is that right?

4 A Yes. And those who could not read.

5 Q Correct. Okay. Thank you.

6 The NAACP conducts frequent voter registration drives,  
7 right?

8 A Correct.

9 Q And the state conference expects its local branches to  
10 conduct voter registration drives, right?

11 A Yes.

12 Q Do you consider -- do you consider voter registration  
13 process a difficult process?

14 MR. ROSS: Objection. I'm not sure what he means by  
15 difficult.

16 THE COURT: If the witness is confused, he can say.

17 THE WITNESS: Beg your pardon?

18 THE COURT: If you understand the question, you may  
19 answer. And if you are confused, you may ask that it be  
20 clarified.

21 THE WITNESS: Okay.

22 Repeat the question.

23 BY MR. TAUNTON:

24 Q Do you consider the process of registering to vote, do you  
25 consider that a difficult process?

1 A For a person that is capable of understanding and who has  
2 access and who can write and not visually impaired or anything,  
3 it's fairly straightforward process.

4 Q Okay. Have members of the NAACP ever run for office?

5 A Yes.

6 Q And so if you had -- have you had an opportunity to  
7 observe their campaigns in your position with the NAACP?

8 A When you say opportunity, the opportunity's there, but we  
9 are nonpartisan, so I do not participate in their campaigns or,  
10 you know, what their records are or anything.

11 Q I understand. I'm not asking whether the NAACP has ever  
12 endorsed a candidate or anything like that. But if you had an  
13 opportunity generally in that position to observe the process?

14 A Again, the opportunity's there. Do I do it? The answer  
15 is no.

16 Q So you don't know whether it takes, for instance, funding  
17 or infrastructure to run an effective campaign?

18 A I assume it takes funding, but I don't quite understand  
19 the question.

20 Q Well, in a contested election, would simply announcing  
21 your candidacy for office but otherwise doing very little to  
22 raise campaign funding or build campaign infrastructure likely  
23 result in a successful campaign?

24 A It probably would not. Again, it depends on who you're  
25 running against and if you're running against anyone. So there



1 are a lot of factors involved in really responding to your  
2 question, so...

3 Q In the last five years, have you had any communications  
4 with any members of the NAACP that have said they wanted to be  
5 more politically engaged but could not be because they couldn't  
6 engage with the Democratic party?

7 MR. ROSS: Objection, Your Honor. It's beyond the  
8 scope of the cross -- excuse me -- the direct.

9 MR. TAUNTON: Your Honor, I mean, it's cross. It's  
10 not redirect. I don't know that my scope is entirely limited  
11 by -- entirely by his direct.

12 MR. ROSS: Yeah. It's not impeachment either, Your  
13 Honor. There's no reason for him to ask him questions about a  
14 political party when we didn't ask him anything about that on  
15 direct.

16 MR. TAUNTON: Your Honor, the case is about the -- the  
17 allegation is that the members of the NAACP have not been able  
18 to fully engage with the political processes in the state of  
19 Alabama. I'm asking him questions related to that.

20 THE COURT: The question was: In the last five years,  
21 have you had any communications with any members of the NAACP  
22 that have said they wanted to be more politically engaged but  
23 could not because they could not engage with the Democratic  
24 party.

25 MR. TAUNTON: Correct, Your Honor.

1 THE COURT: I think to the extent you're asking  
2 questions about whether members of the organization feel  
3 they're unable to participate equally in the political process,  
4 I think that's allowed. But if it's going somewhere else, it  
5 may not be.

6 MR. TAUNTON: Your Honor, it is I think entirely  
7 limited to that. There's not really a follow-up question.

8 THE COURT: Okay. You may answer that one.

9 THE WITNESS: Okay. I'm still a little confused here.  
10 So help me out with what am I answering.

11 BY MR. TAUNTON:

12 Q I can repeat the question. In the last five years, have  
13 you had any communications with any members of the NAACP that  
14 said they wanted to be more politically engaged but could not  
15 be because they could not engage with the Democratic party?

16 A The Democratic party?

17 Q Yes, sir.

18 A Okay. No.

19 Q Okay. In the last five years, have you had any  
20 communications with any members of the NAACP that said they  
21 wanted to be more politically engaged but could not be because  
22 they couldn't engage with the Republican party?

23 A No.

24 Q Let me ask you a little bit about the reapportionment  
25 process and the NAACP's participation in it.

1 Did a representative -- well, representative of the state  
2 conference attended public hearings for the reapportionment  
3 committee concerning the 2021 Senate district map, right?

