

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

ALABAMA STATE CONFERENCE \*  
OF THE NAACP, et al., \*  
Plaintiffs, \* 2:21-cv-1531-AMM  
vs. \* November 20, 2024  
WES ALLEN, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendant. \*  
\*\*\*\*\*

TRANSCRIPT OF BENCH TRIAL  
VOLUME VII  
BEFORE THE HONORABLE ANNA M. MANASCO  
UNITED STATES DISTRICT JUDGE

Proceedings recorded by OFFICIAL COURT REPORTER, Qualified  
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and Procedures Vol. VI, Chapter III, D.2. Transcript  
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I N D E X

1		
2		
3	CHRISTOPHER BONNEAU	1395
	DIRECT EXAMINATION	1395
4	BY MR. TAUNTON	1395
	CROSS-EXAMINATION	1473
5	BY MR. ROSBOROUGH	1473
	REDIRECT EXAMINATION	1532
6	BY MR. TAUNTON	
	EXAMINATION	1541
7	BY THE COURT	
8	SUSAN COPELAND	1545
	DIRECT EXAMINATION	1545
9	BY MS. LANCASTER	1545
	CROSS-EXAMINATION	1570
10	BY MR. ETTINGER	1570
	REDIRECT EXAMINATION	1578
11	BY MS. LANCASTER	
12	PATRICIA PAYNE	1581
	DIRECT EXAMINATION	1581
13	BY MR. MINK	1581
	CROSS-EXAMINATION	1600
14	BY MR. VAN LEER	1600
	REDIRECT EXAMINATION	1618
15	BY MR. MINK	
16		
	Defense Exhibit 2	1460
17	Plaintiffs' Exhibit 333	1507
	Defense Exhibit 202	1565
18	Defense Exhibit 223	1569
	Defense Exhibit 205	1600
19		
20		
21		
22		
23		
24		
25		

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P R O C E E D I N G S

(In open court.)

THE COURT: Good morning, everybody.

All right. Secretary's next witness.

MR. TAUNTON: Your Honor, the Secretary calls  
Dr. Christopher Bonneau.

THE COURT: Excellent.

CHRISTOPHER BONNEAU

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

THE COURTROOM DEPUTY CLERK: Please state and spell  
your name for the record.

THE WITNESS: Christopher, C-H-R-I-S-T-O-P-H-E-R,  
Bonneau, B-O-N-N-E-A-U B.

THE COURTROOM DEPUTY CLERK: Thank you.

DIRECT EXAMINATION

BY MR. TAUNTON:

Q Good morning, Dr. Bonneau.

A Good morning.

Q How are you currently employed?

A I am a profess of political science at the University of  
Pittsburgh.

Q Can you give us a bit of your educational background?

A I received my bachelor's degree in political science,  
theology, and humanities from Valparaiso University. And I

1 received a master's in political science from Ball State  
2 University and a master's in political science and an Ph.D. in  
3 political science from Michigan State University.

4 Q Have you also studied advanced statistics?

5 A I have, both -- primarily in my graduate work. My  
6 secondary field in political science at Michigan State was  
7 research methodology. And then I was -- took a summer  
8 methodology training program at the -- so when I was at  
9 Michigan State University for my Ph.D., my secondary field was  
10 political methodology. And then in the summer of 1999, I did  
11 advanced training at the University of Michigan at the  
12 Inter-University Consortium for Social and Political Research.

13 Q After receiving your Ph.D., did you join the faculty at  
14 Pittsburgh?

15 A I did.

16 Q And you have been there ever since?

17 A I have.

18 Q What position do you currently hold there?

19 A So I'm currently a professor of political science, and I  
20 am also the interim chair of the department of Spanish and  
21 Portuguese.

22 Q For professor political science, have you held that  
23 position since 2019?

24 A I believe that's correct, yes.

25 Q What are some of the courses you have taught as a member



1 of the faculty at the University of Pittsburgh?

2 A At the undergraduate level, I've taught classes in  
3 American political process, which is the name we have for our  
4 intro to American politics class.

5 I've taught classes on civil liberties and constitutional  
6 law. I've taught classes on judicial politics. I've taught  
7 classes on sports and politics, politics and film. I've taught  
8 a class on mass incarceration.

9 I think that's it at the undergraduate level.

10 At the graduate level -- no. I've also taught research  
11 methods.

12 At the graduate level, I've taught research design for  
13 graduate students. I've also taught maximum likelihood  
14 estimation, which is an advanced methodological technique, as  
15 well as seminars in judicial politics.

16 Q Have you ever held a role with the Center for American  
17 Politics and Society?

18 A Yes. I believe it was 2012 to '13 I served as codirector  
19 for that speaker series.

20 Q Have you ever received rewards -- awards for your work?

21 A I have. In 2016, I believe, I received the Best Paper  
22 Award for a paper that was given at the Southern Political  
23 Science Association. My second book -- no, my third book,  
24 sorry, *Voters' Verdicts* received the Best Book Award for the  
25 best book published in state politics in the past three years

1 from the state politics section of the American Political  
2 Science Association.

3 And then in 2021, I received the Chancellor's  
4 Distinguished Teaching Award.

5 Q Have you published any books?

6 A Yes.

7 Q What have you published?

8 A So I've been coauthor on three books. In 2005, a  
9 *Strategic Behavior and Policy Choice on the U.S. Supreme Court*  
10 was published by Stanford University Press.

11 In 2009, *In Defense of Judicial Elections* was published by  
12 Routledge.

13 And in 2015, *Voters' Verdicts* was published by the  
14 University of Virginia Press.

15 Q Have you published any peer-reviewed articles?

16 A Yes.

17 Q What are some of those articles?

18 A Most of my scholarly career has been devoted to studying  
19 of elections, but judicial elections specifically.

20 So our judicial election's similar to elections for other  
21 offices. What do voters know? How much do they know? What  
22 affects the choices they make? What effects does campaign  
23 spending have on these elections? What affects does voter  
24 participation? These kind of fundamental questions.

25 Q Have you held any positions on any peer-reviewed journals?

1 A I have. From 2014 to 2020, I was coeditor of *State*  
2 *Politics and Policy Quarterly*, which is the official journal of  
3 the State Politics Group within the American Political Science  
4 Association, and I've also served on two or -- I think two  
5 editorializing -- three editorial boards, as well.

6 Q And I meant to ask you this: What -- what academic  
7 journals have you published with?

8 A So I have published in a variety of academic journals.

9 In political science, there are three widely-regarded top  
10 journals with acceptance rates of less than, you know,  
11 7 percent'ish.

12 The *American Political Science Review*, the *American*  
13 *Journal of Political Science*, and the *Journal of Politics*. And  
14 I have published five articles in those top outlets, as well as  
15 a variety of other still peer-reviewed rigorous journals, but  
16 not as selective.

17 Q Have you ever testified as an expert in a court case  
18 before?

19 A Yes.

20 Q Have you testified in courts in the state of Alabama?

21 A Yes.

22 Q Has your testimony ever been accepted?

23 A Ever been accepted? Yeah. It always has been accepted.

24 Q That was my next question. Has your testimony ever been  
25 excluded?

1 A No.

2 Q Has your testimony ever been limited?

3 A No.

4 Q Now, you mentioned a lot of your work -- is a lot of your  
5 work focused on judicial elections?

6 A Yes.

7 Q How many states utilize judicial elections in any  
8 capacity, retention elections, any capacity?

9 A About 38.

10 Q How many states use elections for the initial selection of  
11 their judges, as opposed to a recall retention election?

12 A 22.

13 Q And how many states use statewide partisan elections to  
14 select all of their appellate judges?

15 A So Texas and Alabama.

16 Q So in your scholarly work on judicial elections  
17 independent of this case, have you spent time analyzing Alabama  
18 elections?

19 A I've analyzed Alabama elections in the context of how  
20 these elections compare to other states. So I've not done any  
21 specific deep dive into Alabama elections. That would not be  
22 something a political scientist would do, but rather, you know,  
23 how is Alabama in their elections similar to other states,  
24 different from other states. And so in the context of a  
25 multi-state study, Alabama is obviously always there.

1 Q In your work on judicial elections, have you had an  
2 opportunity to also analyze non-judicial elections?

3 A Yes.

4 Q In your scholarly work, have you argued that partisan  
5 judicial elections feature the same characteristics as other  
6 partisan elections?

7 A Yes.

8 Q Has that research included analyzing voter participation?

9 A Yes.

10 Q Voter knowledge?

11 A Yes.

12 Q Campaign fund-raising?

13 A Yes.

14 Q Campaign spending?

15 A Yes.

16 Q And has looking at those issues led you to the conclusion  
17 that judicial elections are materially similar to other  
18 elections?

19 A On many factors, yes.

20 MR. TAUNTON: Your Honor, we would tender Dr.  
21 Christopher Bonneau as an expert witness in American political  
22 science, election analysis, and political research methodology.

23 THE COURT: Any objection?

24 MR. ROSBOROUGH: No objections.

25 THE COURT: Admitted.

1 BY MR. TAUNTON:

2 Q Dr. Bonneau, you produced an expert report in this case?

3 A Correct.

4 Q What were you analyzing?

5 A So what I looked at in this case is trying to figure out  
6 what explains the electoral patterns we see in Alabama  
7 elections, both state Supreme Court, but also state legislative  
8 elections.

9 So given the results that we have, that we know happened,  
10 what are the best possible reasons or the most likely reasons  
11 to see those patterns emerge.

12 MR. TAUNTON: Your Honor, can I give him a copy of his  
13 report, Defendant's Exhibit 1, which I believe has already been  
14 admitted?

15 THE COURT: You may.

16 BY MR. TAUNTON:

17 Q Dr. Bonneau, you began your report by analyzing certain  
18 Alabama Supreme Court elections in the 1980s and '90s?

19 A Yes.

20 Q And you start paragraph 2 by stating that you're analyzing  
21 certain races prior to the realignment of Alabama politics from  
22 a Democratic majority to a Republican majority, right?

23 A Yes.

24 Q Now, when you say prior to realignment, what period of  
25 time are you specifically discussing?

1 A So here I'm talking about the period of time when Alabama  
2 was transitioning from a one-party Democratic state to a  
3 one-party Republican state.

4 Q Roughly speaking, would that be the 1980s to 2000?

5 A Right. If we're looking at elected offices, if you are  
6 looking at when did Democrats stop being successful at electing  
7 statewide offices and when Republicans started being  
8 exclusively successful at winning statewide offices, there was  
9 a transition period where things would cycle through, but  
10 generally, that's when -- that's the time period this happened  
11 in Alabama.

12 Q So you are not talking about 1850?

13 A No.

14 Q Are you talking about 1960?

15 A No.

16 Q Do you know when Richard Shelby switched his party from  
17 the Democratic Party to the Republican Party?

18 A I believe Senator Shelby switched his party in 1994.  
19 Immediately after winning election as a Democrat, he switched  
20 over to the Republican Party.

21 Q Do you know when Fob James was elected governor of Alabama  
22 as a Republican?

23 A I believe that was in the mid-'90s, '94, '96 maybe.

24 Q Do you know if he had previously been elected as a  
25 Democrat?

1 A He had.

2 Q Do you know when the last Democratic governor of Alabama  
3 was elected?

4 A I believe it was Siegelman, right? Don Siegelman, I  
5 believe, in the -- was it late '90s or early 2000s?

6 Q Now, you talk here about the elections of Oscar Adams and  
7 Ralph Cook, right?

8 A Yes.

9 Q Why were you taking a look at these elections?

10 A Well, these were the first African-Americans to serve on  
11 the Alabama Supreme Court, and they also won election to the  
12 Supreme Court to keep their seats.

13 Q And was Oscar Adams first appointed to the Alabama Supreme  
14 Court?

15 A He was.

16 Q Do you recall who appointed him?

17 A I believe it was Fob James.

18 Q And did Oscar Adams then win election in 1982 and '88?

19 A He did.

20 Q Was Ralph Cook first appointed to the Alabama Supreme  
21 Court?

22 A I believe he was.

23 Q Did he stand for election in 1994?

24 A He did.

25 Q And did he win?



1 A He did.

2 Q And I think you say that Oscar Adams and Ralph Cook, they  
3 were both black, right?

4 A They were.

5 Q Were they also Democratic?

6 A Or they still are. I don't know if they are still alive  
7 or not.

8 Yes, they were Democrats.

9 Q Was the majority of the Alabama Supreme Court made up of  
10 Democrats at this time?

11 A Yes.

12 Q Do you know when Republicans gained control of the Alabama  
13 Supreme Court?

14 A It was actually the election of 2000.

15 Q Since 2000, how many black candidates have been elected to  
16 the Alabama Supreme Court?

17 A Zero.

18 Q How many Democrats have been elected to the Alabama  
19 Supreme Court?

20 A One.

21 Q Now, we'll come back to your analysis and straight-ticket  
22 voting in a moment. But that's stick with your analysis of  
23 voting patterns in the Alabama Supreme Court races. Again, a  
24 lot a lot of your work is focused on judicial elections, right?

25 A Yes.

1 Q And in your opinion, in your work on judicial elections,  
2 have you analyzed -- had an opportunity to analyze non-judicial  
3 elections?

4 A Yes.

5 Q And have you -- have you formed an opinion about whether  
6 or not judicial elections feature a lot of the same features as  
7 judicial elections?

8 A They do, particularly partisan elections.

9 Q So if we could put up Appendix A on one side of the screen  
10 and maybe paragraph 5 on the other side.

11 So why did you take a look at Alabama Supreme Court  
12 elections since 2000 in this case?

13 A Well, in 2000 is when the court switched from a Democratic  
14 majority to a Republican majority.

15 Now, you can go further back, but more recent elections  
16 are more probative than prior time elections.

17 And so I chose 2000 as a starting point to give us about  
18 20 years or so of data.

19 Q And how many races during this time were contested by the  
20 two major parties?

21 A About over half, about 55.6 percent.

22 Q Would that be about 20?

23 A Yes.

24 Q Okay.

25 A 20 of the 36 were two-party contested.

1 Q And if we look at Appendix A here, since 2012, it looks  
2 like a number of these races have been uncontested; is that  
3 right?

4 A Yeah. Most of them.

5 Q Do you draw any conclusions from that?

6 A Well, it's an indication that the Democratic Party either  
7 one, cannot recruit candidates to run for these offices; or,  
8 two, are not willing to invest in candidates who are interested  
9 in running, because they know it's very unlikely that they're  
10 going to win.

11 Q Between 2000 and the present day, how many of the 20  
12 contests between the two major parties featured a black  
13 candidate?

14 A So there were six -- I'm sorry. There are five  
15 African-American candidates. My report says six because I  
16 miscoded Donna Smalley when I was trying to ascertain what race  
17 she was. I looked at a campaign photo, and she looked like she  
18 was not white. Subsequent photos show that, in fact, she is  
19 white, so I am going to stipulate that.

20 So if we don't count Donna Smalley, there will be five  
21 African-American candidates.

22 Q How many of the five African-American candidates were  
23 Democrats?

24 A All of them.

25 Q So if we look at paragraph 9 of your report, what analysis

1 were you conducting here?

2 A So here what I wanted to do is since all of the  
3 African-American candidates are Democrats, I wanted to see --  
4 and they all lost. All the Democrats have lost except for Sue  
5 Bell Cobb. And we could get into Sue Bell Cobb if we want more  
6 specifically.

7 So because they were all Democrats, did black Democrats  
8 perform worse than white Democrats did? And so in 2000, we  
9 have a situation where we have four black Democrats -- sorry --  
10 four Democrats running, two of whom are black, two of whom are  
11 not.

12 And so if we look at the percentage of the vote, Ralph  
13 Cook received 46.4 percent, John England received 45.8 percent,  
14 which is higher than the percentage of the vote received by the  
15 two losing Democratic candidates who are white, right, at 45.3  
16 and 45.2.

17 So these are very close, these numbers. There's not a  
18 huge difference between them, but black Democrats are not  
19 performing worse than white Democrats are.

20 The same is true in 2006. So Sue Bell Cobb won, so,  
21 right, with 51.5 percent of the vote, and then the next two  
22 highest vote getters on the Democratic side were John England  
23 and Gwendolyn Kennedy. And then the worst vote getter in 2006  
24 was Al Johnson, a white candidate.

25 So, again, we have black Democrats not being penalized

1 worse than white Democrats.

2 Q So looking just at 2000, then, you're comparing the vote  
3 share received by the two black candidates to the vote share  
4 received by the two white Democratic candidates?

5 A Correct.

6 Q And did you find any significant difference in the  
7 results?

8 A No.

9 Q Did you conclude that the black candidates, England and  
10 Cook, were penalized by voters on account of their race?

11 A They were not.

12 Q And then you conducted similar analysis in 2006?

13 A I did.

14 Q And, again, you were comparing the vote share received by  
15 the two black Democratic candidates England and Kennedy to the  
16 vote share received by the two -- I'm sorry.

17 A Correct.

18 Q So you were comparing the vote share received by the two  
19 black Democrats England and Kennedy to the vote share received  
20 by the two white Democrats Johnson and Cobb?

21 A Correct.

22 Q Did you see any significant difference in the results?

23 A Well, the one significant difference was Sue Bell Cobb won  
24 her election, but among the three Democratic losers in that  
25 election, there were no significant differences.

1 Q So Cobb, then, outperformed the two black Democrats in  
2 this election cycle?

3 A Yes. Cobb outperformed every Democrat in every election  
4 cycle with the exception of Doug Jones since 2000.

5 Q Was there any -- are you aware of anything unique about  
6 Sue Bell Cobb's election?

7 A Well, as, you know, devotees of Alabama know, there's this  
8 character called Roy Moore, and he was forced to resign from  
9 the bench. Drayton Neighbors was his replacement, and Sue Bell  
10 Cobb ran for that seat.

11 The only other Democrat to have success statewide in  
12 Alabama was Doug Jones in a special election who also ran  
13 against Roy Moore. And so that does seem to be a common tie.

14 Q And the common tie is what?

15 A Well, if a Democrat wants to be successful, it helps to  
16 run against somebody who is associated with Roy Moore or Roy  
17 Moore himself.

18 Q Did you also compare campaign spending -- well, before we  
19 move to that, setting aside or acknowledging that the  
20 uniqueness of Sue Bell Cobb's election, how did -- did you find  
21 any significance in how England and Kennedy performed compared  
22 to Al Johnson?

23 A No. They performed slightly better.

24 Q Again, did you find that the black Democrats, England and  
25 Kennedy, were penalized by voters on account of their race?

1 A No.

2 Q Did you also compare campaign spending in the 20 elections  
3 contested by both major parties since 2000?

4 A I did.

5 Q If we could put up on the right side Table 2.

6 And what did you find here?

7 A Well, in every election, the Democratic candidate was  
8 outspent and many times significantly so by the Republican  
9 candidates.

10 Q So looking again at paragraphs 11 through 13 of your  
11 report, what -- let's go and look briefly at that.

12 What analyses were you attempting to conduct in these  
13 paragraphs?

14 A In order to be competitive in an election, you have to  
15 spend money. I mean, this is not news.

16 And so there are a lot of things that can go into whether  
17 or not a candidate is viable or has a legitimate shot to win.  
18 One of them is the amount of money spent.

19 Now, it doesn't have to be equal, and it certainly doesn't  
20 have to be, you know, a lot. It's when you compare it to how  
21 much is spent by their opponent.

22 And so to run a statewide race in Alabama, if you are  
23 getting outspent two to one or three to one, it's going to be  
24 very difficult to win. You don't have to spend the most to  
25 win, but money is obviously an important factor.

1 Q Did you find that Republicans significantly outspent their  
2 Democratic counterparts?

3 A Yes.

4 Q And was that true across all races?

5 A It was. Even Sue Bell Cobb who spent about 2.5 million on  
6 her race was outspent by Drayton Neighbors who spent  
7 4.6 million.

8 Now, she was able to still win, right. 2.5 million is a  
9 pretty large sum of money back in 2006, but she was still  
10 significantly outspent.

11 Q Let's discuss now the analysis that you were conducting in  
12 paragraphs 11, 12, and 13 of your report. Let's focus first on  
13 paragraph 13.

14 What analysis were you conducting here?

15 A So in paragraph 13, I ran a basic regression model with  
16 the percentage of the population in a county that was  
17 registered, percentage of the black population that was  
18 registered, and whether the losing states for the core  
19 candidate was black, and I found in paragraph 13 that  
20 African-American candidates perform about 4.3 percentage points  
21 better than white candidates.

22 Q Now, you were analyzing here races just between 2010 and  
23 2022, right?

24 A Correct.

25 Q After submitting this report, did you become aware of any



1 errors in this analysis?

2 A I did.

3 Q And what were those?

4 A So in conjunction with another case, someone pointed out  
5 that there was a miscoding error in three races where I coded  
6 them as being competitive or contested -- sorry -- more than  
7 one candidate, when, in fact, that was not true.

8 And so thankfully this person found that error, pointed it  
9 out. And so when you run the analysis after that error, the  
10 results in paragraph 13 do not go away -- I'm sorry. They do  
11 go away.

12 Q Now, again you were analyzing just in this paragraph races  
13 between 2010 and 2022, right?

14 A Yes.

15 Q So after correcting those coding errors, if we could put  
16 Appendix A back up -- how many races were left for you to  
17 analyze?

18 A Well, between a black Democrat running, there's only one  
19 black Democrat who run, and that was Kelly. And there were two  
20 white Democrats. Sorry. Four white Democrats who ran.

21 Q Given -- after the correction in the data and given the  
22 lack of data points, would you have run this analysis if you  
23 had realized that there was only one black candidate to run  
24 since 2010?

25 A Probably not.

1 Q Would you have thought that it would yield results that  
2 would be interesting or significant?

3 A No. Because when you are looking at whether or not the  
4 candidate was black as an independent variable, it's basically  
5 a case study of one person.

6 And so in any one campaign, any one candidate, there can  
7 be a whole bunch of idiosyncratic factors that explain the  
8 result. And so if you only have one case, a statistical  
9 technique like this is not useful.

10 Q And the one case I think you said was Anita Kelly running  
11 against Greg Cook in 2022?

12 A Correct.

13 Q And if we were to look back at the campaign spending table  
14 we were just looking at, Table 2, how much money did she spend  
15 on her campaign?

16 A About \$22,000.

17 Q Does that strike you as a serious campaign?

18 A No.

19 Q I will ask this: The campaign spending that's reported  
20 here, is this total spending for the campaign?

21 A Yes.

22 Q So would that include spending in primary elections?

23 A Yes.

24 Q So, for instance, when it reports that Greg Cook spent  
25 just over 1.9 million in his 2022 campaign, could a lot of that

1 been spent in the primary?

2 A Yes. And I will say about the 22,000 to give some  
3 context, so in most recent school board election in my  
4 district, the PAC that I am associated with, we spent about  
5 \$25,000 for subdistrict, so a district within a school  
6 district. We were outspent. Our opponents spent like \$37,000  
7 in a much more compact area than a statewide race.

8 Q Let's go back and take a look at the analysis you  
9 conducted in paragraphs 11 and 12. What analysis were you  
10 conducting here?

11 A So here I'm looking to see if there's a relationship  
12 between the percentage of the vote that the Democratic  
13 candidate received in the county and the percentage of  
14 registered voters who are African-American.

15 Q Did this analysis rely on data concerning the same  
16 elections 2010 to 2012 that we were just discussing?

17 A Yes.

18 Q But did it also rely on county-level data concerning black  
19 registered voting populations?

20 A Yes.

21 Q And did it rely on data concerning black -- did it rely on  
22 data concerning black versus white candidates?

23 A No.

24 Q Did you analyze all Democratic candidates in this analysis  
25 the same?

1 A Yes.

2 Q So would the coding errors that we were discussing earlier  
3 have affected this analysis?

4 A No.

5 Q And what were your conclusions here?

6 A So my conclusion is that the higher the percentage of  
7 African-American voters in a district, the better Democratic  
8 candidates do.

9 Q Now, from this analysis alone, would you be willing to  
10 conclude that black candidates were not being penalized  
11 politically on account of their race?

12 A Well, I can't say anything about the black candidates.  
13 What I can say is a strong predictor of the percentage of the  
14 votes that were received by Democratic candidates is related to  
15 the percentage of the county with -- and how high the  
16 percentage of black registered voters is.

17 Q And I'm sorry. I asked a poor question there.

18 When I said having looked at Supreme Court races in  
19 Alabama since 2000, based on your analysis of Supreme Court  
20 races in Alabama since 2000, based on that alone, would you be  
21 willing to reach the conclusion that black candidates were not  
22 being penalized on account of their race?

23 A That's right. When you look at the results as a whole,  
24 all Democrats are being penalized. And black Democrats do not  
25 appear to being penalized more than white Democrats.

1 Q And that's one of the pieces of evidence you would want to  
2 look at when -- when analyzing that question?

3 A Yeah. I mean, when you're trying to understand the  
4 phenomenon, particularly one that can be complex and involve a  
5 variety of factors, you want to look at as many different  
6 pieces as you can.

7 I always think of doing research as like trying to put  
8 together a puzzle. And so you take evidence that's relevant  
9 from a bunch of different places and try to get a picture of  
10 the puzzle from each piece of evidence.

11 Q Shifting gears. Did you also analyze any legislative  
12 races?

13 A Yes.

14 Q And so if we take a look at -- again, we can look at  
15 paragraph 14 and 15, but what types of analysis was -- were you  
16 conducting the same type of analysis here that we were  
17 discussing before?

18 A Yes.

19 Q And walk us through that a little bit.

20 A So in paragraph 14, I looked at the 2022 elections of the  
21 Alabama House of Representatives, and I found similar results  
22 that black Democrats who lost contested seats for the State  
23 House performed better than white Democrats who lost contested  
24 seats for the State House.

25 And, again, you know, the House is different -- it's

1 difficult necessarily to compare across districts, because  
2 they're different demographics and so on. But just this kind  
3 of like an overview, right. If a Democrat lost, the black  
4 Democrat who lost performed better than the white Democrat who  
5 lost. And we're taking away cases where Democrats won, because  
6 there's not going to be bias if the Democrats are winning.

7 And then I also did that in the Alabama State Senate.  
8 Black Democrats who lost contested seats received a higher  
9 percentage of the vote than white Democrats who lost contested  
10 seats.

11 Q And here you were looking specifically at the 2022  
12 election cycle, right?

13 A Yes.

14 Q And that was -- at the time you conducted this report, was  
15 that the most recent election cycle?

16 A It was.

17 Q So did you find the Democrats as a whole performed poorly  
18 in 2022?

19 A As a whole? Yes. I mean, they don't have a majority in  
20 either house of the Legislature.

21 Q But did you see any reason to believe that black Democrats  
22 were performing worse on account of their race?

23 A Not in -- not in the -- those races where there were  
24 multiple candidates and the Democrats lost.

25 Q Now, again, are you suggesting that these elections

1 conclusively determined that black Democrats are not penalized  
2 in election contests by their race?

3 A It's another piece of evidence that suggests that party is  
4 the primary factor.

5 Q And that's one of the pieces of evidence that you would  
6 want to consider when analyzing this question?

7 A Correct.

8 Q Did you also analyze the primary election in House  
9 District 74?

10 A I did.

11 Q And what analysis did you conduct?

12 A So House District 74 is an interesting district, because  
13 in 2022, the district population was 55 percent  
14 African-American, but in 2018, that district was 67 percent  
15 white.

16 So it was a huge swing in terms of the demographics of the  
17 district between 2018 and 2022.

18 So not surprisingly given that shift, in 2022, an -- a  
19 Democrat was elected, whereas in 2018, it was a Republican.

20 However, in a Democratic primary, a white Democratic  
21 candidate defeated a black Democratic candidate and, in fact,  
22 received 65 percent of the vote against the black candidate.

23 So you have a majority-black district that elected a  
24 Democrat, but in the primary, a black Democrat lost to a white  
25 Democrat.

1 Q Is there any advantage to looking at primary elections  
2 when analyzing the effects that race -- the race of the  
3 candidate might have on election results?

4 A So the advantage of using primaries is that it controls  
5 the party. Everybody in that primary was a Democrat. So we  
6 don't have to worry about is there a conflation between  
7 political party and race. When you look at a primary, the  
8 party has held constant.

9 Q Now, in his initial report, did Dr. Liu analyze even one  
10 election that controlled for either race or party?

11 A He did not.

12 Q Were all the elections that he analyzed biracial elections  
13 that featured a black Democratic against a white Republican?

14 A Yes.

15 Q Now, can there be policy nuances between candidates in a  
16 primary election that could affect the outcome?

17 A Absolutely.

18 Q Could there be other nuances that might affect the  
19 outcome?

20 A Sure.

21 Q Could turnout in a primary election be lower than in a  
22 general election?

23 A Almost always.

24 Q But broadly speaking, I think you said that primary  
25 elections allow us to control for political party?



1 A Correct.

2 Q So would you draw any broad conclusions from a single  
3 primary election result?

4 A No.

5 Q And are you suggesting that this election conclusively  
6 determines that race does not play a role in candidate  
7 selection?

8 A No. It's just another puzzle piece.

9 Q So this was evident -- this is one piece of evidence you  
10 would want to consider alongside the other evidence?

11 A Correct.

12 Q Did you also analyze the primary election -- Republican  
13 primary election in House District 73?

14 A Correct.

15 Q And what analysis were you doing here?

16 A So this is the district where in 2021, Kenneth Paschal  
17 became the first black Republican to win election to the State  
18 House since Reconstruction.

19 And he defeated a white Republican in the primary and won  
20 in the general election about 75 percent of the vote against a  
21 white -- against a white Democrat. So it's a district that's a  
22 heavily conservative district that we have a black Republican  
23 who emerged out of a competitive primary.

24 Q And, again, what are the demographics of House District  
25 73? Do you recall?

1 A It's heavily white, but I'm not -- I don't have an exact  
2 number.

3 Q Could it be more than 65 percent White Voting Age  
4 Population?

5 A Sure.

6 Q Does that sound right?

7 A It sounds about right, yes.

8 Q Was Representative Paschal normally elected to his  
9 district in 2022 following the special election?

10 A He was.

11 Q And do you recall whether that was a contested race?

12 A It was not.

13 Q Do you draw any conclusions from that?

14 A Well, people seem to be satisfied with Representative  
15 Paschal and the job he was doing such that nobody decided to  
16 challenge him.

17 Q Now, again, would you draw any broad conclusions from a  
18 single primary election?

19 A No. Just another case.

20 Q Did you also take a look at the judicial career of Bill  
21 Lewis?

22 A I did.

23 Q And tell us a little bit about that analysis.

24 A So Judge Lewis was appointed to the circuit bench --  
25 African-American attorney was appointed to the circuit bench by

1 a Republican governor in 2019 -- sorry -- no. 2017.

2 Subsequent to his appointment, he ran for a full term on  
3 that bench and won a full seat facing no opposition in either  
4 the Republican primary or the general election.

