

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

4 ALABAMA STATE CONFERENCE *
5 OF THE NAACP, et al., *
6 Plaintiffs, * 2:21-cv-1531-AMM
7 vs. * November 15, 2024
8 WES ALLEN, in his official *
9 capacity as Alabama Secretary *
10 of State, et al., *
11 Defendant. *
12 *****
13

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

21 Proceedings recorded by OFFICIAL COURT REPORTER, Qualified
22 pursuant to 28 U.S.C. 753(a) & Guide to Judiciary Policies
23 and Procedures Vol. VI, Chapter III, D.2. Transcript
24 produced by computerized stenotype.
25

CHRISTINA K. DECKER, RMR, CRR
Federal Official Court Reporter
101 Holmes Avenue, NE
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

APPEARANCESFOR THE PLAINTIFFS:

Amanda N Allen
HOGAN LOVELLS US LLP
555 13th Street NW
Washington, DC 20004
202-637-2521
Amanda.n.allen@hoganlovells.com

Brittany Carter
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC
40 Rector Street, 5th Floor
New York, NY 10006
646-761-0596
Bcarter@naacpldf.org

Colin Burke
NAACP Legal Defense and Educational Fund Inc
40 Rector Street
New York, NY 10006
646-531-3485
Cburke@naacpldf.org

Davin Rosborough
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
212-549-2613
Drosborough@aclu.org

Dayton Campbell-Harris
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
425-516-8400
Dcampbell-Harris@aclu.org

Deuel Ross
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND INC
700 14th Street NW
6th Floor
Washington, DC 20005
202-682-1300
Dross@naacpldf.org

CHRISTINA K. DECKER, RMR, CRR
Federal Official Court Reporter

101 Holmes Avenue, NE

Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 Jack Genberg
2 SOUTHERN POVERTY LAW CENTER
3 P O Box 1287
4 Decatur, GA 30031
5 404-708-0554
6 Jack.genberg@splcenter.org

7 Jacob Van Leer
8 American Civil Liberties Union Foundation
9 915 15th St NW
10 Washington, DC 20005
11 603-277-0314
12 Jvanleer@aclu.org

13 James W Ettinger
14 HOGAN LOVELLS US LLP
15 1999 Avenue of the Stars
16 Suite 1400
17 Los Angeles, CA 90067
18 310-785-4608
19 Jay.ettinger@hoganlovells.com

20 Jess Unger
21 SOUTHERN POVERTY LAW CENTER
22 1101 17th Street NW
23 Suite 550
24 Washington, DC 20036
25 771-200-8943
Jess.unger@splcenter.org

Kathryn Carden Sadasivan
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC
40 Rector Street, 5th Floor
New York, NY 10006
332-600-9546
Ksadasivan@naacpldf.org

Laurel Ann Hattix
ACLU of Alabama
P.O. Box 6179
Montgomery, AL 36106
703-342-9729
Lhattix@aclualabama.org

CHRISTINA K. DECKER, RMR, CRR
Federal Official Court Reporter
101 Holmes Avenue, NE
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 Nicki Leili Lawsen
2 WIGGINS, CHILDS, PANTAZIS, FISHER & GOLDFARB, LLC
3 301 19th Street North
4 Birmingham, AL 35203
5 205-314-0535
6 Nlawsen@wigginschilds.com

7 Shelita M Stewart
8 HOGAN LOVELLS US LLP
9 555 13th Street NW
10 Washington, DC 20004
11 202-637-6960
12 Shelita.stewart@hoganlovells.com

13 Sidney Monroe Jackson
14 WIGGINS CHILDS PANTAZIS FISHER & GOLDFARB
15 301 19th Street North
16 Birmingham, AL 35203
17 205-314-0500
18 Sjackson@wigginschilds.com

19 FOR THE DEFENDANT:

20 Benjamin Matthew Seiss
21 ALABAMA OFFICE OF THE ATTORNEY GENERAL
22 P.O. Box 300152
23 501 Washington Ave (36104)
24 Montgomery, AL 36130
25 334-353-8917
Ben.seiss@alabamaag.gov

Brenton Merrill Smith
OFFICE OF THE ATTORNEY GENERAL OF ALABAMA
P.O. Box 300152
501 Washington Avenue
Montgomery, AL 36130
334-353-4336
Brenton.Smith@AlabamaAG.gov

James W Davis
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
P O Box 300152
Montgomery, AL 36130-0152
334-242-7300
Jim.davis@alabamaag.gov

CHRISTINA K. DECKER, RMR, CRR
Federal Official Court Reporter
101 Holmes Avenue, NE
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 Misty Shawn Fairbanks Messick
2 OFFICE OF THE ATTORNEY GENERAL
3 FOR THE STATE OF ALABAMA
4 501 Washington Avenue
5 P O Box 300152
6 Montgomery, AL 36130-0152
7 334-242-7300
8 Misty.Messick@AlabamaAG.gov

9 Michael P. Taunton
10 Riley Kate Lancaster
11 BALCH & BINGHAM LLP
12 1901 Sixth Avenue North, Suite 1500
13 Birmingham, Alabama 35203
14 (205) 251-8100

15 J. Dorman Walker
16 BALCH & BINGHAM LLP
17 445 Dexter Avenue, Suite 8000
18 Montgomery, Alabama 35203
19 (334) 269-3138

20
21
22
23
24
25
COURTROOM DEPUTY: Sarah Carmichael

COURT REPORTER: Christina K. Decker, RMR, CRR

CHRISTINA K. DECKER, RMR, CRR
Federal Official Court Reporter

101 Holmes Avenue, NE

Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

I N D E X

1		
2		
3	TRACI BURCH	752
	CROSS-EXAMINATION CONTINUED	
4	BY MR. SMITH	
	REDIRECT EXAMINATION	770
5	BY MS. CARTER	
	RECROSS-EXAMINATION	771
6	BY MR. SMITH	
7	WILFRED REILLY	774
	DIRECT EXAMINATION	775
8	BY MR. DAVIS	
	CROSS-EXAMINATION	816
9	BY MR. CAMPBELL-HARRIS	
	REDIRECT EXAMINATION	843
10	BY MR. DAVIS	
11	VALERIE BRANYON	848
	DIRECT EXAMINATION	848
12	BY MS. MESSICK	848
	CROSS-EXAMINATION	871
13	BY MS. CARTER	
	REDIRECT EXAMINATION	886
14	BY MS. MESSICK	
15	COLONEL JONATHAN ARCHER	889
	DIRECT EXAMINATION	889
16	BY MS. MESSICK	
	CROSS-EXAMINATION	907
17	BY MS. ALLEN	907
	REDIRECT EXAMINATION	920
18	BY MS. MESSICK:	
19		
	Defense Exhibit 128	900
20	Defense Exhibit 131	903
	Defense Exhibit 256	904
21		
22		
23		
24		
25		

Christina K. Decker, RMR, CRR
Federal Official Court Reporter
101 Holmes Avenue, NE
Huntsville, Alabama 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

P R O C E E D I N G S

(In open court.)

THE COURT: Good morning. Be seated. You may proceed.

TRACI BURCH

CROSS-EXAMINATION CONTINUED

BY MR. SMITH:

Q Good morning, Dr. Burch.

A Good morning.

Q I am going to pick up with your rebuttal report, if we could pull it up.

So you testified yesterday, and it's contained in your rebuttal report that prosecutors have been found to use peremptory strikes against potential black jurors in a racially-discriminatory manner; is that right?

A Yes.

Q You cite two cases here in footnote 58. Now, that *Madison v. Commissioner* case, that case did not actually find that peremptory strikes against black jurors were used in a racially-discriminatory manner, did it?

A You will have to show me specifically what you mean.

Q Did you read this case?

A I did. But I don't recall the exact line you're talking about.

Q Is it your opinion that this case found that there was

1 racially-discriminatory use of peremptory strikes against black
2 jurors?

3 A That's what I wrote. But if you want to draw my attention
4 to something different, you can it show me.

5 Q Well, is that your opinion today?

6 A Again, I haven't changed my opinion since I wrote it, but
7 if you have something you want to show me, I am happy to look
8 at it.

9 Q So you don't recall that that case instead remanded to the
10 district court to complete the last two steps of the *Batson*
11 analysis?

12 A I do recall that, but, again, I think the initial --
13 again, you have to call my attention to something that was
14 specific.

15 Q Well, this is contained in your report, isn't it,
16 Dr. Burch?

17 A Yes. But I'm saying -- yes. I'm agreeing with what I
18 wrote in my report. But if there's something you want to call
19 my attention to that's different, I'm happy to read it and
20 answer.

21 Q Did you read the subsequent opinion from the Eleventh
22 Circuit that ultimately held that there was no *Batson* violation
23 on the merits?

24 A Again, I think here I'm just talking about the initial
25 opinion where prosecutors were found to use strikes in a

1 racially-discriminatory manner.

2 Q So you didn't read the subsequent opinion that found that
3 that was not the case?

4 A I may have read it, but, again, what I'm talking about
5 here is the district court.

6 Q You're talking about the district court?

7 A I think for both of them, I think I was talking about the
8 district court, that they were found to use those strikes in a
9 racially-discriminatory manner.

10 Q Looking at *McGahee*, the other case that you cite here,
11 *McGahee vs. Alabama Department of Corrections*, didn't the trial
12 in that case occur in 1986?

13 A It may have. I don't recall.

14 Q Do you know how long ago approximately it was?

15 A I don't recall.

16 Q Okay. I will represent to you that it did occur in 1986.
17 And so that was 38 years ago, right?

18 A Okay.

19 Q And why is the use of a peremptory strike in 1986 still
20 relevant today?

21 A Well, as I said on direct, much of the discrimination that
22 occurred is -- even during 1986, affects voters today, so if
23 people who are in the electorate today, so especially given the
24 fact that some people are disenfranchised for life after
25 certain convictions, then that affects their ability to be in

1 the electorate if there was discrimination in the 1980s.

2 Q So we can take that down.

3 Dr. Burch, you also I think testified about photo ID
4 requirements?

5 A I did.

6 Q But you didn't discuss the Eleventh Circuit's opinion
7 concluding that the photo ID requirement was not racially
8 discriminatory, did you?

9 A Again, I was just citing the statistics where both sides
10 agreed that access to photo ID was available disproportionately
11 by race.

12 Q Did you consider the Eleventh Circuit's holding?

13 A No. Just the fact that, again, black people and Hispanic
14 people were less likely to have access to a photo ID.

15 Q Were you aware of the Eleventh Circuit's holding?

16 A Again, I'm just here citing the fact that the availability
17 of ID is disproportionate racially.

18 Q That wasn't my question. My question was: Are you aware
19 of the Eleventh Circuit's holding in that case?

20 A Specifically, with respect to photo ID, I may have skimmed
21 it, but, again, they didn't say it wasn't true that the IDs
22 were not -- they didn't it wasn't true that they were available
23 disproportionately.

24 Q You skimmed it, but you know that that's what it says?

25 A Yes. So what I'm saying is there's nothing -- they're not

1 disputing the fact that -- of what I wrote.

2 Q Well, they found that the requirement was not racially
3 discriminatory in purpose or effect, didn't they?

4 A Again, I'm saying that the -- that doesn't negate the fact
5 that the ID is available disproportionately by race.

6 Q Are free IDs available?

7 A To a certain extent, they are. If you can get to an
8 office to get them.

9 Q Do you have an idea how many people since 2016 have
10 received a free ID?

11 A I do not.

12 Q Now, you also discussed the notary requirement. Do you
13 recall that?

14 A I do.

15 Q And I think you mentioned this yesterday. Voters don't
16 need a notary as long as they have two witnesses to vote
17 absentee, right?

18 A That's right.

19 Q So the notary requirement is not necessarily a
20 requirement. It's one way to satisfy the witness requirement?

21 A That's right.

22 Q And you cite a report that you submitted in *People First*
23 *of Alabama v. Merrill*?

24 A Yes.

25 Q And you looked into how much 42 notaries charged for

1 services in Alabama?

2 A Yes.

3 Q Even some of the 42 notaries you surveyed were free,
4 right?

5 A They may have been. I don't recall how many. Let me just
6 go back to that section and see if I make a note of it.

7 Q I don't think it says in your report.

8 A Sorry. 23 plus 6 is 29.

9 It looks like all of the ones -- so just based on the
10 numbers here -- we were able to reach 42 notaries, 23 plus 6
11 plus 13 -- so it could be somewhere in the 23 that said \$5 or
12 less.

13 Q You don't recall?

14 A But I don't recall exactly if any of them said zero.

15 Q And in doing that study, you didn't contact libraries, any
16 government entities, or any banks, did you?

17 A No. Actually, back that up. I may have. I can't quite
18 recall exactly where the notaries were located.

19 Q You don't recall sitting here today?

20 A I don't.

21 Q So you may not have?

22 A I may not have.

23 Q And your report here doesn't consider that the district
24 court rejected the challenge to the notary requirement based on
25 the cost, does it?

1 A No.

2 Q Did you read that opinion?

3 A I may have several years ago.

4 Q But not in preparing this report?

5 A No. Just my report.

6 Q Dr. Burch, in your report, you cite a study by Smetz and
7 van Ham?

8 A I do.

9 Q And that study is a meta-analysis?

10 A Yes.

11 Q And a meta-analysis is an analysis of analyses; is that
12 fair?

13 A Yes.

14 Q It examines a bunch of different studies to sort of
15 aggregate the results and draw conclusions; is that fair?

16 A Yes.

17 Q And that particular study was looking at how certain
18 commonly-studied factors impact voter turnout; is that right?

19 A Yes.

20 Q Did that study find that there are any confounding
21 variables that might lead education's effect on voter turnout
22 to be overstated?

23 A Could you show me specifically what you mean?

24 Q Well, do you recall?

25 A It's -- the article is long, so I don't recall the

1 specific language, but if you want to show me specifically what
2 you mean, I'm happy to --

3 Q Well, let's pull up PX-113, and it's internal page 354. I
4 don't know what document page it is.

5 And could you zoom in on the text at the top.

6 So, Dr. Burch, the right-hand column last full sentence,
7 does that say, Cognitive abilities are correlated with
8 educational levels, and it's been suggested that the large
9 impact of education on turnout found in many studies may be
10 overestimated due to a lack of control for measures of
11 cognitive ability?

12 A Yes. It does say that.

13 Q Okay.

14 A However, as I said before, the studies that I cite,
15 particularly Verba, Schlozman, and Brady, and the experimental
16 study, control for cognitive abilities.

17 Q You cited this study, didn't you?

18 A I did. In line with this study, the studies that I cite
19 do control for cognitive ability.

20 Q Are you familiar with the contextual education variable?

21 A I'm not sure exactly what that's referencing.

22 Q The idea that higher overall levels of the education in a
23 community, not for an individual, but in the community as a
24 whole?

25 A Yes.

1 Q Does higher contextual education in a community correspond
2 to higher turnout?

3 A They find no. Just individual level effects, which is
4 what I have been studying here.

5 Q And this meta-analysis found that race itself isn't
6 predictive of voter turnout, right?

7 A It found that in most studies that were analyzed here,
8 which, again, also includes studies from Europe and other
9 countries that race is not predictive.

10 Q And could we go to internal page 350 and that sort of top
11 right -- or top left section?

12 And it says here, the first line, that they included race
13 in the study, and it's included in models of voter turnout
14 based on the idea that ethnic minorities often have fewer
15 resources and skills; isn't that right?

16 A Yes.

17 Q But nonetheless found it not to be predictive of voter
18 turnout?

19 A That's right. It's included about half in about half of
20 the studies, and the success rate lies around 23 percent.

21 Q And the modal category for both variables is failure which
22 implies that a non-significant effect was found, right?

23 A In most studies, yes.

24 Q Could we go to page 356 of this document, and the like
25 right column.

1 And so this is in the collusion section of the report in
2 sort of that middle paragraph. They lay out the variables that
3 they have found to have a consistent effect on turnout.

4 Do you see that, Dr. Burch?

5 A I do.

6 Q And they list age and age squared, education, residential
7 mobility, region, media exposure, mobilization, both partisan
8 and non-partisan, vote in previous election, party
9 identification, political interest, and political knowledge; is
10 that right?

11 A Yes.

12 Q Okay. We can take this down.

13 Dr. Burch, switching gears again. In your opinion, the
14 issue of race in Civil Rights is the most significant factor in
15 partisan realignment, right?