4 A You said did members of the NAACP attend the hearing?

5 Q Yes, sir.

6 A Yes.

7 Q Okay. But that representative didn't speak at the  
8 hearing, did he?

9 A No.

10 Q Did the state conference provide any comments on the 2021  
11 Senate district map that was enacted by the Legislature?

12 A I don't recall on that one whether we provided any or not.

13 Q If I were to -- you gave a deposition in this case,  
14 correct?

15 A I did what now?

16 Q Did you give a deposition in this case?

17 A Yes.

18 Q In April?

19 A Yes or whenever it was. I don't remember the date.

20 Q If I were to show you your deposition, could that reflect  
21 --

22 A Yes.

23 Q Refresh your recollection?

24 A Yes.

25 Q So we turn to page 207 of that deposition.

1 And I -- if we -- I can't see it. Can you see the  
2 deposition?

3 A Yes.

4 Q Okay. So beginning at line 7, I asked you: Did anybody  
5 from the NAACP state conference examine the 2021 Senate  
6 district map before it was passed and provide any comments?  
7 And do you see your answer in line 10?

8 A Yes. I see the answer.

9 Q So I will ask you again: Did the state conference provide  
10 any comments on the 2021 Senate district map before it was  
11 passed by the Legislature?

12 A No.

13 Q Okay. Is it the state conference's position that the  
14 Alabama State Legislature should consider race as a key factor  
15 when drawing district lines in the state of Alabama?

16 MR. ROSS: Objection. Beyond the scope. It's  
17 ambiguous. I'm not sure what he's asking.

18 MR. TAUNTON: This goes directly to the heart of the  
19 claims of this case.

20 MR. ROSS: There's no intentional discrimination claim  
21 or claim about the use of race in the districting anymore.

22 MR. TAUNTON: If nothing else, it goes to the totality  
23 of the circumstances.

24 THE COURT: Why?

25 MR. TAUNTON: Well, certainly, if there were --

1 THE COURT: I think the answer would be different if  
2 there were -- to be clear, if there were an intentional  
3 discrimination claim in the case. But...

4 MR. TAUNTON: Your Honor, he provided testimony that  
5 the state -- State of Alabama should actually have in its  
6 guidelines -- or what we were discussing the guidelines that  
7 one of the guidelines should be the consideration of race and  
8 as we'll see in follow-up how that should be considered.

9 THE COURT: He did that in the deposition. I'm asking  
10 why it's admissible now.

11 MR. TAUNTON: I think it goes to the question of what  
12 guidelines were actually used, whether -- what the criteria  
13 were for considering the map and what constitutes a reasonably  
14 configured district ultimately.

15 MR. ROSS: Which, Your Honor, are --

16 THE COURT: Go ahead, Mr. Ross. I'm sorry.

17 MR. ROSS: Mr. Simelton didn't testify about what a  
18 reasonably reconfigured district was or what -- or anything  
19 about the illustrative map here. And, again, we don't have an  
20 intent claim or a racial gerrymandering claim anymore.  
21 Mr. Simelton also didn't testify about redistricting  
22 guidelines, so it's --

23 THE COURT: To be clear, I'm less concerned about what  
24 occurred in the deposition. What I'm concerned about is what  
25 is admissible now. And as I understand it, reasonably

1 configured district is for the Court to determine as the fact  
2 finder. And I still haven't heard anything that makes relevant  
3 the NAACP's belief about what the role of the race should be in  
4 Alabama's redistricting process. That's what I'm looking for.

5 MR. TAUNTON: Your Honor, it affected their decision  
6 about when to bring a claim, what kind of claim to bring, and  
7 ultimately, it -- he did testify concerning what he thought the  
8 shape the district could or should be.

9 THE COURT: Well, that he testified about it doesn't  
10 make it relevant.

11 MR. TAUNTON: I understand, Your Honor. But obviously  
12 --

13 THE COURT: And the same for the decision about what  
14 claim to be bring. I mean, I have got a claim sitting here I  
15 have got to adjudicate. The strategic decision about what to  
16 plead is not relevant to the fate of what was pled.

17 I guess I will put it this way: I understand why you want  
18 to ask the question. Why do you need to ask the question?