5 Q And, again, what do you take away from a victory in an  
6 uncontested election?

7 A People seem satisfied with Judge Lewis such that no one  
8 decided to try and unseat him.

9 Q Since 2018, do you know whether Judge Lewis has received  
10 an additional appointment?

11 A I believe he has. I believe he is now on the court of  
12 civil appeals.

13 Q And who appointed him?

14 A I believe it was Governor Ivey.

15 Q Now, again, would you draw any broad conclusions from the  
16 two-time appointment and one-time election of Judge Lewis?

17 A No.

18 Q But is this one piece of evidence you would want to  
19 consider when analyzing whether the race of a candidate --  
20 whether a candidate was penalized on account of their race?

21 A Yes.

22 Q Now, before we get to your analysis of straight-ticket  
23 voting in this case, based on this evidence that we have seen  
24 so far, have you seen any evidence that black candidates are  
25 penalized on account of their race?

1 A I have not. I have not.

2 Q Now, when you say that, are you saying that they have been  
3 advantaged on account of their race?

4 A No.

5 Q So would you still expect if they were neither advantaged  
6 nor disadvantaged they would win some contests and lose some  
7 contests?

8 A Yes.

9 Q Let's turn back to your analysis of straight-ticket  
10 voting.

11 A Sure.

12 Q If we could put up Table 1.

13 And you discuss this analysis in paragraph 3 and 4 of your  
14 report. And then you provide the court with this Table 1,  
15 right?

16 A Yes.

17 Q Why did you analyze straight-ticket voting in Alabama?

18 A So Alabama is one of six states, I believe, that allow  
19 voters to go in and cast a straight ticket. So when you go in,  
20 you can just check one box or however the method is in that  
21 district, and then it votes for all the candidates of that  
22 party.

23 So if you think about this broadly, you're not voting for  
24 individual players, you are voting for the team. I'm from New  
25 England. I am a Yankee fan. I like the Yankees. I don't like

1 all the players, but I like the Yankees. And so if I am  
2 rooting for the Yankees, I am rooting for all the players,  
3 which was really a problem when Alex Rodriguez was on the team,  
4 but it's less problematic now.

5 Same thing with straight-ticket voting. You are voting  
6 for the team, not the individual players. You are not  
7 selecting individual candidates; rather, you are selecting the  
8 Republican Party or you're selecting the Democratic Party.

9 Q So are individuals who cast straight-ticket votes making  
10 individualized determinations about candidates?

11 A No.

12 Q Are they making individualized determinations about the  
13 race of candidates?

14 A No.

15 Q Are they indicating that the race of a candidate might be  
16 unimportant to them?

17 A No. I'm sorry.

18 Q I said are they indicating that the race of the candidate  
19 might be unimportant to them?

20 A Might be unimportant to them.

21 Q Yes. I probably mumbled.

22 A They are not making any decisions about any candidates.  
23 What they're doing is they're buying a pallet of goods, and  
24 that pallet might have 500 ugly sunglasses in it, but it's part  
25 of the pallet that they're getting.

1 Q And what did your analysis of straight-ticket voting in  
2 this case show?

3 A So what it shows is that a large number of Alabamans --  
4 Alabamians vote straight ticket.

5 Q I prefer Alabamans, but a lot of folks like Alabamians.

6 A Oh, I didn't mean to wade into this. But basically about  
7 two-thirds of Alabama voters cast a straight-ticket vote.

8 Q And what conclusions do you draw from the fact that about  
9 two-thirds of voters in Alabama are voting by straight-ticket  
10 ballot?

11 A That is a high degree of voting for teams, not players. A  
12 high degree of people going in and just saying you know what?  
13 I don't care about the individual candidates on the slate, I'm  
14 voting Republican, or I'm voting Democratic.

15 Q Now, in two of the columns in Table 1, you report the  
16 percentage of straight-ticket Republican voting and  
17 straight-ticket Democratic voting, right?

18 A Yes.

19 Q Is that reporting the percentage compared to the number of  
20 Republican -- scratch that.

21 Let me ask this question: Looking at the percentage of  
22 straight-ticket Republican ballots cast, are you comparing that  
23 against the number of Republican ballots cast or the number of  
24 total ballots cast?

25 A That's total ballots cast.

1 Q Okay. Now, did Dr. Liu criticize this analysis by  
2 indicating that straight-ticket voting was an increasingly  
3 Republican phenomena?

4 A He did.

5 Q And is it your understanding that his critique was based  
6 on the fact that the percentage in the far right column,  
7 percentage of straight-ticket Democrat drops from 2018 to 2022?

8 A Correct.

9 Q If we could put up Dr. Liu's rebuttal report in this case,  
10 page, Figure 1?

11 THE COURTROOM DEPUTY CLERK: What number is that, sir?

12 THE COURT: 18.

13 MR. TAUNTON: Yes. Plaintiffs' Exhibit 18. I'm  
14 sorry.

15 THE COURTROOM DEPUTY CLERK: Thank you.

16 MR. TAUNTON: And if we could put that side by side  
17 with the table we were just looking at. I believe it's Table 1  
18 in Dr. Bonneau's initial report.

19 BY MR. TAUNTON:

20 Q While she's getting that, does Dr. Liu make a similar  
21 claim in Figure 1 of his rebuttal report?

22 A A similar claim to what?

23 Q Yeah. Let me go ahead and ask that again.

24 So is it your understanding that Dr. Liu's critique was  
25 based on the fact that the percentage in the far right column

1 of your Table 1 percentage of straight Democratic ticket voting  
2 drops between 2018 to 2022?

3 A Yes.

4 Q And does he make a similar claim here in Figure 1 of his  
5 rebuttal report?

6 A Yes.

7 Q Looking at Figure 1 of his rebuttal report, does this  
8 chart show the overall share of ballots?

9 A No.

10 Q Cast as straight-ticket Democratic ballots?

11 A No.

12 Q Instead, is he showing the share of straight-ticket  
13 Democratic ballots cast versus total ballots cast?

14 A Correct.

15 Q And he opines that there has been a drop in the overall  
16 share of straight-ticket Democratic ballots cast in the region,  
17 right?

18 A Yes.

19 Q Could that drop be explained by fewer voters overall  
20 voting for Democrats?

21 A Yes.

22 Q Could it be that there are fewer overall straight-ticket  
23 Democratic votes while the percentage of Democrats casting  
24 ballots by straight ticket is either flat or increasing?

25 A Yes.



1 Q Have you had an opportunity to conduct that analysis since  
2 this time?

3 A Yes.

4 MR. TAUNTON: So if we could flip over -- we can take  
5 down Figure 1 and the left side of the screen.

6 Can we put up Dr. Bonneau's report in the *Milligan* case,  
7 Table 2?

8 MR. ROSBOROUGH: Your Honor, I'm -- I don't know where  
9 Mr. Taunton's going with this, but this is Dr. Bonneau's report  
10 in the *Milligan* case, and I'm going to at least lodge a  
11 preliminary objection here to the extent we're going outside  
12 the scope of his opinions expressed in this case.

13 MR. TAUNTON: Your Honor, on day one of this trial, I  
14 raised a similar objection to Dr. Liu testifying to certain  
15 matters that arose in expert discovery in *Milligan* after  
16 discovery in this case closed. That objection was overruled,  
17 and Dr. Liu did testify to some matters that arose in *Milligan*.

18 Counsel has had an opportunity to depose Dr. Bonneau in  
19 this. It is directly relevant to his analysis of straight  
20 ticket here and to Dr. Liu's claims about Dr. Bonneau's  
21 analysis of straight-ticket voting here. These issues have  
22 been fully aired in deposition. There's no surprise.

23 MR. ROSBOROUGH: May I respond, Your Honor?

24 What I recall coming up in Dr. Liu's testimony was a -- I  
25 don't think -- I think there was a flagging of a potential

1 objection and an objection that was never actually made when  
2 Dr. Liu was discussing the error that Dr. Bonneau testified to  
3 that affected his report in this case that arose in his  
4 deposition there.

5 This is an attempt to elicit information that was put  
6 forward in a later expert report that was not disclosed as part  
7 of this case. So I believe the situation is different. And to  
8 the extent the situation is the same, defendants forfeited any  
9 objection earlier.

10 MR. TAUNTON: Your Honor, I believe our believe was at  
11 least initially overruled. We did not afterwards move to  
12 strike on the basis that, again, these issues have been fully  
13 aired in deposition and otherwise. This -- the analysis that  
14 we're going to look at here is directly relevant to the  
15 analysis Dr. Bonneau conducted here. It's directly relevant to  
16 the claims that Dr. Liu made about Dr. Bonneau's analysis here.

17 MR. ROSBOROUGH: One -- to the extent we're going to  
18 open the door there, then plaintiffs would reserve the right to  
19 call Dr. Liu as a rebuttal witness to testify about additional  
20 information he put in his report in *Milligan*.

21 THE COURT: All right. I don't really know what  
22 you're about to ask, so this is a little bit hard. So I am  
23 going to let you ask it. And then you can move to strike it if  
24 you maintain the preliminary objection you've lodged not  
25 knowing what exactly is about to occur.

1

2 BY MR. TAUNTON:

3 Q If we could go to Table 2 of the rebuttal report.

4 So, again, just to reorient us here, Dr. Liu had raised  
5 the concern that -- or had claimed that your analysis -- based  
6 on your analysis of straight-ticket voting and his analysis of  
7 straight-ticket Democratic ballots cast in the Huntsville  
8 region compared to total ballots cast in the Huntsville region  
9 that straight-ticket voting was an increasingly Republican  
10 phenomenon; is that right?

11 A Yes.

12 Q Have you analyzed whether or not that is, in fact, true?

13 MR. ROSBOROUGH: Your Honor, I'm going to renew my  
14 objection in full. This is basically an attempt to use the  
15 *Milligan* report as a surrebuttal report in this case.

16 And I will also put up that Dr. Liu did not testify to any  
17 of this on direct. Mr. Taunton asked him about the analysis on  
18 cross, which he was entitled to do since it was in his initial  
19 report. But this is not addressing anything that Dr. Liu  
20 testified on direct in this case. It's a -- it's basically a  
21 way to use his *Milligan* report as a surrebuttal improperly.  
22 And so I would object and move to strike.

23 MR. TAUNTON: Dr. Liu did testify -- I mean, a couple  
24 of things. First of all, he did testify to these matters on  
25 cross, so it's in evidence. And then second, Dr. Liu's

1 rebuttal report -- excuse me -- Dr. Liu's -- yes, his rebuttal  
2 report to my knowledge is already in evidence, all of it, not a  
3 redacted portion of it, not some other piece of it, but the  
4 whole of his report is in evidence.

5 THE COURT: All right. Go ahead.

6 MR. ROSBOROUGH: May I?

7 THE COURT: I'm not precluding you from making your  
8 record.

9 MR. ROSBOROUGH: Okay. Then I would just say  
10 Mr. Taunton is entitled to ask Dr. Bonneau about Dr. Lieu's  
11 rebuttal report. He's not entitled to use that as a way to  
12 introduce testimony that Dr. Bonneau after those -- all those  
13 reports were provided, provided in a different case.

14 THE COURT: All right. I'm going to take the motion  
15 to strike under advisement, because I want to go back and look  
16 at the transcript and see what exactly occurred with Dr. Liu.  
17 So you may proceed with this line of questioning, and I will  
18 rule on the motion to strike after I have an opportunity to do  
19 that on a break or at lunch.

20 MR. TAUNTON: Thank you, Your Honor.

21 BY MR. TAUNTON:

22 Q Okay. So just to reorient us again real briefly, Dr. Liu  
23 had criticized your analysis here by stating that  
24 straight-ticket voting in Alabama was an increasingly  
25 Republican phenomenon, correct?

1 A Correct.

2 Q And have you had an opportunity to analyze whether or not  
3 it is, in fact, an increasingly Republican phenomenon?

4 A Yes.

5 MR. ROSBOROUGH: Objection. Leading.

6 MR. TAUNTON: And I'm just trying to lay the  
7 foundation since we have had so many objections.

8 BY MR. TAUNTON:

9 Q And did you do that analysis in this Table 2 here?

10 A I did.

11 Q And what did that analysis show?

12 A So let me walk everybody through this table.

13 So let's take 2022 as an example.

14 So in 2022, we have slightly over 1.4 million votes cast  
15 at the top of the ballot.

16 So what is top of the ballot? So it will be -- I am not  
17 going to do 2022. I am going to do 2020, because the  
18 presidential election, so it's much more intuitive.

19 So in 2020, we had 2.3 million ballots cast at the top of  
20 the ballot. That is, there were 2.3 million votes in 2020 in  
21 the presidential election in Alabama. Okay. So that's our  
22 most-voted-on race in Alabama.

23 The other races got fewer votes cast than that race. Of  
24 that 2.3 million, Donald Trump received 1.4 million. Okay? Of  
25 that 1.4 million votes that Donald Trump received in 2020,

1 967,000 of them were cast via straight ticket. There were  
2 967,000 straight Republican votes in 2020, which means the  
3 percent of the total ballots cast on a ballot that was  
4 straight-ticket Republican was 38.

5 But the percentage of -- it was 45. But the percentage of  
6 straight-ticket votes that accounted for the Republican  
7 percentage is 67. That is, of the 967,000 votes that Donald  
8 Trump received, 67 percent of them were straight tickets.

9 Now, on the Democratic side. Same logic. So Joe Biden  
10 got 850'ish-thousand votes. Of those 850,000 votes that Joe  
11 Biden got, 597,000 or so were by straight Democratic votes. So  
12 70 percent of Joe Biden's votes came from people voting  
13 straight-ticket Democratic.

14 So it's not the case that straight-ticket voting is an  
15 increasingly Republican phenomenon. In fact, if you look over  
16 time, all right, the Democratic -- the percentage of Democratic  
17 straight-ticket voting has actually increased and is higher  
18 than the percentage of Republican straight-ticket voting.

19 Q So, again, you said that when we look at the total ballots  
20 cast, you're analyzing -- are you analyzing the top of the  
21 ticket?

22 A Correct. So on presidential election years, the  
23 president. In the other years, it's either governor or  
24 senator, whichever office received the most total votes cast.

25 Q In 2018, would that have been the governor's race between

1 Kay Ivey and Walt Maddox?

2 A I believe so, yes.

3 Q You talked about 2020. In 2022, would that have been the  
4 governor's race between Kay Ivey and Yolanda Flowers?

5 A Yes.

6 Q And why analyze specifically the top of the ballot rather  
7 than a race further down the ballot?

8 A Well, because you want to get a sense of how many ballots  
9 were cast. And when you have straight-ticket voting, you have  
10 a variety -- it's a whole package deal. But people don't come  
11 in to vote just for state senator or coroner or whatever else.

12 But they come in to vote for the top of the ticket. And  
13 so that gives us basically the baseline of like how many  
14 possible votes could there have been cast.

15 Q Is it common for people to vote at the top of the ticket  
16 and then roll off further down the ticket?

17 A It is. There are a variety of factors that affect that.  
18 But, yes.

19 Q But if a person is casting a straight-ticket vote, do they  
20 roll off on the bottom of the ticket?

21 A They cannot.

22 Q Is that because they are casting -- necessarily casting a  
23 vote in every election that features a candidate for that  
24 party?

25 A Absolutely.

1 Q So the most ballots cast, I think you said, are at the top  
2 of the ticket; is that right?

3 A Correct.

4 Q Okay. So if anything, does analyzing the top of the  
5 ticket lead to underestimating the value of straight-ticket  
6 voting?

7 A I'm not sure that that's the case. I think it's the only  
8 way to analyze this, because you're trying to figure out -- so  
9 you know there's straight-ticket votes, right? And the  
10 question is: What's the percentage? So you need something to  
11 anchor it to. And so the top of the ballot is the standard  
12 way.

13 Q If we were to use, say, race, and further down the ballot  
14 that had fewer votes cast, would the percentage of ballots cast  
15 by straight ticket increase?

16 A Probably, yes. Almost certainly, yes.

17 Q So if we were to analyze further down the ballot, we might  
18 see -- scratch that.

19 So then just again so that the record is clear, you are  
20 using -- is this -- is this actual election return data that  
21 you're using to conduct this analysis?

22 A Yes.

23 Q Okay. And did you conclude that, in fact, the percentage  
24 of Democratic votes being cast by straight ticket has increased  
25 in Alabama?



1 A Yes.

2 Q Over time?

3 And so what is your response, then, to Dr. Liu's critique  
4 that straight-ticket voting is an increasingly Republican  
5 phenomenon?

6 A He's incorrect.

7 Q Let's flip over to Dr. Liu's rebuttal report in this case.  
8 That would be Plaintiffs' Exhibit 18. Let's go to page 6,  
9 Figure 2.

10 Now, in Figure 2, Dr. Liu claims to chart the relationship  
11 between the percentage of Black Voting Age Population in a  
12 county and the overall use of straight-ticket voting; is that  
13 your understanding?

14 A Yes.

15 Q Do you have any response to this?

16 A Yes.

17 Q And what is that?

18 A I think this figure is misleading.

19 Q How so?

20 A There are a couple of things. First, if you look at the  
21 scale on the Y axis, it looks like it's equally set up, but the  
22 0 to 60, and then we go 60 to 65 and 65 to 70. So it flattens  
23 out, right, makes the line look more steep, because really the  
24 variation is quite small.

25 Secondly, if you look at the data points, the black dots

1 on there, you see over half of them clustered in the top left,  
2 right? You only have one that is basically low on the Y axis  
3 and mid on the X axis, and then one which is clustered on the  
4 bottom right. Those couple of outliers are going to skew the  
5 line to make it look more steep than it is.

6 And so if you look at the actual data point -- so with any  
7 line with any graph, you can draw an infinite number of lines  
8 to represent the data. What I would suggest is drawing a line  
9 in this way with these scales makes it look like there's a  
10 strong negative relationship that is linear between the black  
11 electorate and straight-ticket voting, when, in fact, if you  
12 look at the raw data, you would not identify that relationship.

13 Q And so do you think that this line is useful to helping us  
14 understand this data?

15 A No.

16 Q Let's go to Dr. Bonneau's report in this case, Defendant's  
17 Exhibit 1, Table 3.

18 Did you also analyze straight-ticket voting in the  
19 Huntsville region?

20 A I did.

21 Q And what analysis did you conduct?

22 A So what this table is, is it's looking at -- let me get my  
23 notes.

24 Q I think you provide more details on this?

25 A I did. Yes.

1 Q 28 and 29. Paragraphs 28 and 29.

2 A So what I did here is I ran a simple correlation between  
3 the Democratic percentage of the vote, that is, what percentage  
4 of the vote did Democrats receive and straight-ticket ballots.

5 And in looking at 2018 and 2022 for governor, attorney  
6 general, and secretary of state, in 2020, for the U.S. Senate,  
7 gave us an interesting insight because in 2018 and 2020, the  
8 Democrats ran white candidates. And in 2022, the candidates  
9 for these offices were all African-American.

10 And so when you run the correlation between a Democratic  
11 percent of the vote and straight-ticket Democratic ballots,  
12 it's high universally across.

13 So when you talk about correlations, what we mean is they  
14 range from negative 1 which is a perfect inverse relationship.  
15 As one increases, the other decreases.

16 A positive correlation of .1 is as high as you can get.  
17 When one increases, the other decreases-- sorry. I get  
18 excited. When one increases, the other increases; or when one  
19 decreases, the other decreases, right? So that's a perfect  
20 positive 1 correlation.

21 Here we see these correlations are as close to 1 as one  
22 can get with real data. And so regardless of whether or not  
23 the Democratic candidates were white or black, a very high  
24 percentage of the votes received by Democratic candidates comes  
25 from voters selecting the Democratic Party in straight-ticket

1 elections.

2 Q So does this show, then, that a highly significant number  
3 of voters who cast ballots for Democrats in the Huntsville  
4 region in 2018, 2020, and 2022 elections you analyzed were, in  
5 fact, voting by straight ticket?

6 MR. ROSBOROUGH: Objection. Leading.

7 MR. TAUNTON: I don't think it was.

8 THE COURT: You can ask him what it shows.

9 BY MR. TAUNTON:

10 Q What does this -- what does this table show us about the  
11 percentage, if anything of -- let me ask it this way: Does  
12 this table support the analysis we were -- is this table  
13 consistent with the analysis we looked at earlier that you  
14 conducted showing that a high percentage of Democrats vote by  
15 straight ticket?

16 A Correct. And it shows that it doesn't matter if the top  
17 of the ticket office has a white candidate or a black  
18 candidate. But the percentage of Democrats who are voting  
19 straight ticket is the same regardless.

20 Q Is this also evidence that Dr. Liu was incorrect when he  
21 said that straight-ticket voting was an increasingly Republican  
22 phenomenon?

23 MR. ROSBOROUGH: Objection. Leading.

24 MR. TAUNTON: Your Honor, I don't think it was.

25 THE COURT: You may answer.

1 THE WITNESS: Can you repeat the question? Sorry.

2 BY MR. TAUNTON:

3 Q I said: Does this analysis also tend to show that Dr. Liu  
4 was incorrect when he said that straight-ticket voting was an  
5 increasingly Republican phenomenon?

6 A Yes.

7 Q Does Dr. Liu also critique your straight-ticket voting  
8 analysis by stating that he -- that it does not demonstrate who  
9 is making use of straight-ticket voting?

10 A Yes.

11 Q Now, did we previously discuss your analysis showing that  
12 there's a high correlation between black population in the  
13 county and the number of votes received by Democrats?

14 A Yes.

15 Q Given the high use of straight-ticket voting, would that  
16 tell you anything about who was making use of straight-ticket  
17 voting?

18 A It would suggest that it's not increasingly -- it would  
19 suggest that it's not dominantly used by one race or the other;  
20 that, in fact, it's used pretty regularly. Again, you have got  
21 two-thirds of Alabama -- of voters in Alabama casting  
22 straight-ticket voting.

23 Q And we just -- did we just discuss that a high percentage  
24 of voters who vote for Democratic candidates in the Huntsville  
25 region do so by straight ticket?

1 A Yes.

2 Q Can you tell anything from those analyses again about who  
3 is casting straight-ticket votes in Alabama elections?

4 A So we know that African-Americans overwhelmingly identify  
5 with and vote for the Democratic Party. So in order to get the  
6 results you see in Huntsville, those voters would have to be  
7 voting straight ticket.

8 Q Have you had an opportunity to analyze this question in  
9 any other ways?

10 A Yes.

11 Q If we could go to Table 1 of the Dr. Bonneau's rebuttal  
12 report in the *Milligan* case.

13 MR. ROSBOROUGH: And I'm sorry. I don't want to  
14 interrupt. I will just renew my objection as to this line of  
15 questioning, as well.

16 MR. TAUNTON: Your Honor, same response.

17 MR. ROSBOROUGH: Just for the record. I understand  
18 Your Honor's reserving ruling.

19 THE COURT: All right. You may proceed.

20 BY MR. TAUNTON:

21 Q And I believe some of this may maybe spills over to the  
22 next page. Can we...

23 So here, are you analyzing how many straight-ticket votes  
24 were cast by black voters in the 2020 gubernatorial election?

25 A Yes. Dr. Liu made a statement that it could be that no

1 black voters cast straight-ticket votes.

2 MR. ROSBOROUGH: I am going to object. That statement  
3 was in Dr. Liu's *Milligan* report and was not made in this case.  
4 I move to strike.

5 MR. TAUNTON: Your Honor, no objection. I -- I agree  
6 that that was in his *Milligan* rebuttal report. We agree that  
7 shouldn't come in.

8 THE COURT: Okay. Motion to strike is granted.

9 BY MR. TAUNTON:

10 Q Let me ask you this.

11 A Yes.

12 Q Did Dr. Liu suggest in this case that we don't know who is  
13 casting votes by straight ticket?

14 A Yes.

15 Q Okay. And so what analysis are you conducting here to  
16 respond to that?

17 A So here I'm looking at the 2022 gubernatorial election and  
18 the votes received by Flowers to see how many -- trying to get  
19 an estimate as to how many black voters voted straight ticket  
20 for Yolanda Flowers in this gubernatorial race.

21 Q Now, was Yolanda Flowers at the top of the ballot for the  
22 2022 gubernatorial race?

23 MR. ROSBOROUGH: And I'm sorry, Your Honor. I don't  
24 want to prolong this. I am going to move to strike that again.  
25 Mr. Taunton asked in response to Dr. Liu's analysis in the

1 Stone case what analysis he provided here.

2 So this is a direct admission that he's using the *Milligan*  
3 report to respond to analysis in this case. It's an improper  
4 surrebuttal.

5 MR. TAUNTON: Your Honor, again, same as before. We  
6 objected to bringing in the additional analysis that was done  
7 by Dr. Bonneau and Dr. Liu on day one in Dr. Liu's direct  
8 testimony.

9 Your Honor ruled that issues that were fully aired and  
10 fully litigated in the *Milligan* case that had -- that counsel  
11 had an opportunity to respond to, Dr. Liu had an opportunity to  
12 respond to, same counsel, same parties, I believe, is what the  
13 statement was, that those issues had been fully explored and if  
14 they were -- could elucidate the Court here, they should come  
15 in.

16 So that is my response.

17 THE COURT: So, I mean, what I said was why don't I  
18 hear it, and if you want to move to strike it, you can move to  
19 strike it. And you didn't move to strike it.

20 That said, I do think the plaintiffs opened the door to  
21 some of this. I think the question is how far the door is open  
22 and exactly what it's open to.

23 So I think the only way that we can proceed without  
24 stopping now and me going to figure out exactly how far the  
25 door is open is for me to hear all of this without prejudice to



1 a motion to strike it down the road.

2 I do not want to litigate *Milligan* in this case,  
3 obviously. I also don't have concern that if specific things  
4 are asked about after the door has been opened that anyone is  
5 being suppressed.

6 So what I have got to do is, again, figure out precisely  
7 what between Dr. Liu and Dr. Bonneau the door was opened to  
8 during Dr. Liu's testimony and how far. I mean, is it a crack  
9 or is the door off the hinges? Because I also have a request  
10 from the plaintiffs to possibly call Dr. Liu as a rebuttal  
11 witness if it's coming off the hinges.

12 So let me go ahead and hear this. But let me reiterate  
13 that other than the one question I've ruled on with respect to  
14 the motion to strike, I have not ruled on any motion to strike  
15 from plaintiffs' counsel yet on this.

16 MR. TAUNTON: And, Your Honor, we agree that we're not  
17 attempting to litigate *Milligan* in this case, but this is  
18 directly relevant to the analysis and the testimony that is in  
19 this case.

20 MR. ROSBOROUGH: May I say -- I'm sorry, Your Honor.  
21 And then I will -- I will leave to it your ruling later.

22 The -- what Dr. Liu testified to, which defendants  
23 declined to move to strike, was basically what Dr. Bonneau has  
24 testified to on his direct, that subsequent to his report, he  
25 -- the error was discovered and that affected his actual

1 conclusions in this report and in this case.

2 We did not bring in Dr. Liu's reports from that case. We  
3 just asked his understanding of whether that still held, which  
4 affected his opinions here.

5 So I think it's distinctively different, and it wasn't an  
6 attempt to use this as a surrebuttal.

7 THE COURT: Understood. And I will say, I mean, I  
8 don't think it's responsive to say that it's relevant in this  
9 case, because as I understand it, the issue is that it wasn't  
10 disclosed in this case.

11 So there may be a lot in *Milligan* that would -- could be  
12 relevant here, because the same area of the law is involved,  
13 and some of the same witnesses are involved, but that isn't  
14 fair game, because it just wasn't disclosed in this case.

15 MR. TAUNTON: Your Honor, which was largely my  
16 response at the time was that Dr. Liu's critiques of  
17 Dr. Bonneau's data and such were not disclosed in this case,  
18 and so that shouldn't be litigated in this case. The response  
19 of counsel was that there is no surprise. And the same applies  
20 here. There is no surprise about this. And certainly they can  
21 explore it on cross.

22 THE COURT: All right. So let me hear this, and I  
23 will rule on the motion to strike either after a break or after  
24 lunch.

25 You need the last question, Mr. Taunton?

1 MR. TAUNTON: I will reorient us here.

2 THE COURT: Okay.

3 BY MR. TAUNTON:

4 Q So are you seeking -- have you had an opportunity -- we  
5 just talked about some of the analysis you conducted here.

6 Again, coming -- backing up just a couple of questions,  
7 Dr. Bonneau.

8 You analyzed whether high percentage of -- did you analyze  
9 whether a high percentage of voters who vote for Democratic  
10 candidates in the Huntsville region do so by straight ticket?

11 A Yes.

12 Q And so could you tell anything from that analysis and your  
13 analysis of the correlation between the black population of the  
14 county and the number of votes received by Democrats tell you  
15 anything about who was casting straight-ticket votes in Alabama  
16 elections?

17 A It seems like straight-ticket Democratic votes are being  
18 cast, you know, regardless of race; that is, black Alabama --  
19 black voters in Alabama are voting straight ticket just like  
20 white voters in Alabama are.

21 Q And so do you -- what is your response, then, to Dr. Liu's  
22 critique that we can't know who was casting straight-ticket  
23 votes?

24 A Well, we can't know in the sense that we don't know what  
25 any one individual is doing. But we can look at the data and

1 the number of votes cast and population, and we can generate  
2 estimates of -- of who's doing what.

3 And so in this table here, that's what I'm trying to do.

4 Q Independent of this table, have you been able to reach a  
5 conclusion about that?

6 A Well, yeah. As the Table 3 in my report in this case  
7 shows that there's a very high correlation between  
8 straight-ticket Democratic votes that are cast and  
9 straight-ticket votes that the Democratic candidate receives at  
10 the top of the ballot. Given that we know the high  
11 relationship between African-Americans in support for the  
12 Democratic Party, one can draw a conclusion that a lot of those  
13 votes are being cast by black voters.

14 Q And that's conclusions that you draw based on the analysis  
15 you conducted in your initial report in this *Stone* case -- I'm  
16 sorry.

17 A Yes.

18 Q NAACP case?

19 A Yes.

20 Q Subsequently, have you tried getting a more precise  
21 number, more precise feel for how straight-ticket votes were  
22 being cast by race in Alabama?

23 A Yes.

24 Q To do that, did you analyze the 2022 gubernatorial  
25 election in Alabama?

1 A Yes.

2 Q And was Yolanda Flowers the Democratic candidate for  
3 governor in that race?

4 A Yes.

5 Q And was that the top of the ballot in that election cycle?

6 A Yes.

7 Q Based on -- how many votes did Yolanda Flowers receive in  
8 the election?

9 A She received 412,961 votes.

10 Q And is that just reporting election returns?

11 A Yes.

12 Q How many straight-ticket votes were cast for Democrats in  
13 that election?

14 A Straight ticket -- well, straight-ticket votes cast for  
15 Flowers and the rest of the ticket was 298,443, about  
16 21 percent of all votes cast.

17 Q And, again, is that data from the Alabama Secretary of  
18 State?

19 A Yes.

20 Q How many votes do you estimate were cast by black voters  
21 in the 2022 election cycle?

22 A 354,930, so about a quarter of all votes cast.

23 Q Now, how do you reach that conclusion?

24 A That data is also from the -- what we did in 2022 -- so in  
25 2018 and 2020, the Secretary of State's office really provided

1 the black turnout rate. They have not -- as of the time I  
2 wrote this table -- released that in 2022.