16 A Yes; in my opinion based on the literature.

17 Q And not only is it the most significant factor in your
18 opinion, it's the only factor, right?

19 A I think here the language that I use is -- sorry. I'm
20 getting to the part of my report where I discuss this.

21 Yes. I think I can't find the sentence here, but I would
22 agree that it's the primary factor.

23 Q My question not primary. My question is only. In your
24 opinion, is it the only factor?

25 A The alignment of the parties -- of the parties at the

1 national level? Yes. Race and racial liberalism are the
2 drivers of the alignment of the parties according to Schickler
3 as well as Carmines and Stimson and other observers.

4 Q And so, yes, you agree it's the only factors, those are
5 the only factors?

6 A Yes. The statements that I have here are that these are
7 the primary factors. And they don't -- I can't think of others
8 that they found that are -- the -- responsible for the
9 alignment of the parties.

10 Q Okay. Can we pull up rebuttal PX-13 and page 15. And if
11 we can kind of zoom in sort of the middle of that paragraph,
12 like five lines down.

13 Okay. Dr. Burch, do you see five lines down starting on
14 the far right you cite Barber and McCarty?

15 A I see that.

16 Q Okay. And you say here, Barber and McCarty argue that for
17 Democrats left-ward ideological movement among elites in the
18 party is a function of the election of African-American and
19 Latino representatives in southern majority-minority districts.
20 Did I read that right?

21 A Yes, I see that.

22 Q Isn't left-ward ideological movement among party elites an
23 independent non-racial reason for a conservative voter to vote
24 against a Democratic candidate?

25 A Again, that is because of African-American and Latino

1 representatives. Again, that left-ward ideological movement is
2 about race and racial conservatism versus racial liberalism.

3 Q Well, it says left-ward ideological movement here, right?

4 A Yes. Left and right on that ideological scale.

5 Q And so did the Democratic party become more ideologically
6 left?

7 A Yes. Again, the distinction here is the party -- as I say
8 on page 14, The party of Civil Rights and racial liberalism
9 while the Republican party is associated with greater
10 resistance to government programs to redress problems of racial
11 inequality.

12 Q Did the Democratic party moved left-ward ideologically on
13 any other issues?

14 A Again, they may have, but the timing may not be the same.

15 Q And if they moved left-ward ideologically on other issues,
16 isn't that a reason why a conservative voter might no longer
17 vote for Democrats?

18 A The research that I cite also ties the movement on other
19 issues, particularly on page 18 of my report, such as negative
20 partisan affect, economic anxiety, and anti-Democratic
21 sentiments also are increasingly tied to racial attitudes and
22 racial anxieties.

23 So movement on other issues is not disconnected from the
24 movement of the parties on racial attitudes and positioning.

25 Q Well, are those things all issues, or are they just sort

1 of attitudes or opinions of voters?

2 A So skipping down, Voters' positions on non-racial policy
3 issues more generally have become more correlated with racial
4 resentment, also on page 18.

5 Q Would you expect a conservative voter to vote for a
6 candidate who holds liberal left-ward ideological positions?

7 A Again, the point of the literature is to suggest that that
8 framing that you've given, that positioning of conservatism is
9 in and of itself also related to racial attitudes and racial
10 issues, racial policy references.

11 Q So you mentioned economic anxiety, right?

12 A Yes.

13 Q As just one thing.

14 So is it your opinion that everyone who is concerned about
15 the economy has negative racial attitudes?

16 A No. It is my opinion that economic anxiety is in and of
17 itself explained by racial attitudes and racial anxieties, and
18 other studies have shown that it is also a function of the
19 racial context in which you live.

20 So, for instance, people who live in areas that are more
21 racially diverse have a different experience of economic
22 anxiety than people who don't live in areas that are
23 economically diverse.

24 So, again, it's hard to disentangle racial context and
25 racial attitudes from racial anxiety -- from economic anxiety.

1 Q Just to be clear, anyone who has any economic concerns, in
2 your opinion, that's because of racial attitudes?

3 A What I'm saying is the way that people view their economic
4 concerns and how they experience them is a function of race and
5 racial attitudes. And so it's difficult to disentangle those.

6 Q I guess my question isn't so much how they view them or
7 how they experience them, but just the fact that people might
8 have concerns related to the economy, just those concerns, the
9 existence of them, is that tied to racial attitudes in your
10 opinion?

11 A The research shows it says yes.

12 Q What about black Americans who have economic anxiety? Is
13 that because of racial attitudes?

14 A Again, the way that they experience and think about
15 economic anxiety may be tied to, again, and also the policy
16 preferences they think to -- they support to address them may
17 be tied to race and their beliefs about race in the United
18 States.

19 Q What is negative partisan affect?

20 A So the feeling of antipathy that you may have for a person
21 in the opposite political party.

22 Q Is that phenomenon present in both major political
23 parties?

24 A Yes. It can be.

25 Q Can we look at page 17 of this?

1 Dr. Burch, kind of at the top here, you're quoting a study
2 that says, Donald Trump's heavy emphasis on racial issues led
3 to a further increase in the strength of this relationship
4 about racial resentment and candidate choice, especially among
5 white voters without college degrees. Do you see that?

6 A I do.

7 Q Is that study -- that's talking primarily about
8 immigration reform and trade deals, right?

9 A The -- when you say that study is talking about, what do
10 you mean? That's not what they measure as ethnic -- sorry.
11 That's a different study.

12 Q I'm talking about the Abramowitz and McCoy study.

13 A Okay. Sorry. Yes. I can't quite recall -- let me go
14 back and look at the title really quickly, so I can just
15 remember, because they have -- Abramowitz has a couple of
16 articles I cite here.

17 So the title is, United States Racial Resentment:
18 Negative Partisanship and Polarization in Trump's America.

19 I'm not sure if it's just primarily about -- you said
20 economic --

21 Q Immigration reform?

22 A Immigration form.

23 Q And trade deals?

24 A And trade deals. I don't know if it's specifically about
25 that. They may also have more information.

1 Q Do you recall if they discussed those things?

2 A They probably do.

3 Q And not everyone who supports stronger immigration control
4 or trade deals does so for racial reasons, right?

5 A No. Again, the argument is that racial resentment is
6 strongly correlated with positions on those attitudes.

7 Q Immigration doesn't have anything to do with voting access
8 for black voters in Alabama, does it?

9 A Can you be more clear about what you mean by have anything
10 to do?

11 Q It doesn't relate to voter turnout?

12 A So, again, the literature here is talking about the
13 relationship between race and racial resentment and racial
14 attitudes and partisanship.

15 And so here the point that I'm making is that racial
16 attitudes and racial resentment are shaping the strength in
17 partisanship. So to the extent that we have been talking about
18 candidate choice and voting, this is -- these are just many of
19 the aspects that racial attitudes shape.

20 So, yes, racial -- I think racial attitudes are relevant
21 here for thinking about generally the shape of politics and the
22 positioning of the parties.

23 Q Let me put it a different way. Does immigration policy in
24 any way affect black Alabamians' ability to participate in the
25 political process?

1 A Again, to the extent that we've been talking about,
2 immigration and other policies as being part of the racial --
3 the regime of how and why people vote the way they do, and
4 candidates position themselves the way they do, yes, I think
5 it's relevant.

6 Q Does it change -- an immigration policy change black
7 Alabamians' ability to participate in the political process?

8 A Again, the immigration -- I think we've seen in the last
9 election that immigration policy both -- and politics motivates
10 partisans and contributes to how -- the shape of the two
11 parties and the positioning of the two parties.

12 So, yes, I think it's relevant.

13 Q Is it possible in your view for a white person and a black
14 person to feel the same way about the economy?

15 A Yes. But, again, how they interpret and think about the
16 reasons for why they feel the way they do about the economy and
17 then how they choose to vote, those also are shaped by race.

18 Q Do all Republicans voters who identify with the Republican
19 party do so only because of racial issues?

20 A No. That's not what I am arguing. What I am arguing is
21 that -- two things; one, that race and racial policy
22 preferences do matter both for what Dr. Carrington calls
23 non-racial policies, as well as for candidate choice and for
24 partisanship.

25 And so I'm not quantifying it or putting a number on it.

1 I'm just saying that those considerations are important to and
2 studies have -- a large body of research has shown that those
3 characteristics are -- that those attitudes are important.

4 Q Well, I'm not asking you what you're arguing. I'm asking
5 a more targeted question.

6 Does any voter who votes for Republican, do they do so
7 because of racial issues?

8 A No. What I'm saying is that partisanship and other factor
9 -- and vote choice are shaped by race and racial attitudes.

10 Q I think you referenced yesterday that you submitted an
11 expert report in the *Pierce* case?

12 A I did.

13 Q And that's *Pierce v. North Carolina State Board of*
14 *Elections*?

15 A Yes.

16 Q And did you offer several of the same opinions you are
17 offering in this case?

18 A Probably did, but for a different state -- for North
19 Carolina.

20 Q For a different state, but the same kinds of things,
21 educational attainment?

22 A Yes.

23 Q The Court there found that your analysis did not favor a
24 finding as to Senate Factor 5, did it?

25 A Yes, in the preliminary injunction hearing. I didn't

1 testify; just submitted a report.

2 MR. SMITH: Your Honor, may I have a moment?

3 THE COURT: You may.

4 MR. SMITH: Your Honor, I pass the witness.

5 THE COURT: All right.

6 MS. CARTER: May I have a moment to confer?

7 THE COURT: You may.

8 MS. CARTER: I just have a couple of questions.

9 THE COURT: Sure. You may proceed.

10 MS. CARTER: Thank you.

11 REDIRECT EXAMINATION

12 BY MS. CARTER:

13 Q Dr. Burch, your testimony is that race is the primary
14 factor in party realignment, not the only factor, correct?

15 A Yes.

16 Q Dr. Burch, do you remember being asked questions about
17 confounding effects that might lead the effect of education on
18 voter turnout to be overstated?

19 A I do.

20 Q Does your research showing that racial disparities in
21 education causing racial disparities in voter turnout also
22 control for other factors?

23 A Yes. It controls for all of the factors that we just
24 talked about with respect to confounding variables and still
25 reaches the conclusions that I discussed related to race, the

1 relationship between race, education, and voter turnout.

2 MS. CARTER: I don't have anything further.

3 THE COURT: All right. Thank you. Is there any
4 reason I may not excuse Dr. Burch?

5 MR. SMITH: Can I ask a follow-up question?

6 THE COURT: Related to what was just asked?

7 MR. SMITH: Yes.

8 THE COURT: Sure.

9 RECROSS-EXAMINATION

10 BY MR. SMITH:

11 Q Dr. Burch, I think in response to a question your counsel
12 just asked, you said that race is not the only factor, it's the
13 primary factor; is that right?

14 A Again, what I'm saying here is --

15 Q I'm asking as to what you just testified to?

16 A Yes. It's the primary factor. Race is -- as I said here,
17 I can't think of anything else that is prominent in the
18 literature.

19 Q And when I asked you about it earlier, you said it was the
20 only factor, didn't you?

21 A Again, I'll just state what I'm saying here, which is --
22 just to be clear about what I'm arguing.

23 Q Dr. Burch, I'm just asking what you testified to. When I
24 asked you the question earlier, didn't you testify that it was
25 the only factor?

1 A Again, I don't specifically recall. Here's -- so just to
2 be clear --

3 Q Well --

4 A -- what I'm trying to say is --

5 Q Let me ask you: Did you give a deposition in this case?

6 A I did.

7 Q Okay.

8 MR. SMITH: Can we pull up Dr. Burch's deposition, the
9 Stone depo, page 88?

10 BY MR. SMITH:

11 Q So, Dr. Burch, you did give a deposition in this case?

12 A Yes.

13 Q Okay. And this is from page 88 of your deposition. And
14 do you see at line 13, I say: So my question is, is that the
15 only factor? And your answer is: The positioning of the two
16 parties? Yes.

17 MS. CARTER: Objection, Your Honor. This is improper
18 impeachment. It misstates her testimony.

19 MR. SMITH: There's a little more.

20 THE COURT: If she believes it misstates her
21 testimony, I think she can say that.

22 BY MR. SMITH:

23 Q And then I follow up and say: No. Is race the only
24 factor that motivated party realignment? And you answered, so,
25 yes. I'm saying the position of the two parties, yes.

1 Is that what you testified to?

2 A So just to go all the way to start at the beginning,
3 here's my re -- I wrote, I said at line 4: Here's my response:
4 My response to that is, the primary factor with respect to the
5 contemporary partisan alignment is the positioning -- what I
6 say here, the positioning of the two parties on the issue of
7 race and Civil Rights. There may be individuals who chose to
8 be in one party or another based on other factors. But, again,
9 the primary alignment is about race and Civil Rights.

10 And then so -- then you asked me: Is that the only
11 factor? And then I said: The positioning of the two parties?
12 Yes.

13 No. Is race the only factor that motivated party
14 realignment?

15 So, yes. I'm saying the position of the two parties, yes.

16 And race is the only factor that led to party realignment?

17 A, so race and Civil Rights.

18 Q Okay. And line 23, and this is going to break pages. It
19 starts: You don't think any other factors are relevant to
20 party realignment? And you answered: Again, the research
21 doesn't support that, right?

22 A Yes.

23 So, again, clear in what I'm -- that encapsulates what I
24 am saying here today, yes.

25 Q That race and Civil Rights are the only issues relevant to

1 party realignment?

2 A Yes.

3 Q Okay.

4 MR. SMITH: No further questions, Your Honor.

5 THE COURT: All right. Is there any reason I may not
6 excuse Dr. Burch?

7 MR. SMITH: None from the state, Your Honor.

8 MS. CARTER: No, Your Honor.

9 THE COURT: Dr. Burch, thank you for being with us
10 yesterday and today.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You are excused.

13 (Witness excused.)

14 MR. ROSBOROUGH: Your Honor, plaintiffs have no
15 further witnesses to offer at this time. We reserve any rights
16 to call rebuttal witnesses, although we don't intend to do so
17 at this time.

18 THE COURT: Okay.

19 MR. ROSBOROUGH: That's all, Your Honor. Thank you.

20 THE COURT: Thank you.

21 Mr. Davis.

22 MR. DAVIS: Your Honor, defendant calls Dr. Wilfred
23 Reilly.

24 THE COURT: All right.

25

1 WILFRED REILLY
2 having been first duly sworn by the Courtroom Deputy Clerk, was
3 examined and testified as follows:

4 THE COURTROOM DEPUTY CLERK: If you will be seated.
5 Please speak loudly and clearly into the microphone.
6 State your name and spell it for the court record.

7 THE WITNESS: Wilfred Reilly, W-I-L-F-R-E-D,
8 R-E-I-L-L-Y.

9 MR. DAVIS: Your Honor, I have a clean copy of
10 Dr. Reilly's report I would like to hand him for review as
11 needed.

12 THE COURT: Certainly. Any objection from the
13 plaintiffs? I should have asked.

14 MR. CAMPBELL-HARRIS: No, Your Honor.

15 THE COURT: Thank you. I assumed no.

16 THE WITNESS: Thank you, counsel.

17 DIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q Good morning, Dr. Reilly.

20 A Good morning.

21 Q Dr. Reilly, have you been retained as an expert for the
22 defendant in this case?

23 A I have.

24 Q What do you do for a living?

25 A I am a professor of political science at Kentucky State

1 University.

2 Q How long have you been at Kentucky State?

3 A I've been there about nine years.

4 Q What do you teach there?

5 A Political science primarily, but a number of classes;
6 constitutional law, statistics, that sort of thing.

7 Q Tell us about your educational background?

8 A Well, I have a JD from the University of ILLINOIS College
9 of Law in 2005, and I have a Ph.D. from Southern Illinois
10 University attained in 2015.

11 Q And, Dr. Reilly, do you see on the screen a document
12 that's been marked as Defendant's Exhibit 9?

13 A Indeed I do.

14 Q Is that a copy of the expert report that you have
15 submitted in this case?

16 A Yes, it is.

17 Q Could we move to page 27 of this document, please?

18 And, Dr. Reilly, is that a copy of your curriculum vitae
19 that was attached to your expert report?

20 A Yes, it is.

21 Q What has been the focus of your research at Western
22 Kentucky?

23 A Well, at Kentucky State.

24 Q Kentucky State. I'm sorry.

25 A Number of great institutions of the Commonwealth.

1 I have researched a number of things. One of my focuses
2 is obviously American race relations within international
3 relations.