19 MR. TAUNTON: Your Honor, I think that this Court is  
20 going to consider lots of evidence about what a reasonably  
21 configured district would be. I think evidence about what the  
22 plaintiffs consider a reasonably configured district to be  
23 could be probative to that. Traditional districting principles  
24 and these types of things are certainly before the Court as it  
25 considers what a reasonably configured district is.

1 THE COURT: Are the plaintiffs offering this witness  
2 to prove anything about reasonably configured districts?

3 MR. ROSS: No, Your Honor, nothing beyond his  
4 testimony about the relationship between Huntsville and  
5 Decatur, but nothing specific to redistricting guidelines, what  
6 redistricting guidelines were considered, the motivation of  
7 legislators. He didn't -- none of his testimony goes to that,  
8 Your Honor.

9 MR. TAUNTON: Your Honor, it also goes to communities  
10 of interest and what communities of interest they thought  
11 should and should not be considered as the NAACP was  
12 considering what communities of interest could be drawn into a  
13 reasonable district.

14 MR. ROSS: And there was no testimony from him about  
15 what a reasonably configured district is or -- you know, beyond  
16 his general testimony about factors that may be relevant to  
17 communities of interest. He didn't testify about what are or  
18 are not communities of interest.

19 THE COURT: I still don't see why it matters for my  
20 limited task what the NAACP thinks the Alabama Legislature  
21 ought to do with race as a consideration.

22 MR. TAUNTON: Your Honor, really this is a foundation  
23 question that will go to actually specific maps before this  
24 Court.

25 THE COURT: Well, he's not testifying about those.

1 MR. TAUNTON: Well, I had like to ask him questions  
2 related to at least one of them.

3 THE COURT: Why does the NAACP's position on the role  
4 that race should play relate to that? Why is it foundational?

5 MR. TAUNTON: Well --

6 THE COURT: I mean, I assume the lawyers are going to  
7 make all kinds of arguments about reasonably configured, and  
8 you are going to do it on the basis of different bodies of  
9 evidence. The plaintiffs have just stipulated that their  
10 evidence about reasonably configured is not going to be this  
11 witness.

12 MR. TAUNTON: Well, Your Honor, that's not entirely  
13 true. He certainly has offered evidence concerning communities  
14 of interest, and in particular tying -- or seeking to tie  
15 together Huntsville and Decatur if not other areas. That is  
16 one of the things this Court will consider in the context of  
17 reasonably configured.

18 THE COURT: But why does that open the door to what  
19 the Legislature ought to do with race? I mean, it opens the  
20 door to impeaching, seeking to impeach what he said about  
21 Huntsville and Decatur. You can ask questions about that for  
22 sure. But why does that open the door to writ large what the  
23 Legislature ought to be doing? I mean, I think the question is  
24 whether the map the NAACP has challenged violates Section 2 or  
25 doesn't.



1 MR. TAUNTON: Correct. And the NAACP had a view about  
2 when it did and when it did not.

3 MR. ROSS: Your Honor. Sorry. To the extent, he's  
4 going to ask my client about when he decided to sue and why he  
5 decided to sue, that obviously potentially implicates the  
6 privilege and attorney work product, so it's even more far  
7 afield from anything Mr. Simelton testified to or anything that  
8 would be relevant to this Court's analysis.

9 Again, this is not an intent case. Plaintiffs are not  
10 questioning or trying to question the motive of the  
11 Legislature. Mr. Simelton simply testified to a few relevant  
12 facts, which the Court may or -- which plaintiffs or the Court  
13 or defendants may or may not use about communities of interest.

14 And so to the extent he wants to ask him about communities  
15 of interest, we understand that he may open the door to that,  
16 but we -- I didn't show him maps. He didn't testify to maps.  
17 And I think it's far beyond the scope and irrelevant.

18 MR. TAUNTON: Your Honor, he testified that he -- he  
19 did look at maps. He did testify to that. And also I'm  
20 primarily interested not in what the Legislature should or  
21 should not do which ultimately this Court will determine, but  
22 instead what the NAACP's understanding of those things is.

23 Ultimately, why the NAACP believes that a suit like this  
24 is due to be brought, why they ultimately decided to bring  
25 that, and I don't think that we will not touch on issues of

1 privilege, at least anymore than privilege was waived within  
2 the deposition itself.