3 So what I did is I took the average of black turnout in  
4 2018 and 2020, and that's how you get the 25 percent of all  
5 votes cast.

6 It could be 24 percent, it could be 26 percent. But  
7 that's a good estimate, right, based on historical patterns of  
8 things that we know.

9 Q Can we put the table back up? I'm sorry. I was not  
10 communicating.

11 And so how many black voters -- how many votes do you  
12 estimate were received by Yolanda Flowers from black voters?

13 A So to do that, we're using an estimate of black support  
14 for Flowers. And so what I did is I took Liu's number that he  
15 calculated and just accepted that he was right of 93.2 percent.  
16 And so then if you take 93.2 percent of 354,930, you get an  
17 estimate of 330,795.

18 Again, that's not a precise number, although it looks like  
19 it's a precise number. It's a confidence interval around that,  
20 because Liu's report generates estimates, and estimates have a  
21 range of things they could be.

22 But that's kind of a ballpark figure. If someone wanted  
23 to say it was 320,000, sure.

24 Q Now, you didn't conduct your own ecological inference in  
25 this case, did you?

1 A No. I just took what Liu did.

2 Q Did you at any point dispute Dr. Liu's core analysis on  
3 how many black voters voted for Yolanda Flowers?

4 A No.

5 Q Have you seen similar evidence in this case?

6 A Yes.

7 Q Do you know whether Dr. Hood conducted an estimate of how  
8 many -- the percentage of black voters who voted for Yolanda  
9 Flowers?

10 A He did.

11 Q And do you recall what his finding was?

12 A I believe it was like 90 percent or just over 90 percent.

13 Q Did you consider that materially similar?

14 A It is. Again, we're generating estimates. And so if we  
15 think about this, you know, we just had a presidential election  
16 and we have polls and we have margins of error. And so in a  
17 race that, you know, is 48, 47, we all say, well, it's tied  
18 because sampling error.

19 And so wherever you're trying to do estimates, you're  
20 going to have a range of things it could be between.

21 And so, you know, not having the specific, you know, data  
22 in front of me, a range of like plus or minus 3 percent strikes  
23 me as totally reasonable.

24 Q And then what conclusion based -- well, so once you  
25 calculated the total number of votes cast by black voters for

1 Yolanda Flowers, were you able to estimate the total number of  
2 votes cast for Yolanda Flowers by non-black voters?

3 A Yeah. It's simple subtractions.

4 Q And then based on all of that, what conclusions did you  
5 reach about how many ballots were cast for Yolanda Flowers by  
6 black voters using straight-ticket voting?

7 A So if we assume that every vote cast by a non-black voter  
8 was straight ticket, which is a heroic assumption, but we can  
9 make that assumption, the minimum number, right, so like the  
10 worst-case scenario was just over 216,000 votes were cast for  
11 Flowers by straight-ticket voting by black voters. Could be  
12 higher, right? But the lowest, right, based on the assumptions  
13 that we set out in this table is that it's two times -- just  
14 over 216,000.

15 Q And you said that that's assuming that every single  
16 non-black voter who voted for Yolanda Flowers did so by a  
17 straight-ticket Democratic ballot?

18 A Correct.

19 Q So if anything, does this -- would this, then, understate  
20 the number of ballots potentially cast by black voters for  
21 Yolanda Flowers by straight ticket?

22 A Most likely. I mean, again, we're using estimates, and  
23 we're making some loose assumptions here. But, yeah, I mean, I  
24 say this is the minimum number.

25 Q Now, again, is that -- we can take that down.



1 Is that consistent with your analysis of the correlation  
2 between the black populations of the county and the number of  
3 votes received by Democrats?

4 A Yes.

5 MR. ROSBOROUGH: And I'm -- just for the record  
6 understanding Your Honor's reserving ruling -- other than the  
7 last question, I'm moving to strike the -- that prior --

8 THE COURT: The preceding line of testimony. Okay.  
9 Understood. Thank you.

10 Do you need the last question, Mr. Taunton?

11 MR. TAUNTON: No. I was just going to say in response  
12 to that, I don't think even if Your Honor were to grant the  
13 motion to strike, which obviously we believe it should not be  
14 granted, but even if Your Honor were grant the motion to  
15 strike, I do believe that there were elements and, in fact,  
16 significant questions and portions of that testimony that did  
17 not go to that table.

18 MR. ROSBOROUGH: I disagree. I believe the whole line  
19 of questioning was specifically about that table.

20 THE COURT: Okay.

21 MR. TAUNTON: Okay.

22 BY MR. TAUNTON:

23 Q Now, again, just to sort of conclude what we've been  
24 talking about here.

25 You also analyzed whether or not there was a high

1 correlation between the black voting population counting the  
2 number of votes received by Democratic candidates, correct?

3 A Yes.

4 Q And did you also analyze with a high percentage of voters  
5 who vote for Democratic -- whether a high percentage of voters  
6 who vote for Democratic candidates in the Huntsville region do  
7 so by straight ticket?

8 A Yes.

9 Q And based on those analyses, were you able to conclude  
10 that black voters are using straight-ticket votes to vote for  
11 Democrats?

12 A Yes. They would have to be.

13 Q And is that consistent with what we just looked at in  
14 Table 1 of your rebuttal report in *Milligan*?

15 A Yes.

16 Q Does that just put a finer point on the point you made  
17 here?

18 A It gives more specific numbers. And it's -- yeah, it's a  
19 finer-grained analysis.

20 Q We discussed earlier the possible -- did we discuss  
21 earlier the possible advantage of analyzing a number of primary  
22 elections because it might allow for controlling for party?

23 A Yes.

24 Q And does Dr. Liu suggest looking at local mayoral races?

25 A He does.

1 Q And does he direct us to two races in Montgomery in 2019  
2 and 2023 and Decatur in 2020?

3 A He does.

4 Q Now, do you recall whether Dr. Liu criticized looking at  
5 primary elections because they are often low turnout elections?

6 A He did.

7 Q In your experience, are local mayoral races held in off  
8 years like 2019 and 2023 likely to be high turnout races?

9 A No.

10 Q Would you expect them to be low turnout races?

11 A Very.

12 Q In your scholarly work, have you studied whether  
13 nonpartisan elections can feature the same essential  
14 characteristics as partisan elections?

15 A Yes.

16 Q Have you published an article on that?

17 A I have.

18 Q And what was that article?

19 A That's a good question.

20 Q Was that article Party Identification and Vote Choice in  
21 Partisan and Nonpartisan Judicial Elections?

22 A Yes.

23 Q And where did you publish that?

24 A That was published in *Political Behavior*.

25 Q Can you tell us a little bit about that article?

1 A Sure. And this also was in my *Voters' Verdicts* book.

2 So what my coauthor and I did is we wanted to understand  
3 whether or not voters in nonpartisan elections could identify  
4 candidates based on their advertisements and based on how they  
5 ran their campaign.

6 So in both a survey experiment where we embedded some  
7 different variations and in actual experiments where we gave  
8 subjects profiles of candidates, some subjects were randomly  
9 assigned an ad that was actually run in a campaign, and in that  
10 ad had the voter's political party.

11 MR. ROSBOROUGH: I'm sorry. I am going to move to  
12 strike. None of this is disclosed in Dr. Bonneau's reports in  
13 this case.

14 MR. TAUNTON: Your Honor, I believe this -- at least  
15 this topic was disclosed and discussed in his deposition with  
16 Mr. Rosborough. I don't think, again, that there's anything  
17 new here. He did not submit a rebuttal report here, because  
18 the time for doing so -- the discovery deadline had closed.

19 THE COURT: I think those may be two separate  
20 responses.

21 MR. TAUNTON: Your Honor, if I may. We had considered  
22 submitting a supplemental report. However, the time for  
23 submitting reports in this case had closed.

24 He was deposed about these issues in his deposition, and  
25 we stood on that without him submitting additional reports in

1 this case after time.

2 THE COURT: All right. I'll allow it.

3 THE WITNESS: So -- so we randomly assigned people to  
4 treatments. And one we gave them a little vignette, a little  
5 story, bio, ad about a candidate, and we identified that  
6 candidate as either a Democrat or Republican.

7 And then in our other treatment group, that piece was left  
8 out. Everything else was the same. So the only difference  
9 between the two groups, right, the experimental group and the  
10 control group was whether or not the party of the candidate was  
11 explicitly identified.

12 And what we found was that voters are able to identify  
13 their co-partisans. That is, a voter who identifies as a  
14 Republican is able to identify which of the two candidates is  
15 also a Republican regardless of whether or not party ID is  
16 presented on the ballot.

17 We found this in observational studies with actual voters,  
18 and we found this in experiments with hypothetical candidates.

19 BY MR. TAUNTON:

20 Q So could the partisan affiliation of mayoral candidates in  
21 the elections that Dr. Liu analyzed be known to voters?

22 A Yes.

23 Q Did you look at the candidates in those elections?

24 A Yes.

25 Q Was the 2019 Montgomery mayoral election between Steven

1 Reed and David Woods?

2 A Yes.

3 Q Do you know whether Steven Reed had previously been  
4 elected as a Democrat?

5 A Yes.

6 Q Yes what?

7 A Yes, he has been.

8 Q Yes, he had been. Had David Woods previously run as a  
9 Republican?

10 A He had.

11 Q And did Steven Reed run for office again in 2023?

12 A I believe so, yes.

13 Q Was he successful in both 2019 and 2023?

14 A Yes, I believe so.

15 Q Do you think voters may have known that Steven Reed was a  
16 Democrat?

17 A I think it's certainly possible if not likely.

18 Q So do you believe that analyzing primary elections is  
19 better than analyzing mayoral races to control for the effects  
20 of partisanship?

21 A So what I will say is partisan elections we know -- sorry.  
22 Primary elections we know controls the party, because it has  
23 to. Unless you have a jungle primary like some states have.  
24 And that's not what happens in Alabama.

25 Nonpartisan elections may control for party, but often

1 times do not.

2 Q Dr. Bonneau, racially-polarized voting has a specific  
3 meaning under the law, right?

4 A It does.

5 Q And do you dispute that Dr. Liu's report shows polarized  
6 voting between black and white voters in the specific elections  
7 Dr. Liu close to analyze?

8 A I do not.

9 Q But did all of those -- in all of those elections, was the  
10 black candidate a Democrat?

11 A Yes.

12 Q Was the white candidate a Republican?

13 A Yes.

14 Q Did he analyze a single election that controlled for  
15 party?

16 A No.

17 Q Did he analyze a single election that controlled for race?

18 A No.

19 Q So based on Dr. Liu's report, do you draw any on  
20 conclusions about the causal role that -- based on Dr. Liu's  
21 report, do you draw any conclusion about the causal role that  
22 race plays in Alabama elections?

23 A No.

24 Q And having separately explored the issue in your own  
25 report, do you have any opinion about whether or not black

1 political candidates are disadvantaged in Alabama on account of  
2 their race?

3 A I think when you look at the entirety of the data that was  
4 presented, the explanation for the results in Alabama are far  
5 more consistent with political party.

6 MR. TAUNTON: And, Your Honor, just two clean-up  
7 items.

8 One, I think we discussed Dr. Bonneau's CV, which is  
9 Defendant's Exhibit 2, but I don't think I moved to admit it.  
10 I would move to admit Defendant's Exhibit 2.

11 THE COURT: Any objection?

12 MR. ROSBOROUGH: No objection.

13 THE COURT: All right. 2 is admitted.

14 (Defense Exhibit 2 admitted in evidence.)

15 MR. TAUNTON: And then second, back on the issue we  
16 were discussing with Dr. Bonneau's analysis conducted in his  
17 rebuttal report in *Milligan*, I would just note for the Court,  
18 which I don't think I did before that the testimony that I  
19 solicited from him on this is in response to Dr. Liu's rebuttal  
20 report.

21 There was no deadline provided for response or  
22 supplemental reports for defendant's experts in this case.  
23 There was -- the deadline for submitting reports was closed at  
24 the time, hence the reason we did not -- we considered, but did  
25 not submit anything else. Our understanding had been that the



1 deadline on that was passed.

2 We just went ahead and did it in *Milligan*, but we did not  
3 do it in this case, and there was no deadline for doing so.

4 That's all, Your Honor.

5 THE COURT: Let me ask a question. You didn't seek  
6 leave to do it. Nobody sought leave to do it, right, in this  
7 case.

8 MR. TAUNTON: Right.

9 THE COURT: Did y'all have discussions among  
10 yourselves about it? I am not asking what they were. I'm just  
11 asking if you had them.

12 MR. ROSBOROUGH: No. We were never approached about  
13 it, Your Honor.

14 MR. TAUNTON: We did not, Your Honor.

15 THE COURT: Okay. Anything else?

16 MR. TAUNTON: With that, Your Honor, I pass the  
17 witness.

18 THE COURT: All right. I think this is a good time  
19 for our morning break. It's 10:15. Let's come back at 10:35,  
20 because I understand that plaintiffs' counsel may need a ruling  
21 from me on the motion to strike in order to appropriately  
22 calibrate your cross.

23 (Recess.)

24 THE COURT: All right. Please be seated.

25 Okay. Thank you for your patience while I took a look at

1 some transcripts.

2       Okay. So I think here's where we are. Based on Dr. Liu's  
3 testimony, I think in his direct that the door was opened on  
4 the issue of the errors in Dr. Bonneau's table. And I think it  
5 was opened as to the straight-ticket voting issue, but not as  
6 to work done subsequent to his report in this case, which I  
7 think was mostly the Yolanda Flowers testimony.

8       I also think the deposition discussed the voter verdicts,  
9 but I do not see that the door was opened to that being  
10 admissible here. I just see that it's not a surprise.

11       So my question is to Mr. Taunton. Understanding that view  
12 of the extent to which the door was opened and the matters on  
13 which it was opened, do you still want to offer the testimony  
14 of Dr. Bonneau on those matters, or do you withdraw it?

15       I realize if I had told you that view contemporaneously  
16 with your examination, you might have withdrawn the questions  
17 just as you did with the one you withdrew. And if you need a  
18 minute to confer, you should take it.

19       MR. TAUNTON: Your Honor, can I just ask for a bit of  
20 a clarification on the those points?

21       Dr. Liu certainly raised in his rebuttal report in this  
22 case issues regarding the straight-ticket voting. We covered  
23 those in cross.

24       Are you saying that the testimony regarding his analysis  
25 of the Yolanda Flowers race seeking to break down the degree to

1 which black voters might use straight-ticket voting, that would  
2 not come in, or that additionally his analysis of whether  
3 Democrats used straight-ticket voting would not come in?

4 THE COURT: So I think the testimony from Dr. Bonneau  
5 that would not come in would be testimony about work he has  
6 done subsequently to the disclosure of his report -- some of  
7 which y'all all know about, because he was deposed about it --  
8 in this case. I do not think that the subject matter is  
9 entirely off limits if you want to -- you know, questions you  
10 have asked about him poking holes in what Dr. Liu said in his  
11 rebuttal report is fair game.

12 The questions about that topic based on work he has done  
13 that was not disclosed is what I think the door is not opened  
14 to.

15 MR. TAUNTON: Okay. And then second, just again  
16 asking for purposes of clarification. Dr. Bonneau disclosed  
17 his re -- in his rebuttal report the mayoral races that is in  
18 his rebuttal report in this case. Dr. Bonneau was asked about  
19 the mayoral races in his deposition in this case.

20 I don't -- honestly, I cannot recall whether he  
21 specifically discussed the *Voters' Verdict* issue or not. But  
22 that's just one part of his testimony about mayoral races and  
23 whether or not non-partisan races actually had partisan cues.

24 MR. ROSBOROUGH: And just to be clear, I did not move  
25 to strike all of the testimony on that. It was solely the

1 portion where he went into his experiment in *Voters' Verdicts*.

2 THE COURT: Understood. So then I think that is -- I  
3 don't think there's a motion to strike that on the table, the  
4 mayoral races piece.

5 MR. TAUNTON: Okay. Can I have a minute to confer?

6 THE COURT: You may.

7 MR. TAUNTON: Thank you.

8 Your Honor, with our understanding of that ruling, I do  
9 believe that the substance of these issues is still on the  
10 table, if not the specific -- I cannot recall without reviewing  
11 the transcript whether or not I asked all the questions the  
12 same way I would ask them now.

13 I do think that he disclosed the substance of most of that  
14 testimony independent of his rebuttal report in *Milligan*. I  
15 would like the opportunity to maybe ask him a couple of  
16 follow-up questions regarding those subjects just to make sure  
17 that the substance of his testimony that is in, is, in fact, in  
18 the record.

19 THE COURT: All right. That's fair.

20 And I think maybe everybody in the room has realtime? Am  
21 I right about that?

22 Mr. Taunton, if you want to take a minute to look back  
23 through what you asked, I think that's perfectly fine.

24 MR. TAUNTON: Your Honor, I -- under other  
25 circumstances, I would like to do that. However, I suspect it

1 will take me longer to do that than just to ask a few follow-up  
2 questions.

3 THE COURT: All right. Okay. So let's ask your  
4 follow-up questions. And then at the end of your follow-up  
5 questions, I will ask you again whether you withdraw the  
6 previous ones that would be the subject of my ruling or whether  
7 I need to rule on the plaintiffs' motion to strike.

8 MR. TAUNTON: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. TAUNTON: Just one further clarification.

11 I understand -- so did Your Honor rule that his testimony  
12 regarding the percentage of straight-ticket Democrats ballots  
13 cast versus total Democratic ballots casts, is that testimony  
14 coming in, or do I need to ask any follow-up questions on that?

15 MR. ROSBOROUGH: I don't think our -- I think that  
16 that was disclosed in this case, and I do not object to that.

17 The objection was when we went to the line of questioning  
18 directly using the *Milligan* report particularly considering  
19 race.

20 THE COURT: Okay.

21 MR. TAUNTON: So that would go to Table 1 of the  
22 *Milligan* report.

23 THE COURT: Uh-huh.

24 MR. TAUNTON: Okay.

25 BY MR. TAUNTON:

1 Q Welcome back, Dr. Bonneau.

2 A It's been a minute.

3 Q Do you recall whether Dr. Liu critiqued your  
4 straight-ticket voting analysis by stating that it does not  
5 demonstrate who specifically is making use of straight-ticket  
6 voting?

7 A Yes.

8 Q And I believe we covered this before, but I want to be  
9 sure.

10 Did we previously discuss in your report your analysis  
11 showing that there is a high correlation between the black  
12 population of a county and the number of votes received by  
13 Democrats from that county?

14 A Yes.

15 Q And what do you draw from that analysis?

16 A That most of the votes received by Democrats are received  
17 because of straight-ticket voting.

18 Q And did we also discuss that a high percentage of voters  
19 who vote for Democratic candidates in the Huntsville region do  
20 so by straight-ticket voting?

21 A Yes, I believe so.

22 Q And what does that analysis tell you?

23 A Well, that tells me that, again, most of the votes that  
24 are received by Democratic candidates in those counties are  
25 received via straight-ticket voting.

1 Q Given your analysis that there's a high correlation  
2 between the black population of a county and Democratic votes,  
3 and the high percentage of voters who vote for Democratic  
4 candidates in the Huntsville area by straight ticket, can you  
5 reach any conclusion regarding who is making use of  
6 straight-ticket voting?

7 MR. ROSBOROUGH: And I think this is the question that  
8 I would object to. Up until now, I have no objection. I think  
9 this is the portion that was only disclosed in *Milligan*.

10 THE COURT: Well, so I think the issue is, is that the  
11 answer may not rely on work done subsequently, so let's hear  
12 the answer.

13 THE WITNESS: Can you repeat the question?

14 THE COURT: I'll read it back. Given your analysis  
15 that there's a high correlation between the black population of  
16 a county and Democratic votes and the high percentage of voters  
17 who vote for Democratic candidates in the Huntsville area by  
18 straight ticket, can you reach any conclusion regarding who is  
19 making use of straight-ticket voting?

20 THE WITNESS: Thank you.

21 Yes. I can make a conclusion, but it's not a very precise  
22 conclusion.

23 Given that African-Americans overwhelmingly vote  
24 Democratic, and given the high number of Democratic votes that  
25 are cast via straight ticket, it would be likely that

1 straight-ticket voting is being used by both whites and  
2 African-Americans.

3 BY MR. TAUNTON:

4 Q Could you reach any conclusion about whether a significant  
5 number of African-Americans are using straight-ticket voting?

6 A I don't know how I would define significant. I can say it  
7 would be very surprising to me if it were a small number.

8 Q And that's based on your analysis conducted in your report  
9 in this case?

10 A Correct. That's an inclusion I can draw based on some of  
11 the data I report in this case.

12 Q And so what is your response to Dr. Liu's critique that we  
13 don't really know who's using straight-ticket voting?

14 A Well, depends what we mean by know. So he's correct if he  
15 says we don't know how an individual voter voted or what method  
16 they used. That's true for everything.

17 He's incorrect if it means that it's not knowable how  
18 groups of voters likely behave.

19 Q Could Dr. Liu have conducted an analysis in this case that  
20 would have shown us a racial breakdown of who might be using  
21 straight-ticket voting?

22 A Yes, he certainly could have.

23 Q Did he include that in his rebuttal report?

24 A He did not.

25 Q Did you submit any kind of a supplemental or rebuttal



1 report in this case?

2 A I don't believe so.

3 Q Okay. Going back to your testimony concerning Dr. Liu's  
4 use of mayoral races to control for partisanship in elections,  
5 do you recall that?

6 A I do.

7 Q Without discussing any specific tests or analyses you've  
8 conducted in your scholarly work, have you ever studied whether  
9 nonpartisan elections can feature the same essential  
10 characteristics as partisan elections? In your scholarly work,  
11 have you ever studied whether nonpartisan elections can feature  
12 the same essential characteristics as partisan elections?

13 A Yes.

14 Q And at a -- have you found -- have you concluded that  
15 nonpartisan elections do, in fact, feature many of the same  
16 characteristics as partisan elections?

17 A Yes.

18 Q And so could the partisan affiliation of mayoral  
19 candidates in the elections that Dr. Liu analyzed have been  
20 known to voters?

21 A Yes.

22 MR. TAUNTON: Your Honor, may I confer?

23 THE COURT: You may.

24 MR. TAUNTON: Your Honor, with the understanding that  
25 his testimony concerning the Democratic use of straight-ticket

1 voting, that that testimony is not being stricken, and with the  
2 follow-up questions I've asked here, we can withdraw his other  
3 -- the questions concerning his other analysis in his *Milligan*  
4 rebuttal report.

5 THE COURT: All right. Thank you. I believe that  
6 moots the plaintiffs' motion to strike.

7 All right.

8 MR. DAVIS: Your Honor, might we -- if once we have  
9 the chance to look at the transcript from today, would it be  
10 helpful if we said these are the portions of the transcript  
11 that are withdrawn and confer with plaintiffs and make sure  
12 there are no more remaining issues?

13 THE COURT: I think that would be helpful. I think it  
14 -- the better course may be for us to recess for lunch now so  
15 that that can happen now, if everybody has real-time. And  
16 here's why I think that: If the motion to strike is live, I  
17 understand that I have a pending request for -- in the  
18 alternative to striking the remedy of calling Dr. Liu as a  
19 rebuttal witness to the extent the door is opened -- on these  
20 matters, to the extent the door is opened.

21 MR. DAVIS: And that makes perfect sense.

22 My only concern is we may think when we say we withdraw  
23 we're withdrawing certain things, the Court and the plaintiffs  
24 may take a broader view or a narrower view. And so I would  
25 just like to be on the same page.

1 THE COURT: I think that's a great idea. Why don't we  
2 then recess now for lunch. You all review the transcript. We  
3 have a little bit of luxury of time here. We are well on track  
4 to finish this week.

5 MR. TAUNTON: We just -- Your Honor, we just want to  
6 make sure that when we are saying we are all on the same page  
7 about what is being withdrawn.

8 THE COURT: I think that's a great idea. All right.  
9 Why don't we recess now for lunch. We will take a long lunch.  
10 Let's come back at 1:00.

11 Y'all confer about what specifically is being withdrawn.  
12 And just keep in mind that questions aren't evidence and don't  
13 have to be stricken. Answers are evidence. And so those need  
14 either to be withdrawn or rulings.

15 MR. ROSBOROUGH: Your Honor, would you mind if we come  
16 back at 12:30 instead?

17 THE COURT: If y'all can finish it by 12:30, that  
18 sounds delightful. So how about this: I will be ready at  
19 12:30. And if you need until 1:00 to reach agreement -- we are  
20 not talking about very many pages of the transcript. I mean,  
21 I've already sort of plowed through them during the break.

22 So if you are able to reach an agreement by 12:30, I will  
23 be available by 12:30. If not, we can roll to 1:00.

24 MR. DAVIS: I don't mean to be complicating things.  
25 If everybody else is clear, then I will sit down.

1 THE COURT: No. I understand. I think this is a good  
2 way forward.

3 MR. ROSBOROUGH: That's fine. Yeah. Your Honor, I  
4 don't anticipate we're going to have a tough time agreeing on  
5 this, but we'll certainly confer.

6 THE COURT: Okay. That sounds great.

7 All right. If y'all need until 1:00, somebody come let us  
8 know in chambers.

9 All right.

10 (Recess.)

11 THE COURT: Welcome back. Please be seated.

12 All right, Mr. Taunton.

13 MR. TAUNTON: Your Honor, we have had a chance to  
14 confer. And I will withdraw my questions beginning at page 54,  
15 line 6 to 55 line 9; 59, line 23 to page 61, line 1; page 60,  
16 line 18 to page 65, line 2; and then separately on the voter  
17 values article, page 67, line 23 to page 69, line 16.

18 THE COURT: Okay.

19 MR. TAUNTON: With that, Your Honor, I pass the  
20 witness.

21 THE COURT: I believe that moots the motion to strike.

22 MR. ROSBOROUGH: I believe you're correct, Your Honor.

23 THE COURT: Okay. Great. All right. Thank you.

24 MR. TAUNTON: Thank you, Your Honor.

25 THE COURT: Thank you very much.

1 All right, Mr. Rosborough, you may proceed.

2 MR. ROSBOROUGH: Thank you, Your Honor.

3

4

CROSS-EXAMINATION

5 BY MR. ROSBOROUGH:

6 Q Good afternoon, Dr. Bonneau.

7 A Good to see you, Davin.

8 Q Good to see you, too.

9 Dr. Bonneau, your scholarly research primarily focuses on  
10 the nature of judicial elections, correct?

11 A Correct.

12 Q You've spent most of your scholarly career seeking to  
13 answer questions about judicial elections in responding to  
14 critics of them using empirical data, right?

15 A Yes.

16 Q This is your first time providing expert testimony in a  
17 legislative districting case, correct?

18 A Yes.

19 Q You do not consider yourself an expert on  
20 racially-polarized voting; is that correct?

21 A Correct.

22 Q And you have never performed a racially-polarized voting  
23 analysis yourself, correct?

24 A Correct.

25 Q You have not researched or published on ecological

1 inference analysis, correct?

2 A Yes.

3 Q And you do not know of any empirical methods that would be  
4 better at generating racially-polarized voting estimates  
5 compared to ecological inference, correct?

6 A Yes.

7 Q You also acknowledge that ecological inference techniques  
8 are widely used and accepted by courts for RPV analysis; isn't  
9 that right?

10 A That is.

11 Q And you have not published any work as an academic where  
12 you attempt to disentangle the effects of race and party when  
13 it comes to voter choice, correct?

14 A Correct.

15 Q But when you have analyzed variables affecting turnout in  
16 your work, you accounted for racial turnout gaps, correct?

17 A Yes.

18 Q You did so because of research that found black voters  
19 historically faced unique impediments to registration and  
20 voting, correct?

21 A Yes.

22 Q And black voters have had lower turnout rates because of  
23 these impediments to registration and voting, correct?

24 A That's one of the factors, yes.

25 Q You also agree it was not long ago when there was

1 institutionalized oppression of citizens in the South regarding  
2 voting and political participation, right?

3 A Yes.

4 Q It's also true that there are still vestiges of racial  
5 discrimination that permeate throughout the political system,  
6 correct?

7 A Yes.

8 Q Other than perhaps in responding to Dr. Liu's report, you  
9 did not analyze any issue in this case except whether black  
10 candidates in Alabama elections perform worse than white  
11 candidates on account of race, correct?

12 A That's fair.

13 Q You are not offering an opinion as an expert in this case  
14 about whether or not black voters should have additional State  
15 Senate districts in which they can elect candidates of their  
16 choice?

17 A Correct.

18 Q You did not perform any racial-polarization analysis in  
19 this case, right?

20 A Right.

21 Q You have no opinions in the way that Dr. Liu carried out  
22 his methodology in this case as it pertains to  
23 racially-polarized voting analysis, correct?

24 A As it pertains to that, correct.

25 Q And you have no opinions about the data upon which Dr. Liu

1   relied, correct?

2   A     Correct.

3   Q     Putting aside the reason why black and white voters may  
4   have made the choices that they did, you have no criticisms of  
5   Dr. Liu's opinion that black and white voters are highly  
6   polarized in their voting choices in the Montgomery and greater  
7   Huntsville regions, correct?

8   A     Correct.

9   Q     Understanding that you are not a lawyer, you are generally  
10  familiar with the three-pronged *Gingles* preconditions, correct?

11  A     Generally, yes.

12  Q     But you are not offering any opinions as to whether or not  
13  plaintiffs meet any of those preconditions in this case, right?

14  A     Correct.

15  Q     You also offer no opinion as to whether black voters in  
16  Alabama have an equal opportunity to participate in the  
17  political process, correct?

18  A     Correct.

19  Q     And you didn't perform any causal analysis in this case,  
20  right?

21  A     It depends what you mean by causal analysis.

22        So identifying causality is a very difficult thing to do  
23  in the social sciences.  It's one of the things I always get a  
24  little prickly about when biologists and physicists say, oh,  
25  well, the social sciences soft sciences.  No.  They're not.



1 You drop up a pen, it's going to drop. It's easy. Physics is  
2 easy. Trying to understand human behavior is hard.

3 So there are some techniques that better allow us to get  
4 at causal mechanisms. But given that we have behavior and a  
5 multitude of factors that could potentially explain behavior,  
6 getting that causality is incredibly difficult.

7 Q So then let me ask a follow-up question. You are not  
8 offering any causal opinions here, correct?

9 A That's fair.

10 Q Okay. Dr. Bonneau, you agree that with the passage of the  
11 Voting Rights Act in 1965 and the Civil Rights Act in 1964, a  
12 lot of conservative Democrats in the South left the Democratic  
13 Party and joined the Republican Party, right?

14 MR. TAUNTON: Your Honor, I am going to object to  
15 this. This is beyond the scope of report and anything that  
16 he's analyzed here.

17 MR. ROSBOROUGH: May I respond, Your Honor.  
18 Dr. Bonneau is purporting to analyze the reasons why voters  
19 affiliate -- well, why black candidates, whether black  
20 candidates have equal success, which goes to -- his entire  
21 opinion deals with race and party. So these questions go  
22 directly to what is driving party, what is -- the role that  
23 race plays in driving party. It's directly relevant to his  
24 opinions.