4 Q And tell me, you said you have taught a number of things.
5 Give us some examples of the classes that you have been
6 teaching.

7 A I teach statistics at the state university level pretty
8 much every semester, teach research methods, introduction to
9 American government, and did the Greeks come before the Romans,
10 Washington before Jefferson, that kind of thing, American
11 presidency, constitutional law, so on down the line.

12 Q How often do you teach statistics?

13 A Roughly every semester, every second semester at the
14 rarest.

15 Q Have you published on these issues?

16 A Yes.

17 Q Has your writing appeared in academic publications?

18 A Yes.

19 Q Tell us about your dissertation.

20 A My dissertation looked at a very famous experiment that's
21 known as the Hacker test. In 1992, I believe, the Queen's
22 University political scientist Andrew Hacker asked a group of
23 white males how much they would have to be paid to become
24 black. And he designed an excellent hypothetical experiment.
25 The average answer was \$50 million, and this is often used as

1 evidence of the quote unquote value of whiteness or of white
2 privilege.

3 For my dissertation, which became a short book, I expanded
4 the experiment to a number of other people. I asked whites,
5 African-Americans, Hispanics, Asians how much they'd have to be
6 paid to change this characteristic in a hypothetical where that
7 was possible. I also added sex and sexual orientation
8 questions.

9 And what I found is that if you view this as a measure of
10 racism, that was actually slightly more prevalent among
11 minority groups than among whites. Everyone demanded similar
12 amounts of money. People valued themselves to a fairly similar
13 degree. Again, a number of variables were thrown in there.

14 Q So has a focus of your research and your writing and your
15 thinking been looking at socioeconomic gaps among racial
16 groups?

17 A That has been one focus across my books and so forth.

18 Q Have you written any books? You mentioned one that
19 followed through from your dissertation. Any others?

20 A Yes. I've written four books.

21 Q What are they?

22 A The -- the first one was simply a reproduction of my
23 dissertation. The second one is called *Hate Crime Hoax*. The
24 third was called *Taboo* which looks at the climate around speech
25 in America and also it -- empirical claims made by for example

1 the Black Lives Matter movement.

2 And I wrote another book recently. That's a popular press
3 book calls *Lies My Liberal Teacher Taught Me*.

4 Q Are you well-versed in the literature of socioeconomic
5 gaps among racial groups?

6 A Yes. I certainly believe so.

7 Q Are you well-versed in the literature of how people
8 analyze and think about what might cause gaps in socioeconomic
9 fields among racial groups?

10 A Yes.

11 Q Have you studied research methodology?

12 A Yes.

13 Q Within the field of political science, do you have any
14 particular focuses?

15 A The three focus fields in my dissertation course of study
16 were public law, international relations, which includes race
17 relates and political theory.

18 I also took a two-year course in statistics. It's called
19 A through D, regression, that kind of thing.

20 MR. DAVIS: Your Honor, at this time, we tender
21 Dr. Reilly as an expert in political science, statistics, race
22 relations, and a study of the impact of racial discrimination
23 on socioeconomic gaps.

24 THE COURT: Any objection?

25 MR. CAMPBELL-HARRIS: No objection, Your Honor.

1 THE COURT: Admitted.

2 BY MR. DAVIS:

3 Q So, Dr. Reilly, as we've discussed, you spent a
4 significant amount of time in your career looking at
5 socioeconomic gaps and their possible causes, correct?

6 A Yes.

7 Q And for this case, did you look at the median income of
8 black and white populations?

9 A In the United States, and as I recall in Alabama, yes.

10 Q Could we pull up page 18 of Exhibit 9, Dr. Reilly's
11 report, please, and the first full paragraph?

12 So, Dr. Reilly, did you find that there was a gap between
13 black and white citizens in income?

14 A Of course.

15 Q Where does that occur?

16 A Everywhere in the country. If I can add one more
17 sentence, there are gaps among all groups, with Asians out
18 earning whites, et cetera.

19 Q Dr. Reilly, are there different ways of thinking about
20 what might cause a gap in a socioeconomic measurement such as
21 income?

22 A To put it mildly, yes.

23 Q Okay. What are some of the different schools of thought?

24 A Well, there's what could be called culturalism, which is
25 associated with Thomas Sowell, William Julius Wilson on the

1 left, so on. Gaps are due to a number of things; attitudes
2 toward society, perhaps study time, so on down the line.

3 There is a fairly, fairly fringe paradigm called
4 hereditarianism, Arthur Jensen, so on. The argument is that
5 performance gaps in athletics or in intelligence testing are
6 genetic. Charles Murray hinted at this in the bell curve.

7 This is what could call a racialist paradigm. Ibram
8 Kendi, for example, has said that the only possible causes of
9 gaps are racism or, quote, there's something wrong with some
10 people.

11 So you have at least three or four paradigms on this.

12 Q Okay. So if I understand you correctly, the racialist
13 approach, do people who hold that point of view assume that
14 racism is the cause of any socioeconomic gap?

15 A I think a common perspective in social science, especially
16 on the political left, is that essentially the cause of all
17 gaps is racism. Dr. Kendi, page 12 of one of his books, gives
18 that line. Either it's something in the system, it's racism,
19 or their genetic inferiority basically.

20 Q Do you agree with that school of thought?

21 A No.

22 Q Another school of thought that you mentioned was
23 hereditarianism; is that correct?

24 A Yes. Genetic determinism.

25 Q Do you hold that school of thought?

1 A No.

2 Q Do you understand the state to be holding that school of
3 thought in this case?

4 A No, absolutely not.

5 Q And the third you mentioned that you actually brought up
6 first is the culturalist. And explain that to us, please?

7 A You could call it culture and systems theory. But the
8 simple argument would be that multiple variables influence
9 performance. Interest in sports would influence athletic
10 performance.

11 Q Do you hold the culturalist point of view?

12 A Yes. Of the three, certainly.

13 Q We're going to be talking during this examination about
14 whether racism and racial discrimination explains various gaps.
15 So to make sure we're on the same page, how would you define
16 racism?

17 A I would define racism, when doing research, as dislike of
18 outgroup movement -- tribalism in the context of race.

19 Q Would you say that there is any state in the United States
20 where there is zero racism?

21 A No. Absolutely not.

22 Q Would you say there's any state in the United States that
23 has no history of racism?

24 A No. I would say there's no place in the world that is
25 free of this ancient human curse.

1 Q Thinking of the discrimination that blacks have faced in
2 history in the United States, have they experienced in your
3 opinion the same levels of racism in all regions of the country
4 historically?

5 A Of course not.

6 Q How much you identify -- what's a way a researcher might
7 identify states where historical racism has been more intense?

8 A You could look at whether slavery was legal in a
9 particular state. You could look at whether a particular state
10 was a member of the Confederacy. You could look at whether a
11 particular state engaged in Jim Crow segregation. You could
12 look at measured levels of historic bias relative to, for
13 example, attitudes on interracial marriage. Last one, you
14 could look at levels of current bias; negative phrases used on
15 the Internet, something like that. All of this has been done
16 repeatedly.

17 Q Are you familiar with the preclearance requirement that
18 was in effect under Section 5 of the Voting Rights Act?

19 A Yes, I am. Not a focus, but, yes.

20 Q I understand. Are you generally aware that some states
21 were covered by that requirement and other states were not?

22 A Yes. As I recall, Alaska was. It was 12 and 30. Yes.

23 Q And a lot of southern states, too?

24 A Of course, yes.

25 Q Would one way of identifying states with the larger

1 history of racism be whether that state was covered by Section
2 5?

3 A Quite. Yes.

4 Q You mentioned Jim Crow laws. Didn't all states have Jim
5 Crow laws?

6 A All states had some form of discriminatory law or allowed
7 some type of private discrimination, such as restrictive
8 covenant. Clearly, not all states, at least within the past
9 say 124 years, had Jim Crow segregation.

10 Q By the way, Dr. Reilly, when you consider a gap in a
11 socioeconomic factor, and you're thinking about what might
12 cause that gap, do you set out with the goal of proving that
13 racism does or does not explain a gap?

14 A No. I set out with the goal of finding the truth.

15 Q Have you ever been surprised by what you found?

16 A Yes. I was surprised by the Hacker results I just
17 mentioned.

18 Q So focusing now on the income gaps that you looked at in
19 your report, what were the gaps that you noted?

20 A As I note, the study I'm primarily relying on here,
21 although I have looked at some of this myself, comes from the
22 Congressional Budget Office's June O'Neill. The initial gap as
23 I recall page 18 is that black men earned 82 percent roughly of
24 the white wage, 82.9. There's a current gap on the screen
25 that's \$74,932 to \$48,297 for household income.

1 Q So when we note that a gap like this exists, in your
2 opinion, do you think we should assume that racism is the cause
3 of the gap?

4 A No. We cannot simply look at a single variable and assume
5 racism.

6 Q Well, what other possible causes might there be?

7 A Household size comes to mind. There are higher rates of
8 single motherhood among African-Americans than whites, among
9 whites than among Asian Americans, age, a number of things.

10 Q Let's look at the next paragraph, please.

11 Have any social scientists attempted to consider whether
12 there are other causes of an income gap?

13 A Yes. The CBO has looked at this, which is what's on the
14 screen right now.

15 Q So this is on page 18 of your report. And this is the
16 June O'Neill study that you're referring to?

17 A The first of her two to three studies, yes.

18 Q Okay. And what did Ms. O'Neill consider?

19 A Well, in terms of the variables, she considered region;
20 i.e., the South is lower income on average than the North,
21 about 50 percent of African-Americans only 16 percent of whites
22 live in the South, years of schooling, not quality of schools,
23 simply did you get the sheep skin, age, standardized test
24 scores, and years of work experience.

25 Q What was the result when the study adjust -- when the

1 study adjusted for these various factors and controlled for
2 them?

3 A You started out with a 100 to 83 gap adjusting for region
4 and age, some effective schooling, you close that to 100 to 88.
5 If you add standardized test scores as VAP, IQ, or SAT all
6 work, you get 100 to 96. Adding differences in years of work
7 experience raising the ratio to 99.1 percent, to quote.

8 Q Now, what does it mean to adjust for geographic region?

9 A In a regression model, looking at a set of data in Stata
10 or something similar, you would add a column that shows, you
11 know, 0-1 whether people live in the South or North. You could
12 code it 1 to 4 for the regions of the country. So you are
13 taking into account whether people live in a lower income area
14 when you are looking at their income.

15 Q Give me an example of a lower income area in the United
16 States?

17 A West Virginia, Appalachia, where I live.

18 Q What about the South?

19 A South is right behind Appalachia.

20 Q Are racial groups evenly distributed among the country in
21 terms of where they live?

22 A Not at all.

23 Q Where is -- where are places where the African-American
24 population is concentrated?

25 A The classic answer would be the Black Belt, the core

1 South, Alabama, Georgia, Mississippi, on up a little bit.

2 Q So proportionately, do more African-Americans live in the
3 South than other regions of the country?

4 A Yes.

5 Q So is what you're saying that people in the South in
6 general of all races tend on average to have lower income than
7 perhaps another region of the country?

8 A On average, that is correct.

9 Q You said the study adjusted for age, too. What difference
10 does that make when it comes to income?

11 A Different ethnic groups because of marriage patterns,
12 child rearing patterns, region again have very different median
13 and modal ages. At the mode, the average black man is 27,
14 average white man is 58. Gaps smaller at the medium about ten
15 years.

16 Q So older people might tend to on average to have a higher
17 income -- people in their 50s might on average have a higher
18 income than people in their 20s?

19 MR. CAMPBELL-HARRIS: Objection, Your Honor. Leading.

20 THE COURT: I think it -- are you asking him if people
21 in their 50s might on average have a higher income than people
22 in their 20s?

23 MR. DAVIS: Yes, ma'am. I was asking him to clarify.

24 THE COURT: You can answer.

25 THE WITNESS: Your Honor, yes.

1 BY MR. DAVIS:

2 Q As part of your work in this case, Dr. Reilly, did you
3 read a rebuttal report that was submitted by Dr. Burch?

4 A Yes, I did.

5 Q Did you understand that Dr. Burch criticized you in this
6 area for using what she believes is old data?

7 A Yes, on this study, yes.

8 Q Is she correct?

9 A No. This study was replicated using almost the same
10 variables in 2005. I believe it's been done again since.

11 This study was done sometime ago, but this has been the
12 case for a while.

13 Q So are you saying this research has been replicated more
14 recently?

15 A Yes.

16 Q Let's -- we are going to come back and look at other gaps
17 later, but since you talk about the next issue earlier in your
18 report, I want to look now at another topic. Let's look at
19 page 5, please.

20 And, Dr. Reilly, did you as part of your work in this case
21 examine voting patterns of black Americans around the country?

22 A Yes, I did.

23 Q And are you aware that plaintiffs' experts have offered
24 opinions that voting is racially polarized in Alabama?

25 A Yes.

1 Q Did you review Dr. Liu's report?

2 A Yes.

3 Q Did you note the party affiliation of the candidate of
4 choice for black voters in Dr. Liu's analysis?

5 A Yes.

6 Q And what did you see?

7 A The candidate of choice for black voters -- you're talking
8 about black voters in Alabama and the cities on page 5, right?

9 Q Yes. I'm talking about -- yes. I'm talking about the --
10 in the elections that were analyzed by Dr. Liu in his report?

11 A Yes. Massive preference for Democrats.

12 Q And did you note in Dr. Liu's report what the party
13 affiliation was of the candidate of choice for white voters in
14 those elections?

15 A Yes. Significant advantage for Republicans.

16 Q Let's enlarge that top paragraph, please.

17 What were the margins of party preferences noted for the
18 candidate of choices of white and black voters in Dr. Liu's
19 report?

20 A Large, particularly for black voters -- I mean, looking at
21 this top line here, 94.3 percent, 95 percent, 95.9 percent, so
22 on down the line. In one sizeable city, 82.4, 84.7, so on,
23 percent in another.

24 Q So according to Dr. Liu, did black voters in the elections
25 he analyzed overwhelmingly prefer the Democratic candidate?

1 A Yes.

2 Q Did you examine black voting patterns outside of Alabama
3 in this case?

4 A Yes, naturally using Pew Research.

5 Q So you said Pew Research. What particularly was the Pew
6 Research looking at, what data points?

7 A They were looking at party registration and stated
8 affiliation as I recall for black and white voters nationally.

9 Q As a political scientist, do you consider a person's party
10 identity to be a good indication for how that person typically
11 votes?

12 A Yes.

13 Q When you reviewed voting patterns nationally, what did you
14 find?

15 MR. CAMPBELL-HARRIS: Objection, Your Honor.
16 Relevance, and plaintiffs renew their motion in limine to --
17 because this testimony about national party affiliation
18 statistics are irrelevant to this case.

19 THE COURT: All right. Well, Mr. Davis?

20 MR. DAVIS: Your Honor, we believe it's very relevant.
21 The plaintiffs have taken the position that the finding -- a
22 finding of racially-polarized voting should lead to certain
23 inferences. We believe showing of what the patterns are in the
24 -- well, around the nation would give the Court context and
25 help the Court determine what weight to give it and whether the

1 inferences they suggest should be drawn or in fact warranted.

2 MR. CAMPBELL-HARRIS: He's not looking at voting
3 patterns, Your Honor. He's only looking at the party
4 affiliation of individuals, and this tells us nothing about the
5 voting behaviors of individuals in Alabama. And there's no way
6 voting patterns considered whatsoever or white-party
7 affiliation considered.

8 THE COURT: All right. I will allow it but keep in
9 your objection and assign it the appropriate weight.

10 MR. CAMPBELL-HARRIS: Thank you, Your Honor.

11 THE COURT: You may proceed.

12 BY MR. DAVIS:

13 Q Let's go to page 6, please, and look at Figure 1.

14 So what did you find for the preferences of black voters
15 in various states around the country, Dr. Reilly?

16 A African-Americans strongly prefer the Democratic party in
17 virtually every state with the black population large enough to
18 map, I think is fair to say.

19 Q Did you find that black voters had different patterns of
20 party preferences or voting in states that were -- well,
21 comparing Southern states with Northern states?