3 THE COURT: Well, I mean, Mr. Ross asked why the NAACP  
4 is a plaintiff in the case. So you can certainly ask that  
5 question and engage with him about his answer there. But I  
6 don't think that opens the door to what the Legislature should  
7 or should not have considered about race as an input for this  
8 map.

9 MR. TAUNTON: Your Honor, as far as it concerns that  
10 specific issue, I will say I don't have any follow-up questions  
11 to the one that I asked. I mean, I asked him if he has a  
12 position on that. But that -- I really don't have any  
13 additional questions for him concerning the legislative  
14 guidelines.

15 THE COURT: All right. The question that drew the  
16 objection is: Is it the state conference's position that the  
17 Alabama State Legislature should consider race as a key factor  
18 when drawing district lines in the state of Alabama?

19 MR. TAUNTON: Correct, Your Honor.

20 THE COURT: I still don't have a relevance hook for  
21 that.

22 MR. TAUNTON: Your Honor, if -- I'm happy to ask my  
23 next question, and if the Court is satisfied that it -- if it  
24 doesn't draw the objection and the Court is satisfied that I  
25 can proceed on that, then I'm happy to proceed.

1 THE COURT: Let me hear the next question.

2 BY MR. TAUNTON:

3 Q Mr. Simelton, is it the NAACP's position that if a  
4 majority-black district can be created, it should be created?

5 A That's the question to proceed to answer?

6 MR. ROSS: Objection, Your Honor. I'm not sure -- it  
7 seems to ask for a legal conclusion, and I'm not quite sure  
8 what his question was, in fact, asking. So apparently he needs  
9 to rephrase it.

10 MR. TAUNTON: I am not asking him for a legal  
11 conclusion. I'm asking for him -- I'm asking for his  
12 understanding and what the -- again, the understanding and  
13 position of the NAACP is on that.

14 The Court ultimately decides the law.

15 THE COURT: You may answer that question.

16 BY MR. TAUNTON:

17 Q Would you like for me to repeat it, Mr. Simelton?

18 A Yes, sir.

19 Q Is it the NAACP's position that if a majority-black  
20 district can be created, it should be created?

21 A That -- the answer is we believe that's what Section 2 of  
22 the voting rights allows.

23 Q Is that the same as yes?

24 A The Section 2 of voting rights allow that? The answer is

25 --

1 Q Now, I --

2 A If that is allowed under Section 2 of the Voting Rights  
3 Act, which we believe it is, then the answer is yes.

4 Q Okay. Now, the state conference had evaluated bringing a  
5 lawsuit like this one for several years, hadn't it?

6 MR. ROSS: Objection. Excuse me. This is calling for  
7 attorney-client privilege and work product.

8 MR. TAUNTON: Without -- I'm happy to stipulate that  
9 you should not reveal any conversations with counsel.

10 MR. ROSS: He's asking him about what the -- what the  
11 NAACP considered and what lawsuits it considered bringing. Of  
12 course, that's entirely within the privilege. I don't know  
13 what would be a non-privilege answer.

14 BY MR. TAUNTON:

15 Q I'm happy to rephrase the question.

16 Had the NAACP state conference for several years had  
17 discussions about the possibility of creating another district  
18 in north Alabama for African-Americans to get elected to the  
19 Senate?

20 THE COURT: Mr. Simelton, I am going to instruct you  
21 that in answering the question, you can't reveal anything about  
22 conversations with attorneys.

23 MR. ROSS: Including with the NAACP's internal  
24 attorneys at the general counsel's office of the NAACP  
25 attorneys.

1 THE WITNESS: The response would be based on  
2 discussions that we have had with attorneys. I mean, I haven't  
3 -- we didn't come up with this ourselves.

4 MR. ROSS: Your Honor, I --

5 THE COURT: All right. Then the objection based on  
6 the privilege is sustained if he can't answer it without  
7 revealing conversations with attorneys.

8 MR. TAUNTON: Your Honor, I -- I just read his answer  
9 in a deposition. So I mean, I'm not asking him for anymore  
10 than he already has revealed. And there was no objection on  
11 the basis of privilege at the time that the question was asked.  
12 BY MR. TAUNTON:

13 Q So I am not asking you to go beyond what has already been  
14 stated. I'm only asking you if that question -- if that  
15 question is true.

16 THE COURT: What was the question from -- I don't have  
17 the question. What was the question from the deposition?

18 BY MR. TAUNTON:

19 Q Mr. Simelton, if we could maybe refresh your recollection,  
20 we'd go to your deposition on page 67 beginning at line 17 and  
21 then through line 6. And at some point, you did reference  
22 conversations with counsel. And I think both myself and your  
23 counsel instructed you not to provide any further testimony  
24 concerning that.