25 THE COURT: And, Mr. Taunton, you asked him about

1 specific conservative Democrats who left the party, right?

2 MR. TAUNTON: I don't believe I did, Your Honor.

3 Well, Your Honor, I asked him about the time period from 1980  
4 until 2000. I don't think I asked him about anything before  
5 that. And I think he only testified that he was analyzing the  
6 period from 1980 onward.

7 MR. ROSBOROUGH: I believe there were questions about  
8 Senator Shelby and Governor James changing parties. These  
9 questions go -- speak directly to some of the motivations and  
10 reasons about why they might have changed parties.

11 THE COURT: Well, I think that you can ask, because  
12 those questions were post-1980. But I think the question about  
13 the passage of the Civil Rights Act predates 1980.

14 MR. TAUNTON: Thank you, Your Honor.

15 THE COURT: I think if you want to ask if he knows why  
16 Shelby and James changed parties, that's fair game.

17 BY MR. ROSBOROUGH:

18 Q Let me ask a little bit of a different question.

19 Dr. Bonneau, you agree that a reason for why white voters  
20 are more likely to support the Republican Party is that the  
21 Republican Party has done a really good job of appealing to a  
22 time when white people were prominent, right?

23 MR. TAUNTON: Your Honor, again, I am going to object  
24 on the basis of scope. This is not something that was in his  
25 report. This is not something he's been offered to testify to.

1 MR. ROSBOROUGH: This goes directly to the present.  
2 You know, this is not asking pre-1980. They've opened the  
3 door, in terms of reasons -- Dr. Bonneau testifies -- a whole  
4 portion of his report is about the party realignment in  
5 Alabama.

6 So if I am not allowed to explore the reasons behind the  
7 party realignment in Alabama, Dr. Bonneau should not be allowed  
8 to testify about black candidate success before and after  
9 realignment and whether that informs party or race.

10 THE COURT: All right. Let's see what he's opened the  
11 door to. What part of the report are you referencing?

12 MR. TAUNTON: Your Honor, and if I may respond while  
13 he's finding that. There is not an entire portion of his  
14 report dedicated to this. There is a line of his report in  
15 paragraph 2, I believe, of his report that say prior to  
16 realignment.

17 On direct examination, we explored what prior to  
18 realignment, what he means by that, and he said he meant the  
19 period between 1980 and 2000.

20 MR. ROSBOROUGH: Your Honor, I would point you to --  
21 Dr. Bonneau has three paragraphs in his conclusion, his  
22 summation thoughts.

23 The second paragraph reads as follows: African-American  
24 candidates did have success running in statewide judicial  
25 elections before Alabama realigned and became a one-party

1 Republican state.

2 MR. TAUNTON: Your Honor, what that conclusion is  
3 referencing is the portion of his report that is contained in  
4 paragraph 2.

5 THE COURT: I think you can --

6 MR. TAUNTON: We explored on direct what he meant by  
7 prior to realignment.

8 THE COURT: I think you can go into the basis for  
9 that, but not beyond that, meaning he's making a limited  
10 statement about realignment. He's not discussing the  
11 realignment writ large or at great length. He's making a  
12 particular assertion about it.

13 MR. ROSBOROUGH: Okay.

14 THE COURT: And you can go into the basis for that.

15 MR. ROSBOROUGH: Okay.

16 BY MR. ROSBOROUGH:

17 Q Dr. Bonneau, you wrote in several places in your report  
18 you referred to a political realignment in Alabama, correct?

19 A Yes.

20 Q And you were asked questions by counsel on direct in terms  
21 of party realignment in terms of public elected officials  
22 changing parties, correct?

23 A Correct. That was part of the realignment. But when  
24 Alabama moved from a one-party Democratic state to a one-party  
25 Republican state, some public officials switched parties.

1 Q And do you agree that one of the reasons why some of these  
2 public officials switched parties was that the Republican Party  
3 had done a better job appealing to a time when white people  
4 were more prominent, correct?

5 MR. TAUNTON: Your Honor, so long as it's with the  
6 understanding that we're talking about the period post-1980, I  
7 have no objection. But I object if he's referencing any time  
8 before that.

9 THE COURT: I think the question is specifically  
10 limited to the public officials who switched parties that had  
11 been gone into on direct.

12 MR. TAUNTON: Understood, Your Honor.

13 THE WITNESS: So what I would say is I don't have  
14 specific reasons as to why, for example, Senator Shelby or  
15 Governor James switched parties.

16 As a political scientist, I would say they switched  
17 parties because they probably thought it was easier to win as a  
18 Republican than as a Democrat. Politicians are always  
19 concerned with remaining in office. And so if you think it's  
20 in your interest to switch parties in order to do that, I think  
21 you are going to do that.

22 We can see that more recently in Vermont, where Senator  
23 Jeffords switched from Republican to Independent because he  
24 thought it was going to be advantageous for him politically.

25 BY MR. ROSBOROUGH:

1 Q So, Dr. Bonneau, you have no opinions in this case about  
2 whether or not black and white voting patterns are due  
3 primarily to racial or party reasons; is that right?

4 A What I would say is the differences between voting among  
5 groups of people are varied. There are lots of factors that  
6 factor in. Political party is an amazingly good predictor of  
7 individuals' votes. In fact, it is the single best predictor  
8 of how an individual will vote.

9 Q And there are reasons why people choose to affiliate with  
10 political parties, correct?

11 A Correct.

12 Q And one of those presently is that black voters prefer to  
13 associate with the Democratic Party because they see it as  
14 being supportive of civil and voting rights and expanding equal  
15 protection, correct?

16 A I would say that's one reason why black voters identify  
17 with the Democratic Party. There could be other reasons, like  
18 their support of certain policies and so on. But, yes, those  
19 are certainly reasons.

20 Q Another such reason might be that black voters also tend  
21 to support Democratic candidates because they believe the party  
22 has been more open in nominating and electing African-American  
23 officials, correct?

24 A Correct.

25 Q Dr. Bonneau, you cite an article in your report on page

1 12, paragraph 22 by Dr. Watts, correct?

2 A Correct.

3 Q And you have no reason to disagree with Dr. Watts's  
4 conclusion in that article that much of black support for the  
5 Democratic Party has relied upon the party's willingness to  
6 support racial policy positions in favor of black interests,  
7 correct?

8 A Correct.

9 Q You also have no reason to dispute Dr. Watts's point that  
10 black voters' support for the Democratic Party is also due to  
11 the Republican party's use of racially coded language during  
12 election campaigns, correct?

13 MR. TAUNTON: Your Honor, real quick, just I am going  
14 to object to this line of questioning. He's cited it, but not  
15 for the reasons -- I think this is beyond the scope of what he  
16 included concerning this, this article in his report. When we  
17 tried to explore some of the articles that he cited earlier,  
18 that was not allowed in as beyond the scope.

19 I don't think he made these assertions in his report. I  
20 think this is beyond the scope of what he testified to.

21 MR. ROSBOROUGH: Dr. Bonneau cites the Watts article  
22 as supporting that it is important that we know that  
23 African-Americans overwhelmingly identify with the Democratic  
24 Party.

25 So he is citing this article for the proposition of

1 whether and why Democratic voters -- African-American voters  
2 identify with the Democratic Party.

3 I believe I'm inclined to explore the depths to which he  
4 is relying on which aspects of an article he relies on for one  
5 of his points.

6 THE COURT: I will allow it. And if he is not relying  
7 on it for that, then he can say so.

8 BY MR. ROSBOROUGH:

9 Q Okay. I will re-ask the last question.

10 You also have no reason to dispute Dr. Watts's conclusion  
11 -- oh, I'm sorry -- Dr. Watts's point that black voters'  
12 support for the Democratic Party is also due to the Republican  
13 party's use of racially coded language during election  
14 campaigns, right?

15 A So what I will say in that article -- I cited that  
16 article, right, as scholarly -- as a scholarly representation  
17 hence the e.g., one example of the political science consensus  
18 that African-Americans overwhelmingly identify with the  
19 Democratic Party.

20 I didn't look at that article for any other purpose or  
21 base my analysis on anything in there. It's a citation that  
22 was used to basically indicate that this statement is supported  
23 by political science scholars.

24 Q Dr. Bonneau, do you recall giving a deposition in this  
25 case?



1 A I do.

2 Q And you testified under oath?

3 A Yes.

4 MR. ROSBOROUGH: John, can you pull up Dr. Bonneau's  
5 deposition in this case, page 111, lines 11 to 19?

6 I'm sorry. 111. Page 111. 111. 11 to 19.

7 MR. TAUNTON: Your Honor, I am going to object here.  
8 I don't think this is proper impeachment. He's answered what  
9 he relied on the statement for. At which anything beyond --  
10 beyond that, I think is beyond the scope of his report.

11 So I don't think this is proper impeachment. And I think  
12 that the question to the degree that it's seeking to solicit an  
13 answer different than one he just gave goes beyond his report.

14 THE COURT: Mr. Rosborough?

15 MR. ROSBOROUGH: If defendants are asserting that  
16 Dr. Bonneau is offering no opinions about the role that race  
17 and party play in voter choices, I will withdraw the question.

18 MR. TAUNTON: Your Honor, Mr. Rosborough can tell me  
19 if I am wrong, but I don't believe we solicited that in his  
20 testimony. I don't believe he has offered any opinion on that  
21 in his report.

22 THE COURT: So what his testimony was just a minute  
23 ago is that he did not look at the article for any other  
24 purpose or base my analysis on anything in there. He simply  
25 cited it as an example.

1           So we have not opened the door to whether he agrees with  
2 everything in the article. He's cited it for a specific  
3 purpose.

4           MR. ROSBOROUGH: Let me ask, then, maybe the question  
5 outside of the context of the article.

6           THE COURT: Okay. Let me hear the question.

7           MR. ROSBOROUGH: All right.

8 BY MR. ROSBOROUGH:

9 Q       Dr. Bonneau, do you have any reason to dispute that black  
10 voters' support for the Democratic Party is also due to the  
11 Republican Party's use of racially coded language during  
12 election campaigns?

13 A       That's possible.

14 Q       Okay. And so even if voters are making choices based on  
15 party, race is a factor in making that party or candidate  
16 choice for some voters, right?

17 A       For some voters, absolutely.

18 Q       And there are policy reasons relating to racial issues for  
19 why black voters choose to more frequently vote for Democratic  
20 candidates, correct?

21 A       Correct.

22 Q       And it's fair to say that you can't examine partisanship  
23 in Alabama without thinking about the role of race, correct?

24 A       Yes.

25 Q       Dr. Bonneau, is it fair to say there are generally three

1 components of the analysis of your report: Straight-ticket  
2 voting, state legislative elections, and judicial elections?

3 A That's fair.

4 Q Okay. And I won't hold you to it exactly. I'm just  
5 trying to organize our discussion here.

6 Let's turn first to your straight-ticket voting analysis.  
7 You employed straight-ticket voting data in several places in  
8 your report, correct?

9 A Correct.

10 Q In your report, DX-1, beginning on page 14, paragraph 28,  
11 and as reflected in Table 3, you look at the correlation  
12 between Democratic straight-ticket voting and votes for the  
13 Democratic candidate, correct?

14 A Correct.

15 Q And you do so by comparing four statewide races with a  
16 white Democratic candidate in 2018 or 2020 and a black  
17 Democratic candidate in 2022 using a subset of counties in  
18 northern Alabama, correct?

19 A Correct.

20 Q You do not look at any correlations on the Republican  
21 side, correct?

22 A Correct.

23 Q And you are comparing across several different election  
24 years, correct?

25 A Correct.

1 Q You do not account for whether there were more contested  
2 state legislative races in the region in one year or another,  
3 correct?

4 A More contested -- so in paragraph 28, I'm looking at the  
5 statewide races. I'm not looking at the legislative races.

6 Q Right. And in conducting that analysis, you're not  
7 considering or accounting for the number of other races on the  
8 ticket in a given year, correct?

9 A Correct. I'm just looking at the races at the top of the  
10 ticket.

11 Q Okay. You don't account for different overall turnout  
12 across the years, right?

13 A Correct.

14 Q And you don't account for different turnout by race across  
15 the years, correct?

16 A Correct.

17 Q And you did not analyze any voting patterns by race of the  
18 voter, correct?

19 A Well, we don't know voting patterns by race of the voter,  
20 so, no.

21 Q Okay. Well, when I say -- so you're not looking at the  
22 race of the voter -- the voting patterns by race of the voter  
23 here, correct?

24 A Correct.

25 Q Just so the answer is clear for the record.

1 And the performance level of black candidates may have  
2 been affected by the turnout level of black voters, right?

3 A The performance rate, sure.

4 Q But you did not account for turnout by year or race in  
5 this specific analysis, right?

6 A No. This analysis is simply looking at what percentage of  
7 the vote did the Democratic Party candidate get and what  
8 percentage of that vote was accounted for by straight-ticket  
9 Democratic ballots.

10 Q Let's move along to paragraph 1 and Table 4.

11 Here you look at the correlation between votes for the  
12 Democratic candidate and whether the candidate was  
13 African-American, correct?

14 A Correct.

15 Q And as we just discussed, black and white candidates for  
16 these offices ran in different years, correct?

17 A Correct.

18 Q And there may have been different turnout rates, right?

19 A Yes.

20 Q And there may have been different turnout rates for  
21 different racial groups, right?

22 A Sure.

23 Q And the candidate quality may have been different?

24 A May have.

25 Q And the funding of those candidates may have been

1 different, correct?

2 A Absolutely.

3 Q And, in fact, your results do show that the black  
4 Democratic candidates for these offices performed worse, just  
5 not at a level of statistical significance, correct?

6 A Well, I'm going to quibble with that characterization.

7 So what tests of statistical significance show us or  
8 suggest is whether or not the relationship we observe is  
9 systematic or due to chance alone.

10 So while the coefficient is negative on each of those, the  
11 fact that the -- that they're not statistically significant  
12 suggests the absence of a relationship between the Democratic  
13 percentage of the vote and whether the candidate was black.

14 Now, again, right, we're at 95 percent certainty. So  
15 we're 95 percent confident that the point estimate here, right,  
16 which includes 0, which is why it's insignificant, that the  
17 true value is somewhere within that range.

18 But if you're asking me if I'm looking at these results,  
19 do I conclude there's a relationship? This data indicates that  
20 there's no relationship between the Democratic percentage of  
21 the vote and whether a candidate was black.

22 MR. ROSBOROUGH: John, can you go to page 16,  
23 paragraph 30 of Dr. Bonneau's report?

24 BY MR. ROSBOROUGH:

25 Q And, Dr. Bonneau, would you mind reading that passage

1 right there?

2 A While it appears from simply looking at the election  
3 results as if the black Democratic candidates for these offices  
4 performed worse in 2022 than they did in 2018 and 2020,  
5 statistical analysis shows this difference is not statistically  
6 significant.

7 Q In your expert report, DX-1, at page 4, let's go to that,  
8 you look at three years of Alabama election results in terms of  
9 total ballots cast and both the number and percentage of voters  
10 who cast a straight-party Republican ballot and straight-party  
11 Democratic Party ballot, correct?

12 A Correct.

13 Q In paragraph 4, you write that the prevalence of  
14 straight-ticket voting means that most voters are voting for a  
15 political party, not a candidate -- or I'm sorry -- not a  
16 candidate or candidates. Thus, the fact that 45.6 of the  
17 percent of the ballots cast in 2022 were straight-ticket  
18 Republican votes indicates that the race of the candidates for  
19 either party did not matter; voters were not voting for  
20 individual candidates.

21 Did I read that correctly?

22 A You did.

23 Q Okay. These are comparisons over different election  
24 years, correct?

25 A Correct. There were three different election years that I

1 analyzed. I just pulled out 2022 for further explanation.

2 Q And in your analysis here, you do not analyze racial  
3 voting patterns, correct?

4 A Correct.

5 Q You did not account for different candidate quality here?

6 A Correct.

7 Q You did not account for different candidate funding here,  
8 correct?

9 A Well, what I was -- that's correct. And the reason why is  
10 because those things don't matter for straight-ticket voting.  
11 Straight-ticket voting you are not voting for candidates. You  
12 are voting for a party.

13 Q You also did not account for different turnout rates by  
14 race through these years, correct?

15 A Correct.

16 Q And in the 2022 elections, every single Democratic  
17 candidate for statewide office was black, correct?

18 A I believe so, yes.

19 Q And you agree that in the 2022 elections, every single  
20 Republican candidate for statewide office was white, correct?

21 A Correct.

22 Q And indeed in all three elections, you examined for  
23 straight-ticket voting every single Republican candidate for  
24 statewide office was white, correct?

25 A I believe that's true for every election I didn't analyze,



1 too. There's no variation there.

2 Q And you are not aware -- I'm sorry. Were you finished?

3 A Yes.

4 Q Okay. And you are not aware of any State Senate races  
5 where the Republican candidate was black, correct?

6 A At the time of this -- that's correct, yes.

7 Q And you agree that it's rare in Alabama to have a black  
8 Republican on the general election ballot, right?

9 A Correct.

10 Q If it's rare to have a black Republicans on the general  
11 election ballot, you agree that Republican straight-ticket  
12 voters may well believe that the candidates they're voting for  
13 are all white, correct?

14 A They may.

15 Q And it's also the case that black voters may well be aware  
16 that all of the candidates at least in 2022 that they were  
17 voting for were black, correct?

18 A Sure.

19 Q Your analysis of straight-ticket voting looks at election  
20 results but does not address voting choices of different racial  
21 groups, correct?

22 A Well, we don't know voting choices of different racial  
23 groups.

24 Q So --

25 A So, yes.

1 Q Okay.

2 A We -- sure.

3 Q Okay. And indeed it's your testimony -- it's not your  
4 testimony that political parties have replaced race in driving  
5 voting choices in Alabama, right?

6 A Correct.

7 Q Yet you do agree that the race of the candidate may be an  
8 important factor affecting voter choice?

9 A Yes. It may.

10 Q Let's turn to your analysis of state legislative  
11 elections. And, Dr. Bonneau, you performed two types of  
12 inquiries concerning state legislative elections, correct?

13 A Sounds right.

14 Q Okay. And, again, I won't hold you to that one if I am a  
15 little off. But for both types of your state legislative  
16 elections analysis, other than one paragraph where you compare  
17 a specific State Senate district in 2018 versus 2022, you only  
18 analyze state legislative races from 2022, right?

19 A I believe that's correct, yes.

20 Q Okay. One of your inquiries was looking at the bivariate  
21 correlation at the county level between the percentage of  
22 registered voters who are black and the percentage of the vote  
23 received by the Democratic Party candidate, right?

24 A Yes.

25 Q In this analysis, you were only looking at the correlation

1 between black voters and Democrats, right?

2 A I believe so, yes.

3 Q You were not analyzing anything about white voters?

4 A Correct.

5 Q You did not perform separate bivariate correlation  
6 analyses in which you looked at biracial elections versus  
7 uni-racial elections, correct?

8 A Correct.

9 Q You grouped all of these elections together regardless of  
10 the race of the candidate, right?

11 A Correct.

12 Q And you were also looking at state legislative races  
13 across the entire state, not just the Huntsville and Montgomery  
14 regions, right?

15 A Right.

16 Q And you excluded here uncontested races from your  
17 analysis; is that right?

18 A Yes.

19 Q And there were no contested senate races in Montgomery  
20 County in 2022, were there?

21 A I believe that's right.

22 Q So this particular analysis entirely excludes Montgomery,  
23 correct?

24 A Right. I mean, in order to analyze voting percentages,  
25 you need to have a race. And if there is only one candidate,

1 the vote is 100 percent.

2 Q Let's turn to paragraph 24 of your report on page 13.

3 And there you note that in Senate District 2, the same  
4 Republican candidate -- there was the same Republican candidate  
5 in both 2018 and 2022, but the Democratic opponent was a black  
6 candidate in 2022, and a white candidate in 2018, right?

7 A Right.

8 Q And you note that the white Democrat in 2018 and the black  
9 Democrat in 2022 received a fairly similar vote share with the  
10 white Democrat 1.2 percentage points higher, correct?

11 A Correct.

12 Q But you did not analyze whether black voters supported  
13 each candidate similarly, correct?

14 A Correct.

15 Q And you acknowledge that the district lines changed  
16 between these two elections, right?

17 A Correct.

18 Q But you did not examine whether the change was small or  
19 significant, right?

20 A I did not.

21 Q Even though you agree that -- and you agree, though, that  
22 a significant change in the lines would make the comparison  
23 less useful, correct?

24 A Yeah. I mean, what we're trying to do here is compare  
25 similar things that have different outcomes. And obviously,

1 the more similar they are, the better our comparisons are.

2 Q So on that topic, you also did not look at the racial  
3 demographics of the district as it stood in 2018 versus the  
4 racial demographics of the district as it stood in 2022,  
5 correct?

6 A I did not.

7 Q But you would agree that that would be useful to know in  
8 making a comparison?

9 A If there was a significant difference, yes.

10 Q You also did not look at turnout between 2018 and 2022 in  
11 this district, correct?

12 A No. I used percentages. And so percentages, it doesn't  
13 matter what the turnout is.

14 Q Okay. Your comparison also did not account for  
15 differences in candidate funding, correct?

16 A Correct.

17 Q And although you agree candidate funding differentials can  
18 matter in assessing the strength of a campaign, right?

19 A Correct.

20 Q Dr. Bonneau, you also analyzed the vote percentage of the  
21 counties in which Democrats lost in contested 2022 State Senate  
22 elections, right?

23 A Yes.

24 Q And when you looked at state legislative elections, you  
25 did not perform a regression analysis, right?

1 A Correct.

2 Q You simply compared the results of losing black candidates  
3 and losing white -- I'm sorry -- losing black Democrat  
4 candidates and losing white Democratic candidates, correct?

5 A Correct.

6 Q And your takeaway from this comparison of state  
7 legislative races is that you don't find evidence of racial  
8 differences in vote totals in the 2022 elections; is that fair?

9 A Fair.

10 Q But that we can't draw any conclusions outside of these  
11 2022 elections, right?

12 A Right.

13 Q And you're not examining whether party plays a role in  
14 these state legislative races, because you're holding party  
15 constant in comparing black and white losing Democratic  
16 candidates, right?

17 A Correct.

18 Q And I believe you testified at your deposition that your  
19 state legislative analysis is a less pure kind of analysis;  
20 does that sound right?

21 A Sounds right.

22 Q Because -- and this is because each district has a  
23 different mix of voters, and sometimes districts span county  
24 lines, correct?

25 A Correct. So this analysis basically takes like a

1 30,000-foot view and kind of looked to see if there's anything  
2 here that seems off or that seems like it would be suggestive  
3 that black losing candidates are disadvantaged compared to  
4 white losing candidates.

5 Q And here you looked at any state legislative districts in  
6 the state of Alabama that met these criteria contested  
7 elections in which there was a losing Democratic candidate.  
8 Not only those in the Huntsville and Montgomery areas, correct?

9 A Correct.

10 Q And for the State Senate races in Huntsville, there is no  
11 comparison between black and white Democratic candidates  
12 because both losing Democratic candidates in SD2 and SD7 were  
13 black, correct?

14 A Correct. It's hard to make comparison when you don't have  
15 any variance.

16 Q And for State Senate races, none of the races involve  
17 Montgomery because neither SD25 or SD26 had contested races in  
18 2022, correct?

19 A Sounds correct.

20 Q And for both versions of your state legislative analysis,  
21 you relayed on a county-level election -- a county-level  
22 election result to perform that analysis, correct?

23 A Yes.

24 Q And you agree that there are drawbacks to using  
25 county-level data, right?

1 A For this purpose, yes.

2 Q One of those drawbacks is that for contested races where  
3 there are multiple districts in a county, effectively those  
4 counties received greater weight in the analysis than counties  
5 that are only represented in one House or Senate district,  
6 right?

7 A Yes.

8 Q And do you agree that in some of the counties, there are  
9 indeed multiple State House and State Senate districts you  
10 analyzed, right?

11 A Yeah, it's a fact.

12 Q In fact, in Madison County, it appears twice via State  
13 Senate Districts 2 and 7, correct?

14 A Yes.

15 Q And you agree that one part of a county can have very  
16 different voting patterns than another part of a county,  
17 correct?

18 A Absolutely.

19 Q And so you agree that your unit of analysis has a built-in  
20 conflict, sometimes as a county, other times as a State Senate  
21 district, right?

22 A I wouldn't describe it as a conflict, but your description  
23 of the data is correct.

24 Q You also agree that your county-level analysis has a small  
25 unit size problem because the number of counties in a given



1 area is sometimes too small to allow statistical inference,  
2 right?

3 A Absolutely.

4 Q And in this analysis, you didn't analyze why black  
5 candidates performed better or the same, correct?

6 A Correct.

7 Q Your conclusion that black Democrats perform better when  
8 they challenge white Republicans than white Democrats perform  
9 when they challenge white Republicans could mean that black  
10 voters prefer black candidates to white candidates even within  
11 party, correct?

12 A It could.

13 Q You agree that it's possible that black Democrats and  
14 white Democrats tend to run for office in different types of  
15 districts, right?

16 A Sure.

17 Q And it's true that if black Democrats were more likely to  
18 run in districts with higher percentages of black voters, that  
19 might be a reason why they're obtaining higher vote  
20 percentages, correct?

21 A Yes.

22 Q And it's possible that black Democrats and white Democrats  
23 tend to win primaries in different kinds of districts, right?

24 A Sure.

25 Q We don't know from your analysis whether those districts

1 with a black Democratic candidate had a higher Black Voting Age  
2 Population than those districts with a -- where a white  
3 Democratic candidate was the Democratic nominee, correct?

4 A Yes.

5 Q And we don't know from your analysis whether white voters  
6 across these districts voted in greater numbers for white  
7 Democrats or black Democrats, correct?

8 A Correct.

9 Q And we don't know from your analysis whether the race of  
10 the Democratic candidate corresponds to the majority of  
11 Democratic primary voters in the district, correct?

12 A Correct.

13 Q And you agree that we don't know from the data that you  
14 provide or the analysis whether the election results you  
15 observe are the result of black voters turning out in greater  
16 numbers for black Democrats than for white Democrats, correct?

17 A Yes.

18 Q You discussed a little earlier Dr. Liu's analysis of three  
19 nonpartisan mayoral elections -- two in Montgomery and one in  
20 Decatur, correct?

21 A Yes.

22 Q And you agree that these three nonpartisan elections  
23 showed starkly racially-polarized voting even without partisan  
24 cues on the ballot, correct?

25 A Correct.

1 Q And none of these races were cast via straight-ticket  
2 party ballot, correct?

3 A Well, they can't be because there's no party affiliate.  
4 So if someone were to cast, if that were an option in these  
5 races in those odd years, voters would not vote for those races  
6 if they use the straight-ticket option.

7 Q And you testified on direct that sometimes even though  
8 races are labeled nonpartisan, they can be functionally  
9 partisan; is that fair? Is that a fair statement?

10 A I would say more than just sometimes. I would say they  
11 often are.

12 Q But you still have no reason to doubt the finding that  
13 mayoral elections in general removing partisanship from the  
14 ballot essentially eliminates the relationship between voters'  
15 party identification and vote choice, correct?

16 A No. I disagree there. I mean, you are right. It removes  
17 the party from the ballot. That doesn't mean the party is not  
18 known by voters and that that's not a factor when voters cast  
19 their ballots. It simply means that when they go and cast  
20 their ballots, they're not reminded of which candidate is  
21 representing which party.

22 Q Let's pull up Dr. Bonneau's deposition page 70.

23 Dr. Bonneau, I asked you at our first deposition: Is it  
24 still your best understanding that for mayoral elections  
25 removing partisanship from the ballot essentially eliminates

1 the relationship between voters' party identification and vote  
2 choice.

3 And can you read your answer there below?

4 A For mayoral elections, I think in general, I have no  
5 information suggested in that finding in general is not true.  
6 To be clear, though, the Schaffner, Streb, and Wright article  
7 that found that, I believe they only look at mayoral elections  
8 comparing -- inaudible -- in Illinois because one has partisan  
9 elections, one has nonpartisan elections.

10 And so to the extent that that -- so I'm not sure the  
11 political culture or the context or whatever of local politics  
12 in two -- to call them rural I think would be an overstatement  
13 -- towns, college towns, right, in Illinois.

14 Man, I have to work on my English.

15 But I mean, I have no qualms with the methodology or their  
16 finding.

17 Q Thank you. You can take that down.

18 A That was embarrassing.

19 Q And in this case, you did not consider whether any of  
20 these particular candidates actually had high name recognition  
21 in association with a political party, correct?

22 A Correct.

23 Q And you did not consider whether these candidates had  
24 appeared with partisan figures during their campaigns, correct?

25 A Correct.

1 Q And you did not analyze anything else that these  
2 candidates may have done to give their voters partisan cues,  
3 correct?

4 A Correct.

5 Q And you mentioned I believe that one of the candidates in  
6 Montgomery earlier had formerly been the probate judge,  
7 correct?

8 A Yes.

9 Q But you don't know whether probate judges have a high name  
10 recognition in the Montgomery area, correct?

11 A I do not, or in particular, that particular probate judge.

12 Q Let's turn now to your analysis of judicial elections and  
13 talk about campaign spending first.

14 On pages 7 and 8 of your report, you look at campaign  
15 spending in contested Alabama Supreme Court races between 2000  
16 and 2022, correct?

17 A Yes.

18 Q During this time period, no African-American Democratic  
19 candidates won Supreme Court races, correct?

20 A Correct. There was only one Democrat who won during that  
21 time period.

22 Q And no black candidates ran as Republicans during that  
23 time period, correct?

24 A Correct.

25 Q But one white Democrat did win election, correct?

1 A Correct.

2 Q And you chose to report differences in average spending  
3 between Republicans and Democrats here, correct?

4 A Well, it's the table has the difference in actual spending  
5 between the candidates. But then in subsequent paragraphs, I  
6 did average between Republican candidates and Democratic  
7 candidates.

8 Q And that would be in paragraph 10 of your report, correct?

9 A Correct.

10 Q And there you note that Republican candidates on average  
11 spent \$1,547,737, while Democratic candidates spent on average  
12 \$604,335, right?

13 A Yes.

14 Q But you did not report differences in average spending  
15 between black and white candidates, right?

16 A Right.

17 Q And you agree that unless you're looking at both party and  
18 racial differences, you cannot come to an informed conclusion  
19 about whether party is a better explanation for the observed  
20 data than race, correct?

21 A In general, that's correct.

22 Q And can we pull up PX-333? Sorry. 333. Thank you. And  
23 do you mind rotating that?

24 Appreciate it.

25 Dr. Bonneau, do you recognize this table from your

1 deposition?

2 A Vaguely, yes.

3 Q Okay. And --

4 A I don't think it was the deposition in this case, though.

5 I think it was the deposition in a different case, but...

6 Q I do believe this was introduced at your deposition in  
7 this case.

8 A Okay.

9 Q We can check the record if you --

10 A I believe you. I get confused.

11 Q That's fine. And feel free to take your time and look at  
12 this.

13 But to the best of your understanding, does this appear to  
14 be simply a reorganization of the data you present in Table 2  
15 of your report?