22 A Not really. Many of you can see this on your screen.
23 Alabama, 80 percent Democrat lean or Democrat strong reference.
24 But, I mean, Illinois is also 80 percent, Maryland, 86 percent;
25 Pennsylvania, 84 percent.

1 Q Did you note any areas where most blacks said they lean
2 Republican?

3 A There are no such areas in the USA yet.

4 Q So in your opinion, are the voting patterns that Dr. Liu
5 noted in the Alabama elections he analyzed -- in terms of black
6 voting patterns, is it different in Alabama than it is in other
7 states?

8 A In my opinion, looking at the party affiliation and exit
9 polling data, we'll clarify, no.

10 Q What if you compare -- well, for the record to be clear,
11 what do you understand people to mean when they talk about red
12 states and blue states?

13 A A red state is a GOP Republican voting state. A blue
14 state, of course, is a Democratic voting state.

15 Q Did you notice differences in black voting patterns when
16 you compare blue states and red states on your list?

17 A On this list, no, from my data work and from a glance
18 here.

19 Q Now, did 100 percent of black voters support the
20 Democratic party in any of the areas that you looked at?

21 A Of course not.

22 Q Okay. Let's return now to our discussion of gaps.

23 Are you aware that there was testimony from Dr. Burch that
24 black voter turnout in Alabama has lagged behind white voter
25 turnout in recent elections?

1 A I am aware.

2 Q So is it fair for us to assume if we note that there's a
3 gap that that gap must necessarily be caused by racism?

4 A No. That is not fair.

5 Q What else other than racism can affect a turnout gap among
6 racial groups?

7 A Level of education, which from her work, I don't think
8 Dr. Burch would disagree with. Past felony record is a
9 significant limiter for men and to some extent for minorities
10 in the United States, age, and a number of things.

11 Q If you note a gap in turnout, what would a social
12 scientist need to do in order to prove that racism was the
13 cause of that gap?

14 A What I would do is run a 10-to-12 variable preferably
15 beyond linear quote unquote model, looking at rate of voter
16 turnout among a number of different counties, states, something
17 of that order, and adjusting for felon disenfranchisement,
18 education, race, age, et cetera.

19 Q Are you familiar with any efforts in Alabama or elsewhere
20 to promote black voter and registration and turnout since
21 passage of the Voting Rights Act?

22 A There are massive such efforts nationwide and in Alabama.

23 Q How does that inform your opinions?

24 A I think it -- it makes it more difficult to assume that a
25 gap in voter turnout is due to subtle or direct attempts to

1 discourage minority voters definitely.

2 Q Let's go to page 15 of your report, Dr. Reilly.

3 And we'll look at the first full paragraph under heading

4 D.

5 What are the size of turnout gaps that have been alleged
6 to exist in this case?

7 A They vary. Some turnout gaps reached 10 percent. Voter
8 registration gaps are quite small. The 2018 gap given here is
9 .4 percent, although it is a bit larger now.

10 Q So it does vary from year to year?

11 A Of course. Yes.

12 Q Do you agree with Dr. Burch -- and I think you just said
13 this, but to make the record clear, do you agree with Dr. Burch
14 that education attainment can impact voter turnout?

15 A Educational attainment strongly impacts voter turnout.

16 Q What if someone responds to you and says, well, yeah, but
17 a difference in educational attainment may itself be caused by
18 past or historical discrimination?

19 A This is known of the God-of-the-gaps fallacy in debate;
20 i.e., if I can have one sentence here, if we see that there is
21 a gap in voter turnout, and we attribute that to racism, and it
22 turns out that adjustment for education mitigates that effect,
23 and then we look at level of education and attribute that to
24 racism, and it turns out that SAT scoring or interest in the
25 military -- African-Americans make up I believe 26 percent of

1 combat troops, kudos, but it turns out that that mitigates that
2 effect, we can't well then say differences on the SAT or a
3 compulsion to fight are caused by racism. That could go on
4 indefinitely.

5 Q And, Dr. Reilly, we all get excited talking about
6 something we're interested in. But for our court reporter's
7 sake, let's both try to slow down just a little bit.

8 A Of course.

9 Q Do you agree that black Alabamians on average are less
10 likely to have a high school diploma or college degree than
11 white voters in Alabama?

12 A Many of the gaps are surprisingly small, but, yes.

13 Q Is that particular gap in achieving a high school or
14 college diploma, is that something that exists only in Alabama?

15 A No.

16 Q Where does it exist?

17 A Everywhere in the country.

18 Q You look at SAT scores in your report, do you not?

19 A Yes.

20 Q Why use that metric?

21 A It's a very common metric of post-secondary performance on
22 a test that measures scholastic aptitude.

23 Q Let's go to page 10 of your report, Dr. Reilly, and look
24 at Figure 2. Tell us what we see here.

25 A This is SAT score in a very representative pre-COVID year

1 broken down by sex and by race in the USA.

2 Q And it looks at the average results for different racial
3 groups, does it not?

4 A Yes. These are mean scores.

5 Q And what do you find?

6 A I find that SAT scoring varies dramatically by race.
7 Neither whites nor blacks are the top or the bottom performing
8 group. That's true in almost every state, which is why I use
9 national data.

10 Q Have you ever reviewed data for individual states?

11 A Yes, I have.

12 Q Do you see the same patterns when you look at results for
13 individual states?

14 MR. CAMPBELL-HARRIS: Objection, Your Honor. This is
15 beyond the scope of Dr. Reilly's report. He doesn't look at
16 any individual states in his reporting.

17 MR. DAVIS: Your Honor, I'm not asking him to talk
18 about what he saw other than to say if he saw similar patterns,
19 if the national patterns are indicative of what he has reviewed
20 when he's looked at individual states.

21 MR. CAMPBELL-HARRIS: I don't know, Your Honor, how he
22 can understand what the individual patterns are of different
23 states if those states' patterns are not contained in his
24 reporting.

25 THE COURT: All right. Sustained.

1 MR. CAMPBELL-HARRIS: Thank you.

2 BY MR. DAVIS:

3 MR. DAVIS: If the Court will indulge, I am going try
4 a slightly different way.

5 THE COURT: Sure.

6 BY MR. DAVIS:

7 Q Dr. Reilly, have you ever reviewed reporting of SAT scores
8 which contain different patterns of gaps among racial groups?

9 MR. CAMPBELL-HARRIS: Same objection, Your Honor.

10 THE COURT: I think that's a different question. I
11 mean, that's just asking if he's ever seen something different
12 from this.

13 THE WITNESS: You mean different from this Asians on
14 top, natives on the bottom, African-Americans, Hispanics sort
15 of pattern?

16 BY MR. DAVIS:

17 Q Yes.

18 A I've seen very slight mobility. I've -- African-Americans
19 have outperformed Hispanics, that sort of thing.

20 Q Okay. Generally, it's been similar?

21 A Yes.

22 Q Okay. So looking -- focusing on these 2019 results?

23 A Uh-huh.

24 Q If I'm reading this correctly, Asians outperform whites by
25 1223 to 1114 in terms of average total SAT scores; is that

1 correct?

2 A Yes.

3 Q All right. Let's focus on this Asian, white gap.

4 If gaps were caused by racism, would this report tell us
5 that whites have suffered more racism than Asians?

6 A If gaps were invariably due to racism, yes.

7 Q Does that seem plausible to you?

8 A Absolutely not.

9 Q Does this gap mean that the Asian students who took this
10 test are better genetically than the white students who took
11 this test?

12 A No. The Asian students come from 20 different ethnic
13 groups -- Indian, east Asian, et cetera.

14 Q What might explain the difference we see in these results?

15 A Reading books.

16 Q You discussed study time, do you not, on page 13 of your
17 report?

18 A I do.

19 Q And in footnote 20, you cite to report by the Brookings
20 Institute, correct?

21 A Yes.

22 Q So let's pull that up. It's called Analyzing "the
23 Homework Gap." We'll start with page 1. Is this the study
24 that you cited?

25 A Brookings Institute white paper, yes.

1 Q What is the Brookings Institute?

2 A The Brookings Institute is a well-regarded center left
3 think tank.

4 Q Let's look at Figure 1 on the second page and focus in on
5 that chart in the middle, please.

6 What do we see here, Dr. Reilly?

7 A You see a staggering difference in study time between
8 groups with both whites and African-Americans improving from
9 the past, but Asians outperforming them almost two to one.

10 Q Now, let's be clear.

11 Does this mean that every Asian student studies more than
12 every white student?

13 A As a college professor, it certainly does not.

14 Q Is this simply addressing the averages?

15 A Yes.

16 Q Now, let's look at figure -- okay. No, let's go on to
17 Figure 2 on the third page, please, that chart at the top left.

18 What is this showing?

19 A If you break down a typical school day and after school
20 day, Asian American students are far more likely to be doing
21 homework or engaging in tutoring than other groups of students.

22 Q Okay. I will represent to you, Dr. Reilly, that Dr. Burch
23 has said that this study doesn't actually prove that there's
24 study time differences that explain test gaps; rather, that
25 African-American students are less likely to have access to AP

1 classes.

2 Is she correct about that?

3 A Are you asking just about the access itself?

4 Q I'm asking whether this study found that gaps in test
5 scoring and educational attainment are not related to study
6 time but instead related to access to AP classes?

7 A No. To add a comment here from -- as I recall, both the
8 footnotes here in Pew, Asian American students from families
9 that make 10 to \$20,000 a year post higher SAT scores than
10 African-American students from families who make \$200,000 a
11 year.

12 Q Let's look at the last page of this exhibit, please, next
13 to last, and focus in on the paragraph that begins, Students of
14 color.

15 A Okay.

16 Q Does this paragraph make a finding that access to AP
17 classes is the explanation?

18 A No. They theorize a couple of things. Again, this think
19 tank, very good, but slants a bit to the political left. They
20 say a would likely, may partially explain the gaps. Their idea
21 is that school quality may have some impact on these gaps.
22 Could be true.

23 Q But do they, in fact, analyze that and test that as part
24 of this study?

25 A As I understand from reading and a brief conversation, no.

1 Q So we can take that down.

2 Why might we see on average different rates of study time
3 among racial groups?

4 A A culture is a common short answer, but I think parental
5 expectations, in terms of grades, is a good metric that Amy
6 Chua mentioned, a father in the home, a number of things.

7 Q Can income, family income have an effect on study time?

8 A Income is one variable that does.

9 Q What might we see in terms of study time in an area where
10 a lot of high school kids play varsity sports?

11 A It decreases.

12 Q Are there any areas of the country where you might see
13 more high school kids play varsity sports than in other areas?

14 A I mean, the South comes to mind. Alabama and Georgia,
15 Kentucky.

16 Q Now, when we were looking at the SAT scores, it had some
17 broad categories. Asians had the highest scores, listed
18 whites, blacks, Hispanics, but if you break those down into
19 smaller study groups, do any groups of -- we'll say people of
20 color do especially well in educational attainment?

21 A A number -- Nigerian Americans do quite well. Depending
22 on how you define POC, Chinese and Japanese Americans do quite
23 well. They're individual outlier groups certainly if you look
24 at income, as well.

25 Q The Nigerian population, are they racially black?

1 A Yes. They're from west Africa.

2 Q And how do they compare on average to the white population
3 in terms of educational attainment?

4 A As I recall the most recent study on SATs by, I believe,
5 Covington, Nigerians do a bit better than whites in terms of
6 overall grades, significantly better.

7 Q So to sum up, when you note a gap between Asian students
8 and white students, do you see any reason to assume that racism
9 is the cause of that gap?

10 A No. I would find that claim to be absurd if it was made
11 by a white advocate quote unquote.

12 Q Would it be appropriate to assume that some genetic
13 difference was the explanation for that gap?

14 A No.

15 Q If we turn, then, to a gap in test scores on average
16 between black students and white students, is there any reason
17 to assume that racism is necessarily the cause of that gap?

18 A Automatically, no.

19 Q In your opinion, Dr. Reilly, is at least one reason that
20 we might note a gap in voter turnout between black voters and
21 white voters, can it be explained by educational attainment in
22 -- difference levels on average of educational attainment?

23 A That would be one what we would call statistically
24 significant variable in the model, definitely. That would have
25 an effect.

1 Q Now, back when I believe when we started out with looking
2 at voter turnout, we mention educational attainment, which we
3 just discussed, but you also mentioned age is something that
4 could affect turn turnout, correct?

5 A Yes.

6 Q So does age in your opinion tend to correlate with the
7 likelihood that someone will vote?

8 A Generally and overall, yes. Older people tend to be more
9 civically involved, famous studies about the AARP, et cetera.
10 Older people tend to be more civically involved.

11 Q On footnote 25 on page 14, you cite a study on this point,
12 do you not?

13 A 25. Yes.

14 Q All right. Let's pull up voter turnout by age, a chart
15 from that study, please. Is this from the study you cite,
16 Dr. Reilly?

17 A Yes. This is a world in-data chart breaking down the
18 major age clades.

19 Q What does this show us?

20 A It shows that there are very significant differences in
21 voting by age. Since 2000, we have seen old people, 60-plus
22 year-olds break out away from the crowd. Seniors.

23 Q And let's go back to Dr. Reilly's report on page 14.

24 And tell us, Dr. Reilly, do different racial groups tend
25 to have different age distributions?

1 A Yes.

2 Q And while I think you mentioned it, we will point out
3 there at the top of page 14 of your report, you look at modal
4 average age for different racial groups, correct?

5 A Correct.

6 Q And what did you find?

7 A At the mode, most common age, one of the three averages,
8 the modal average age for a white American is 58, black
9 American is 27. Hispanic American, by the way, is 11.

10 Q If a racial group on average has a lower age, modal age,
11 would that tend to suggest that that racial group may be less
12 likely to turn out?

13 A It would tend to suggest that, yes.

14 Q Another thing you mentioned as affecting turnout,
15 Dr. Reilly, if I heard you correctly, was family structural
16 criminal behavior, correct?

17 A Criminal behavior, certainly, but, yes, both variables.

18 Q Well, does family structure influence civic participation
19 in your opinion?

20 A Yeah. Yes, almost every form of civic participation.

21 Q In particular, does fatherlessness tend to influence
22 someone's tendency to participate in civic politics?

23 A Fatherlessness, to put bluntly, correlates very highly
24 with crime, with what we call civic non-participation, with
25 dropping out of school, with most negative variables. I think

1 that is fair to say.

2 Q Has there been academic research on the effects of
3 fatherlessness?

4 A Dozens of studies.

5 Q And how can a criminal conviction affect civic
6 participation?

7 A Well, this is one of the elephants in the room. Most
8 felony convictions prevent a previous offender from voting for
9 at least some period of time.

10 One sentence -- in Alabama, a 14.7 percent of otherwise
11 eligible voters have a relevant -- an RFC relevant felony
12 conviction and cannot vote.

13 Q So you understand that certain felony convictions in
14 Alabama cause someone to be disenfranchised until their rights
15 are restored?

16 A Yes, as almost everywhere else, yes.

17 Q And are various racial groups equally likely to have such
18 felony convictions?

19 A No. African-Americans more than whites, whites more than
20 Asians.

21 Q So Asians are less likely than whites in Alabama to have a
22 disqualifying felony conviction?

23 A Yes.

24 Q Do you understand plaintiffs' experts to argue in this
25 case that blacks are overrepresented in the prison population

1 in Alabama?

2 A Yes.

3 Q Are blacks overrepresented in prison population in
4 Alabama?

5 A Relative to baseline, yes.

6 Q What do you mean relative to a baseline?

7 A If the black population of Alabama is 27 percent and black
8 Alabamians make up 53 percent of the prison population, it
9 could be more than that, that would be overrepresentation to
10 baseline.

11 Q Let's go to page 17 of your report, Dr. Reilly, and we'll
12 look at Figure 4.

13 A Yeah.

14 Q What do we see here?

15 A These are prison populations per 100,000 for different
16 groups.

17 Q What different groups?

18 A Looking across here, whites, blacks, Hispanics, American
19 Indians.

20 Q And Asians as well, correct?

21 A Yes.

22 Q What are the differences between Asian and white rates of
23 incarceration?

24 A 40 -- the figure given per X, per 100,000 here for whites
25 is 40, for Asians is 5.

1 Q Does this mean that whites are eight times more likely to
2 be incarcerated than Asians?

3 A Within the demographics of this chart. This is federal
4 prison -- yes.

5 Q Okay. And, again, is there any reason to assume that
6 racism in the criminal justice system is the cause of the
7 difference in incarceration rates between whites and Asians?