25 Mr. Simelton, based on your review --

1 MR. ROSS: Your Honor, there was an objection to  
2 privilege in the middle of this deposition. So it's not clear  
3 to me.

4 THE COURT: Well, but Mr. Naifeh it says at line 13,  
5 you can say that. So I think the answer that begins at line 22  
6 on 67 through page 68, line 6 is in, but nothing beyond that.

7 MR. TAUNTON: Your Honor, that's -- I am not asking  
8 him anything beyond that.

9 THE COURT: All right. Well, if you want that in the  
10 record, I think you need to refresh his recollection.

11 BY MR. TAUNTON:

12 Q Mr. Simelton, based on your review of the deposition  
13 there, had the state conference been evaluating bringing a  
14 lawsuit like this for several years?

15 A And I hate to ask the question with the question because I  
16 don't want -- I want to make sure I answer your question  
17 correctly.

18 MR. ROSS: Your Honor, there is also an objection to  
19 form. I'm not sure this is proper refreshing recollection. I  
20 also, again, raise my objection to relevance. He asked a  
21 confusing and improper question and then got an objection to  
22 attorney-client privilege. So obviously, whatever he said in  
23 the deposition that came out before the objection, we  
24 understand is in. But asking him to testify beyond that seems  
25 improper to the plaintiffs.

1 THE COURT: All right. I think the answer that he  
2 gave before the privilege objection is fairly in. I think  
3 anything beyond that or any characterization of that is subject  
4 to the privilege objection. I think the privilege objection  
5 was waived as to the answer in the deposition that came before  
6 the privilege objection.

7 MR. TAUNTON: Understood, Your Honor. I'm not trying  
8 to probe any -- any further past that.

9 THE COURT: All right.

10 THE WITNESS: Start again?

11 BY MR. TAUNTON:

12 Q Yeah. I am a little lost as to where we are with the  
13 question. But I think it was this: Had the state conference  
14 before bringing this lawsuit evaluated bringing a lawsuit like  
15 this for several years?

16 A Again, depends on what you mean by evaluated.

17 We have not done -- we did not do any evaluation, but we  
18 did --

19 Q Don't tell me about evaluations of counsel.

20 A Beg your pardon?

21 Q Don't tell me about evaluation of counsels.

22 A That's what you said is evaluation.

23 MR. ROSS: Your Honor, it seems -- if he can just read  
24 this answer into the record, that seems --

25 THE COURT: Why don't you read the answer into the

1 record and ask him if he wants to change it.

2 BY MR. TAUNTON:

3 Q Yeah. I tried that earlier and drew the objection, but I  
4 will do that now.

5 THE COURT: Well, I mean, to be fair, it doesn't say  
6 evaluating bringing a lawsuit. What it says is there have been  
7 discussion for several years that it may be possible to create  
8 another district.

9 MR. TAUNTON: Okay.

10 BY MR. TAUNTON:

11 Q So, Mr. Simelton, I think I asked you this question: I'd  
12 asked you: How did the Stone matter come to your attention?

13 I believe your answer was: There had been discussion for  
14 several years that it may be possible to create another  
15 district in north Alabama for an African-American to get  
16 elected to the Senate. And this is probably three or  
17 four years ago. You know, just casual conversation; is that  
18 correct?

19 A That is correct.

20 Q Do you stand by that answer?

21 A Stand by the answer?

22 Q Yes, sir.

23 A Casual conversation, yes.

24 Q Then the NAACP, of course, brought this lawsuit following  
25 the reapportionment process after the 2020 census, right?



1 A Yes.

2 Q Is one of the reasons that the state conference did not  
3 bring this lawsuit prior to the 2020 census because the state  
4 conference did not believe that a valid majority-black district  
5 could be drawn?

6 MR. ROSS: Objection. Not sure what valid means.

7 BY MR. TAUNTON:

8 Q I believe it is the word that you used. But did the state  
9 conference believe that it could succeed in a lawsuit prior to  
10 the 2020 census? And let me -- that's phrase is confusing.  
11 Let me ask this: Did the state conference decline to bring  
12 this lawsuit in the north Alabama area prior to the 2020 census  
13 because the state conference did not believe it could succeed  
14 in that lawsuit?