16 A Yes.

17 Q Okay.

18 MR. ROSBOROUGH: Plaintiffs seek to admit PX-333.

19 THE COURT: Any objection?

20 MR. TAUNTON: No objection.

21 THE COURT: Admitted.

22 (Plaintiffs' Exhibit 333 in evidence.)

23 BY MR. ROSBOROUGH:

24 Q Dr. Bonneau, you agree that the average amount spent by  
25 white candidates during this time frame was more than three

1 times the average amount spent by black candidates during this  
2 time frame, correct?

3 A Yes.

4 Q And that even if we just compare white Democrats to black  
5 Democrats, white Democrats spent approximately 2.7 times more  
6 than black Democrats?

7 A Yes. I would point out there are only five entries in the  
8 white Democrats table, and one of them is Sue Bell Cobb's  
9 \$2.5 million, which is going to significantly skew the average.

10 Q But this is -- just represents the data in your own chart,  
11 correct?

12 A Right. It represents the actual data, right, so it's not  
13 just the data in my chart. These are the actual figures from  
14 the Alabama Secretary of State.

15 Q Fair correction.

16 You agree that if the cost for running of election becomes  
17 too high, needing to raise significant funds of money could  
18 deter candidates for minority groups from seeking office,  
19 correct?

20 A Yes. If they're not able to raise funds either through  
21 themselves or through their political party apparatus or from  
22 other groups, yes.

23 Q And you did not examine whether in Alabama the cost of  
24 running for election for State Supreme Court is too high for  
25 minority candidates to be able to compete, correct?



1 A I don't know what too high means. But I did not analyze  
2 whether candidates were kept out of races because they -- I did  
3 not analyze whether or not a candidate decided not to run  
4 because of the cost of running.

5 Q Let's move along to paragraph 6 of your report. And there  
6 I believe you discuss some summary statistics from contested  
7 Alabama State Supreme Court races between 2000 and 2002,  
8 correct? I'm sorry. 2000 and 2006, correct?

9 A Paragraph 6 looks at just Sue Bell Cobb, at least as  
10 displayed on my --

11 Q No. You're right. Let me check that.

12 Okay. In -- let me rephrase my question. In paragraph 6  
13 of your report, you note that since 2000, all incumbents have  
14 won elections in their Alabama State Supreme Court races except  
15 for three, correct?

16 A Correct.

17 Q And the first two of those Democratic incumbents lost in  
18 the year 2000, correct?

19 A Yes.

20 Q One of those was Ralph Cook?

21 A Yes.

22 Q Justice Cook was a black Democratic candidate?

23 A He was.

24 Q And he was one of only two black Alabama Supreme Court  
25 justices ever elected, correct?

1 A Correct.

2 Q And he was initially elected after first being appointed  
3 to office, correct?

4 A Yes.

5 Q And the other Democratic incumbent who lost in 2000 was  
6 John England, correct?

7 A Yes.

8 Q Justice England was also African-American, correct?

9 A He is.

10 Q And Justice England had not been -- I'm sorry -- Justice  
11 England had been appointed to the bench and had not yet faced  
12 election, correct?

13 A Yes.

14 Q The third incumbent who lost in this period was Drayton  
15 Neighbors, correct?

16 A Yes.

17 Q And Justice Neighbors was a white Republican, right?

18 A He is.

19 Q And he lost to Sue Bell Cobb, correct?

20 A Yes.

21 Q And Justice Cobb is a white Democrat?

22 A Yes.

23 Q So in the three Alabama state Supreme Court elections in  
24 which incumbents lost in a 22-year period, two of the losses  
25 were black candidates, and one was a white Republican who was

1 defeated by a white Democrat, correct?

2 A There were no other incumbent Democrats who lost during  
3 that time either. And so at the time, the Alabama Supreme  
4 Court, the only incumbents who were up for election were the  
5 two Democratic incumbents.

6 Q Understanding the qualification, is it factually accurate  
7 that in the three Alabama State Supreme Court elections in  
8 which incumbents lost in a 22-year period which you pointed out  
9 in paragraph 6, two of the losses were black candidates, and  
10 one was a white Republican who was defeated by a white  
11 Democrat?

12 A Yes, that's correct.

13 Q Now, turning back to the 2000 elections. You note in  
14 paragraph 9 of your report that all four Democrats lost their  
15 races that year, correct?

16 A They did.

17 Q And two of those Democrats were the ones we just  
18 discussed, Justices England and Cook, who were black  
19 incumbents, correct?

20 A Yes.

21 Q And the other two were white Democrats who were not  
22 incumbents, right?

23 A Yes.

24 Q And you state that Cook received -- sorry -- 46.4 percent  
25 of the vote, and England received 45.8 percent of the vote.

1 This is higher than the percentage of the vote received by the  
2 two losing Democratic candidates who were white -- 45.3 percent  
3 and 45.2 percent, correct?

4 A Yes.

5 Q So one black incumbent candidate, Justice Cook, received  
6 1.1 and 1.2 percentage points respectively more support than  
7 his white Democratic non-incumbent counterparts, correct?

8 A Yes.

9 Q And the other black incumbent candidate, Justice England,  
10 received 0.5 and 0.6 percentage points more support than his  
11 white Democratic non-incumbent counterparts, correct?

12 A Yes.

13 Q And from these figures, you conclude that although these  
14 differences are small, they suggest that the African-American  
15 candidates were not disadvantaged because of their race; they  
16 were disadvantaged because they were Democrats, correct?

17 A Yes.

18 Q But the fact that Ralph Cook and John England got what  
19 similar or a little bit higher percentage of the vote could  
20 reflect an incumbency advantage, correct?

21 A It could. I would also point out that the fact that these  
22 are all very similar speaks to the importance and power of  
23 straight-ticket voting. That is, these two individuals did  
24 slightly better probably because people didn't vote straight  
25 ticket, and people defected and voted for them maybe because

1 they were incumbents, maybe for any number of reasons.

2 MR. ROSBOROUGH: Your Honor, I would move to strike  
3 the last portion of the answer as nonresponsive.

4 MR. TAUNTON: Your Honor, I think he was just  
5 answering the question that he was asked.

6 MR. ROSBOROUGH: The question asked was: But the fact  
7 that Ralph Cook and John England got somewhat similar or a bit  
8 higher percentage of the vote could reflect an incumbency  
9 advantage, correct? And there was no question posed about the  
10 role of straight-ticket voting.

11 MR. TAUNTON: Your Honor, he answered the question in  
12 the context of crossover voting and how that might affect.

13 THE COURT: He answered the question, and he said it  
14 is also be for a different reason, so I will allow it.

15 MR. ROSBOROUGH: Okay.

16 BY MR. ROSBOROUGH:

17 Q Dr. Bonneau, you agree that when you are dealing with a  
18 small number of elections, it can be difficult to make any kind  
19 of conclusion about the role of race or party for instance in  
20 voter choices?

21 A Absolutely. You have got to go to war with the data you  
22 have got, not the data you want.

23 Q And in the races you analyze, you don't know if a higher  
24 percentage of black voters were voting for black Democrats over  
25 white Democrats, correct?

1 A Correct.

2 Q And it can certainly be true that higher vote totals for a  
3 black candidate were informed by a high percentage of black  
4 voters who voted for that candidate and a low percentage of  
5 white voters who voted for that candidate, correct?

6 A Yes.

7 Q It's true that all else being equal, judicial incumbents  
8 should have a formidable advantage over their opponents,  
9 correct?

10 A All else being equal, yes.

11 Q And you agree after fixing the error in your data that you  
12 discussed with Mr. Taunton earlier that it demonstrates the  
13 exact opposite of your initial conclusion that black Democratic  
14 candidates for the Supreme Court receive significantly lower  
15 vote shares on average than white Democratic candidates,  
16 correct?

17 MR. TAUNTON: Your Honor, I am going to object and say  
18 that mischaracterizes his testimony.

19 THE COURT: He can say that if it does.

20 THE WITNESS: Yeah. What I agreed to in my testimony  
21 is that paragraph 13 is not supported by what I -- by the data  
22 once they've been corrected. So I would not conclude that  
23 African-Americans perform 4.3 percentage points better than  
24 white candidates.

25 MR. ROSBOROUGH: John, if we can pull up the *Milligan*

1 deposition, page 71.

2 And let's go to lines 16 through 24.

3 BY MR. ROSBOROUGH:

4 Q There, a question was posed to you: Dr. Palmer writes at  
5 the end of this paragraph: In other words, fixing the error in  
6 Dr. Bonneau's data demonstrates the exact opposite of  
7 Dr. Bonneau's initial conclusion. Black Democratic candidates  
8 for the Supreme Court received significantly lower vote shares  
9 on average than white Democratic.

10 Do you agree with that assessment?

11 And your answer?

12 MR. TAUNTON: Your Honor, I am going to object to  
13 this. Again, this is -- Dr. Palmer is not testifying here.  
14 Dr. Palmer is not an expert in this case. This is part of the  
15 reason I objected to -- if they want to talk about Dr. Liu's  
16 analysis, which Your Honor ruled has come in, that's fine. But  
17 Dr. Palmer is not present here. We don't have his analysis in  
18 this case.

19 THE COURT: It's about this one sentence, which is the  
20 exact question he just got asked. I mean, he's not being asked  
21 about anything else Dr. Palmer says. He's being asked about  
22 this specific sentence.

23 Previously the sentence was: And you agree -- this was  
24 the question from Mr. Rosborough -- and you agree after fixing  
25 the error in your data that you discussed with Mr. Taunton

1 earlier that it demonstrates the exact opposite of your initial  
2 conclusion that black Democratic candidates for the Supreme  
3 Court received significantly lower vote shares on average than  
4 white Democratic candidates, correct?

5 MR. TAUNTON: Your Honor, I certainly don't object to  
6 them crossing him on this issue based on your ruling on day one  
7 of the trial. However, I just note Dr. Palmer's analysis  
8 report are not in evidence in this case.

9 THE COURT: And to be clear, I am not allowing  
10 anything about Dr. Palmer's analysis. This is -- I would allow  
11 this solely for the purposes of impeachment as it asks the  
12 exact same question that he just answered.

13 MR. ROSBOROUGH: That's what we're -- that's exactly  
14 what I am doing, Your Honor.

15 THE COURT: All right.

16 THE WITNESS: So I would say -- so I have to have  
17 invoke Dr. Palmer -- I did not run the analysis, again, after  
18 the error was pointed out.

19 BY MR. ROSBOROUGH:

20 Q And I'm sorry, because I think that was not the question  
21 that was pending. Let's --

22 MR. ROSBOROUGH: Your Honor, do you mind if I step  
23 back and re-ask the --

24 THE COURT: Sure.

25 MR. ROSBOROUGH: -- the question here? I think we got



1 a little lost there.

2 BY MR. ROSBOROUGH:

3 Q Now, in your deposition in *Milligan*, you gave a deposition  
4 in the *Milligan* case, correct?

5 A Yes.

6 Q And you were under oath?

7 A I was.

8 Q Okay. And there you were asked the question: Dr. Palmer  
9 writes at the end of this paragraph: In other words, fixing  
10 the error in Dr. Bonneau's data demonstrates the exact opposite  
11 of Dr. Bonneau's initial conclusion. Black Democratic  
12 candidates for the Supreme Court received significantly lower  
13 vote shares on average than white Democratic candidates.

14 Do you agree with that assessment?

15 And your answer was?

16 A I do.

17 Q So based on the corrected analysis, you would agree that  
18 we cannot eliminate race as the reason why black Democrats  
19 perform worse than white Democrats, correct?

20 A In the State Supreme Court election analysis, yes.

21 Q Okay. And as between race and party, your analysis of  
22 Alabama Supreme Court elections indicates that race may be a  
23 factor, correct?

24 A It may be one factor, yes.

25 Q But party is not a factor in determining voter choices in

1 this context when -- given -- when black and white -- given how  
2 white and Democratic -- let me restate that.

3 THE COURT: Why don't we start that one over?

4 MR. ROSBOROUGH: Thank you.

5 BY MR. ROSBOROUGH:

6 Q But you agree that party in this analysis is not a factor  
7 in determining voter choices when considering how black and  
8 white Democrats perform, correct?

9 A Correct. Party is the same for both groups of candidates.

10 Q Okay. Dr. Palmer --

11 A Whoa. I object to that.

12 Q Sustained.

13 Dr. Bonneau, I'd like to discuss now your opinions about  
14 what the success of black candidates or lack thereof in Alabama  
15 tells us about the respective roles of race and partisanship in  
16 Alabama's politics, okay?

17 A Sure.

18 Q Let's start with your conclusion, pages 17 to 18,  
19 paragraph 35.

20 You state that the lack of success of African-American  
21 candidates is not because of their race; rather, it is because  
22 they overwhelmingly run as members of the Democratic Party.

23 Indeed, in the one case where a black Republican ran  
24 against a white Democrat for a state legislative seat, the  
25 black Republican won easily and even defeated a white

1 Republican in the primary.

2 And in the one case where a black Republican judge ran for  
3 election, he was uncontested in both the primary and general  
4 election.

5 Did I read that correctly?

6 A You did.

7 Q Okay. Let's take a look at some of the evidence that you  
8 rely on for this point.

9 So, first, Dr. Bonneau, you looked at two State House  
10 primaries -- Districts 73 and 74 -- to support your theory that  
11 party drives voter choices more than race, correct?

12 A Correct.

13 Q So let's go to -- I'm sorry -- page 10, paragraph 17 of  
14 your report. And there you discuss the 2022 House District 74  
15 Democratic primary, correct?

16 A Yes.

17 Q And there, a white Democrat, Phillip Ensler, defeated a  
18 black Democrat, Malcolm Calhoun in that race, correct?

19 A Yes.

20 Q You cite this as evidence that race is not the driving  
21 force behind vote choice, correct?

22 A Yes.

23 Q Now, in forming your opinions, you try very hard not to  
24 rely on one piece of data because that does not give a complete  
25 picture, correct?

1 A Correct.

2 Q So you don't want to make conclusions just on one piece of  
3 data?

4 A Indeed.

5 Q And for this race, you looked at this race after counsel  
6 called it to your attention, correct?

7 A Correct.

8 Q And you decided to note it because it is a rare thing that  
9 a white Democrat defeated a black Democrat in the primary in a  
10 majority-black district, correct?

11 A Yes.

12 Q You did not attempt to analyze what percentage of white  
13 votes -- white voters versus black voters supported each  
14 candidate, correct?

15 A We don't know what percentage -- we don't know who voters  
16 vote for, so, no.

17 Q Okay. And you did not consider turnout when analyzing  
18 this race, correct?

19 A No. Again, I used percentages, so it doesn't matter.

20 Q And you take no issue with Dr. Liu's finding that turnout  
21 was about 5 percent in that election for black voters and about  
22 7 percent for white voters, correct?

23 A I have no reason to dispute that.

24 Q So you would agree this is a low turnout election?

25 A Sure. I would say that, again, it's the data we have. I

1 would love to have more cases. I would love to have a bunch of  
2 black Republicans, a one bunch of white Republicans, a bunch of  
3 black Democrats, white Democrats running for offices all over  
4 the state in all kinds of things.

5 Then we could answer this question. This is what we got.

6 Q Fair enough.

7 And although you believe the race of the candidate may  
8 have not been the most important factor here, you do not  
9 dispute that it may be a factor?

10 A Correct.

11 Q On page 18 -- I'm sorry -- paragraph 18, page 11, you cite  
12 the victory of an African-American Republican Representative  
13 Kenneth Paschal over -- I'm sorry -- a black Republican Kenneth  
14 Paschal over a white Republican in a 2021 special election  
15 primary as additional evidence for the effect of party being  
16 the most important factor, correct?

17 A Yes.

18 Q And you looked at this race because it was rare that you  
19 have a black Republican who not only won, but defeated a white  
20 Republican in the primary, correct?

21 A Correct.

22 Q You do not believe there were any other legislative  
23 elections in Alabama where a black Republican defeated a white  
24 Republican in a primary, correct?

25 A Correct. At least at the time I wrote this.

1 Q And you agree that it's hard to draw much of a general  
2 conclusion at all from one specific race, right?

3 A Of course.

4 Q And you agree that this race concerned a State House  
5 district in Shelby County, correct?

6 A Yes.

7 Q And to the best of your knowledge, Shelby County is not in  
8 or near one of the areas in dispute in this case, correct?

9 A Correct.

10 Q And it's true that it is possible there are differences in  
11 white Republican voting patterns in Shelby County versus  
12 Montgomery or Huntsville area; is that fair?

13 A That's possible.

14 Q And you also agree that this race was very unusual,  
15 correct?

16 A I do.

17 Q And you agree that you are not aware of any other black  
18 Republicans who have won election to the State Legislature  
19 since Reconstruction, correct?

20 A Correct.

21 Q And I think as we've already discussed, the number of  
22 voters who voted in a primary can inform the weight you put on  
23 a conclusion, correct?

24 A To the extent that it's representative of anything, sure.

25 Q And you do not contest Dr. Liu's analysis that the House

1 District 73 Republican primary had extremely low turnout even  
2 among partisan voters, correct?

3 A Well, it was a special election, so I would expect that,  
4 yes.

5 Q And you agree that you can't draw any conclusions based on  
6 this election alone about the extent to which race or party is  
7 informing voter choices, correct?

8 A Correct.

9 Q You also cite the appointment of Judge Bill Lewis to a  
10 local judicial seat, correct?

11 A I do.

12 Q But you do not purport to draw any conclusions about  
13 voting patterns in Alabama from the appointment of Judge Lewis,  
14 correct?

15 A Correct.

16 Q Because there was no election to analyze, right?

17 A Right. And then he ran uncontested.

18 Q And the same is -- well, you answered my next question.

19 You are not purporting to draw any conclusions about how  
20 political party factors into Alabama elections based on Judge  
21 Lewis's appointment, correct?

22 A Correct.

23 Q So you cited the HD73 and HD74 primaries because for one,  
24 counsel for defendant sent it to you; and for the other,  
25 because it was very unusual, correct?

1 A Correct.

2 Q You did not undertake any more systematic analysis of how  
3 black Republicans fared in primaries, correct?

4 A Correct.

5 Q You did not undertake any more systematic analysis of  
6 biracial Democratic primaries, correct?

7 A Biracial, you mean races in a Democratic primary between a  
8 black Democrat and a white Democrat.

9 Q Correct?

10 A Not outside my report, correct.

11 Q Okay. So your report contains no evidence that either of  
12 these specific races represent any sort of broader pattern or  
13 trend in Alabama elections, correct?

14 A I would say that two -- yes, because two races -- any two  
15 races couldn't tell us anything about that.

16 Q Now, in Dr. Liu's rebuttal report, he mentioned the 2024  
17 Congressional District 2 primary. Do you recall that?

18 A Yes.

19 Q That was not a race that you analyzed in your report?

20 A Correct. I don't believe it happened at the time I wrote  
21 this report.

22 Q Fair enough.

23 A I mean, I'm a pretty good, but that's a little outside me.

24 Q You were aware of that race?

25 A I am now, yes.



1 Q We discussed it in your deposition?

2 A We did.

3 Q Okay. In that primary, eight candidates ran for office --  
4 four white candidates along with four other black candidates,  
5 correct?

6 A Correct.

7 Q And the four African-American candidates in that race  
8 finished fifth, sixth, seventh, and eight places after the  
9 election results were announced and together received only  
10 6.2 percent of the total vote, correct?

11 A Correct.

12 Q And in the 2024 Montgomery County Commission District 3  
13 Republican primary, the white candidate Justin Castanza  
14 defeated the black candidate Cedric Coley winning over  
15 80 percent of the votes cast, correct?

16 A Correct.

17 Q And you did not analyze this race in your report, correct?

18 A I do not.

19 Q Let's go to the conclusion of your report, page 17,  
20 paragraph 34.

21 Here you opine that African-American candidates did have  
22 success running in statewide judicial elections before Alabama  
23 realigned and became a one-party Republican state, correct?

24 A Correct.

25 Q When you state that African-American judicial candidates

1 had electoral success, you were referring solely to the two  
2 state Supreme Court candidates, Oscar Adams and Ralph Cook, who  
3 were appointed and then won election, correct?

4 A Correct.

5 Q And Justice Adams won in 1982 and 1986 after first being  
6 appointed to the court, correct?

7 A Correct.

8 Q And Justice Cook won in 1994 after first being appointed,  
9 right?

10 A Yes.

11 Q And then Justice Cook lost reelection in 2000, along with  
12 Justice England, correct?

13 A Correct. The Republicans swept all the seats that year.

14 Q You are not aware, though, of any black candidates who won  
15 election to statewide office before party realignment other  
16 than the two state Supreme Court justices we discussed,  
17 correct?

18 A Correct.

19 Q So even during this period of 1982 to 1994, and, in fact,  
20 not ever, has a black candidate won election to the Alabama  
21 Supreme Court without being appointed first, correct?

22 A Correct.

23 Q So both Justices Adams and Cook had the advantage of  
24 running as incumbents, correct?

25 A They did.

1 Q And you agree that one of the enduring findings in  
2 electoral politics is that incumbents generally fare better  
3 than non-incumbents, right?

4 A Indeed.

5 Q And you agreed specifically there's a significant  
6 incumbency advantage in partisan judicial races, right?

7 A Yes.

8 Q And so you agree that even prior to realignment, black  
9 candidates were not winning regularly in Alabama in statewide  
10 election in non-majority-black districts or in  
11 non-majority-black districts -- I'm sorry -- correct?

12 A Well, I'm not sure they were running. So I would have to  
13 go back and look and see how many African-American candidates  
14 ran for state Supreme Court and lost during that time. My  
15 hunch is it was zero, but I could be wrong.

16 Q Let me rephrase my question.

17 You were not -- even prior to realignment, you are not  
18 aware of any black candidates winning -- other than the two we  
19 mentioned -- in Alabama statewide elections or  
20 non-majority-black districts, correct?

21 A I am not aware, correct.

22 Q And after party alignment, no black candidates won  
23 statewide office, correct?

24 A And only one Democrat did. Two if you count Doug Jones.  
25 Correct.

1 Q Well, even after party alignment in Alabama, a white  
2 non-incumbent Democrat, Sue Bell Cobb won election to the state  
3 Supreme Court?

4 A Yes. One person did.

5 Q And a white Democratic candidate won the Secretary of  
6 State's race in 2002, right?

7 A I believe so, yes.

8 Q And two white Democrats won election to Congress from  
9 Alabama in majority white districts in 2008, correct?

10 A Yeah. Those aren't statewide races, so, yes, I believe  
11 so. Sure.

12 Q And a white Democratic candidate won a U.S. Senate seat in  
13 2017, correct?

14 A Correct.

15 Q You agree that black Democrats' very limited success  
16 statewide before realignment and total lack of success -- total  
17 lack of statewide success after realignment compared to the  
18 white Democrats' consistent success before realignment and  
19 limited, but existing success, after realignment is a salient  
20 factor, right?

21 A It is. I would characterize it differently, though. I  
22 mean, I think if we are going to talk about consistent success,  
23 we also have to look at the number of people who are running.

24 So it says one thing if you had a lot of black Democrats  
25 before realignment running and losing or if you had very few

1 running. But those are two different stories about -- I mean,  
2 the outcome is the same, but how we got to the outcome is way  
3 different. So I would need to know more about that.

4 Q But you did not analyze that question, correct?

5 A Correct.

6 Q You only focused on the two African-American Supreme Court  
7 justices who won office after being appointed in that period,  
8 correct?

9 A Yes.

10 Q And it's also true that white Democrats continue to win  
11 state legislative races in Alabama well into the 2000s, right?

12 A Correct.

13 Q But you were not aware of any black Democrats winning  
14 state legislative races in Alabama in districts that are not  
15 majority black or very close to it, correct?

16 A I did not look at that, yeah.

17 Q Your conclusions in this case are about whether the race  
18 of the candidate, not whether the race of voters matters,  
19 correct?

20 A Yes.

21 Q That is a different question that you're seeking to answer  
22 than whether black voters have an equal opportunity to elect  
23 preferred candidates, right?

24 A Yes.

25 Q Your analysis doesn't tell us whether white voters are

1 more likely to vote for a white candidate regardless of party,  
2 correct?

3 A I don't think that's the case. I think my analysis shows  
4 that voters vote by party, and the race of the candidates, if  
5 anything, is a secondary factor. I mean, if we had a black  
6 Republican running statewide in Alabama, my prediction, right,  
7 would be that that person would win and would win easily.

8 MR. ROSBOROUGH: John, can you pull up the *Milligan*  
9 deposition, page 227? Page 227, lines 2 through 5.

10 BY MR. ROSBOROUGH:

11 Q In your deposition in the *Milligan* place, asking about  
12 this same topic, I asked you: Similarly, this doesn't tell us  
13 whether white voters are more likely to vote for a white  
14 candidate regardless of party, correct?

15 And your answer was?

16 A Correct. I did not understand that to be the question you  
17 were just asking me.

18 Q Now, in terms of the race of the candidates, you agree  
19 that the evidence in this case does not allow you to rule out  
20 race as a reason for lack of success of black candidates,  
21 correct?

22 A It cannot be ruled out.

23 Q And you agree that indeed race is likely a reason why some  
24 African-American candidates in Alabama do not have electoral  
25 success, correct?

1 A Yes.

2 Q And you agree there are not many examples of black  
3 Republican candidates defeating white Republican candidates in  
4 Alabama, correct?

5 A Yes.

6 Q And, indeed, no black person has ever won a contested  
7 Republican primary election for statewide office to the best of  
8 your knowledge, correct?

9 A Yes.

10 Q And is it fair to say that the race of the candidate could  
11 be a reason why black Republicans underperform white  
12 Republicans in primaries?

13 A It could be.

14 Q And in your opinion, it is absolutely possible that both  
15 the race of the candidate and party of the candidate affect  
16 voters' choices, correct?

17 A There are a lot of factors that affect voters' choices.  
18 The party is absolutely one of them. And race for some voters  
19 could be one of them, as well.

20 Q And you agree that the race of the voter is a driving  
21 factor in their political party affiliation, correct?

22 A Yes.

23 MR. ROSBOROUGH: I will pass the witness, Your Honor.  
24 Thank you.

25 THE COURT: All right. Any redirect, Mr. Taunton?

1 MR. TAUNTON: Just a little bit, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. TAUNTON:

4 Q Let's begin real quick by going back to paragraph 13 of  
5 your report.

6 We discussed this on your direct, but I want to make sure  
7 that we're clear.

8 Now, again, after you submitted your report in the  
9 *Milligan* case, Dr. Palmer pointed out a -- who is not an expert  
10 in this case -- pointed out an error in the data; is that  
11 right?

12 A Yes.

13 Q And we have talked about that.

14 Now, Dr. Palmer conducted some additional analyses based  
15 on corrected data; is that right?

16 A Yes.

17 Q Okay. If we could pull up DX-1 and Appendix A.

18 Again, the analysis that you were conducting in paragraph  
19 13, was it limited to the time period between 2010 and 2022?

20 A Yes.

21 Q And at the time you conducted this analysis, did you think  
22 that there was more than one African-American candidate who had  
23 run for Supreme Court since 2010?

24 A Yes.

25 Q After you corrected the data, how many black candidates



1 have one run for Supreme Court since 2010?

2 A One.

3 Q Based on the fact that only one black candidate has run  
4 for Supreme Court since 2010, would you have conducted the  
5 analysis that you conducted in paragraph 13?

6 A No.

7 Q Do you find Dr. Palmer's subsequent analysis based on one  
8 black candidate to have run since 2010 meaningful?

9 A I mean, it's not -- I wouldn't have invested the effort in  
10 doing it. I don't have his results here in front of me, so I  
11 can't -- I don't remember exactly what, you know, what he did.

12 But certainly, I mean, people can do all kinds of  
13 different things. It's not an analysis I would have performed.  
14 I wouldn't have found it particularly worthwhile.

15 Q Is that because you don't think -- with the corrected data  
16 there are enough data points to conduct that type of analysis?

17 A Correct. There's not enough variation among the  
18 candidates.

19 Q So when you were asked whether or not you agreed with  
20 Dr. Palmer's analysis which is not in this case, were you  
21 agreeing that that's an analysis that should be conducted in  
22 this case?

23 A I -- I mean, I would not have done it. Nobody -- no other  
24 expert witness in this case, to my knowledge, has conducted it.  
25 So probably not.

1 Q Let's flip over to paragraph 22 of your report.

2 Do you recall being asked a number of questions about the  
3 dataset that you used to conduct the correlation analysis in  
4 paragraph 22?

5 A Yes.

6 Q And you used county-level data, correct?

7 A Correct.

8 Q And I think you were asked whether or not that could lead  
9 to some counties that have multiple Senate districts appearing  
10 twice in the data?

11 A Correct.

12 Q For purposes of the analysis that you were conducting  
13 here, is that something that you thought was fatal?

14 A No.

15 Q Why not?

16 A I just -- you know, again, I was trying to take a  
17 30,000-foot view of this to see what the -- if there was a  
18 simple relationship here or not. And if so, how strong it was.

19 And the results, right, comport with what political  
20 scientists know. It's consistent with the literature that the  
21 larger the percentage of voter -- registered voters who are  
22 black, the better the Democrats are going to do.

23 That's supported by everything that I have talked about  
24 above, all those citations, as well scores of others. And so  
25 when I found the same thing in Alabama, for me, that was

1 enough.

2 Q Do you believe that this analysis in its broad strokes  
3 remains reliable?

4 A I think it remains true, yes.

5 Q And so did you -- did you decline to conduct a  
6 precinct-level analysis because you thought it would  
7 potentially confirm what you had already seen?

8 A Correct. As the kids say, the juice wasn't worth the  
9 squeeze.

10 Q If we go back to I believe it's maybe paragraph 10 of your  
11 report, you were asked a number of questions about the campaign  
12 expenditures of black Democrats as compared to the campaign  
13 expenditures of white Democrats. Right?

14 A Yes.

15 Q And you noted that Sue Bell Cobb's expenditures are an  
16 upward departure?

17 A Yes.

18 Q And are Anita Kelly's a downward departure?

19 A Yes. Although far less of a downward departure than Sue  
20 Bell Cobb's upward departure.

21 Q Now, in a general election, were any of the black  
22 Democrats included in this Table 2 running against the white  
23 Democrats included in Table 2?

24 A No.

25 Q So when -- when seeking to determine -- when seeking to

1 determine how campaign expenditures might influence an  
2 election, is it more useful to compare the campaign  
3 expenditures of candidates who run against each other?

4 A Well, yes, because, again, campaign spending doesn't exist  
5 in a vacuum. And so you may only spend \$50,000. But if your  
6 opponent spends 55,000, then you're on the same footing. If  
7 you spend \$50,000, and your opponent spends 2 million, now all  
8 of a sudden you have a huge discrepancy.

9 And so it's not as much as the absolute value, although  
10 some of those numbers are staggering, but also relative to the  
11 opponent.