8 A No.

9 Q Does this mean that white people are inherently more
10 criminal than Asians?

11 A No.

12 Q Did you review incarceration rates by state?

13 A Yes.

14 Q Let's look at page 19 of your report, and Figure 5. This
15 actually rolls over two pages. We will look at just this first
16 page.

17 What did you find when you looked at rates of
18 incarceration by state?

19 A That there are racial differences in incarceration across
20 almost every U.S. state, and those do not track with the
21 measures of historic races that we mentioned before.

22 Q Okay. This is a study dating around 2001, correct?

23 A This first one, yes.

24 Q What is -- well, let's look at Alabama's number.

25 First, Alabama's listed first. This is alphabetically.

1 It says, white 417 and black 1,877. What do those numbers
2 mean?

3 A Per 100,000 residents in the state as versus federal
4 system, you have 417 whites incarcerated, and 1,877 blacks or
5 African-American per 100,000 people in those groups.

6 Q Okay. In the last column is ratio, and Alabama's number
7 is 4.5. What does that mean?

8 A It means that per 100,000 group members, 4.5 X as many
9 blacks as whites are incarcerated.

10 Q So does a smaller number in that last column mean a
11 smaller gap in the rates of incarceration between black and
12 white inmates?

13 A Absolutely does.

14 Q How does the gap in Alabama compare to the gaps that you
15 see in other states?

16 A The gap in Alabama is smaller than the gap in all but
17 seven other states. The largest gap at least on this page is
18 in Connecticut or New Jersey.

19 Q Are there any states where you see a negative number where
20 blacks are underrepresented?

21 A No. No.

22 Q Let's go to page 22 and look at Figure 6, please.

23 So the first chart was looking at data from around 2001.
24 Have you looked at more recent data?

25 A Yes. I updated this with the most recent chart from the

1 same project.

2 Q When does this data come -- or what year did this data
3 come from, if you know?

4 A This report was published in 2021.

5 Q It looks to have a similar structure, doesn't it, showing
6 the rates of incarceration of white and black citizens and then
7 the ratio, the gap?

8 A Yes. The gap has, if anything, decreased.

9 Q You mean there's a smaller gap in more recent years than
10 there was in the 2001 study of the incarceration rates between
11 blacks and whites in Alabama?

12 A In Alabama, yes. Not everywhere nationally. The ratio
13 that has dropped from 4.5 to 2.69 in the Yellowhammer State.

14 Q So that means in more recent years, there is less of gap
15 in the rates of incarceration between blacks and whites,
16 correct?

17 A Yes.

18 Q And how does the gap in Alabama compare to other states in
19 this -- using this more recent data?

20 A It is now the second smallest or best gap in the country.

21 Q Do you see any trends of where you see smaller gaps?

22 A Well, actually, yes, although I'd have to do a bit more
23 analysis. But in the South, if anything.

24 Q Where do you see the largest gaps?

25 A The largest gaps tend to be in urbanized Northern and

1 Northeastern states from my original analysis in looking
2 through this. Connecticut gap still about 10 to 1, Maine 9.31.
3 Minnesota 9.74, New Jersey 12.46.

4 Q Dr. Reilly, do you understand plaintiffs to argue that the
5 racial gap in incarceration rates in Alabama is caused by
6 racial discrimination?

7 A Yes.

8 Q Do you understand the argument to be that that means that
9 the state of Alabama is treating blacks and whites differently
10 in the criminal justice system?

11 A You mean is that the argument?

12 Q Yes.

13 A Yes. I would assume so.

14 Q I am not asking you if you agree with it.

15 A Of course.

16 Q Okay. If that is true -- if -- if you accept the
17 hypothesis that the gap is evidence of racial discrimination,
18 which states have the least discrimination in the criminal
19 justice system?

20 A If you accept that hypothesis, Alabama would have one of
21 the lowest levels of racial discrimination. Georgia, Arkansas,
22 looking at this, Kentucky, 2.94, those might be the top four,
23 if you accept that.

24 Q If you accept that a gap suggests that the Alabama
25 criminal justice system treats blacks and whites differently,

1 in what states are blacks and whites treated most equally?

2 A If you accept that about the meaning of gaps, black
3 Americans would be treated most equally in Hawaii and then
4 Alabama, Georgia and Kentucky. Also Mississippi, 2.78.

5 Q Let's go to Plaintiffs' Exhibit 13, please, Dr. Burch's
6 rebuttal report.

7 And I don't think you have a copy, Dr. Reilly, but we are
8 going to bring it up on screen.

9 A Okay.

10 Q Let's go to page 12, and we will look at the middle
11 paragraph.

12 Dr. Reilly, do -- do inmates among the different racial
13 groups tend to commit the same types of crimes?

14 A Not always, no.

15 Q Now, Dr. Burch has argued that accounting for things like
16 age and the types of crimes that tend to be committed by
17 different racial groups doesn't explain the racial gaps. Do
18 you agree with her?

19 A No.

20 Q What is your response?

21 A Couple of sentences here, if that's okay.

22 There are different units of data being used here. So at
23 one point, the argument is made that looking simply at arrests
24 doesn't explain the majority representation of
25 African-Americans in Alabama prison.

1 But as I recall the data, it explains about 60 percent of
2 it. Simply differentials in arrest rates nationally and in
3 state close the gap by that much. You would then have to look
4 at prior record, gang affiliation, severity of past offenses,
5 quality of lawyer, that sort of thing. And, I mean, looking
6 even at what this says in this report, 80 more black people
7 were arrested for committing crimes against persons. So you
8 have arrests, then you have violent felony arrests, then you
9 have murder arrests, those all convey differences sentences
10 with them.

11 Murders go to jail for more time than drunk driver
12 offenders.

13 Q While we have this up, Dr. Burch's report, let's go to
14 page 10 of that report, please. Before we discuss that, I want
15 to close out the discussion of the incarceration rates.

16 To be clear, Dr. Reilly, are you arguing that any members
17 of any racial group are inherently more criminal than any
18 other?

19 A No. I think looking at history, rates of war, so on, that
20 seems very implausible.

21 Q In your review of the data, though, does it suggest that
22 more crimes are committed by some racial groups than others?

23 A At any given time, that's an undisputed fact.

24 Q For example, is it clear to you that more whites have been
25 arrested and convicted of crimes than Asians?

1 A The Asian -- the white crime rate appears to be about 2.8
2 to 3 X the Asian crime rate in the USA.

3 Q Okay. Now, I want to -- since we already have this report
4 up -- to look at page 10 and the paragraph that begins,
5 Dr. Reilly argues.

6 Go back to what we talked about the beginning, if you
7 recall, Dr. Reilly. You had looked at the O'Neill report. And
8 is that not the one where they controlled for various factors
9 to see if that lessened the income gap?

10 A Yes.

11 Q Okay. Now, Dr. Burch suggests that you didn't consider
12 some of the literature in that area, and you see there she has
13 some studies that she thinks proves you wrong -- the Bertrand
14 study, the Gaddis study, the Pager study. Are you familiar
15 with these studies?

16 A Yes. These are very well-known studies. I have talked to
17 Gaddis about his study.

18 Q What was the last sentence?

19 A I've talked to Gaddis about his study.

20 Q Have you written responses to any of these?

21 A I did write a short critique of these sort of audit
22 studies, yes.

23 Q And what do these studies show?

24 A Well, what audit studies show is that at least in some
25 sectors of the job market, there is discrimination against

1 people with very ethnic names, which are often associated with
2 African-Americans.

3 The Bertrand and Mullainathan study, if I recall, is
4 titled, Are Keisha and Jamaal -- similar names -- less
5 employable than Emily and Joe? The names might be off, but
6 that's model that's being followed.

7 Q So is that where they tested to see whether resumes with
8 certain names that were arguably associated with certain racial
9 groups received more or less attention than others?

10 A Yes. You would send out 1,000 resumes, and half of them
11 -- I'm being crude here -- would be labeled to Jamarian
12 Freeman, and the other half would be labeled, you know, Betty
13 Sue Cohen, and you would look at whether there was more
14 rejection in the first category.

15 Q So you have argued, have you not, that if you see an
16 income gap, once you control for things like age and other
17 factors, that income gap lessens and almost goes away, correct?

18 A Very, very often, yes.

19 Q And these studies show -- do these studies not disprove
20 you?

21 A No. This is an important point and fact. What these
22 studies show is simply that racism or classism probably still
23 exists at some level. That doesn't change the fact -- because
24 people can apply for two jobs and so on, that if you adjust for
25 age and the rest, income gaps close.

1 Q I didn't do my homework well enough to do this well, but I
2 am going to try it.

3 Dr. Burch addressed your discussion of race relations and
4 your suggestion that race relations have been pretty good
5 lately. Do you make that suggestion in your report?

6 A In practical terms, yes.

7 Q And she put a chart that I will represent to you where
8 people were polled about their view -- Do you think race
9 relations are good or bad. And according to Dr. Burch, it
10 showed that in recent years that those numbers have dropped.
11 And I will represent that she suggests you haven't dealt with
12 the most up-to-date data. Is she correct?

13 A No. It's a perception-versus-reality question.

14 Due to media exposure, many other things, people tend to
15 think there's a massive amount of ethnic conflict in the USA.
16 But if you look at interracial marriage data, so on, that's
17 very questionable at best.

18 Q What data would be better to view in terms of testing
19 whether race relations are good or bad if not just the
20 perception?

21 A There are pretty classic measures of racial bias. One is
22 called the work-for vote-for question. Would you have a
23 problem voting for a qualified presidential candidate of a
24 different race?

25 Right now, for blacks, the figure there is 8 percent I

1 wouldn't do it, but it's 9 percent for Hispanics, 9 to 10
2 percent for Jews, Jewish Americans, so on down the line.

3 Another question is simply: Are you a supporter of
4 interracial marriage? And would you be comfortable with such a
5 marriage for yourself or a close relative? Right now, it's 94
6 to 95 percent in support, and so on.

7 MR. DAVIS: If I may have a moment, Your Honor.

8 THE COURT: You may.

9 MR. DAVIS: Your Honor, we pass the witness.

10 THE COURT: All right. We've been going for not quite
11 an hour and 45 minutes. Would you prefer to start now or to
12 take our morning break now?

13 MR. CAMPBELL-HARRIS: We can take the morning break
14 now, Your Honor.

15 THE COURT: All right. It's 10:15. Let's come back
16 at 10:30.

17 (Recess.)

18 THE COURT: You may proceed.

19 MR. CAMPBELL-HARRIS: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. CAMPBELL-HARRIS:

22 Q Hello, Dr. Reilly.

23 A Hello.

24 Q How are you?

25 A Good. Good.

1 Q My name again is Dayton Campbell-Harris, and I represent
2 the plaintiffs in this matter. I am going to ask you a series
3 of yes-or-no questions based on your depositions and on your
4 report in this case. Do you understand?

5 A Yes.

6 Q And are you ready?

7 A Yes.

8 Q Okay. Now, other than in this case and the *Milligan v.*
9 *Allen* litigation, you have never served as an expert witness in
10 litigation before, correct?

11 A Yes.

12 Q You do not have a degree in history, correct?

13 A No, not specifically in history.

14 Q In fact, you're not a historian, correct?

15 A No.

16 Q You are not specifically an expert on Alabama's history?

17 A Yes.

18 Q And you are not a historian of the American South?

19 A No.

20 Q None of your academic research specifically focused on
21 politics in Alabama, correct?

22 A Yes. That's correct.

23 Q And indeed, none of your academic research has
24 specifically focused on Alabama, right?

25 A Yes, although in the context of the USA, there is Alabama.

1 Q But, specifically, none of your academic research has
2 focused on Alabama?

3 A No.

4 Q None of your papers focus specifically on the political
5 environment below the Mason-Dixon line, correct?

6 A Yes, that's correct.

7 Q And you are not a professional expert on Southern
8 politics, right?

9 A Correct. It's not a focus of mine as a general American
10 political scientist.

11 Q And just to be clear, you are not an Alabama-specific
12 expert, right?

13 A That would depend on what if we're looking at national
14 gaps or something. I could certainly engage Alabama. My focus
15 is not Alabama.

16 Q Thank you. All right.

17 Dr. Reilly, let's turn to your expert report. Do you
18 still have a copy -- do you have a physical copy in front of
19 you?

20 A Yes.

21 Q You believe that everything in your expert report in this
22 case is true to the best of your knowledge, right?

23 A To the best of my knowledge, certainly.

24 Q And you swear that under oath and under penalty of
25 perjury?

1 A Yes.

2 Q And this report is a complete statement of your opinions
3 in this case?

4 A To this point, certainly, yes.

5 Q There's nothing that you left out in your expert report
6 that you are relying on today, right?

7 A I'm -- could you clarify that? I have a general knowledge
8 base that I might rely on when we talk about SAT scores in
9 Alabama or something like that.

10 Q You didn't submit any other reports that disclose any
11 additional opinions that you have in this case, correct?

12 A No.

13 Q Okay. Prior to submitting your expert report, you
14 reviewed the initial report of Dr. Liu?

15 A Yes.

16 Q And you're not offering any criticisms or disagreements
17 with Dr. Liu's methodology?

18 A The methodology itself, no.

19 Q Okay. And you offer no criticisms of the data that
20 Dr. Liu relied on in his report, correct?

21 A To the best of my recollection, no, no criticisms.

22 Q You have also reviewed the expert report of Dr. Burch
23 prior to submitting your report in this case?

24 A Yes.

25 Q You think Dr. Burch's sources are perfectly conventional?

1 A Yes. Her sources are -- as are mine, but her sources are
2 standard academic sources, yes.

3 Q You do not have any reason to attack the sources of
4 Dr. Burch, correct?

5 A The articles and such, no.

6 Q And you reviewed Dr. Bagley's initial report in this case
7 prior to submitting your report?

8 A Yes. More briefly, but, yes.

9 Q And you have no reason to disagree with the data in
10 Dr. Bagley's report, correct?

11 A I'd have to refresh myself on some of that, but the
12 sources for these reports are all perfectly conventional.

13 Q I can help refresh your memory if that would be helpful.

14 A Sure.

15 Q You took a deposition in this case, Dr. Reilly?

16 A Uh-huh.

17 Q You were under oath in that deposition?

18 A Yes.

19 Q You said the truth in that deposition?

20 A Yes.

21 Q And that deposition occurred around May 2024?

22 A Yes.

23 MR. CAMPBELL-HARRIS: Okay. And just for the record,
24 this is not for impeachment, this is just to recollect and
25 refresh the witness's memory.

1 Let's pull up the May 2024 deposition, page 241, line 24
2 to page 242, line 4.

3 BY MR. CAMPBELL-HARRIS:

4 Q My question: Dr. Reilly, you reviewed Dr. Bagley's
5 report? And you answered?

6 A I don't see it on here. Yes. I would agree with this. I
7 mean, the quote here. The data on the raw number of prisoners
8 that the doctor uses. No. I don't disagree.

9 Q Okay. And my second question was: Okay. You have no
10 reason to disagree with his opinion or his data in his report?
11 And you responded?

12 A The data on -- where's this second?

13 Q The second question?

14 A Yeah. The -- if you're talking about the data that
15 Dr. Bagley uses on prisoners by state, I would agree with my
16 comment that no one disagrees with it.

17 Q My question, Dr. Reilly, was: You have no reason to
18 disagree with his opinion or his data in his report, right?

19 A Well, I think this is a technical question. What I said
20 here is: The data on the raw number of prisoners, no one
21 disagrees. If that's what we're talking about, that kind of
22 thing, his raw numbers, no, I don't disagree.

23 Q Okay. Dr. Reilly, you understand that you are being
24 offered as an expert on statistics and race relations; is that
25 correct?

1 A Yes.

2 Q And you discuss socioeconomic disparities in your report,
3 right?

4 A Yes.

5 Q And you agree that socioeconomic disparities exist between
6 black and white Alabamians?

7 A Yes.

8 Q And I believe on direct you testified that these
9 disparities exist between black and white Alabamians and voter
10 registration rights, right?