15 MR. ROSS: Which again, Your Honor, likely involved  
16 conversations with counsel. So to the extent he's asking for  
17 any information which Mr. Simelton testified about with --  
18 excuse me -- spoke with counsel about the viability of any  
19 claim, plaintiffs would object.

20 MR. TAUNTON: I could try rephrasing the question,  
21 Your Honor.

22 BY MR. TAUNTON:

23 Q Would the population shifts following the 2020 census in  
24 the Huntsville area have an impact on the state conference's  
25 decision to participate in the Stone lawsuit?

1 A Yes.

2 Q How so?

3 A We believed that there were increase in African-Americans  
4 in the Huntsville area after looking at the numbers that the  
5 increase in the number of African-Americans in the area that  
6 there would be an increased possibility of creating a district.

7 Q And how did that in particular impact the state  
8 conference's decision to participate in the Stone lawsuit?

9 A It was a -- kind of a combination of the time was right,  
10 and let's proceed.

11 Q Was there a shift in population that made you believe that  
12 there was a way to create a majority-black district in the  
13 Huntsville area?

14 MR. ROSS: Objection. Asked and answered.

15 MR. TAUNTON: Your Honor, I don't know if that was.

16 MR. ROSS: Well, he answered.

17 THE WITNESS: I mean, we did not do an analysis or  
18 anything like that. We just knew that there were more people  
19 moving into that area -- into the Huntsville Madison County  
20 area.

21 BY MR. TAUNTON:

22 Q Do you know if majority of black district could have been  
23 drawn before the 2020 census?

24 A We don't -- again, we didn't do an analysis, so we don't  
25 know if there could have been or not.

1 Q Did the NAACP believe that a majority-black district could  
2 be drawn prior to the 2020 census but only by splitting four  
3 counties?

4 MR. ROSS: Your Honor, I renew my prior objections  
5 about relevance and beyond the scope. Again, there was no  
6 testimony from Mr. Simelton at all about whether he thought it  
7 was possible to draw a majority-black district beyond his  
8 general statement that he doesn't believe cracking and packing.  
9 And there's no testimony from him about any map, you know, what  
10 population changes in Huntsville.

11 So, again, this is not what Mr. Simelton was put up by the  
12 plaintiffs to testify about. That's beyond the scope of his  
13 knowledge or his direct testimony.

14 MR. TAUNTON: Your Honor, I believe, if I can get an  
15 answer to it, this is probably my last question in this line.

16 Second, he was asked about the NAACP's decision to  
17 participate in the lawsuit, why they're participating in the  
18 lawsuit, and the NAACP is a plaintiff requesting the power of  
19 this Court to do these things.

20 They're -- why they have invoked the power of the Court  
21 and why they have invoked the power of the Court now as opposed  
22 to some other time I think is relevant.

23 THE COURT: So I think I need to know answers to  
24 questions about why the NAACP believes it's entitled to relief.

25 I do not think I need to know answers to questions about

1 why they did not previously believe they were entitled to  
2 relief.

3 So if you can frame the question in a way that is relevant  
4 to what I need to know or have to decide, then I think the fact  
5 that it was not specifically asked in the direct is not a  
6 sustainable objection.

7 But why the NAACP changed its mind about whether to bring  
8 a lawsuit or not bring a lawsuit is not material to whether it  
9 is now entitled to relief. Questions about its position as to  
10 why it is now entitled to relief are relevant.

11 BY MR. TAUNTON:

12 Q When the NAACP brought this lawsuit, did it believe that a  
13 majority-black district could be drawn without splitting four  
14 counties?

15 A Yes.

16 Q Okay. And did it believe that that was true after the  
17 2020 census?

18 A Let me back up and answer that question. I'm -- I should  
19 have stated this upfront.

20 But it was only after we -- I mean, we had in our minds  
21 that it could be done, but --

22 MR. ROSS: Your Honor, I guess I'm concerned that he  
23 may testify about --

24 THE COURT: I'll reissue my warning. Okay, so  
25 Mr. Simelton, you may answer the question, but you may not

1 reveal conversations with counsel.

2 So make sure that you limit yourself in your answers to  
3 things that were not derived from conversations with counsel.