12 So Anita Kelly spent \$22,000. If Greg Cook spent \$25,000,  
13 I think we'd say they were both similarly equipped, in terms of  
14 being able to run an adequate campaign.

15 Q And, again, I think I asked you this earlier, but the  
16 campaign expenditures that are reported here, does that include  
17 primary expenditures?

18 A Yes.

19 Q So it could be that, for instance, Greg Cook spent well  
20 over a million dollars in the primary and less in the general  
21 election?

22 A He could have.

23 Q You were also asked some about Table 4 on page 17 of your  
24 report.

25 And you testified -- did you testify that the relationship

1 here between the Democratic percentage of the vote and whether  
2 the candidate -- Democratic candidate was black was not  
3 statistically significant?

4 A Correct. It's not significantly -- we can't rule out the  
5 fact that the true relationship is zero.

6 Q And why is that? I mean, in looking at this analysis and  
7 it has negative coefficient, so why would it be that we can't  
8 rule that out?

9 A Well, because it has to do with the size of the standard  
10 error or the uncertainty, level of uncertainty that's  
11 associated with all of those estimates.

12 A lot of times when we see like numbers, we think they're  
13 real numbers, and they are real numbers, but they're also  
14 estimates. And estimates are by definition imprecise.

15 So with each coefficient, which is an estimate of the  
16 effect, there is a standard error associated with it. And so  
17 when you look at the size of the coefficient divided by the  
18 size of the standard error, that tells you whether or not the  
19 relationship you have is likely to be real or likely to be an  
20 artifact of the sample and not reflective of the true  
21 population.

22 Q You were asked some questions about your conclusions in  
23 this case, in particular, I believe paragraph 35.

24 There, do you opine that the lack of success of  
25 African-American candidates is not because of their race,

1 rather, it is because they overwhelmingly run as members of the  
2 Democratic Party?

3 A Correct.

4 Q You were then asked about several of the individual  
5 analyses you conducted in this report, right?

6 A Yes.

7 Q You were asked about -- were you asked about individual  
8 legislative races?

9 A Yes.

10 Q And you were asked about some other questions.

11 Here's my question: Any individual analysis that you  
12 conducted in this report, based on that, can you opine that  
13 party, not race, is driving voter choices?

14 A In my opinion, the data that we have are most consistent  
15 with the explanation that's political party that's causing  
16 these results or that's leading to these results rather than  
17 race.

18 Q Is that based on the totality of the evidence that you  
19 analyzed in your report?

20 A The totality of the evidence in this report, as well as  
21 the political science literature. Scholars who have conducted  
22 studies of this for years show the importance of political  
23 party as the dominant force in vote choice.

24 Q So based on your analysis of Alabama Supreme Court  
25 elections since 2000, straight-ticket voting in Alabama, the

1 various regressions you performed here, the individual  
2 legislative races you analyzed, and the other elements of your  
3 report, is it those pieces of evidence that would lead you to  
4 conclude that black candidates are not penalized politically by  
5 their race?

6 MR. ROSBOROUGH: Objection. Leading.

7 THE COURT: You have to break it apart, I think.

8 BY MR. TAUNTON:

9 Q I can rephrase. Is it the totality of the -- does the  
10 totality of the analysis of your report lead you to conclude  
11 that black candidates are not penalized politically by their  
12 race in Alabama?

13 A Yes.

14 Q You also were asked about some races that you did not  
15 analyze, such as the Republican primary in Congressional  
16 District 2, right?

17 A Yes.

18 Q Did you analyze any elections that happened after you  
19 submitted this report?

20 A Not for this case, no.

21 Q Did you analyze the Fayette County Commission election for  
22 District 6?

23 A No. I'm not even aware that such a thing exists. I guess  
24 it was talked about yesterday maybe, but, no.

25 Q So you didn't analyze any -- any elections for purposes of

1 this report from the most recent election cycle?

2 A No.

3 Q And so that may have included more examples of black  
4 Republican candidates running for office?

5 A Sure.

6 Q And some of them may have had success?

7 A Some may have.

8 MR. ROSBOROUGH: Objection. Leading.

9 BY MR. TAUNTON:

10 Q Do you know whether any of them had success or not?

11 A Off the top of my head, no, I don't, but I would need -- I  
12 don't want to state a conclusive position on that.

13 Q So that would be -- again, that would be equally true,  
14 though, you wouldn't have analyzed races such as the County  
15 Commission District 6 race in Fayette County any more than you  
16 did Congressional District 2?

17 A Correct.

18 MR. TAUNTON: Your Honor, if I may have a moment.

19 THE COURT: You may.

20 MR. TAUNTON: Nothing further, Your Honor.

21 THE COURT: All right. Counsel for the plaintiffs?

22 MR. ROSBOROUGH: Nothing further from us, Your Honor.

23 THE COURT: All right. I have some questions for  
24 Dr. Bonneau. Is there any objection to me asking them?

25 MR. ROSBOROUGH: No, Your Honor. No objection.



1 MR. TAUNTON: No, Your Honor.

2 EXAMINATION

3 BY THE COURT:

4 Q Dr. Bonneau, I am going to ask you to wait just a beat  
5 after I ask my questions so that if the lawyers want to object  
6 to them, they can?

7 A Perfect.

8 Q All right. And I think I understand some of your  
9 testimony clearly, but this is my last chance to make sure of  
10 that.

11 So I want to ask some questions about your disagreements  
12 with Dr. Liu.

13 A Okay.

14 Q So is your opinion that Dr. Liu is wrong that voting is  
15 racially polarized or that he has simply overstated the  
16 evidence that voting in Alabama is racially polarized?

17 You may answer.

18 A All right. So I'm not disputing his conclusion, right?  
19 That was also Dr. Hood's conclusion I believe that there is  
20 racial polarization vote that is -- that he, through ecological  
21 inference, has determined that blacks vote differently than  
22 whites.

23 What I'm saying is that doesn't lead to a conclusion that  
24 race is motivating vote choice; that, in fact, you could find  
25 exactly what he found, but more consistent explanation is

1 political party, because blacks overwhelmingly identify as  
2 Democrats.

3 And so you could look at that polarized -- if you did it  
4 any number of ways, you would see these differences. And the  
5 question is: Why do we see these differences? And I would say  
6 the bulk of the evidence suggests that we see these differences  
7 because of the high identification with blacks and the  
8 Democratic Party.

9 Q So your dispute is about the cause of the phenomenon  
10 that's observed in the data?

11 A Yeah. What it means. Yeah. What does this tell us about  
12 how elections occur, or what elections mean.

13 Q All right. Okay. So in your report --

14 THE COURT: Can somebody pull up page 17 of his  
15 report, please? It's the page with paragraphs 32 and 33.

16 BY THE COURT:

17 Q Okay. So I just want to be sure I understand these  
18 sentences properly.

19 So in paragraph 32, it says, Indeed, the lack of  
20 relationship holds even when the percentage of voters who voted  
21 straight-ticket Democrat is included as an independent  
22 variable. In sum, the empirical evidence shows that the  
23 political party of the candidates is what matters in these  
24 elections, not race.

25 When you say not race, do you mean not the race of the

1 candidate?

2 A Correct. Right. So this regression is between the  
3 Democratic percentage of the vote and whether the candidate was  
4 black.

5 Q Okay. All right. Same question as to paragraph 33.

6 So your conclusion, which I understand to be your opinion  
7 as to the whole of the case, paragraph 32 relates to an opinion  
8 about a specific matter in the preceding paragraphs.

9 Paragraph 33 says: My examination of the evidence in this  
10 case does not reveal evidence of voting based on race.

11 When you say based on race, do you mean based on the race  
12 of the candidate?

13 A Yes.

14 Q Okay. So is what you think Dr. Liu overstates or  
15 exaggerates or is otherwise wrong about, the importance of the  
16 race of the candidate?

17 A I think his fundamental error is that he ignores the role  
18 of the political party altogether. He assumes that race is the  
19 issue. He does not examine whether or not political party and  
20 how political party relates to all this.

21 And given what we know about how Democrats perform in  
22 Alabama, particularly in recent years, that omission, all  
23 right, is a pretty big omission and doesn't really, you know,  
24 and -- it's not as simple, I would say, as he makes it out to  
25 be.

1 Q Okay. So do you take issue with Dr. Liu's finding -- let  
2 me make sure I state this correctly -- that black voters have  
3 expressed a clear preference for the same candidate in the  
4 elections he analyzes?

5 A No. And I would say the same is true for Democrats.

6 Q Sure. And you don't take issue, then, with his conclusion  
7 in that regard about white voters either, correct?

8 A Correct.

9 Q Okay. You attribute it -- their preferences to party and  
10 not to race?

11 A Correct. White voters are a little -- white voters are  
12 not as uniformly Republican as black voters are uniformly  
13 Democrat.

14 Q Got it. Okay.

15 THE COURT: All right. I think I understand.

16 Did my questions create a need for any additional  
17 questions from the lawyers?

18 MR. TAUNTON: No, Your Honor.

19 MR. ROSBOROUGH: No, Your Honor.

20 THE COURT: All right. Is there any reason I may not  
21 excuse Dr. Bonneau?

22 MR. ROSBOROUGH: Not from plaintiffs.

23 MR. TAUNTON: No, Your Honor.

24 THE COURT: All right, Dr. Bonneau. Thank you for  
25 being with us today, and you are excused.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 MR. DAVIS: Shall we call in our next witness, Your  
4 Honor?

5 THE COURT: How long do you expect the direct of the  
6 next witness to take?

7 MS. LANCASTER: Not long. Maybe 30 minutes.

8 THE COURT: All right. Is it y'all's preference to  
9 start now or to take our afternoon break now?

10 MS. LANCASTER: I will say the witness is trying to  
11 get on the road before dark due to recent cataract surgery.

12 THE COURT: All right. Let's start.

13 MS. LANCASTER: Secretary calls Ms. Susan Copeland to  
14 the stand.

15 THE COURT: Thank you.

16 SUSAN COPELAND

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

19 THE CLERK: Please state and spell your name for the  
20 record.

21 THE WITNESS: Susan, S-U-S-A-N, Copeland,  
22 C-O-P-E-L-A-N-D.

23 THE CLERK: Thank you.

24 DIRECT EXAMINATION

25 BY MS. LANCASTER:

1 Q Good afternoon, Ms. Copeland. Tell us where you currently  
2 live?

3 A I live in Pike Road, Alabama.

4 Q What county is Pike Road Alabama in?

5 A Montgomery.

6 Q How long have you lived in the town of Pike Road?

7 A 13 years.

8 Q Are you currently employed?

9 A Yes.

10 Q What do you do for a living?

11 A I am a lawyer.

12 Q And where did you go to law school?

13 A At the University of Alabama.

14 Q Can you briefly walk us through your legal career after  
15 graduation?

16 A Yeah. After I graduated in 1982. I went to work first as  
17 a law clerk at the court of criminal appeals. And then I  
18 became a staff attorney to Judge John C. Tyson, III and stayed  
19 as a staff attorney until he retired.

20 Then was kept on by Mark Montiel, who was a classmate of  
21 mine. And then I was kept on after Mark left by Sue Bell Cobb  
22 who was classmate of mine, as well.

23 And then I left the court in 1996. And I took some time  
24 off and wrote some briefs for some lawyers. And then I went to  
25 work with Doyle Fuller.

1 Q I want to talk about your time with Mr. Fuller. How did  
2 you meet Mr. Fuller?

3 A When I interviewed, that was the first time I had met him,  
4 but my husband knew him pretty well from being in court with  
5 him, and he loved him, so...

6 Q And when was this?

7 A I went to work -- it would have been in the fall of 1997  
8 when I met him. And I went to work for him January 2nd, 1998.

9 Q How long did you and Mr. Fuller work together?

10 A 25 years.

11 Q Do you two still keep in contact?

12 A Every day.

13 Q Is it your understanding that Mr. Fuller was intended to  
14 testify as a witness in this case?

15 A He was.

16 Q Are you aware of why he's no longer testifying?

17 A Yes. His leukemia has returned, and his doctor just  
18 wouldn't let him testify.

19 Q Do you know if he gave a deposition in this case?

20 A He did.

21 Q And to clarify for the record, when you mentioned that you  
22 worked with Mr. Fuller, you two are working together at Fuller  
23 & Copeland, correct?

24 A Right.

25 Q And you mentioned that you started working with Mr. Fuller

1 around 1998. When did the firm establish the name Fuller &  
2 Copeland?

3 A I don't even remember. Just kind of -- I don't think we  
4 officially ever changed it. We just started calling it Fuller  
5 & Copeland.

6 Q So is it fair when I am asking you about your time at  
7 Fuller & Copeland that I'm referring from 1998 until so on?

8 A Correct.

9 Q What type of work did Fuller & Copeland handle?

10 A All I can tell you is the best way to describe it, we did  
11 complex civil litigation. And we were the lawyers for the town  
12 of Pike Road since it was incorporated.

13 Q Before we talk more about the cases that Fuller & Copeland  
14 handled, tell me what is your understanding of why you're here  
15 to testify in this case?

16 A I was asked to testify, and so I'm here.

17 Q You mentioned that you and Mr. Fuller were legal counsel  
18 for the town of Pike Road when it was incorporated. When was  
19 Pike Road incorporated?

20 A It was incorporated October the 24th of 1997. Doyle  
21 incorporated it. I was not with him at that time. I didn't  
22 start until two months later.

23 Q Now, if I do my math correctly, it sounds like Pike Road  
24 just came on its 27th anniversary. Did the town of Pike Road  
25 do anything to celebrate its recent anniversary?



1 A This year?

2 Q Yes, ma'am.

3 A They did. They named a children's park after Charlene  
4 Rayburn who was the first Town Clerk, Wayne Rabren, who was the  
5 first mayor, Reed Ingram who helped with the incorporation, and  
6 Doyle and me as the founding lawyers.

7 Q Congratulations.

8 Broadly speaking, what were your responsibilities as legal  
9 counsel for the town of Pike Road?

10 A We did whatever legal work. Whatever work they needed to  
11 be done, we did it.

12 Q Did you assist with the annexation of the property into  
13 Pike Road?

14 A I did just about all the annexations.

15 Q Were you involved with forming the Pike Road school  
16 system?

17 A Yes.

18 Q Did you assist in the purchase of the Georgia Washington  
19 Middle School facility?

20 A I did.

21 Q If Pike Road were ever involved in litigation, would you  
22 represent the town in a lawsuit?

23 A I did.

24 Q Ms. Copeland, did you review any expert reports in this  
25 case relating to the incorporation of Pike Road?

1 A I did. I looked at just a few pages of the expert report.

2 Q Can we pull up Plaintiffs' Exhibit 19, Dr. Bagley's  
3 initial report which is already admitted into evidence?

4 Ms. Copeland, have you seen this exhibit before?

5 A I have.

6 Q Is this the expert report that you reviewed?

7 A I did.

8 Q You mentioned you only reviewed a few pages. Do you  
9 remember what portions?

10 A The part that talked about Pike Road.

11 Q Based on your knowledge of Pike Road, both as legal  
12 counsel and as a current resident, does Dr. Bagley's report  
13 accurately characterize the town of Pike Road?

14 A No.

15 Q Why not?

16 A The town of Pike Road is just -- it was an area back in  
17 the -- I guess since the beginning of Montgomery County and  
18 they've always just been real tight, and people that initially  
19 incorporated it were from the Pike Road community.

20 And it still has that community feel. And everybody --  
21 even though it's already a city, we still refer to it as a town  
22 because it just has that -- a good feeling.

23 Q I want to break down your characterization of Pike Road  
24 more. You mentioned you've lived there for nearly 13 years.  
25 How would you describe the community of Pike Road?

1 A I just describe it as a wonderful place to live, and the  
2 people there are great. Everybody I've met. It's a safe  
3 place. So I mean, I don't know what else to...

4 Q Would you consider Pike Road a small town?

5 A Yes.

6 Q Would you consider Pike Road a rural town?

7 A Absolutely. Although, it's growing.

8 Q During the incorporation of Pike Road in 1997, where did  
9 you live?

10 A Where did I live?

11 Q Yes, ma'am?

12 A Montgomery.

13 Q The city of Montgomery?

14 A I did.

15 Q What county is the city of Montgomery in?

16 A Montgomery County.

17 Q How would you describe the relationship between the city  
18 of Montgomery and the town of Pike Road?

19 A You mean after it was incorporated?

20 Q Yes.

21 A Well, city of Montgomery fought very, very hard not to  
22 allow it to be incorporated. But they lost that court fight,  
23 and Pike Road was incorporated.

24 And after that time until -- until the time of Emory  
25 Folmar and Bobby Bright, they still did not like Pike Road, and

1 I think we had some litigation over it over the years.

2 And then when Todd Strange came to be mayor, we finally  
3 kind of settled everything, and Montgomery is it now, and we're  
4 Pike Road. And we are getting along since then.

5 Q Would you consider Montgomery a small town?

6 A No.

7 Q Would you consider Montgomery a rural town?

8 A No.

9 Q Before Pike Road was incorporated, did what is now the  
10 town of Pike Road community have any form of government?

11 A No.

12 Q Did the current -- did the residents of what is now Pike  
13 Road have any form of protection over its land from other  
14 cities?

15 A No, not -- say that again.

16 Q I can ask it in a better way.

17 If a city like the city of Montgomery wanted to annex land  
18 from the Pike Road area into its municipal limits, would the  
19 land owners have any way to prevent this?

20 A No.

21 Q Did this ever happen?

22 A They did it by election, but I don't think they've ever --  
23 I don't think they've ever taken in property that didn't want  
24 to come in to Montgomery.

25 Q Do you know what the population of Pike Road is today?

1 A It's over 10,000.

2 Q And to prevent any confusion, in his report, Dr. Bagley  
3 mentions that the population of Pike Road, the census county  
4 division is around 23,000. When you say the population is just  
5 above 10,000, are you referencing the population for the census  
6 county division or just within the municipal limits?

7 A Just within the municipal limits.

8 Q Are you familiar with the racial demographics of the town  
9 of Pike Road today?

10 A Probably not today, but I was from the beginning and was  
11 for a long time.

12 Q How would you describe the racial demographics of the town  
13 of Pike Road around the time it was incorporated?

14 A Well, when it was incorporated, there were --  
15 approximately 40 percent were African-Americans. And the rest  
16 were white or whatever kind of, you know, whoever foreign  
17 nationalities there would be. And then it stayed pretty much  
18 that for a while. And then the more we incorporated, sometimes  
19 it would start falling a little bit. But I just don't know  
20 what it is now.

21 Q I want to talk about the leadership of Pike Road.

22 Does Dr. Bagley's report accurately characterize the  
23 leadership?

24 A I don't really remember what he said about the leadership.

25 Q Dr. Bagley's report -- if we could pull up again exhibit

1 -- Plaintiffs' Exhibit 19 and go to page 27.

2 If we look at that first full paragraph, can you read the  
3 second sentence and the remainder?

4 A The counsel is comprised of only white members. The mayor  
5 is also white. Keep reading?

6 Q Is -- you can finish the paragraph.

7 A There is one black member of the Pike Road Board of  
8 Education. The members of the board are appointed by the town  
9 council.

10 Q Okay. We can take that down.

11 Are you familiar with the current members of the Pike Road  
12 town council?

13 A I am.

14 Q What are the racial demographics of the current members?

15 A The current members are all white.

16 Q Do you recall what year the current members were elected?

17 A 19 -- I mean, 2020.

18 Q You mentioned that you work -- you mentioned you work as  
19 counsel for the town of Pike Road. Generally, who did you work  
20 alongside on behalf of the town?

21 A Usually the mayor, but the council members would call us  
22 with questions and things like that.

23 Q Did you attend any town council meetings?

24 A Yes.

25 Q Are you generally familiar with the members of the

1 previous town councils?

2 A I am.

3 Q As Pike Road's legal counsel, would you be familiar with  
4 the meeting minutes from these town council meetings?

5 A Yes.

6 Q Would you be able to find the names of the council members  
7 that served as town council over these years through the  
8 meeting minutes?

9 A Yeah.

10 MS. LANCASTER: To avoid flipping through several  
11 multi-page exhibits, defense has created a demonstrative to use  
12 with Ms. Copeland that has been shared with plaintiffs.

13 Permission to publish?

14 THE COURT: Any objection?

15 MR. ETTINGER: No objection.

16 THE COURT: You may publish it.

17 BY MS. LANCASTER:

18 Q Can we pull up Ms. Copeland's -- perfect.

19 Looking at this demonstrative, can you identify any years  
20 other than the current Pike Road town council where the town  
21 council did not have at least one black member serving?

22 A No. There's always been a black serving until 2020.

23 Q Are the Pike Road town council members elected at-large?

24 A Yes.

25 Q So is it your understanding that in these at-large

1 elections, a sufficient number of Pike Road voters, including  
2 white individuals voted for black officials?

3 A Yes.

4 Q Do you know who Mr. Leroy Tolliver is?

5 A I do.

6 Q How long did Mr. Tolliver serve on council?

7 A I think it was at least 12 years, if not longer.

8 Q Do you know if he ran in the 2020 election?

9 A He did not.

10 Q Do you understand why he did not run?

11 A He's just tired of it and wanted to retire.

12 Q Where were the Pike Road town council meetings held?

13 A Well, when they first were held, it was at the Peace  
14 Baptist Church, which was part of the original incorporation  
15 area, because the original incorporation area was very small.  
16 And this is the only public building in that area.

17 Q After -- were they always held at the Peace Baptist  
18 Church?

19 A And once we left there, we went to a house that was at the  
20 intersection of Pike Road and Wallahatchie Road.

21 Q Are you aware of what the racial demographics of the  
22 congregation of the Peace Baptist Church was?

23 A It was black at the time.

24 Q Before we take down defendant's exhibit -- defendant's  
25 demonstrative, can you name the black members that served over



1 the years?

2 A Sure. The 1998 to 2000, Henry Curry and Charles Julius  
3 were black members.

4 And 2000 to 2004, the same two were serving.

5 In 2004 to 2008, Leroy, that was when Leroy joined with  
6 Charles Julius. And Henry Curry went off.

7 2008, Leroy Tolliver was still on.

8 2012, Leroy Tolliver was still on.

9 Q What about 2016 through 2020?

10 A Leroy Tolliver is on that one, as well. So actually he  
11 served 16 years.

12 Q You mentioned that you helped with the annexation process  
13 of the town of Pike Road. I want to talk about that.

14 Generally, how does a municipality annex property into  
15 their city limits in Alabama?

16 A The easiest way is by a petition to annex. And the  
17 landowner would get a petition from the town. And the land  
18 owners would sign it and attach a deed to the petition and then  
19 would present it to the town council.

20 Q Were there any other ways to annex land?

21 A Yes. You could do it by election, or the Legislature can  
22 do the annexation.

23 Q You mentioned the easiest way was through petition, and  
24 you started to take us through that process.

25 Was any land annexed into Pike Road through a petition?

1 A A lot.

2 Q During your time, was any land eligible to be annexed by  
3 petition?

4 A If it's contiguous to the town of Pike Road, they were  
5 eligible to be annexed.

6 Q On a similar note, was any landowner, as long as their  
7 land was contiguous, eligible to petition to have their land  
8 annexed?

9 A Yes.

10 Q In other words, were there any eligibility requirements of  
11 a landowner in order to petition their land into Pike Road?

12 A You just had to be a landowner and you had to -- and your  
13 property had to be contiguous.

14 Q You started to walk through that process of what that  
15 looked like. I want to break that down a little bit.

16 You mentioned starting with a petition. Where would a  
17 landowner find this petition?

18 A They would get it from the town clerk.

19 Q Once they filled out the petition, then what?

20 A They would bring it back with their deed and give it to  
21 the town clerk, and she would set it at the next meeting.

22 Q Before setting it at the next meeting, did it undergo any  
23 review?

24 A Did it get any other review?

25 Q Yes, ma'am.

1 A We would have looked at it.

2 Q And what would you look for?

3 A To make sure it was contiguous and make sure the landowner  
4 had -- was the owner of the land.

5 Q Once the petition was presented in front of council, what  
6 would happen then?

7 A The council would vote on it.

8 Q Assuming that the land was contiguous but there was some  
9 other errors maybe with the deed as you said, what would you  
10 do?

11 A If there was -- if there was a problem with the deed, we  
12 would send it back to them and say, you know, you have got to  
13 correct it, because we can't take it before the council unless  
14 it's correct.

15 Q Assuming there were no errors with the deed or the  
16 petition but the land was noncontiguous, what would you do?

17 A We would tell them it was noncontiguous, and we would try  
18 sometimes to help them find a way to make it contiguous.

19 Q What would this look like of finding a way to make land  
20 contiguous?

21 A Maybe they were one piece of property away from being  
22 contiguous, and we or they would go to the landowner and -- the  
23 landowner that between the town and them and ask that landowner  
24 to just annex a strip of land so that we could get to them.

25 Q Would you do these efforts for petitioners of all races?

1 A Absolutely.

2 Q Did you ever choose not to present a petition to town  
3 council that met all the legal requirements?

4 A No.

5 Q Did the town council ever deny any petition that met all  
6 the legal requirements?

7 A Not that I remember.

8 Q Did black landowners petition to have their land annexed  
9 into Pike Road?

10 A Yes, they did.

11 Q And were these petitions granted?

12 A Yes.

13 Q Let's switch gears and talk about the Pike Road school  
14 system. What was your involvement in the formation of the Pike  
15 Road school system?

16 A Doyle and I were involved from day one.

17 Q When did the Pike Road -- when did Pike Road form its own  
18 independent school system from the Montgomery County school  
19 system?

20 A If I remember, it was 2015, but that may have been the  
21 year that we opened the elementary school, and we actually  
22 formed it earlier. I just don't remember if that was the day  
23 we opened it or the day that we left.

24 Q Understandable.

25 Dr. Bagley's report notes that Pike Road's independent

1 school system was intended to provide a, quote, public school  
2 alternative to Montgomery public schools, which were then and  
3 now predominantly black.

4 Were there any racially motivated intentions to build a  
5 separate school system for the purposes of providing Pike Road  
6 an alternative to a majority black school?

7 A Absolutely not.

8 MR. ETTINGER: Objection. Hearsay.

9 THE COURT: You may respond.

10 MS. LANCASTER: This comes directly from Dr. Bagley's  
11 report, Plaintiffs' Exhibit 19.

12 MR. ETTINGER: She is not an expert and can't testify  
13 as to the intentional or non-intentional discriminatory efforts  
14 that go beyond her personal knowledge.

15 THE COURT: Well, she is not testifying to an  
16 out-of-court statement. She's just answering the question  
17 insofar as she's aware.

18 MR. ETTINGER: Understood.

19 THE COURT: All right. You may continue.

20 BY MS. LANCASTER:

21 Q Ms. Copeland, do you need me to repeat my question?

22 A That would be great.

23 Q Were there any racially motivated intentions to build a  
24 separate school system for the purposes of providing Pike Road  
25 students an alternative to a majority black school?

1 A No. Absolutely not.

2 Q Ms. Copeland, what is your understanding of why Pike Road  
3 built a separate school system?

4 A Pike Road, there was a school that serviced all the Pike  
5 Road students back in the old days. And I think it went from,  
6 like elementary to high school or whatever. So they had a  
7 rural community feeling around that school.

8 So when we initially incorporated, there was always the  
9 intention that they wanted to have a school system, because  
10 they all loved it so much back in the -- I don't know, back  
11 before the '70s, I think is when it closed.

12 Q Did the formation of a separate school system have  
13 anything to do with race?

14 A No.

15 Q Around 2015, whenever the school system was formed, do you  
16 know what the racial demographics of the students in the Pike  
17 Road community were?

18 A I don't, but it's probably still pretty similar to what it  
19 was when we incorporated.

20 Q And do you remember what it was when it was incorporated?

21 A There were 40 percent black.

22 Q Before Pike Road was incorporated in 1997, where did the  
23 students living in the Pike Road area attend school?

24 A The Montgomery County schools.

25 Q And from the time Pike Road incorporated in 1997 until

1 Pike Road formed a separate school system, where did Pike Road  
2 students go to school?

3 A I misspoke before. Either Montgomery public schools, or  
4 they went to one of the many private schools we have in  
5 Montgomery.

6 Q Okay. And what about the time from incorporation but  
7 before Pike Road formed a separate school system?

8 A That's the same thing. They would either go to a private  
9 school, or they would be in the Montgomery public schools.

10 Q During this time, were any of the Montgomery public  
11 schools located within the city limits of Pike Road?

12 A No.

13 Q Did the Montgomery public -- did the Montgomery County  
14 school system ever try to build a public school within Pike  
15 Road limits?

16 A We -- we built a school -- did Montgomery?

17 Q Yes.

18 A No.

19 Q Before -- okay.

20 You previously mentioned that you were involved with the  
21 purchase of the Georgia Washington School facility.

22 What was your role in this purchase?

23 A We just met with the lawyers for the Montgomery County  
24 Board of Education. And at that time, the Montgomery school  
25 system had been taken over by the state, and Ed Richardson was

1 appointed to kind of be the head of the school board, I guess  
2 is what --

3 Q Who decided to purchase the Georgia Washington facility on  
4 behalf of Pike Road?

5 A Who made the decision? The town council and the mayor.

6 Q To your knowledge, why did Pike Road decide to purchase  
7 the Georgia Washington School building?

8 A Because we had grown -- we started out with just an  
9 elementary school. And then we purchased the old Pike Road  
10 school and turned it into the junior high school.

11 And we grew by a grade every year after the first few  
12 years -- after the first elementary school term. And then we  
13 just needed -- we were growing into a high school and adding  
14 high school students, so we needed some place, and Georgia  
15 Washington was the closest to the town limits.

16 Q Dr. Bagley's report mentions that the Montgomery public  
17 schools closed the Georgia Washington Middle School in 2018.  
18 To your knowledge, why was the Georgia Washington Middle School  
19 closing?

20 A My understanding is that they were losing students.

21 Q Do you know if the Georgia Washington Middle School was  
22 going to close regardless of whether this -- it was sold to  
23 Pike Road or not?

24 A My understanding it was.

25 Q Would you recognize a copy of the sales agreement between



1 Pike Road and Montgomery Board of Education for the Georgia  
2 Washington building?

3 A Yes.

4 MS. LANCASTER: Can we you will up Defendant's  
5 Exhibit 202?

6 BY MS. LANCASTER:

7 Q Ms. Copeland, do you recognize Defendant's Exhibit 202?

8 A I do.

9 Q And what do you recognize Defendant's Exhibit 202 to be?

10 A This is the agreement that we had with Montgomery County  
11 Board of Education to purchase Georgia Washington.

12 Q Can we turn to pages 12 and 13?

13 Ms. Copeland, is your signature represented in Defendant's  
14 Exhibit 202?

15 A Yes.

16 Q Does Defendant's Exhibit 202 appear to be the final  
17 executed copy of the sales agreement for the Georgia Washington  
18 facility?

19 A It does.

20 MS. LANCASTER: Defendants offer Exhibit 202 into  
21 evidence.

22 THE COURT: Any objection?

23 MR. ETTINGER: No objection.

24 THE COURT: 202 is admitted.

25 (Defense Exhibit 202 admitted in evidence.)