11 A Yes. There's a current disparity in voter registration.

12 Q And disparities also exist between black and white
13 Alabamians and voter turnout rates?

14 A Yes.

15 Q And in raw numbers, you agree that black Alabamians are
16 overrepresented in Alabama's prison system?

17 A Yes. Relative to baseline, more black inmates.

18 Q In raw numbers, black Alabamians are overrepresented in
19 Alabama's prison systems, correct?

20 A Yes. They're more than you would expect given the pure
21 population.

22 Q And you would include racism in part as an explanation of
23 black Alabamians' overrepresentation in prisons?

24 A I think you have to prove that case by case.

25 Q You would always include racism in the model?

1 A I would always include racism a metric of discrimination,
2 historical, yes.

3 Q Dr. Reilly, you agree that black people disproportionately
4 live in the South compared to other regions of the United
5 States, right?

6 A Yes.

7 Q And black people specifically live in the American Black
8 Belt?

9 A Disproportionately, yes.

10 Q And you know that most black Southerners share a linear
11 connection to the enslaved people brought here before the Civil
12 War, right?

13 A Yes. In the sense that all black Americans do. Yes.
14 Black Americans are about 84 percent descended from west
15 African slaves.

16 Q You mentioned high school varsity sports on your direct;
17 is that correct?

18 A Briefly, yes.

19 Q You did not study high school varsity participation rates
20 in Alabama, right?

21 A I've seen them in passing, but, no, it's not a thing that
22 I've devoted a great deal of research time to.

23 Q It's not in your report?

24 A That is not in my report, no.

25 Q And no study on black participation in high school varsity

1 sports in Alabama is in your report either?

2 A That is not in my report, no.

3 Q Thank you.

4 You also considered disparities between black and white
5 Americans at the national level in your report, correct?

6 A Correct.

7 Q For example, you discussed on direct that the median
8 income gap between white and black people nationally, you
9 discussed that?

10 A Yes.

11 Q Dr. Reilly, did you -- Dr. Reilly, you did not consider
12 disparities in the median income gap between white and black
13 people within Alabama, correct?

14 A In my report, no. The focus was the national gap and the
15 adjustments that close it.

16 Q You also report national disparities in education between
17 black and white Americans in your report?

18 A Yes.

19 Q You reported average SAT scores of different racial groups
20 in your report?

21 A Yes.

22 Q Let's put up page 10 of DX-9.

23 Dr. Reilly, you testified on direct that these average SAT
24 scores -- these are the average SAT scores you compiled in your
25 report, right?

1 A Yes.

2 Q These average SAT scores are national averages?

3 A Yes.

4 Q You did not analyze black, white, and other ethnicities'
5 SAT scores in Alabama specifically, right?

6 A In this report, no. The SAT gap in Alabama is essentially
7 identical to the gap here.

8 Q The SAT score gap in Alabama is not in your report, right?

9 A That is not in my report. I did not break out all 50
10 states.

11 Q And the national SAT scores you reviewed show black SAT
12 test takers have the second lowest SAT average SAT score
13 relative to the other represented race or ethnic groups on this
14 chart, correct?

15 A Yes.

16 Q Let's turn to page 12 of DX-9.

17 You also reported high school graduation rates by race,
18 right?

19 A Yes.

20 Q Those graduation rates are reported here on Figure 3 of
21 your report?

22 A Yes.

23 Q These high school graduation rates are national rates?

24 A Yes.

25 Q The high school graduation rates you analyzed, these are

1 not specific to Alabama?

2 A They are not specific to Alabama. I did not break out all
3 50 states.

4 Q You also reviewed school performance racial disparities
5 here?

6 A Uh-huh. Yes.

7 Q You did not analyze school performance disparities between
8 black and white students in Alabama, right?

9 A No. I did not break out the states.

10 Q Okay. You also testified on direct about national
11 disparities in your report about black ask white high school
12 students' time spent studying?

13 A Yes.

14 Q You looked at a blog post that is not peer-reviewed in
15 support of that reporting, correct?

16 A The blog post is an online link to a Brookings Institute
17 white paper.

18 Q It is a -- sorry.

19 A I would say that is incorrect. Except in the sense that
20 anything online could be described in that fashion.

21 Q Okay. Let's put up impeachment Exhibit 1.

22 Dr. Reilly, do you see the second paragraph on this page?

23 A Yes, I do.

24 Q And can you read the first sentence?

25 A Sure. In this blog post, we will look at time spent

1 outside of school -- specifically, time spent doing homework
2 among different racial and socioeconomic groups.

3 Q Thank you. Within -- we can pull that -- within the blog
4 post, the authors attribute racial disparities and study time
5 may partially be due to the lack of access to AP courses black
6 students have, correct?

7 A Yeah. They hypothesize this. They don't test it.

8 Q Okay. Are you aware that Courts recently found schools in
9 Huntsville Madison County racially discriminated against black
10 students by failing to offer equal access to AP courses?

11 A I am not familiar with that individual situation. I would
12 have to check whether I think that's legitimate -- no.

13 Q Okay. You did not consider sentencing differences between
14 black and white Alabamians in your report, right?

15 A No.

16 Q Okay. You did not consider Alabama's parole rates at all
17 in your report?

18 A No. That wasn't one of the multiple variables I looked
19 at, no.

20 Q Okay. You mentioned -- I believe it was Nigerian
21 Americans' SAT scoring on direct examination; is that correct?

22 A Yes.

23 Q Your source for that opinion is in your report, right?

24 A Not sure. In my report, I refer to a piece that mentions
25 Nigerians as the best-educated group in the United States.

1 That's a popular press piece, but cites some research on that
2 point. I don't know whether SAT scores specifically are
3 included in that piece.

4 Q Okay. Let's pull up DX-9 again, page 13.

5 You cite footnote 22 for your claims about Nigerian
6 Americans?

7 A Yes.

8 Q It's a news article from 2008; is that correct?

9 A Yes. Illustrating how long this has been the case, yes.

10 Q Okay. It's not peer-reviewed?

11 A Well, no -- yes, no newspaper or magazine articles would
12 be peer-reviewed. The peer-reviewed data is linked in the
13 article, as I recall.

14 Q Okay. We can pull this down.

15 Your report also discussed race relations, correct?

16 A Yes.

17 Q Your reporting of race relations, I believe that's on
18 DX-9, page 24, first full sentence, right?

19 A I believe so. Page 24. First full sentence, second
20 paragraph. I suppose that's a discussion of race relations.
21 I'm talking about incarceration rates here.

22 Q I believe it's in the last sentence of this pushed-up
23 paragraph?

24 A Yes. Gallup polling on race relations.

25 Q This is Gallup data, correct?

1 A Yes. This is.

2 Q Your opinion of race relations, it relies on point from
3 2022 or 2002, correct?

4 A This citation is from 2002 pointing out that people
5 related race relations as fairly good for quite a while.

6 Q Okay. You agree that more recent polling, though, shows a
7 steep decline in Americans' belief that race relations is very
8 or somewhat good, right?

9 A Yes. I have a theoretical explanation for why that is.

10 Q Okay.

11 You also discuss police shootings of black men in your
12 report?

13 A I do.

14 Q Black Americans are shot by police at higher rates than
15 white Americans, correct, Dr. Reilly?

16 A Yes.

17 Q Okay. Let's turn to the section of your report titled,
18 Voting Electoral Partisanship By Race starting on DX-9.

19 Dr. Reilly, you have never published peer-reviewed
20 research on racially-polarized voting before, correct?

21 A Correct.

22 Q You have published no books about racially-polarized
23 voting?

24 A As -- yeah, correct.

25 Q You don't know what the Ecological Inference method is?

1 A I'd have to refresh myself on it. It's not something that
2 I research regularly.

3 Q But you understand racially-polarized voting to be people
4 of different races voting differently, right?

5 A Dramatically differently, yes.

6 Q You did not conduct any independent racially-polarized
7 voting analysis in this case?

8 A No.

9 Q And you agree that black and white people do vote
10 differently in Alabama?

11 A Yes, and in the large majority of other U.S. states.

12 Q Let's return to Figure 1 of your report, which is on page
13 6. You looked at the partisan affiliation data of black voters
14 in 16 states plus the District of Columbia from a Pew survey,
15 right?

16 A Yeah. I looked at the standard Pew data on party
17 affiliation and party lean in all states with a sizeable black
18 population.

19 Q And that data is reflected on Figure 1?

20 A That, yes.

21 Q Okay. Dr. Reilly, the point of your black partisan
22 affiliation comparison is to support your argument that if
23 Alabama's racially polarized, then so is every other large
24 state in the USA?

25 A Yes. I would say most might be more accurate. But, yes,

1 these voting figures for Alabama are very typical of those
2 nationally for African-Americans.

3 Q Now, you relied on Dr. Liu's analysis of black voting
4 patterns, right?

5 A I read Dr. Liu's analysis. This analysis here relies on
6 completely different data.

7 Q Fair. Let's got to the previous page, 5. Highlight note
8 8, please.

9 For the black voting patterns in Alabama that you looked
10 at, you did rely on Dr. Liu's analysis, correct?

11 A Yes. I looked at his report, double checked the data,
12 yes.

13 Q Okay. But you yourself, you did not analyze any voting
14 patterns, right?

15 A I'm not sure what you mean. I looked through his report.
16 I double checked the data on Alabama voting, and I broke down
17 the voting rates in each of the regions that we're looking at
18 by year. Completely independent sourcing of exit poll data or
19 something, no.

20 Q The Pew data that you are referencing in your report is
21 party affiliation data, correct, Dr. Reilly?

22 A Yes, it is.

23 Q And party affiliation is distinct from vote choice in
24 elections?

25 A Yes. The correlations only .94 or something.

1 Q And you compare the black party affiliation Pew data
2 across 16 states with the black voting patterns that Dr. Liu
3 analyzed, correct?

4 A Yes. Assuming a .9 or higher correlation, I'm pointing
5 out that a rate of 80 percent or even 90 percent black voting
6 in an Alabama district is not necessarily atypical of -- last
7 sentence, Vice-President Harris won 94 percent of black women
8 in the most recent election.

9 Q Thank you, Dr. Reilly.

10 You take no issue with Dr. Liu's findings that you rely on
11 in your report, correct?

12 A His data itself, no.

13 Q You don't report white partisan affiliation in Alabama,
14 correct?

15 A I do not. My focus was black Americans.

16 Q You don't report white partisan affiliation in any other
17 states?

18 A I do not. My focus was black partisan affiliation.

19 Q Yet the very same Pew survey you relied upon also looked
20 at white voters' partisan affiliation, correct?

21 A Yes, it did.

22 Q Would you be able to recognize that Pew survey data if you
23 saw it?

24 A Yes, I would.

25 Q Let's put up amended PX-344, page 2.

1 Dr. Reilly, I am showing you amended PX-344. Can you see
2 it on your screen?

3 A Yes, I can.

4 Q This was Exhibit 15 during your deposition in this case.
5 And it is the Pew survey data party affiliation among whites by
6 state, right?

7 A Yes.

8 Q You reviewed this data while writing your report?

9 A I focused on the African-American data, but, yes, I have
10 seen this.

11 Q Okay. Dr. Reilly, the survey shows Alabama has a higher
12 percentage of white residents affiliated with the Republican
13 party than any other state, correct?

14 A As I recall, there were two ties when we discussed this
15 during the deposition, but it's quite high.

16 Q 68 percent of white individuals in Alabama affiliate with
17 the Republican party; isn't that correct?

18 A Yes.

19 Q And isn't it true that in 31 states, Dr. Reilly, not
20 including the District of Columbia, white partisan affiliation
21 with the Republican party is under 50 percent?

22 A White -- I'd have to double check that. Just looking at
23 this, white partisan affiliation with the Republicans
24 substantially outpaces white partisan affiliation with the
25 Democrats in the large majority of states.

1 I mean, we're looking here at Georgia, Hawaii, Idaho. We
2 have got a tie in Illinois, but Indiana, 47 to 34. Again,
3 Mr. Trump won I believe 59 percent of whites. So...

4 Q Doesn't quite answer my question, Dr. Reilly.

5 Is it true, again, that in 31 states, not including the
6 District of Columbia, white partisan affiliation with the
7 Republican party is under 50 percent?

8 A I'd have to check. And I would have to compare that to
9 Democratic party affiliation. Independents are a category
10 here. Very briefly, if we look at Alaska, 47 percent
11 Republican, but only 30 percent Democrat.

12 Q We can walk through the states, Dr. Reilly. Let's go to
13 Arizona. Can you highlight that?

14 In Arizona, the percentage of white voters associated with
15 the Republican party is 49 percent?

16 A Correct. As versus 34 percent affiliated with the
17 Democrats.

18 Q Okay. And in California, the percentage of white
19 individuals associated with the Republican party is 41 percent?

20 A Looks like we skipped Arkansas.

21 Yes. It is -- that is correct.

22 Q Okay. And in Colorado, the percentage of white
23 individuals associated with the Republican party, it's
24 47 percent?

25 A Yes. 47 percent versus 40 percent for the Democrats and

1 one of the more liberal states.

2 Q Okay. And --

3 A If I could make one comment. The question would be white
4 as versus African -- sorry -- the question would be white as
5 versus African-American Democratic party voting. In most of
6 these states, the black Democratic rate of affiliation given a
7 sizeable enough black population would be, say, 80 percent.

8 Q Okay, Dr. Reilly. In Florida, the percentage of white
9 individuals associated with the Republican party is 48 percent?

10 A Correct, given my caveat so far, yes.

11 Q Okay. Do you agree yet that there are -- it's true in 31
12 states, again not including the District of Columbia, white
13 partisan affiliation with the Republican party is under
14 50 percent?

15 A Sure. I will take that as a given, given the 48 percent
16 to 37 percent would be under 50 percent, sure.

17 Q Okay. And in 12 states, white partisan affiliation with
18 the Republican party is 40 percent or less, correct?

19 A Quite possibly. There could be 12 states where there are
20 more white Democrats than Republicans. Although, I am not sure
21 those two things are identical.

22 Q We can go through the states if we want to verify.

23 A I will accept 12. There could be a Democratic majority.

24 Q Okay. You agree that some minority voters, Dr. Reilly,
25 perceive the Republican party as racist, correct?

1 A Perceive, yes.

2 Q And you agree that many black voters also perceive the
3 Republican party as racist?

4 A Perceive, yes.

5 Q And you believe that black people vote based on their
6 belief in a supportive state?

7 A I think many things motivate the American voter.

8 Q Including that black voters vote based on their belief in
9 the supportive state?

10 A By supportive state, do you mean government a large --
11 more social Democratic government?

12 Q These are your words, Dr. Reilly.

13 Let's pull up your deposition transcript from this case,
14 the May 2024 transcript, page 304, lines 8 through 12 -- oh.
15 305, 8 through 12.

16 My question: Okay. And like black voters also perceive
17 the Republican party as racist? What was your answer?

18 A Yes. And that's one of many reasons, okay. Including
19 support for a kind of supportive state, if you will, that
20 people vote as they do.

21 Q Thank you, Dr. Reilly.

22 You've also tweeted that the primary issues holding back
23 the GOP statistically are abortion and the perceptions of
24 racism, correct?

25 A In perceptive terms, that's quite possible.

1 Q And in your report, you do not examine black Alabamians'
2 level of support for abortion?

3 A I do not.

4 Q Dr. Reilly, in your report, you did not examine white
5 Alabamians' level of support for abortion, correct?

6 A No.

7 Q Dr. Reilly, part of your report discusses what you call
8 tertiary variables that you believe contribute to racial
9 disparities, correct?

10 A Yes. It does.

11 Q And one of the variables you name is median age, right?

12 A Yes, correct.

13 Q And you report that black Alabamians have a younger median
14 age than white Alabamians, right?

15 A That is correct.

16 Q And you report that on a national level, younger voters
17 are less likely to vote, correct?

18 A Yes, I report and link the data.

19 Q You did not analyze voting patterns by age in Alabama
20 specifically, correct?

21 A No. I did not break out the states for many of these
22 analyses.

23 Q Did you not examine racial voting patterns by age either
24 nationally or in Alabama?

25 A Racial voting patterns by age nationally are cited in the

1 report. That was one of the footnotes we brought up during
2 direct, as I recall. Year-by-year patterns of voting for each
3 age clade, 60 years old, that sort of thing.