4 MR. ROSS: I think that, Your Honor, that he can't  
5 testify --

6 THE COURT: I think he's about to tell us that if he  
7 can't, but --

8 THE WITNESS: I can only --

9 BY MR. TAUNTON:

10 Q Would it help if I refresh your recollection?

11 A Well, if you rephrase the question. I mean, I think --  
12 again, we didn't do an analysis -- well, I don't want to get  
13 into the client -- attorney-client privilege.

14 THE COURT: All right. I'm going to stop you right  
15 there. If you have something from the deposition, you can use  
16 it.

17 MR. TAUNTON: Can we put up page 201 beginning at line  
18 10, the full page? Your Honor, this was phrased in the context  
19 of what the NAACP thought prior to the 2020 census.

20 THE COURT: Well, I already said that wasn't relevant,  
21 so, I mean, that's not the question.

22 MR. TAUNTON: But it was -- he discusses in his  
23 answer, Your Honor, without raising a privilege objection why  
24 the NAACP believed it was entitled to relief afterwards --  
25 without raising a privilege objection.

1 THE COURT: Well, but that's all before.

2 MR. ROSS: Your Honor --

3 THE COURT: What I limited you to was on relevance  
4 grounds was now or after --

5 MR. TAUNTON: Your Honor, I was trying to phrase it in  
6 the context of now. I do think that his answer goes to the  
7 question of now.

8 I'm happy to move on.

9 THE COURT: I think that sounds like the wiser course.

10 MR. TAUNTON: Your Honor, I will take a minute to  
11 confer with counsel.

12 THE COURT: Sure.

13 MR. TAUNTON: Your Honor, I don't think I have any  
14 further questions.

15 THE COURT: Okay. Is there any redirect?

16 MR. ROSS: Your Honor, could I have just have a few  
17 minutes?

18 THE COURT: You may.

19 MR. ROSS: Thank you.

20 Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. ROSS:

23 Q Just a couple of questions, Mr. Simelton. You mentioned  
24 you had about 50 people in your ward at your church, correct?

25 A Yes.

1 Q Do you know where all 50 of them live?

2 A No.

3 Q Okay. In your experience, are black people more likely to  
4 need help with registering to vote?

5 A Yes.

6 Q And are black people more likely to need help with  
7 applying to vote absentee?

8 A Yes.

9 MR. ROSS: Thank you, Your Honor. No further  
10 questions.

11 THE COURT: All right. Is there any reason I may not  
12 excuse Mr. Simelton?

13 All right. Mr. Simelton, thank you for being with us  
14 today. You are excused.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: All right. Would plaintiffs' counsel  
18 predict for me the chances that the next witness can testify in  
19 fewer than 22 minutes.

20 MR. ROSBOROUGH: Zero.

21 THE COURT: Zero. Okay. All right. I thought that  
22 was the case, but I just wanted to be sure.

23 All right. Then we will plan to recess now for the day.

24 Is there any objection to starting at 8:30 tomorrow?

25 Y'all are so well prepared, and everything has gone so

1 seamlessly today, except for the minor AV hiccups that I think  
2 we can afford to start 30 minutes earlier.

3 MR. ROSBOROUGH: No objections from plaintiffs, Your  
4 Honor.

5 MR. TAUNTON: No objection.

6 THE COURT: All right. Excellent.

7 Does everybody else in the room know who the first witness  
8 is tomorrow? I think so.

9 MR. ROSBOROUGH: We can say it. Plaintiffs are going  
10 to call Tony Fairfax as their next witness.

11 THE COURT: Okay. And I did not mean to be putting  
12 anybody to any premature revelations, but I have learned over  
13 the course of time that y'all make agreements about telling  
14 each other these things, and I'm the last person in the room to  
15 know it.

16 MR. ROSBOROUGH: We're happy to let the Court know  
17 who's coming after that, too, if it's helpful.

18 MR. DAVIS: Do you want to know who's coming the next  
19 day?

20 THE COURT: I would love to know who will be the first  
21 witness the next day so that I can be prepared. That would be  
22 great. Because I'll make sure I'm brushed up on Mr. Fairfax.

23 All right. Anything we need to take up before we recess?

24 MR. DAVIS: I can't think of anything, Judge.

25 MR. ROSBOROUGH: Nothing from us either, Your Honor.



1 THE COURT: Okay. Great.

2 All right. Then we'll recess and go off the record right  
3 now.

4 (Discussion off the record.)

5 (Whereupon, the above proceedings were concluded at  
6 4:40 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K Decker

11-12-2024

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255