1

2 BY MS. LANCASTER:

3 Q And according to pages 12 and 13, when did Pike Road and  
4 Montgomery County Board of Education execute this agreement?

5 A It says on -- at least on page 12 that it was May the 11th  
6 of 2018.

7 Q Let's turn to page 5, section 10.

8 According to section 10, when did the parties contract to  
9 close on the Georgia Washington Middle School building?

10 A It says on or about June 15th, 2018, but no later than  
11 July 1st, 2018.

12 Q Looking at the next page, page 6, can we look at Section  
13 11(c)?

14 Ms. Copeland, what does Section 11(c) provide?

15 A It says that we -- that the town of Pike Road is  
16 contingent -- well, it's -- the purchase is contingent upon  
17 Pike Road's agreement to accept a deed restriction on the  
18 property specifying that the name of Georgia Washington shall  
19 remain on or about the property and shall be -- continue to be  
20 used in conjunction with the trade name of the facility in  
21 honor and observation of the historical significance of Georgia  
22 Washington.

23 Q What about Section 11(d)?

24 A Seller's obligation to close on the property and to convey  
25 the property to purchaser shall be contingent upon purchaser's

1 agreement to honor, observe, and maintain the burial plot of  
2 Ms. Georgia Washington, which is situated on the property.  
3 More specifically, purchaser shall agree to honor, observe, and  
4 maintain the burial plot of Ms. Georgia Washington as situated  
5 on the property as of the closing date.

6 Q And, finally, what about Section 11(e)?

7 A Seller's obligation to close on the sale of the property  
8 and to convey the property to purchaser shall be contingent  
9 upon purchaser's consent to commission or cause to be  
10 commissioned a memorial mural or some other medium of art to be  
11 installed and maintained inside the property in observance of  
12 the heroism and accomplishments of Ms. Georgia Washington.

13 Q Ms. Copeland, who is Ms. Georgia Washington?

14 A She was -- I think she was a former slave who started the  
15 school way back forever. And she was just a beloved member of  
16 the community -- of the -- that community, and the school was  
17 named after her.

18 Q And what was Ms. Georgia Washington's race?

19 A She was black.

20 Q Do you know if Pike Road has complied with these  
21 provisions that we just looked at?

22 A I know they have done the first two because they are  
23 outside. I have not been back inside since we purchased --  
24 well, I would go into the gymnasium to vote, but I never went  
25 into the actual school after we purchased. So I just don't

1 know about the third one.

2 Q Understandable.

3 A But I would assume they did.

4 Q Were there any lawsuits concerning the sale of the Georgia  
5 Washington School facility?

6 A Yes.

7 Q Do you remember who filed this lawsuit?

8 A I do not remember who it was, the lawyer that filed it. I  
9 certainly don't know the plaintiff. But it didn't last long.  
10 We were able to settle pretty quickly with...

11 Q Would you recognize a copy of the settlement agreement in  
12 that case?

13 A Yes.

14 Q Can we pull up Defendant's Exhibit 223?

15 Ms. Copeland, do you recognize Defendant's Exhibit 223?

16 A Yes.

17 Q And what do you recognize Defendant's Exhibit 223 to be?

18 A It's a settlement agreement between Eric Mackey and his  
19 official capacity as Alabama State Superintendent of Education  
20 and Gordon Stone the mayor of Pike Road and the Alabama  
21 Education Association. That's who sued.

22 Q And can we turn to page 3?

23 Ms. Copeland, is your signature represented on page 3?

24 A It is.

25 MS. LANCASTER: Defendant's offer Defendant's

1 Exhibit 223 into evidence.

2 THE COURT: Any objection?

3 MR. ETTINGER: No objection, Your Honor.

4 THE COURT: 223 is admitted.

5 (Defense Exhibit 223 admitted in evidence.)

6 BY MS. LANCASTER:

7 Q Ms. Copeland, generally, do you know what this lawsuit was  
8 about?

9 A They don't want us to get Georgia Washington.

10 Q If we turn back to page 1, can we look at paragraph C?

11 Ms. Copeland, can you read the first sentence of paragraph  
12 C?

13 A Comply with and enforce the promises made in the most  
14 recent May 11, 2018, sales contract for Georgia Washington  
15 Middle School.

16 Q All right.

17 A With regard to paragraphs 11(c), 11(d), and 11(e).

18 Q Are paragraphs 11(c), 11(d), and 11(e) referred here in  
19 Defendant's Exhibit 223 the same as the ones we just read in  
20 Defendant's Exhibit 202?

21 A Yes.

22 Q Has there been any allegation that Pike Road has failed to  
23 comply with the settlement agreement, specifically this  
24 provision?

25 A Not that I know of.

1 Q Did the sale of the Georgia Washington School facility  
2 ultimately go through?

3 A It did.

4 Q Ms. Copeland, how many years did you serve as legal  
5 counsel for the town of Pike Road?

6 A For 25 years.

7 Q During your 25 years as legal counsel, was race ever a  
8 motivating factor into any decisions of Pike Road?

9 A Absolutely not.

10 MS. LANCASTER: A moment to confer?

11 THE COURT: You may.

12 MS. LANCASTER: No further questions at this time.

13 THE COURT: All right.

14 Okay. We are going to take a very short ten-minute break.  
15 It's 2:50. Let's come back at 3:00 o'clock.

16 (Recess.)

17 THE COURT: Please be seated.

18 MR. ETTINGER: May I proceed?

19 THE COURT: You may.

20 CROSS-EXAMINATION

21 BY MR. ETTINGER:

22 Q Good afternoon, Ms. Copeland. My name is Jay Ettinger on  
23 behalf of the plaintiffs. I am going to ask you a couple of  
24 yes-or-no questions.

25 Do you understand?

1 A Yes.

2 Q And are you ready to proceed?

3 A Yes.

4 Q I believe on direct you testified that Pike Road was  
5 incorporated in 1997?

6 A That's correct.

7 Q Is that correct?

8 And it's your understanding that the Pike Road community  
9 incorporated, because at the time, Montgomery was annexing a  
10 lot of property, and they were afraid that they would be  
11 annexed into Montgomery; is that correct?

12 A Yeah. I mean, they were just getting close to Pike Road.

13 Q Can you hear me okay?

14 A Yes.

15 Q And in your view, the Pike Road residents obviously did  
16 not want to become a part of Montgomery?

17 A That's correct.

18 Q And Montgomery was majority black at the time that Pike  
19 Road was incorporated?

20 A I -- I don't know if Montgomery was majority black at the  
21 time.

22 Q And I believe you testified that when Pike Road was  
23 incorporated, it had roughly 300 residents?

24 A Correct.

25 Q And now it has over 5,000?

1 A Probably over 10,000.

2 Q And that a majority of Pike Road's residents are white,  
3 correct?

4 A Probably.

5 Q According to 2020 census data, approximately 64 percent of  
6 Pike Road's residents are white, and roughly 29 percent of Pike  
7 Road's residents are black. Does that sound about right to  
8 you?

9 A I just don't really know. But if it comes from the  
10 census, then it's probably right.

11 Q And according to 2020 census reporting, approximately  
12 60 percent of the city of Montgomery's residents are black. Do  
13 you have any reason to dispute that number?

14 A No.

15 Q And I believe you mentioned this on direct, but Pike Road  
16 has a town council, correct?

17 A That correct.

18 Q And it's elected at-large?

19 A That's correct.

20 Q And the current Pike Road town council members include  
21 only white members, correct?

22 A That's correct.

23 Q And Pike Road's mayor is also white?

24 A That's correct.

25 Q In 2010, Pike Road separated from the Montgomery County



1 school system, correct?

2 A In what year?

3 Q 2010.

4 A Was it that early? I guess so. I don't think it was that  
5 early.

6 Q But in the early 2010s, Pike Road separated from the  
7 Montgomery County public schools?

8 A Yeah. That sounds about right.

9 Q And I believe on direct you mentioned that with the  
10 incorporation of Pike Road, it was always an intention of  
11 reopening the community school that the community loved; is  
12 that accurate?

13 A That's correct.

14 Q And there was a school in Pike Road that closed in the  
15 late '60s or '70s?

16 A '70s, I think.

17 Q And at the time the Pike Road school closed, it was part  
18 of the Montgomery County public school system, correct?

19 A That's correct.

20 Q And at the time the Pike Road school closed, it was an  
21 all-white school, correct?

22 MS. LANCASTER: Objection, Your Honor. Lack of  
23 personal knowledge.

24 THE COURT: If she doesn't know, she can say.

25 THE WITNESS: I don't know.

1 BY MR. ETTINGER:

2 Q You have no basis to disagree with that?

3 A I just don't know. I wasn't around back then -- I wasn't  
4 in Alabama back then.

5 Q Understood.

6 Are you aware of whether the Pike Road school was shut  
7 down because of segregation?

8 A No. My understanding is it was shut down because they  
9 were losing students because it had -- they were just declining  
10 in students. I just don't know.

11 Q And just to clarify. I'm not speaking about the Georgia  
12 Washington School, but the community school in Pike Road.

13 Are you aware of whether that was shut down due to  
14 segregation?

15 A I do not know.

16 Q To your knowledge, Pike Road representatives never asked  
17 Montgomery County school system to open a school in Pike Road  
18 before deciding to separate, correct?

19 A Correct.

20 Q Pike Road separated because town residents wanted to start  
21 their own school system separate from the Montgomery County  
22 school system, correct?

23 A That's correct.

24 Q And Pike Road had never had its own school system before  
25 it separated in the early 2010s, correct?

1 A It couldn't until it incorporated.

2 Q And a majority of the students in Montgomery were black in  
3 2010 when Pike Road separated; is that correct?

4 A I don't know for fact, but it's probably right.

5 Q And in your view, the Montgomery County school system was  
6 a majority black in part because many of the white students had  
7 left the public school system in the '60s and '70s during  
8 desegregation to go to private schools, correct?

9 A That's correct. My understanding, anyway.

10 Q And it's your understanding that many of these private  
11 schools were formed because of segregation; is that correct?

12 A That's my understanding. That's what I have been told. I  
13 do not know that for a fact because I wasn't around.

14 Q Understood. And the private schools in Montgomery were  
15 majority white, correct?

16 A Yes.

17 Q I believe on direct you mentioned the purchase of the  
18 Georgia Washington School; is that correct?

19 A Yes.

20 Q And Pike Road purchased the Georgia Washington Middle  
21 School because its schools were growing so fast, and they  
22 needed another location, correct?

23 A That's correct.

24 Q And they used that property to open a high school,  
25 correct?

1 A That's correct.

2 Q Before that acquisition, Pike Road did not have a public  
3 high school of its own; is that correct?

4 A No. They did. I think we opened 1 through 6, and then we  
5 added a grade on after every year. So when we had to get a  
6 junior high, we bought the old Pike Road school. And about the  
7 time we were getting ready to add 9th grade or 10th grade, we  
8 had to have a high school, because it was just a lot bigger  
9 than the old Pike Road school could handle.

10 Q I see. So it was to help expand to the 9th to 12th grade?

11 A Correct.

12 Q And but before that acquisition, though, Pike Road didn't  
13 have a 9th through 12th grade school of its own?

14 A Either it was 9th through 12th or 10th through 12th, one  
15 of the two.

16 Q And prior to Pike Road's acquisition of the Georgia  
17 Washington Middle School, children in Pike Road would have  
18 attended Montgomery County schools for public school or private  
19 schools, correct?

20 A That's correct.

21 Q And the Pike Road City Council had to approve the purchase  
22 of the Georgia Washington Middle School; is that accurate?

23 A The city of Montgomery?

24 Q No. The Pike Road City Council. Were they involved in  
25 approving?

1 A Yes.

2 Q And at the time of the purchase, the Pike Road City  
3 Council only had one black member; is that accurate?

4 A That's probably correct.

5 Q And the Pike Road mayor would also have had a vote on the  
6 acquisition?

7 A He doesn't always vote unless there's a tie or something.  
8 He doesn't usually vote.

9 Q There was opposition to the -- to Pike Road's acquisition  
10 of the Georgia Washington Middle School, correct?

11 A Opposition from whom?

12 Q There was a lawsuit filed?

13 A Yes.

14 Q And I believe you mentioned as part of the final  
15 acquisition deal, Pike Road was required to rename the school  
16 -- or to retain the name of the school based on Georgia  
17 Washington; is that accurate?

18 A That's true.

19 Q And the school is not currently named Georgia Washington  
20 High School now, correct?

21 A It is Pike Road High School/Georgia Washington Campus.

22 Q Understood. Were you aware that Pike Road owed Montgomery  
23 County school systems \$1.4 million in state funding that was  
24 erroneously sent to Pike Road at the time of the Georgia  
25 Washington Middle School sale?

1 A I learned that.

2 Q The Montgomery County Board of Education strongly objected  
3 to the sale of Georgia Washington Middle School, correct?

4 A I don't really remember what the board of education did.

5 Q The Montgomery County School Board voted in opposition to  
6 its sale; is that accurate?

7 A I just don't remember. I know that we got it, and I think  
8 that because the state was in charge of the county system that  
9 I think Dr. Richardson said, you know, we're going to sell it.

10 Q Is it your understanding that due to the state takeover of  
11 the Montgomery County school system, then Superintendent of  
12 Education Ed Richardson overrode the Montgomery school board's  
13 opposition and forced the sale of the Georgia Washington Middle  
14 School?

15 A Yes.

16 Q And Ed Richardson is white, correct?

17 A That's correct.

18 MR. ETTINGER: One moment, Your Honor.

19 No further questions at this time.

20 THE COURT: All right. Thank you. Any redirect?

21 MS. LANCASTER: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. LANCASTER:

24 Q Ms. Copeland, you were asked about the 2020 census data  
25 concerning Pike Road. Do you know from cross-examination that

1 this concerned the Pike Road CCD or the Pike Road city  
2 municipal limits?

3 A I don't know which one it was. I don't think he said.

4 Q Was there ever a problem with -- did the Pike Road Board  
5 of Education or the Pike Road school system ever oppose to  
6 maintaining the name of Georgia Washington?

7 A No.

8 Q Did the Montgomery Board of Education first approve the  
9 sale of Georgia Washington facility?

10 A I don't remember if they did or not.

11 Q On cross-examination, you were also asked about your  
12 understanding of the creation of private schools in Montgomery.  
13 And I believe you testified that based on what you were told,  
14 these were created because of segregation.

15 Other than what you were told, do you have any knowledge  
16 as to why different private schools in Montgomery were created?

17 A Absolutely not.

18 Q Ms. Copeland, do you have children?

19 A I do.

20 Q And where did they grow up?

21 A In Montgomery.

22 Q And where did they attend school?

23 A My oldest went through Saint James School until he was in  
24 the 11th grade. And then I can't even remember where he went  
25 for 12th grade.

1           And then my younger two started out at Forest Avenue,  
2           which is part of the Montgomery school system. And then my  
3           middle one ended up going to Greengate. And then they both  
4           went to Catholic school.

5           Q     Why did you choose to send your kids to Montgomery private  
6           schools?

7                     MR. ETTINGER: Your Honor, I am just going to object  
8           to this as being beyond the scope of the cross-examination.

9                     MS. LANCASTER: Your Honor, on cross-examination,  
10          Ms. Susan was asked about Montgomery private schools, and I'm  
11          just developing her testimony and her personal knowledge  
12          according to those questions.

13                    THE COURT: Is this your last question on the topic?

14                    MS. LANCASTER: It is.

15                    THE COURT: Okay. You can answer.

16                    THE WITNESS: Can you ask me the question again?

17          BY MS. LANCASTER:

18          Q     Why did you choose to send your kids to Montgomery private  
19          schools?

20          A     I did. They went to public schools and private schools.

21          Q     And why did you -- did you choose to send your kids to  
22          private schools based on any racial motivations?

23          A     No. They didn't get in the magnet school, so I sent them  
24          to private school because that was the next best thing.

25                    MS. LANCASTER: No further questions.



1 THE COURT: All right.

2 MR. ETTINGER: No further questions, Your Honor.

3 THE COURT: All right. Is there any reason I may not  
4 excuse Ms. Copeland?

5 MS. LANCASTER: None from defense.

6 THE COURT: All right. Thank you for being with us  
7 today. You are excused, Ms. Copeland.

8 (Witness excused.)

9 THE COURT: All right. Mr. Davis, the Secretary's  
10 next witness. Oh, Mr. Mink. I'm sorry.

11 MR. MINK: Thank you. Defense calls Dr. Patricia  
12 Payne.

13 THE COURT: Great. Thank you.

14 PATRICIA PAYNE

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

17 THE COURTROOM DEPUTY CLERK: Please state and spell  
18 your name for the record.

19 THE WITNESS: Patricia, P-A-T-R-I-C-I-A, Payne,  
20 P-A-Y-N-E.

21 THE COURTROOM DEPUTY CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. MINK:

24 Q Good afternoon, Dr. Payne.

25 Could you please state where you currently live with the

1 name of the town and state?

2 A I live in the town of Pike Road in Alabama.

3 Q And how long have you lived in Pike Road?

4 A 27 years.

5 Q What brought you to Pike Road?

6 A The United States Navy.

7 Q And how did they bring you to Pike Road?

8 A I was stationed in Montgomery, Alabama. And I chose to  
9 live in Pike Road.

10 Q Had you lived in Alabama prior to 1997?

11 A No, I had not.

12 THE COURT: Mr. Mink, you can adjust that microphone  
13 if you want to so that you don't have lean over into it.

14 MR. MINK: Thank you.

15 BY MR. MINK:

16 Q Where else have you lived besides Alabama? Where are you  
17 from originally?

18 A My father was a naval officer, so I was born into a Navy  
19 family. And we -- I was born in Virginia. Then we went to  
20 California. Then we went to Maryland. Then we went to France.  
21 Then to Chicago for a little while. Then McLean, Virginia.  
22 And from there, I went to college at Norfolk.

23 Q Let me stop you there.

24 Where did you attend college?

25 A In Norfolk, Virginia.

1 Q And what was the school?

2 A Old Dominion University.

3 Q Did you graduate from there?

4 A Yes.

5 Q Did you receive any other education after graduating from  
6 college?

7 A Yes.

8 Q And what education -- can you describe your educational  
9 background?

10 A I received a master's in educational leadership from Troy  
11 University while stationed in Orlando, Florida at a satellite  
12 -- university for them.

13 Q What year was that?

14 A 1994, I believe.

15 Q Okay. Did you receive any other education?

16 A A master's in military and science from Air Command and  
17 Staff College, and I got my Ph.D. from Keiser University out of  
18 Miami, Florida.

19 Q And when did you receive your Ph.D.?

20 A 2016.

21 Q And what was the subject of your...

22 A Educational leadership.

23 Q Was that also the subject of your master's degree?

24 A The one from Troy, yes.

25 Q After you graduated from college, could you describe your

1 work history?

2 A Basically, after college -- basically, I was working -- so  
3 I finished my last two years of college while working full-time  
4 and finished it at night. And so I was working for the Navy at  
5 the time. And after I graduated from college, I joined the  
6 Navy in the enlisted ranks. And after four years, I went to  
7 officer candidate school and got my commission.

8 Q How long did you serve in the Navy as an officer?

9 A 19 years, something like that, 18, 19 years. I was  
10 23 years total service.

11 Q So did you retire from the Navy?

12 A Yes.

13 Q What was your rank when you retired?

14 A Lieutenant commander.

15 Q After you retired from the Navy, did you work any  
16 additional jobs?

17 A Yes.

18 Q What did you do?

19 A I worked immediately with the Navy again, but in a  
20 civilian capacity as an education specialist. I did that for  
21 several years. But the Government was downsizing, and they  
22 decided to do away with the recruiting district in Montgomery.  
23 So then I didn't have a job.

24 Q What year did you retire from the Navy?

25 A In '01.

1 Q And where were you living when you retired?

2 A In Pike Road.

3 Q So after they did away with your job, did you do any  
4 additional jobs?

5 A I -- yes. Not right away. But I did -- I did end up  
6 going to the town hall in Pike Road and seeing if I could  
7 volunteer. So I volunteered for a while. And then they  
8 offered me a position with them for part-time, like 20 hours a  
9 week.

10 Q And what did you to for the city of Pike Road?

11 A At that time -- just about anything I could do. They only  
12 had one city clerk. And we were just doing -- just sort of  
13 picked up and helped out wherever you could doing a lot of  
14 stuff, meeting, planning, getting the paperwork ready for  
15 meetings, calling people.

16 Q Do you remember when you started working for the city of  
17 Pike Road or the town of Pike Road?

18 A I think it was 2003.

19 Q Have you served in any other capacities for the town of  
20 Pike Road?

21 A Really, no, I have just always been a part-time contractor  
22 person. I didn't want to work a full-time job.

23 Q What about on a volunteer capacity?

24 A Oh, I do that now.

25 Q And what position do you have?

1 A I'm -- basically I'm the director of their arts center.

2 Q So if someone had never been to Pike Road, Alabama, how  
3 would you describe that -- the town of Pike Road to someone  
4 who's never been there?

5 A Well, if you were coming to visit me for the first time, I  
6 would say it's a cute little town in the country still. It's a  
7 growing, fast-growing town. And we have lovely people and  
8 great families and a growing and robust school system.

9 Q Do you know what the socioeconomic makeup of Pike Road is?

10 A I do not.

11 Q How about the racial makeup of Pike Road?

12 A I really don't know.

13 Q Were you involved at all with the creation of the Pike  
14 Road school system?

15 A Yes.

16 Q How did that come about?

17 A Well, the town decided -- once it became a town, there was  
18 a lot of litigation that went on between the town of Montgomery  
19 -- city of Montgomery and the town of Pike Road.

20 And once that litigation was cleared, the town could move  
21 to secede from the Montgomery County City School System so that  
22 we could build our own school system. And that took a couple  
23 of years at least.

24 But the two mayors, our mayor and the mayor of Montgomery  
25 at the time, worked actually really well together to resolve

1 those differences, I thought. And we moved forward to build  
2 the town.

3 So my role was basically setting up meetings, calling  
4 people, researching.

5 Q Do you know why the town of Pike Road wanted its own  
6 school system?

7 A Well, so any community should have the right to control  
8 the education of its citizens. And that's what we wanted.

9 We had our citizens going hither and yon to get education.  
10 I think at one time, we counted at least 28 different schools  
11 that our children were going to from Pike Road. And that  
12 included public and private. And did not even include those  
13 who chose to home school.

14 So it was really -- and then the other aspect of it is  
15 when you don't have a school system in a town like ours, you  
16 have nothing to really knit the town together. So for the sake  
17 of community alone, it's great to have your own school system.

18 Q Were you ever made aware or did you ever become aware of  
19 any racial motivation for creating the separate Pike Road  
20 school system?

21 A No.

22 Q Do you know -- could you tell us what the period was that  
23 you worked to get -- to help with the creation of the Pike Road  
24 school system?

25 A I want to say it was around -- I'm getting my dates

1 probably mixed up, but around '06 to '16.

2 Q And what happened in 2016?

3 A The school was created.

4 Q Do you know when the school board was created?

5 A I would say 2015.

6 Q Do you know what the racial makeup of the school board was  
7 at that time?

8 A You know, I don't remember.

9 Q Do you remember what the process was for creating the  
10 school board?

11 A So people put in their applications to be considered as a  
12 member of the school board. And the town council, because of  
13 the size of our town, reviewed those applications, and then  
14 between the five of them would vote to -- who would be sitting  
15 on the school board.

16 Q Did you ever attend city council meetings?

17 A Often I did, yeah, until COVID.

18 Q And I was specifically referring to prior to the creation  
19 of the school board.

20 A I would say I probably always -- there was a rare instance  
21 that I did not attend.

22 Q And do you recall the makeup of the -- the racial makeup  
23 of the town council?

24 A For the most part, while I was attending the town council  
25 meetings, we had two women, four white, one black man.



1 Q Okay. If we could bring up Defense Exhibit 205.

2 This is an article -- can you see that?

3 A Yes.

4 Q And at the top of the article, the headline says, "Pike  
5 Road Dispute Centers Around Choice."

6 A Yes.

7 Q Are you familiar with this article?

8 A Yes.

9 Q How are you familiar with this article?

10 A Most recently because you brought it to my attention. I'd  
11 forgotten about it.

12 Q Who is the -- who is the "by" line on this article?

13 A It's me.

14 Q So when -- when it refers to Patty Payne, it's referring  
15 to you?

16 A Right.

17 Q And down towards the end of the article, the very last  
18 part of the article, it describes you as coordinator of the  
19 Pike Road Investment in Community and Education Foundation.

20 Could you explain what the Pike Road Investment in  
21 Community and Education Foundation was or is?

22 A So that was an organization that was to be a non-profit  
23 organization and to be used as a vehicle to raise funds to  
24 build our first school system.

25 Q Was it successful?

1 A You know, I never know where it went, because we had  
2 problems giving a 501(c)(3) authorization on it. It took an  
3 inordinate amount of time. And by the time that happened, I  
4 think another organization was made. I sort of lost track of  
5 what happened with that.

6 Q Do you recall if you wrote this entire article?

7 A I don't think I did, no.

8 Q Okay. But your name appears on it?

9 A Yeah. I agree with everything that's in it.

10 Q So have you read it recently?

11 A Not since the deposition.

12 Q But you reviewed it at that time?

13 A Yes.

14 Q And was everything that you read in that article true when  
15 it was published back in 2010 as far as you know?

16 A I think it was.

17 MR. VAN LEER: Objection. Your Honor, she said that  
18 she doesn't remember if she wrote the article.

19 THE COURT: I believe what she said is that she did  
20 not write the whole article but that she agrees with everything  
21 in it. And the question was: Was everything that you read in  
22 that article true when it was published back in 2010 as far as  
23 you know?

24 What's the objection?

25 MR. VAN LEER: Withdrawn.

1 THE COURT: Thank you. All right. You may answer.

2 THE WITNESS: I'm sorry. Now, what was the question?

3 BY MR. MINK:

4 Q Was everything in that article true back in 2010?

5 A Yes, to the best of my knowledge.

6 Q And to the best of your knowledge, is it still true?

7 A Actually, yes. I think so.

8 Q Do you know what the reasons for writing that article  
9 were?

10 A I think it was a persuasive article to give people another  
11 opportunity to consider what the town of Pike Road's motivation  
12 was for wanting to, one, be a town; and, two, build its own  
13 school system.

14 There was a lot of anger centered around us pulling out of  
15 the Montgomery County City School System from individuals.

16 Q So let's clear up this question about whether you wrote  
17 this article.

18 A Uh-huh.

19 Q Do you remember whether you wrote any of this article?

20 A I do believe I wrote some of the article, yes.

21 Q Could you explain the circumstances of how this article  
22 could have been drafted with your "by" line and published in --

23 A Okay. So I probably drafted the initial article, and then  
24 probably gave it to the mayor who expanded or deleted on it,  
25 who gave it to the communications director, who did the same,

1 who may have given it to our city clerk who would have done the  
2 same.

3 And then what we ended up with was a compilation of all  
4 our thoughts. But I agree with everything on it, and I didn't  
5 mind that my name was put on it.

6 MR. MINK: We can take that down for now. And if we  
7 could pull up Plaintiffs' Exhibit 19. And if you could go to  
8 page 26.

9 BY MR. MINK:

10 Q Dr. Payne, prior to your familiarity with this -- becoming  
11 familiar with this lawsuit, had you ever heard of Joseph  
12 Bagley?

13 A No, I had not.

14 Q Have you ever met him?

15 A No, I have not.

16 Q Ever spoken to him on the phone?

17 A No, sir.

18 Q To your knowledge, has he ever visited Pike Road or made  
19 any efforts to get in touch with you?

20 A Not to my knowledge.

21 Q I'm going to direct your attention to the next-to-the-last  
22 paragraph.

23 If you go about halfway down, maybe a little bit more, I  
24 am going to read a sentence that starts with "according to,"  
25 and ask if you can follow along.

1 Do you see that?

2 A Uh-huh.

3 Q According to one city booster, Patty Payne, the town's  
4 leadership had sought to preserve and protect what they saw as  
5 their preferred way of life in the face of encroachment from  
6 the city of Montgomery.

7 And those quotation marks around "preserve and protect  
8 what they saw as their preferred way of life" and the word  
9 "encroachment." Do you recognize those quotes as being from  
10 that article that we just looked at?

11 A Yes.

12 Q And could you explain what you meant or understand the  
13 words "preserve and protect what they saw as their preferred  
14 way of life" to mean?

15 A You know, at that time, well, especially before -- this is  
16 a complicated answer. I don't know how long you want me to go.

17 But anyhow, when I first moved to the town of Pike Road,  
18 one of the -- and the town was established the same month and  
19 the year that I moved there, but I didn't realize that because  
20 I wasn't doing anything with the town. I was just living there  
21 and commuting into Montgomery.

22 But one thing that I began to notice was that the place  
23 where I lived had no say over what happened. In other words,  
24 there could be an apartment complex go up, and we had no say  
25 over that as citizens. And basically, the city of Montgomery

1 as the hub city of the county of Montgomery was the tail  
2 wagging the dog in our county.

3 And I think a lot of people were really frustrated by  
4 that. They had no say. They had no voice.

5 And so that I think drove a lot of the need to want to  
6 become a town -- an independent town, number one. And that  
7 just ties in to the preserve and protect our way of life.

8 I don't want to live next to an apartment complex when I  
9 have a farm. You know, that type of thing.

10 Q Okay. And you may have just kind of addressed this, but  
11 what about the word "encroachment?" What was encroachment?

12 A And that is the encroachment, the encroachment of the city  
13 building, what we saw probably as pretty haphazardly, you know,  
14 any opportunity they could get to build.

15 The way I looked at it, there were so many degraded and  
16 derelict buildings in Montgomery that could have been torn down  
17 and built on, but they chose to just keep coming further east  
18 and building on farmland.

19 Q If we continue on in that -- after that sentence I read,  
20 it says another woman who serve as a town's first clerk  
21 explained, quote, in 1996, Montgomery annexed several large  
22 properties in and around Pike Road community, and, we, the  
23 residents, became concerned that the community we loved would  
24 soon be gone?

25 A Uh-huh.

1 Q Do you know who that first town clerk was?

2 A Uh-huh. Charlene Rayburn.

3 Q And do you have an opinion about what "the community we  
4 loved would soon be gone" meant?

5 A Well, Charlene --

6 MR. VAN LEER: Objection, Your Honor.

7 THE WITNESS: Charlene --

8 THE COURT: Just one second.

9 MR. VAN LEER: That's asking her to speculate about  
10 the statement of another person.

11 THE COURT: All right. S I think you can ask her if  
12 she has an understanding, but I don't think you can ask her  
13 about an opinion.

14 MR. MINK: Okay.

15 BY MR. MINK:

16 Q What do you understand that to mean?

17 A What I know is that Charlene grew up there. She was born  
18 right there and grew up there, and she had a specific  
19 perspective of the community from being there her whole life.