4 Q You agree that low socioeconomic status is also correlated
5 with lower political participation?

6 A Yes.

7 Q You also testified that incarceration rates have a massive
8 impact on political participation, correct?

9 A Yes.

10 Q And you note in your report citing Dr. Burch that a
11 significantly higher percentage of black Alabamians and white
12 Alabamians have felony convictions that prevent them from
13 registering to vote?

14 A Yes. I think we may both be citing the census, but, yes,
15 14.7 percent.

16 Q Thank you.

17 Dr. Reilly, you have also stated that black Alabamians
18 have the lowest average IQ among black residents of any state,
19 correct?

20 A What? I'm not sure that's correct. That could be part of
21 a discussion of IQ data nationally or something.

22 Q Dr. Reilly, you're on social media, correct?

23 A Yes.

24 Q Your Twitter username is wil_da_beast630, correct?

25 A Yes. It's an old neighborhood reference.

1 Q Let's put up PX-347.

2 Dr. Reilly, which is your tweet 9:01:00 p.m.,
3 November 20th, 2019?

4 A Oh, yes. This is a -- this is a process called NAEP
5 norming. You can look at national scores on educational tests.
6 It's entirely possible that in one year, African-Americans in
7 Alabama posted the lowest black NAEP norm score. That would
8 not be the lowest IQ score in the country, by the way.

9 Q But you do say the lowest average black IQ was Alabama 86,
10 correct?

11 A Yes. I believe Alabama was also a second from the bottom
12 along whites. And these are tested IQs. I believe these can
13 change quite dramatically.

14 Q Okay. We can pull that down.

15 Dr. Reilly, you have also tweeted that many/most people
16 are banal idiots; is that correct?

17 A I think that is correct as a statement about humanity
18 though God loves us all.

19 Q You have also tweeted that humans still have the exact
20 same taste and drives that we did when we were raping and
21 eating Neanderthals?

22 A Yes. Although we control them rather better.

23 Q You have tweeted people in the hood in particular
24 understand these tastes and drives?

25 A I think that the less sort of formal training in gentleese

1 I believe was the old term. You have the more you might
2 respond to aggression with violence or something. Again,
3 that's not genetic or anything like this.

4 Q Dr. Reilly, I don't believe you answered my question.
5 You've tweeted that people in the hood in particular understand
6 these tastes and drives, correct?

7 A Sure. Although all people do. That's not a --
8 particularly a comment about a permanent characteristic of poor
9 people.

10 Q You have also testified, Dr. Reilly, that every prominent
11 Black Lives Matter martyr was a scumbag criminal?

12 A It's entirely possible I said that following another clash
13 with the police that ended in an unfortunate death.

14 Q But --

15 A You pay a lot of attention to my social media here.

16 Q But you'd rank, Dr. Reilly -- you would rank Trayvon
17 Martin at least above the scumbag criminal category, correct?

18 A Well, Twitter isn't peer-reviewed research. I mean, I'd
19 have to -- in his case, yes, above. But I mean, I would have
20 to go through all -- I'd have to go through say Michael Brown
21 or Jacob Blake or rapist went back to his victims' home. I
22 would have to check them all out really to see which ones I put
23 in that category and which ones I don't if I was writing an
24 article rather than a tweet.

25 Q Dr. Reilly, you would agree with me that Breonna Taylor

1 shouldn't have been killed in her home by police, right?

2 A I think it's an unfortunate and complex case. The police
3 in that case went, as I understand it, to the correct location.
4 Breonna Taylor's boyfriend believed that -- as I understand it,
5 they were affiliated with her previous partner, who was
6 apparently involved in quote unquote the drug game and began
7 firing shots at the police. A person I know casually was shot
8 in the leg nearly disabled. I think it's very unfortunate she
9 was killed.

10 Q Would you agree that she should not have been killed?

11 A I would have to look through all the facts of the gun
12 battle on both sides to come to a legal conclusion rather than
13 tweeting or Facebooking.

14 Q Okay, Dr. Reilly, and you would agree that the 12-year-old
15 Tamir Rice shouldn't have been shot to death by police on a
16 playground?

17 MR. DAVIS: Your Honor, I'm going to object. We're
18 going through this a little bit, but I don't see what
19 Dr. Reilly's opinion about this have to do with the reports and
20 the opinions that he has issued in this case.

21 MR. CAMPBELL-HARRIS: May I respond?

22 THE COURT: You may.

23 MR. CAMPBELL: It goes to impeachment, Your Honor.

24 The witness testified to this not only in his deposition, but
25 he also discussed police shootings as a portion of his analysis

1 of the socioeconomic disparities in his report, and I argue,
2 Your Honor, that it goes to his views about the reliability and
3 showing the bias he has in his reporting.

4 MR. DAVIS: He testified about the number of police
5 shootings and whether societal perceptions were correct and
6 were supported by the data. He doesn't testify and offer any
7 opinions in this case about the individuals who were the
8 victims of those circumstances.

9 MR. CAMPBELL-HARRIS: May I respond again, Your Honor?
10 He has also been tendered as a witness for his views on race
11 relations. I think this goes directly to that point. And it's
12 my last question on the topic.

13 THE COURT: I was about to say, help me understand
14 where you are. I think it -- I can afford some latitude on
15 impeachment here, but I think you do need to be coming to your
16 last question on the point.

17 MR. CAMPBELL-HARRIS: Thank you, Your Honor.

18 THE WITNESS: Tamir Rice, I would have to look through
19 all the facts of the case. As I understand the tragic
20 situation, young man -- as I also understand, he either had a
21 weapon or is pantomiming using one. The police were called by
22 an African-American neighbor. To really comment on these cases
23 at the level of a courtroom rather than the Twitter account
24 we've been discussing, I'd have to review it.

25

1 BY MR. CAMPBELL-HARRIS:

2 Q My final question: You yourself have made the argument,
3 Dr. Reilly, that some of these people, these BLM martyrs as you
4 call them, they should have not been killed?

5 A Well, it sounds like you found two conflicting tweets
6 there.

7 I think there are situations where the police are involved
8 in a conflict or shooting where that violence was unmerited,
9 yeah. Officers should have been fired or jailed, yes.

10 Q Okay.

11 MR. HARRIS: One moment to confer with counsel, Your
12 Honor.

13 THE COURT: You may.

14 MR. CAMPBELL-HARRIS: No more questions, Your Honor.

15 THE COURT: Mr. Davis, is there any redirect?

16 MR. DAVIS: Brief.

17 REDIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q So, Dr. Reilly, you said that you had no reason you were
20 aware of to disagree with sources and data that were presented
21 by some of plaintiffs' experts, such as Dr. Liu, Dr. Bagley,
22 and Dr. Burch, correct?

23 A The core census data, no, I don't dispute that.

24 Q Does that mean that you necessarily agree with all the
25 conclusions that they drew from reviewing that data?

1 A Oh, of course not. No.

2 Q You were asked about your citations in terms of the
3 Brookings Institute and study time and the educational
4 attainment of Nigerian Americans, were you not?

5 A I was, yes.

6 Q During your cross-examination, were you presented with any
7 contrary data that would change your position?

8 A No. The performance of Nigerian Americans and black
9 immigrants in general in the USA is undisputed. That one
10 sentence, there is a census project called the American
11 Community Survey that breaks each group down by income,
12 sometimes at level. It's something that you can check online.
13 All of the experts are aware of it.

14 Q When you have reviewed studies of IQ testing and you
15 report that somebody received a certain IQ scores on average
16 according to some report?

17 A Uh-huh.

18 Q Well, tell me what those tests are. Are those tests that
19 are taken regularly that can change from year to year?

20 A Yes. IQ scores are malleable. The IQ of the western
21 world has increased by about 18.2 points since World War II.
22 That's called the Flynn effect. I am not a hereditarian on
23 these issues.

24 Q Gotcha.

25 MR. DAVIS: And Your Honor sustained an objection, I

1 believe, during direct examination about his review of data in
2 Alabama. I would say the questions on the IQ testing and his
3 reporting in Alabama from 2019 opened the door for me to ask
4 the following question. I'm just alerting in case counsel
5 wishes to raise an objection.

6 BY MR. DAVIS:

7 Since 2019, have you had reason to review any data
8 showing performance by white and black Alabamians?

9 MR. CAMPBELL-HARRIS: Object, Your Honor. This is not
10 -- this is beyond the scope of his report.

11 THE WITNESS: Well, Mr. Davis isn't arguing it's in
12 the scope of his report. He's arguing that you opened the
13 door.

14 MR. CAMPBELL-HARRIS: Okay.

15 THE WITNESS: You're asking if since 2019 I've looked
16 at SAT scores or something like that in Alabama?

17 BY MR. DAVIS:

18 Q Yes.

19 A Of course. Hundreds of time.

20 Q What did it show?

21 A The gap in terms of standardized testing performance in
22 Alabama is a bit smaller than it is nationally. Bear with me
23 as I try to pull these numbers up. But as I recall, the white
24 mean on the SAT was either an 1118 or 1162. I believe 1118.
25 The black mean was a 994 in state, and the Asian mean was a

1 1294. All of these are very comparable to national figures,
2 but your gap is a bit smaller.

3 MR. CAMPBELL-HARRIS: Your Honor, I am going to move
4 to strike because, again, we discussed on cross IQ scores of
5 black Alabamians, and he just testified to SAT scores. Those
6 are two different topics. And the SAT scores in Alabama again
7 is something that Dr. Reilly did not review in his reporting.

8 MR. DAVIS: Let me try to ask a question of Dr. Reilly
9 to see if there's a link between those two. If there's not, I
10 will withdraw.

11 THE COURT: All right.

12 BY MR. DAVIS:

13 Q Dr. Reilly, would a report on SAT scores performance,
14 would it likely correlate in your experience with the reports
15 of IQ testing on the same population?

16 A Yes. That's not disputed. All quote unquote -- and I a
17 quote unquote intentionally -- intelligence tests correlate at
18 .87 or higher. The SAT, the ASVAB our troops used, what's
19 called the Wechsler IQ test, so on down the line.

20 MR. CAMPBELL-HARRIS: We withdraw our objection, Your
21 Honor.

22 MR. ROSS: Oh, no, no, no.

23 THE COURT: Why don't you take a minute to confer?

24 MR. CAMPBELL-HARRIS: We don't withdraw the objection.
25 We're just not objecting again, Your Honor.

1 THE COURT: Understood. Thank you.

2 All right. I will allow it and deny the motion to strike
3 but without prejudice to arguments you may make about what
4 weight it ought to be assigned.

5 BY MR. DAVIS:

6 Q One last question, Dr. Reilly -- well, a couple. One last
7 line.

8 When you talk about the hood, do you mean that in a
9 disparaging way?

10 A No. I'm from the hood by most definitions. A lower
11 income formerly red line neighborhood. I also don't mean it in
12 an entirely racial sense. In Kentucky, we often say, "the hood
13 and the holler" to refer to areas where lower income people
14 experiencing struggle are a majority or plurality of the
15 population.

16 MR. DAVIS: No further questions.

17 THE COURT: Thank you. Is there any reason I may not
18 excuse Dr. Reilly?

19 MR. CAMPBELL-HARRIS: None from the plaintiffs, Your
20 Honor.

21 THE COURT: All right. Dr. Reilly, thank you for
22 being with us this morning. You're excused.

23 THE WITNESS: Thank you, Your Honor.

24 (Witness excused.)

25 MR. DAVIS: Your Honor, we have not been able to

1 communicate among -- within the team about what's coming next.

2 And if we are rely -- are you ready? We are ready.

3 THE COURT: I think Ms. Messick is ready.

4 MR. DAVIS: I think she is more than ready. I am
5 going to sit down and shut up.

6 MS. MESSICK: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MS. MESSICK: Misty Messick for the Secretary of
9 State, and the Secretary calls Valerie Branyon.

10 THE COURT: All right.

11 VALERIE BRANYON

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

14 THE CLERK: If you will be seated. Please speak
15 loudly and clearly into the microphone. You can adjust it as
16 you need.

17 THE WITNESS: Okay.

18 THE CLERK: State your name and spell it for the court
19 record.

20 THE WITNESS: My name is Valerie Branyon, first name
21 V-A-L-E-R-I-E; last name Branyon, B-R-A-N-Y-O-N.

22 DIRECT EXAMINATION

23 BY MS. MESSICK:

24 Q Good morning, Ms. Branyon. What county and state do you
25 live in?

1 A I live in Fayette, Alabama.

2 Q Have you lived in other places?

3 A Yes, I have.

4 Q Where else have you lived?

5 A I've lived in Florida and three different cities in
6 Florida and Tuscaloosa and Montgomery.

7 Q Do you have a college degree?

8 A Yes, I do.

9 Q From where?

10 A The University of Alabama.

11 Q What is your degree in?

12 A A bachelor of science in civil engineering.

13 Q And when did you get that degree?

14 A I got it in December of 1987.

15 Q What do you do for work?

16 A I work with the Alabama Department of Transportation. I'm
17 over the materials section. And basically, in materials, we
18 test any materials that go into the construction of roadways
19 and bridges. And we also design the roadway build ups.

20 Q And how long have you been with the Alabama Department of
21 Transportation?

22 A Since January of 1998.

23 Q For the record, would you please tell me your race?

24 A African-American.

25 Q Thank you. You recently ran for office; is that correct?

1 A That's correct.

2 Q What office did you run for?

3 A I ran for the Fayette County District 6 Commissioner
4 position.

5 Q So the County Commission District 6?

6 A Correct.

7 Q Who did you run against?

8 A I ran against this gentleman named John Underwood.

9 Q And was the seat open?

10 A No. He was the incumbent.

11 Q Mr. Underwood was?

12 A Mr. Underwood was.

13 Q Approximately, how long has Mr. Underwood been in office?

14 A Well, I think it's -- I know at least 16 years, maybe 20,
15 24, somewhere in there.

16 Q What race is Mr. Underwood?

17 A He's African-American.

18 Q What was the result of the election?

19 A I won.

20 Q Congratulations.

21 A Thank you.

22 Q When do you take office?

23 A I took office last Wednesday a few days ago.

24 Q Did you run with a political party?

25 A Yes, I did.

1 Q Which party was that?

2 A The Republican party.

3 Q Was Mr. Underwood a Democratic candidate?

4 A Yes. He was the Democratic candidate.

5 Q Have you always been a Republican?

6 A No, I haven't.

7 Q What brought you to the Republican party?

8 A Actually, a gentleman I knew, and I think I'm kind of kin
9 to him, his name is Bill McCollum. He ran for sheriff in
10 Fayette County years ago.

11 And my mother and I wanted to support him, and he was
12 running on the Republican ticket, if they run on tickets, I
13 believe. And we started going to the Republican meetings along
14 with him and his wife.

15 Q And what race is Mr. McCollum?

16 A He's an African-American.

17 Q Is there anything other than Mr. McCollum that kept you
18 with the Republican party?

19 A Yes. There are other reasons I stay with the Republican
20 party, and I got more serious about being Republican later on
21 for those reasons.

22 Q And can you tell me what some of those reasons are?

23 A Yes. The pro life. I don't believe in killing little
24 babies. And also the gay rights-type things, the gay marriage,
25 and all of that.

1 Q Are your political views at all influenced by your
2 religion?

3 A Yes.

4 Q Have you run for Fayette County Commission District 6
5 before?

6 A Yes. I ran twice before. And the first time, I didn't
7 really complete the race. But in 2020, I ran to the end.

8 Q And what has made you focus on this seat?

9 A The District 6 county -- because I couldn't think of
10 things that the present commissioner was really doing for the
11 people in District 6, and I felt I could fight to get more
12 things done for them.

13 Q Am I right to assume that all of the newly-elected
14 commissioners just took office?

15 A Yes.

16 Q Okay.

17 A We all took office last Wednesday.

18 Q Wednesday of last week or this week?

19 A Of this week. I'm sorry.

20 Q Okay. So the last week before the new commissioners took
21 office.

22 Can you tell me the race of the people who were on the
23 county commission?

24 A Yes. There are six county commissioners in Fayette
25 County. Five of the commissioners are white, and one

1 commissioner was African-American.

2 Q Fayette County Commission District 6, can you tell me what
3 the population is like?

4 A In District 6, I believe there's somewhere around -- well,
5 I think there were 2,000 and something on the list that I had,
6 but I'm not sure it's 2,000 people there, because it just when
7 I was door knocking, it just didn't seem like 2,000.