20 Q Well, let me ask this: As a resident of Pike Road  
21 yourself --

22 A Uh-huh.

23 Q -- did you become concerned that the community you loved  
24 would soon be gone?

25 A I did. I did. I loved -- I love Pike Road. And I still

1 do, although it's changing very rapidly.

2 Q How has it changed from what you first loved about it?

3 A We were far more rural when I first moved there than we  
4 are now because, dang it, we had to go build a school. But and  
5 when you build a school, people will come. And so we're  
6 building, you know, communities. And building up -- if you'd  
7 just moved to Pike Road last year, you would love Pike Road,  
8 and you would not have any idea what it was like 20 years ago  
9 when -- as I remember it. So everybody that moves there, they  
10 build their own memory of a place.

11 But it's not just the rural farmlands. It's not just the  
12 cows and the horses. It's the people that live there. And we  
13 have just such an engaging and wonderful and close community.

14 Q Are there minorities that live in Pike Road?

15 A Yes.

16 Q Are there full communities, full housing areas that are  
17 multiracial?

18 A Yes. I mean, I don't think we have any solidly black or  
19 solidly white communities.

20 Q If I could ask you to scroll down the page to the next  
21 paragraph and bring it up.

22 I am going to -- it says, "Once the school system was  
23 established, Payne predicted the growth in Pike Road would come  
24 from those individuals who have left Montgomery County because  
25 they wanted a choice in their public school operations and did



1 not want to place a second mortgage on their home in order to  
2 pay for private school education for their children.

3 Did I read that correctly?

4 A Yes.

5 Q And what did you mean by that?

6 A By this time, I had attended -- I can't even -- couldn't  
7 even count, maybe 50 or more community meetings with people  
8 where they talked about what they wanted in the town of Pike  
9 Road. This was right after we created the town. And so many  
10 of them talked about the need for a school system.

11 And you heard the stories of people working two and three  
12 jobs to send their kids to the private schools, which if I  
13 could be blunt, were probably mediocre at best, because when  
14 you don't have to compete for anything, you're not going to be  
15 great.

16 But they would work to get their kids into private  
17 schools. And then, you know, they just had to see to their  
18 family's needs. So many of them faced that choice of, well, I  
19 guess we are going to move to Prattville, or I guess we are  
20 going to move to Elmore or Auburn.

21 So basically, the county of Montgomery was losing a base  
22 of human capital, which I thought was terrible.

23 Q Do you know why people were choosing to send their  
24 children to private schools?

25 A Because the schools in Montgomery were not satisfactory.

1 Q Not satisfactory?

2 A They were failing.

3 Q And when you say failing, you are talking about academic  
4 standards?

5 A Yes. And they were not safe. I mean, there were a lot of  
6 problems.

7 Q The next sentence on Plaintiffs' Exhibit 19 says, And the  
8 town and school system indeed grew tremendously. Payne tried  
9 to explain that the city of Montgomery had a history distinct  
10 from Pike Road because the latter's ancestors had lived off the  
11 land. And that puts that part in quote again.

12 What did you -- did your article talk about that?

13 A It did.

14 Q And what did you mean by that?

15 A I think what it meant was that it was the rural -- way of  
16 life in our community. People farm. They raised beef for  
17 cows. They had horses. They raised crops, sold crops. It was  
18 a different way of life and a different mindset than you would  
19 have in Montgomery at the time.

20 Q Would you describe the city of Montgomery as a rural  
21 community?

22 A No, not the city.

23 Q And then we go to the next sentence there, Payne tried to  
24 explain that the city of Montgomery -- I'm sorry. I just read  
25 that part.

1           The next sentence. Given the middle class, suburban  
2 nature of Pike Road by that time and considering the  
3 color-masked language Payne used, it is evidence that white  
4 boosters wanted to establish a -- let me turn to the next page  
5 -- public school system that was not only majority white in its  
6 student population, but also under majority white if not all  
7 white leadership.

8           He's obviously attributing there to you certain language.  
9 The word "color-masked," do you know what that word means?

10 A       It's my understanding that the author created that word.

11 Q       And do you know what he intended by that word?

12 A       He thinks I was using the word "encroachment" as a  
13 negative term against people who are not white.

14 Q       Did you have any intent in the article that you wrote that  
15 we looked at earlier to express a view on a racial basis?

16 A       No.

17 Q       Do you agree with Bagley's statement here that you were  
18 using color-masked language?

19 A       Absolutely not.

20 Q       And based on your familiarity with the creation of the  
21 school system in Pike Road, do you believe that white boosters  
22 wanted to establish a public school system that was not only  
23 majority white in its student population, but also under  
24 majority white if not all white leadership?

25 A       It was actually laughable, because we had black members on

1 our council and on our education committee.

2 Q Okay.

3 MR. MINK: Your Honor, I move to admit Defense  
4 Exhibit 205 that we looked at earlier, the article.

5 THE COURT: All right. Any objection?

6 MR. VAN LEER: No objection.

7 THE COURT: All right. 205 is admitted.

8 (Defense Exhibit 205 admitted in evidence.)

9 MR. MINK: No further questions. I pass the witness.

10 THE COURT: All right. Counsel for the plaintiff.

11 MR. VAN LEER: Just a moment.

12 CROSS-EXAMINATION

13 BY MR. VAN LEER:

14 Q Good afternoon, Dr. Payne. How are you?

15 A Good. How are you?

16 Q I'm doing well. It's nice to meet you in person. I know  
17 we have spoken before over Zoom.

18 To remind you, my name is Jake Van Leer. I'm counsel for  
19 the plaintiffs.

20 I am going to be asking you a series of primarily  
21 yes-or-no questions today. Do you understand?

22 A Okay.

23 Q Now, you testified that when you were growing up, you  
24 moved all over the place a bit, but you primarily grew up in  
25 McLean, Virginia?

1 A Nine years in McLean.

2 Q And you first moved to Pike Road, at least the Pike Road  
3 area in the fall of 1997, correct?

4 A Yes.

5 Q The town of Pike Road was incorporated around October of  
6 1997, right?

7 A Right.

8 Q So you moved to the area around Pike Road at nearly the  
9 same moment that the town was first incorporated, correct?

10 A Yes, that's correct.

11 Q And you bought your home in 1998, correct?

12 A Correct.

13 Q But that property was not annexed into Pike Road until  
14 about six or seven years after the town was founded; is that  
15 right?

16 A I think it was about three or four years later.

17 Q Okay. Dr. Payne, you played no formal role in the town's  
18 initial incorporation process, correct?

19 A That's correct.

20 Q And you have no personal knowledge of the town's founding  
21 or initial incorporation process?

22 A Not personal knowledge, no.

23 Q In fact, you didn't even know about the town's 1997  
24 incorporation when it happened, correct?

25 A That's true.

1 Q You said you started volunteering for the town of Pike  
2 Road around 2006, right?

3 A In that -- in that time frame, yes. I don't remember  
4 exactly.

5 Q Sure. And you said you run Pike Road's community art  
6 center; is that right?

7 A I do right now as a volunteer.

8 Q You have previously been employed as a paid contractor for  
9 the government of Pike Road for ten years from about 2007 to  
10 2016, correct?

11 A Yes, that's correct.

12 Q And starting around 2008 or 2009, thereabouts, you were  
13 involved with an organization called the Pike Road Investment  
14 in Community and Education Foundation, correct?

15 A That's correct.

16 Q And that organization is also known by the acronym PRICE,  
17 right?

18 A Correct.

19 Q PRICE was created by the town of Pike Road to be a  
20 fund-raising vehicle for the development of its school system;  
21 is that correct?

22 A That's true.

23 Q Dr. Payne, it's important to you that Pike Road is  
24 perceived positively by the public, correct?

25 A Absolutely.

1 Q Let's talk a bit about the town of Pike Road.

2 When the town was first incorporated, it had under 400  
3 residents; is that right?

4 A Yes.

5 Q And by 2010, its population was above 5,000 people,  
6 correct?

7 A To the best of my knowledge, yes.

8 Q And since then, Pike Road has been growing very fast,  
9 correct?

10 A As far as I know, yes.

11 Q In fact, for quite a while, the town of Pike Road was the  
12 fastest growing town or city in the state of Alabama, right?

13 A It was, yes.

14 Q In addition to the population's growth in Pike Road, the  
15 town's infrastructure has also grown substantially since you  
16 arrived, right?

17 A Yes, it has.

18 Q Dr. Payne, you would agree that the residents of Pike Road  
19 tend to be middle or upper class, correct?

20 A I would have to see statistics to absolutely say that's  
21 correct, but just guessing, I would say probably.

22 Q Your general sense is that the community tends to be  
23 middle and upper class, correct?

24 A Middle to middle upper class, yeah.

25 Q Okay. And you testified today that you aren't familiar

1 with the racial demographics of Pike Road compared to the city  
2 of Montgomery today, correct?

3 A I couldn't tell you what they are, no.

4 Q And you weren't familiar with those racial demographics  
5 back in 2010 either, correct?

6 A That's correct.

7 Q And you don't have any personal knowledge of the  
8 demographics of any communities that the town acquired through  
9 annexations, right?

10 A You mean as far as acquiring different communities? I'm  
11 not really sure. You mean neighborhoods?

12 Q Sure. I can rephrase the question.

13 The town of Pike Road has grown through annexation over  
14 the course of its existence, correct?

15 A Yes.

16 Q But you don't have personal knowledge of the demographics  
17 of any of those communities that the town has incorporated or  
18 acquired through those annexations, right?

19 A There were three communities that you would call  
20 predominantly African-American that were already annexed before  
21 I got involved with the town.

22 MR. VAN LEER: Just a moment.

23 BY MR. VAN LEER:

24 Q For the record, Dr. Payne, you are white?

25 A Yes, I am.



1 Q Within the town itself, you would agree that Pike Road  
2 residents have shared common interests with one another, yes?

3 A I think they have shared common interests of having a way  
4 of life that they all benefit from.

5 Q The answer is yes?

6 A It's a weird question. Yes.

7 Q The town of Pike Road successfully seceded from the  
8 Montgomery school system in 2010, right?

9 A Correct.

10 Q And you were supportive of Pike Road's secession from the  
11 Montgomery school system, correct?

12 A Yes, I was.

13 Q And you supported the school secession effort in part  
14 because you felt that the Montgomery school system was a  
15 failing school, right?

16 A That's true.

17 Q And you testified earlier the Montgomery school system was  
18 not safe, correct?

19 A I did testify that, yes. Well, I didn't -- as a parent, I  
20 did not feel it was safe.

21 Q Understood.

22 Your understanding is that the Montgomery school system  
23 was primarily black in 2010, correct?

24 A I believe that's correct.

25 Q And it's your understanding that the Montgomery school

1 system is still primarily black today, correct?

2 A I would guess so, but I have not seen data.

3 Q But you believe it is majority black?

4 A Like I said, I would guess so, but I've not seen data.

5 Q Dr. Payne, your position is that the town of Pike Road  
6 chose to secede from the Montgomery County school system  
7 because the children in Pike Road were attending various  
8 different schools at that time, right?

9 A That's correct.

10 Q There used to be a school in Pike Road, the Pike Road  
11 school, several decades ago, correct?

12 A That's correct.

13 Q And that was an all-white school, correct?

14 A It was.

15 Q And that school closed due to segregation in 1969,  
16 correct?

17 A That's my understanding.

18 Q You would agree that the Pike Road school's closure due to  
19 its segregation was definitely the reason that students in Pike  
20 Road subsequently attended a variety of different schools,  
21 correct?

22 A I would imagine that's correct.

23 Q Dr. Payne, you were a paid contractor during the process  
24 of school secession and establishment of the new Pike Road  
25 school system, correct?

1 A That's correct.

2 Q Your direct involvement in the secession process was  
3 administrative, correct?

4 A It was.

5 Q Your role was basically setting up meetings, correct?

6 A Calling people, setting up meetings, yes.

7 Q You were not a decision maker in the secession process?

8 A I was not.

9 Q And after the secession was finalized, you assisted with  
10 getting the new school system in Pike Road up and running,  
11 correct?

12 A Yes.

13 Q The town needed to select and train school board members,  
14 right?

15 A That's true.

16 Q You helped gather applications for school board members,  
17 yes?

18 A Yes.

19 Q And you were not substantively involved in the selection  
20 of school board members, correct?

21 A I was not.

22 Q And you didn't develop any contents of trainings for  
23 school board members, right?

24 A No. That's already developed by the state of Alabama.

25 Q You didn't lead any of those trainings for school board

1 members, right?

2 A I didn't -- please repeat that question.

3 Q I'm sorry. You also didn't lead any trainings for school  
4 board meetings, correct?

5 A No.

6 Q I'm being told that I talk too fast. The school system  
7 also needed to select a superintendent, right?

8 A That's correct.

9 Q And you helped gather applications for the superintendent  
10 position?

11 A I did.

12 Q But you were not substantively involved in the selection  
13 of a superintendent, correct?

14 A That's correct.

15 Q Again, you only served in an administrative role in that  
16 process, correct?

17 A Correct.

18 Q Otherwise, you didn't have any other involvement in the  
19 creation of the Pike Road school district beyond coordinating  
20 meetings along the way?

21 A That's right.

22 Q Dr. Payne, you were asked by defense counsel about an  
23 opinion article titled "Pike Road Dispute Centers Around  
24 Choice" was in the Montgomery Advertiser on June 24th, 2010.  
25 Do you recall that?

1 A I do.

2 MR. VAN LEER: Let's pull up DX-205.

3 Can we pull it up as DX-205 instead? Great. Sorry.

4 I'm going to zoom in on the "by" line here. Actually, we  
5 don't have to zoom in. I can clarify here.

6 BY MR. VAN LEER:

7 Q You testified earlier the "by" line says that this is  
8 written by Patty Payne, correct?

9 A Correct.

10 Q And the last portion of the article here that Mr. Mink  
11 read to you, that says that Patty Payne is coordinator of the  
12 Pike Road Investment in Community and Education Foundation,  
13 correct?

14 A Correct.

15 Q So this article is attributed to you in your capacity as  
16 coordinator of the municipal organization called PRICE,  
17 correct?

18 A That's right.

19 Q And to be clear, you were working as a contractor for the  
20 government of Pike Road at the time this article was published,  
21 right?

22 A That's right.

23 Q Dr. Payne, you do not remember whether you, in fact, wrote  
24 this article, correct?

25 A I did already explain this. Do you want me to explain it

1 again?

2 Q I'm just asking for a yes or no to the question of whether  
3 you remember. You do not remember whether you, in fact, wrote  
4 this article, correct?

5 A I remember having a hand in it and writing it. There's  
6 parts of it I definitely wrote.

7 MR. VAN LEER: Can we pull up the deposition  
8 transcript?

9 BY MR. VAN LEER:

10 Q Dr. Payne, you sat for a deposition in this case on  
11 May 21st, 2024, correct?

12 A Correct.

13 Q And you were under oath during that deposition, correct?

14 A That's right.

15 Q You told the truth in that deposition?

16 A Yes.

17 Q Yeah. If we can go to page 78.

18 Let's take a look at lines 7 through 11.

19 Dr. Payne, I asked you in the deposition: Did you write  
20 this article?

21 Can you read your response?

22 A I may have written part of it. I may not have written  
23 part of it. It was -- I don't remember writing it. Which I  
24 don't still remember -- I don't remember the act of writing it.  
25 Although I don't disagree with the content.

1 Q Okay. We can take that down.

2 Dr. Payne, even if you did write some portion of this  
3 article, you agree that it's unlikely that you wrote the entire  
4 article because it isn't written in your voice, right?

5 A That's correct.

6 Q And it's hard for you to say which portions you may have  
7 written, correct?

8 A That's correct.

9 Q The other people who could have been working on this  
10 article were also part of the municipal government of Pike  
11 Road, correct?

12 A Correct.

13 Q You have made this clear, I believe, but you stand by the  
14 statements that are made in the piece, correct?

15 A I do.

16 Q And you would have signed off on the final version of this  
17 article published under your name, right?

18 A Yes.

19 Q If we could pull the article back up.

20 Let's look at the paragraph spanning from the bottom of  
21 the third column to the top of the fourth column, the last line  
22 on the third column there. Yeah. Just the very last line.

23 With apologies for the small size of the font -- leading  
24 to a little bit of pixillation, I might be able to help here  
25 with some of the --

1 A It's very blurry.

2 Q -- words there. No, I understand. This paragraph here,  
3 the article discusses, quote, individuals who fear a massive  
4 flight from the city to the town of Pike Road once the school  
5 district is in place; is that correct?

6 A Yes.

7 Q And the author states that growth in Pike Road will come  
8 from those individuals who have left Montgomery County because  
9 they wanted a choice in their public school options and did not  
10 want to place a second mortgage on their home in order to pay  
11 for private school education of their children.

12 Does that seem to be an accurate reading of the text?

13 A Yes.

14 Q Let's turn to the first two paragraphs of the article.

15 These paragraphs discuss -- see if we can pull them up.

16 These paragraphs discuss, quote, two significant  
17 histories, end quote, of Montgomery County, yes?

18 A Yes.

19 Q I will start with the second paragraph that's here.

20 Here the author describes the history of, quote, rural  
21 residents who have made their living from the land outside of  
22 the hub city, correct?

23 A That's correct.

24 Q You testified this refers to a history of farming and  
25 agriculture, right?



1 A Yes.

2 Q You do not own a farm, correct?

3 A I don't, no.

4 Q And you would not characterize Pike Road as primarily  
5 being a farming community today, correct?

6 A I'm not really sure about that. It might be 50/50 now. I  
7 don't really know how much is left in the agriculture and how  
8 much is getting built.

9 Q Understood.

10 If we could pull up the deposition transcript and go to  
11 page 109. Look at lines 19 to 21. Thank you.

12 Dr. Payne, I asked you: Okay. Would you characterize  
13 Pike Road as being primarily a farming community today?

14 What was your answer?

15 A No. Not anymore.

16 Q Thank you. We can take that down. And go back to the  
17 article itself.

18 Oh. If we can look at the first two paragraphs again.  
19 Thanks.

20 Now, returning to the first paragraph here.

21 The other history that the author describes is the one  
22 that -- and I'm quoting now -- played out in the growth of the  
23 city of Montgomery along the Alabama River in support of the  
24 cotton trade. And later in its role as the capital city of  
25 Alabama, the county seat, and the cradle of the American Civil

1 Rights movement.

2 Correct?

3 A Correct.

4 Q You would agree that the history of the cotton trade in  
5 Alabama is inseparably tied to slavery, yes?

6 A I would say predominantly, yes.

7 Q You would agree that the term "Civil Rights movement"  
8 refers to the Civil Rights of black Americans, correct?

9 A Predominantly so, yes.

10 Q And now if we can just scroll down to the third paragraph,  
11 the following one.

12 We can even pull up the first whole column if that helps.

13 Perfect. That works great.

14 Looking now at the third paragraph immediately following  
15 the paragraph discussing these two histories.

16 In the very next sentence, the article here says that  
17 nearly 13 years ago -- and this, of course, was written in  
18 2010, so I believe this is referring to the late-'90s -- quote,  
19 a group of rural citizens in east Montgomery County became  
20 alarmed by the encroachment of the city of the Montgomery into  
21 their rural neighborhoods, correct?

22 A Correct.

23 Q And in the next sentence, the article says that the  
24 purpose of incorporating the town of Pike Road was, quote, to  
25 preserve and protect what they saw as their preferred way of

1 life, end quote; is that correct?

2 A That's correct.

3 Q You were not part of that group of rural citizens because  
4 you moved to Pike Road just as it was being incorporated,  
5 right?

6 A That's correct.

7 Q And the article then goes on to advocate in favor of Pike  
8 Road's secession from the Montgomery school system, right?

9 A Uh-huh.

10 Q Is it your position that the history with the cotton trade  
11 in Montgomery was relevant to the article's support for Pike  
12 Road's secession from Montgomery schools in 2010?

13 A Repeat that question.

14 Q Of course. Is it your position that the history of the  
15 cotton trade in Montgomery was relevant to this article's  
16 support for Pike Road's secession from Montgomery schools in  
17 2010?

18 A Well, I think I was talking about agriculture, which is  
19 not just cotton trade. So you're losing me on that question.

20 Q Of course.

21 I'll remind you in the first paragraph, I believe the  
22 article says that one of the two relevant histories played out  
23 in the growth of the city of Montgomery along the Alabama River  
24 in support of the cotton trade.

25 My question is: Is it your position that the history of

1 the cotton trade in Montgomery was relevant to this article's  
2 support for Pike Road's secession from Montgomery schools in  
3 2010?

4 A It was relevant to the fact that it was -- that Montgomery  
5 County is a county with two significant histories. One has the  
6 urban history, and then one does not.

7 Q I don't believe you answered the question directly.

8 A I'm having a hard time with your question.

9 Q That's all right. Is it your position that the history of  
10 the cotton trade was relevant to the school secession issue?

11 A That's a weird question. I can't answer that question.

12 Q Okay. Is it your position that the history of the Civil  
13 Rights movement in the city of Montgomery was relevant to this  
14 article's support for Pike Road's secession from Montgomery  
15 schools in 2010?

16 A I think it's relevant in pointing out that there's two  
17 different perspectives on life in Montgomery County.

18 Q Dr. Payne, you were motivated to testify today because you  
19 believe that Dr. Bagley put words in your mouth that you did  
20 not say, right?

21 A That's true.

22 Q But you agree that he did not misquote the article; is  
23 that right?

24 A He just used the article.

25 Q Sorry. I'll be clear.

1           You agree that you that he did not misquote the actual  
2 words used in the opinion article, right?

3       A       That he used the word "encroachment?"

4       Q       My question is: You -- Dr. Bagley -- the quotations that  
5 Dr. Bagley puts in his report that you were shown by Mr. Mink,  
6 the actual words that he cites do appear in this article,  
7 correct?

8       A       Yes.

9       Q       Your disagreement is with the characterization of his  
10 words?

11      A       Yes.

12      Q       But you don't believe that you wrote this whole article,  
13 correct?

14      A       I've already described that.

15      Q       And you can't say which portions of the article you may  
16 have written, if any, right?

17      A       No, I cannot.

18      Q       Just a few questions left.

19           Dr. Payne, you studied the concept of white flight in  
20 school systems as an undergraduate criminal justice major,  
21 correct?

22      A       Yes.

23      Q       And you have a master's degree in educational leadership  
24 and a Ph.D. in educational leadership, correct?

25      A       Correct.

1 Q Your graduate studies addressed subjects related to race  
2 and education, right?

3 A That's true.

4 Q You would agree that there are disparities in education  
5 between black and white students in Alabama today, correct?

6 A Correct.

7 MR. VAN LEER: Your Honor, may I have I have a moment  
8 to confer?

9 THE COURT: You may.

10 MR. VAN LEER: Thank you very much, Dr. Payne. No  
11 further questions.

12 THE COURT: All right. Any redirect, Mr. Mink?

13 MR. MINK: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MINK:

16 Q Briefly.

17 Dr. Payne, on that last question that plaintiffs' counsel  
18 asked you about disparities between black and white students,  
19 are there minority students, black students in the Pike Road  
20 school system?

21 A Yes, there are.

22 Q And do they receive the same education that the white  
23 students receive in Pike Road?

24 A Yes, they do. And there's a reason for my last answer,  
25 which he didn't give me an opportunity to elaborate on.

1 Q Please go ahead.

2 A And the reason is because in a community where parents  
3 support their children in a school system, they're going to get  
4 a better school education. The parents make all the  
5 difference.

6 When you have a community where parents can't come to  
7 parent-teacher meetings or don't care what their kids report  
8 cards or even know what classes they're taking, their education  
9 is going to be substandard.

10 Q When Pike Road seceded from the Montgomery school system,  
11 that was the Montgomery County school system; is that correct?

12 A It was called the Montgomery County City School System.

13 Q But it's one school system?

14 A Yes.

15 Q Do any of your views about Montgomery schools have  
16 anything to do with race?

17 A No.

18 Q Do Pike Road residents of all races share an interest in  
19 the way of life that benefits them?

20 A So Pike Road residents are extremely diverse. You walk  
21 into our school system, you see every race. And all the  
22 children perform fairly well, to my knowledge. Everybody gets  
23 along. And it's -- I'm very excited because the Pike Road High  
24 School is getting right across from our arts center. And I  
25 can't wait for that.

1 Q Plaintiffs' counsel asked you a number of questions about  
2 the article that carries your "by" line. And he also asked you  
3 about the closure of the Pike Road high school back in the --  
4 maybe the '60s or the '70s.

5 Do you have any personal knowledge about the closure of  
6 that high school?

7 A It's my knowledge that it was a like a 1st through 8th  
8 grade school. And it was closed as a result of the Civil  
9 Rights ruling. I don't even know what the statute it was, but  
10 all the schools had to desegregate at the time.

11 I think I was 13 or something, 16. So I don't remember  
12 that. I remember it happening, but I don't remember any of the  
13 legalities about it.

14 Q But you weren't living in Pike Road then?

15 A No. I was in Virginia.

16 Q So you didn't have any personal knowledge of what was  
17 going on in Pike Road?

18 A No.

19 Q The quotations that Mr. -- or Dr. Bagley cited in his  
20 report that you told plaintiffs' counsel were correctly cited,  
21 but were his conclusions correct?

22 A No.

23 Q And why were they not correct?

24 A Well, Dr. Bagley never even came to Pike Road to find out  
25 what our town was about. Had he done his research well, he



1 would have known that we had African-American members on our  
2 first town council, that we met in a black church, that  
3 African-Americans were part of our planning committees for our  
4 education committees. I mean, it's just -- that was never part  
5 of our language ever.

6 Q One of the questions that plaintiffs' counsel asked you  
7 about your desire to see the town of Pike Road perceived  
8 positively?

9 A Uh-huh.

10 Q And I believe you answered yes to that?

11 A Uh-huh.

12 Q That it was important to you? Would you come in here and  
13 lie to present a vision of Pike Road that was different than  
14 the truth?

15 A No.

16 MR. MINK: No further questions.

17 THE COURT: All right. Is there any reason that I may  
18 not excuse Dr. Payne?

19 MR. VAN LEER: None from the plaintiffs.

20 THE COURT: Dr. Payne, thank you for being with us  
21 today. You're excused.

22 THE WITNESS: Thank you very much.

23 (Witness excused.)

24 MR. DAVIS: Defendants have no other witnesses, Your  
25 Honor.

1 THE COURT: All right. Let me ask you a question  
2 before all of the evidence closes.

3 First of all, is this any evidentiary clean up that needs  
4 to be done?

5 MR. DAVIS: Possibly, Your Honor. I confess to being  
6 unprepared. I have thought about this question and how  
7 embarrassed I am going to be when I am not able to answer it.

8 THE COURT: Well, I have also thought it, and I am  
9 also unprepared. Otherwise, I would ask you about specific  
10 exhibits that you have used that haven't been admitted on both  
11 sides and I have not kept a list.

12 Well, I may have another question to stack on to it, but  
13 let me give Mr. Rosborough an opportunity to respond.

14 MR. ROSBOROUGH: The only item that I am aware of I  
15 believe that both parties have agreed on some additional  
16 stipulations regarding addresses and things like that. As far  
17 as I know, they just haven't been filed yet.

18 So that's -- I believe I -- I don't want to misquote this  
19 because I have not been as directly involved with it -- that  
20 there's agreement. We just need to actually finalize and file.

21 THE COURT: So there may be evidence, and there are  
22 also addresses?

23 MR. DAVIS: Those stipulations have not yet been  
24 filed. They're agreed to. That doesn't change. We have no  
25 objection to if they file it tomorrow or next week.

1 THE COURT: Okay. Okay. And then the deposition  
2 designations, I have not ruled on objections that were made to  
3 those. I think it's possible that some of the testimony has  
4 obviated some of those objections. And it's -- some of them  
5 may well remain live and preserved.

6 Do the parties have a desire to meet and confer about  
7 those and try to make clear what their status is, or do you  
8 want me to -- is it the mutual position of the parties that  
9 everything is admitted, subject to objections, that I will rule  
10 on in the final ruling? I guess what I'm asking is, how do you  
11 want to handle the depo designations?

12 MR. DAVIS: Well, I may have a suggestion. Can Your  
13 Honor tell us whether we're going to try to complete closings  
14 tonight or whether we're going to be coming back tomorrow?

15 THE COURT: So my preference would be to come back  
16 tomorrow only because I know what's going to happen is y'all  
17 are going to use your 30 minutes gloriously, and then I'm going  
18 to have a bunch of questions but get pinched on getting us out  
19 of the room on time.

20 So selfishly, I would propose that we close tomorrow  
21 afternoon.

22 I also think it's possible -- we had I know some  
23 objections and questions from me related to testimony earlier  
24 in the day. I think it's possible if folks had time to reflect  
25 on that, that it might affect what you would say in closing or

1 how you would present it. And I don't want to cut that off.

2 MR. DAVIS: Well, if I may, then, perhaps overnight,  
3 we could look at that.

4 There may also be some exhibits that we have not moved to  
5 admit that haven't been addressed by a witness, perhaps  
6 something that's self-authenticating that I will let  
7 Mr. Rosborough know, hey, defendants would like to move to  
8 admit these exhibits so he will be prepared and know if he has  
9 objections.

10 And, of course, plaintiffs are free to do the same if they  
11 see anything they need to clean up. And then when we come back  
12 tomorrow, we will be able to better inform the Court of where  
13 we are.

14 THE COURT: Mr. Rosborough?

15 MR. ROSBOROUGH: That's fine with me, Your Honor.

16 THE COURT: Okay. All right. So you don't actually  
17 have to do it overnight, because we're not coming back until  
18 1:30 in the afternoon tomorrow. So I know that sometimes I  
19 require overnight work during trials, but you can actually do  
20 it in the morning tomorrow like regular professionals that  
21 don't have to work overnight.

22 MR. DAVIS: That's refreshing.

23 THE COURT: I have not been doing this job long enough  
24 that I have forgotten what that job feels like.

25 So, okay. So let's leave the evidence open. And at 1:30

1 tomorrow, we will take up any additional exhibits, the  
2 stipulations if they're ready. If not, y'all can file those  
3 afterward. And anything with the depo designations that we  
4 need to take up before we close the evidence. If you want to  
5 wait for me to just rule on them at that time in the final  
6 order, that's fine, too.

7 MR. ROSBOROUGH: We will confer, Your Honor. My  
8 recollection is that there might not be that many specific  
9 objections, so we will talk. It may be something that's pretty  
10 easy resolved. But we will confer.

11 THE COURT: Okay. Great. Is there anything else we  
12 need to take up?

13 MR. DAVIS: Not for us.

14 THE COURT: All right. I thank you all for the  
15 presentation of the witness testimony. I thought it went  
16 really smoothly, and I can tell it was the product of extensive  
17 preparation by everybody involved.

18 I also noticed that both sides took the opportunity to  
19 allow some younger lawyers the opportunity to examine  
20 witnesses. And I appreciate that.

21 More people need to do that.

22 So, okay. We will recess now, and I will see everybody in  
23 this courtroom at 1:30 tomorrow.

24 (Whereupon, the above proceedings were concluded at 4:20  
25 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K Decker

11-20-2024

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255