8 Q What about the racial makeup of the district?

9 A At this point, I think it's 50/50 somewhat
10 African-American and white. It's more of an even split, I
11 believe.

12 Q Is that true historically, as well?

13 A No. Historically, it was a majority African-Americans.

14 Q Is that happenstance?

15 A What did you mean by happen -- it like --

16 Q Is this any reason that that district was previously
17 majority African-American?

18 A Yes. They drew the district so that it would be a
19 majority African-American.

20 Q Do you know what the general partisan lean of the district
21 is?

22 A Right now, I would say it's probably 50/50 Republican and
23 Democrat.

24 Q Did black candidates only win in black districts in
25 Fayette County?

1 A No. Black candidates have won in other districts in
2 Fayette County.

3 Q Can you tell me about those?

4 A Yes. A few years back, I believe it was the 2020
5 election. I'm not sure, though. But an African-American man
6 won in another district that was I would say pure white. He
7 won the position on the board of education. And there's some
8 others within the city council that have also won in another
9 district.

10 Q Okay. Tell me about that person or people.

11 A Okay. The way the city's divided up, the district I'm in
12 within the city limits, there's a majority African-American.
13 And so an African-American won there.

14 And then there's another district that's majority white.
15 An African-American lady won in that district also.

16 Q Great. Thank you.

17 Let's talk about your campaign experiences with this most
18 recent campaign.

19 Can you tell me some of the things that you did to get the
20 word out?

21 A Yes. I had political signs. I knocked on doors. I had
22 five weeks of my personal ad was running in the local
23 newspaper. There was a week before and then the Monday and
24 Tuesday of the election we had radio ads. There was three
25 mailers that was sent out, and there was two robocalls and a

1 text message went out. And also somebody told me there was
2 something on Facebook also.

3 Q Thank you.

4 Can you tell me about your experiences with the door
5 knocking?

6 A Well, it's hard for me, but I would just knock on
7 everybody's doors on the list in my district and introduce
8 myself and tell them something that I had accomplished as a
9 citizen. And I would let them know that I was a hard worker.
10 And I think that was basically it.

11 Q Okay. Can you help quantify for me how much door knocking
12 you did, maybe tell me how many hours or how many people?

13 A I door knocked just about everybody in the district except
14 for one other voting I guess precinct. I wasn't able to door
15 knock hardly any in that precinct. But pretty much everybody
16 else in the rest of them.

17 For the city limits, I door knocked most all the houses,
18 but there was one apartment complex I wasn't able to get to.
19 And then I door knocked all the houses in this community called
20 Canaan and all the houses in a community called Covin.

21 And then there's another area that's on 159. I guess
22 they're at the Palestine precinct. I door knocked their houses
23 also.

24 Q Did you have any help with the door knocking?

25 A Yes. A lady volunteered in the beginning to help me, so I

1 gave her 50 houses, I believe in that one District that I
2 wasn't able to knock doors.

3 I did knock a few doors, but I wasn't able to finish in
4 that district, so she had helped me a little bit there.

5 Q What was her -- what is her race?

6 A She's a white lady.

7 Q I believe you mentioned like yard signs. Can you tell me
8 about that?

9 A Yeah. I had yard signs at the intersections of roadways
10 and along different roadways. Several people allowed me to put
11 yard signs in their yards. So I had a few yard signs in
12 different yards also.

13 Q You mentioned newspaper ads. So did you or your campaign
14 run an ad?

15 A Yes. I ran one I guess you could call it myself for my
16 campaign. It was a five weeks that I ran that ad. And it was
17 personally about me and stuff.

18 Q Did that ad include a picture?

19 A Yes. It included a picture of myself. I had the
20 Republican symbol on it. I told a little bit about my
21 background and three things that I stood for.

22 Q Who paid for that ad?

23 A The local Republican party paid for it.

24 Q Were there any other newspaper ads that involved your
25 campaign?

1 A Yes. There was the local Republican party ran a large ad
2 to pretty much say what they, the Republican party stood for.
3 And it had every candidate, our local candidate's name on that
4 ad. And they ran it two weeks.

5 Q Thank you. You mentioned radio ads. What can you tell me
6 about that?

7 A Yes. The radio ad pretty much, it was ran for the week
8 before and the Monday before the election and the Tuesday of
9 the election, and I pretty much introduced myself. It was me
10 speaking, and I told a little bit about what I would do and
11 that type thing.

12 Q And who paid for that ad?

13 A The local Republican party paid for that ad, also.

14 Q How did the local Republican party come to pay for the
15 newspaper ad and the radio ads?

16 A Someone suggested that I present like an itemized budget
17 of what I would like for the local Republican party to pay for.
18 And that's what I did. I pretty much -- I got the pricing on
19 the newspaper ads, and I pretty much wrote out like the price
20 and how many weeks I wanted them to run the ad, and how much
21 that would cost.

22 And the -- I got the pricing on the radio ads, which was
23 run on two radio stations. I itemized it and got the price for
24 that. And I gave them the itemized copy of what all of that
25 would cost.

1 Q And what was their response?

2 A They voted and decided to pay for it.

3 Q You were deposed over the summer. And at that time, you
4 said you were a little shy about asking for money. So what
5 changed?

6 A What changed was a gentleman that used to be over the
7 local Republican party, he had planned on, I guess, investing a
8 lot of money in my election because I wasn't far from winning
9 the time before, and he felt with a little help I could win.
10 But for some reason, he had to resign or he ended up resigning
11 before I started campaigning. So he just talked to me and told
12 me what I should do. And he also invested a little bit of his
13 own money in my campaign also.

14 Q And what race is he?

15 A He was a white.

16 Q You mentioned mailers. Can you tell me about the mailers?

17 A Yeah. Three mailers was sent out. I didn't really ask
18 anybody to do that for me, but the -- I guess the gentleman
19 that was over the Republican party, his name is John, he had a
20 lot of connections with the state Republican party and our
21 representatives and stuff like that. So I don't know if they
22 paid for it because of him or what reason, but the state
23 Republican party paid for three mailers that were sent out.

24 Q Thank you. Can you describe those mailers?

25 A Yes. The first two mailers pretty much had pictures of me

1 and two young ladies I knew. And it was stuff on both sides of
2 the mailers. And it told about me and what I stood for, and
3 they seemed to know some things that I hadn't even told them,
4 so I was -- I was impressed with some of the things they said.

5 Q What about the third mailer?

6 A The third mailer was more about what the Republican party
7 stood for. But it still said vote for Valerie Branyon on it.

8 Q Did it mention other candidates, as well?

9 A No. It just mentioned myself.

10 Q You said that you had robocalls. What can you tell me
11 about those?

12 A Okay. One robocall was by a local African-American
13 minister. The other robocall was done by a U.S. representative
14 for the area, Mr. -- Representative Robert Aderholt.

15 Q What is the name of the local African-American minister?

16 A His name is Floyd Rogers.

17 Q Has Mr. Rogers ever run for office?

18 A Yes, he has.

19 Q What do you know about that?

20 A Well, he ran for two positions. He ran for the city
21 council. I believe it was in 2020. And he also ran for the
22 state representative position. So that's pretty much what he's
23 run for.

24 Q Did he win either one of those elections?

25 A No, he didn't win either one of them, but for the city

1 council, he came really, really close. I believe it was a vote
2 or so that he lost by.

3 Q What is his race?

4 A African-American.

5 Q I'm sorry. You did tell me that.

6 What party does he associate with or run with?

7 A He -- at present, he associates with the Republican party
8 also.

9 Q You mentioned text messages or message. What did you tell
10 me about that?

11 A Well, I don't know who sent them out. I just saw a text
12 message up here on my phone. And it was about Bill McCollum
13 who ran for the local board of education, and it was also about
14 myself. And asked -- I believe it asked that people vote for
15 me, too, us or whatever.

16 Q Was it one message or two messages?

17 A It was one message, and the top paragraph was about Bill.
18 The second paragraph was about me.

19 Q And is that the Bill McCollum you mentioned earlier who
20 had run for sheriff?

21 A Yes.

22 Q Did you receive any other support or help from the state
23 Republican party with your campaign this year?

24 A Well, I believe it was them that sent out like a Facebook
25 thing also. I didn't get it personally, but Dr. John Killian

1 did, and he sent it to me. And I'm feeling like the text
2 message, they were responsible for that also.

3 Q Is John Killian the John who was recently the leader of
4 the Fayette County Republican party?

5 A Yes. He's the gentleman that was the chairman of the
6 Fayette Republican party who resigned.

7 Q At your deposition, you talked about a training
8 opportunity. Can you tell me about that?

9 A Yes. They also -- they invited me to Montgomery prior to
10 the election to train me about how to run for an office and
11 win.

12 Q And when you say "they," who is they?

13 A Someone from the state Republican party. I can't remember
14 his name, though.

15 Q That's okay. Thank you.

16 You previously ran for this Fayette County Commission
17 District 6 in 2020, as well; is that right?

18 A That's right.

19 Q And did you have a primary that year?

20 A Yes. I had a primary that year.

21 Q And who were you up against?

22 A I'm sorry. I don't know his name. I know he's from the
23 Newton family. He lives down the road from me, but I don't
24 know his name exactly, but he was running against me. I do
25 know that he was probably a sheriff's deputy or something like

1 that, or on the police force, but I think it was on the
2 sheriff's deputy.

3 Q And this was in the Republican primary?

4 A Yes. This is a Republican primary.

5 Q And what race was your opponent in the primary?

6 A He was a white gentleman.

7 Q And who won the primary?

8 A I won.

9 Q And who did you run against in the general election?

10 A I ran against John Underwood in the general election.

11 Q And you told us earlier that he was the incumbent this
12 time, so I assume he won that race?

13 A Yes. He was the incumbent that time in 2020 also. But,
14 yes, he won that race. I lost by I believe 31 votes.

15 Q Can you tell us what you remember about your campaign
16 experiences in 2020?

17 A In 2020, it was mostly me door knocking. I usually have
18 someone come with me. And there was a newspaper ad and signs.

19 Q Was the newspaper ad like the one that you ran for
20 yourself this time or like --

21 A I think it was pretty much the same ad. I just -- this
22 time around, I put the Republican symbol on it also or logo, or
23 whatever.

24 Q Did you remember how much time you spent door knocking in
25 2020?

1 A I'm pretty sure I got every house in 2020. I door knocked
2 every house.

3 Q Did anybody encourage you to run for Fayette County
4 Commission District 6 in 2020?

5 A Yes. A gentleman named Joe Acker, and Bill McCollum
6 encouraged me to run in 2020.

7 Q Tell me more about Joe Acker.

8 A He was at one point the leader of the Republican party.
9 He's a pretty wealthy man in Fayette County. He was also on
10 the county commission at that time in 2020. I think he had won
11 maybe in 2016 or something like that.

12 Q When you say he was a leader in the Republican party, do
13 you mean at the county level or the state level?

14 A At the county level.

15 Q And he was on the county commission at the time that he
16 encouraged you to run against John Underwood?

17 A Yes.

18 Q Did Mr. Acker do anything to try to support your
19 candidacy?

20 A Actually, he was going to pay for the whole thing, but I
21 told him I would fund it myself.

22 Q But he offered to pay for it?

23 A He did offer.

24 Q Was there -- in campaigning in 2020, did you identify a
25 need in the community?

1 A Yes. The same need that I saw in 2024. I didn't feel
2 like anything was being done for the citizens of District 6, so
3 I wanted to try to do something myself.

4 Q What can you tell me about public transportation in
5 Fayette County?

6 A Okay. There was no public transportation in Fayette
7 County. And that was -- that was something I realized we
8 needed in 2020 when I was door knocking. I saw a lot of people
9 that they couldn't get to the store to get their food. People
10 would charge them a tremendous amount of money.

11 And then they also couldn't get to the doctor to their
12 medical appointments. And I was a little upset about that,
13 that in this age, we had citizens in Fayette County that
14 couldn't, you know, see about their medical needs because they
15 didn't have a ride.

16 Q And when you say people would charge them a lot of money,
17 what do you mean?

18 A Well, okay. Some of the people were -- lived in the
19 projects, and there's a Walmart in Fayette that's north of town
20 and the projects are kind of on the south end of town. And
21 Fayette is not a big town.

22 They would charge them like \$25 for a trip to Walmart so
23 that they could purchase their food.

24 Q Having identified that need, have you tried to do anything
25 about it?

1 A Yes. That was one thing that I wanted to do if I had made
2 it in office in 2020. But since I didn't make it in office, I
3 tried to work with John Underwood to make it happen on a
4 county-wide basis, but the other county commissioners, they
5 didn't like it too well, so they voted it down. There was two
6 commissioners that supported it -- John and Mr. Joe Acker.

7 But the other two commissioners kind of blind sided them
8 and voted it down. So at that point, I went to the city. And
9 the city had different committees that had citizens on it. And
10 I ended up being one of the citizens on that committee, and I
11 kind of fought to get the bus system going in the city of
12 Fayette.

13 Q How did you end up on that committee?

14 A Well, they had a ten-year plan of where they wanted to see
15 Fayette. And public transportation was one of those items on
16 the plan. It was basically something that the public wanted,
17 so they wanted to try to see if they could get it going
18 themselves. So they developed the committee to work on it.

19 Q And how did you end up on that committee?

20 A Oh, I'm sorry.

21 Somebody asked me to come to one of the city council
22 meetings, and they -- at that council meeting, they pretty much
23 told about the different committees. And they asked for
24 volunteers to serve on that committee. And I was one of the
25 volunteers that served.

1 Pretty much the guy that was over the ACE program at the
2 time knew me, and he, you know, encouraged me to be on the
3 committee and stuff. So that's kind of how I got on the
4 committee.

5 And I worked with the ACE coordinator and the mayor, and
6 there was another councilman that was part of the committee.

7 There was another gentleman that started out on that bus
8 transportation committee, but he kind of fell off. So I ended
9 up being the only citizen on the committee at that time.

10 Q And has the city made any progress on getting public
11 transportation?

12 A Yes. We now have a city-wide bus system that seems to be
13 working pretty well.

14 Q Did your 2020 campaign open any doors for you?

15 A Yes. It did. I guess the mayor -- I believe he ran for
16 election that same year, but he took notice of me, and he ended
17 up appointing me to a C3 committee, which was a -- it's called
18 something else, Northwest Alabama something. But it's
19 responsible for bringing industry to the area. And it's --
20 it's a makeup of three counties -- Fayette, Lamar, and Marion
21 County.

22 So I was kind of happy he appointed me to that committee.
23 And it opened a lot of doors for me.

24 Q And I'm sorry. Who appointed you?

25 A The mayor of Fayette.

1 Q What race is he?

2 A He's white. And I was also able to serve on a few other
3 committees also.

4 Q What is the Fayette County leadership training?

5 A Oh, okay. It's a training that they do for citizens in
6 Fayette County. Basically, they like for the company that you
7 work for to sponsor you, to I guess attend the Fayette -- the
8 training. And it lasts over a period of several months.

9 They meet once a month, and they pretty much tell you
10 about city government and different things, a little bit about
11 industry. We went to the water department and the sewer
12 department, went to Montgomery to the Legislature and got to
13 sit in on the House and Senate while they were meeting. And
14 it's just to help I guess get you in tune with what goes on in
15 local government.

16 And my workplace wouldn't sponsor me, so I was sponsored
17 by someone on the -- the ACE coordinator actually sponsored me
18 to attend that.

19 Q Who is that ACE coordinator?

20 A His name was -- at that time -- they have had two in a
21 short time period, but at the time, Floyd Rogers was the ACE
22 coordinator.

23 Q Do you know why your employer wouldn't sponsor you?

24 A I guess I had asked my boss, and he thought it was a good
25 thing. They had to get approval from the central office in

1 Montgomery, and they act like they would support me in it. But
2 in the end, they never did like give me a concrete answer.

3 So when that didn't happen for me, at that point, Floyd
4 Rogers, he wanted me to really attend the training, so he
5 sponsored me himself.

6 Q Thank you.

7 You ran for County Commission District 6 one time before
8 2020; isn't that right?

9 A That's correct.

10 Q And you indicated earlier you didn't finish that race.

11 Can you just tell me briefly why not?

12 A Yes. I didn't finish it because of the Hatch Act. The
13 probate judge in Fayette, he went -- I worked out of Tuscaloosa
14 at that point. But he went to visit my office to let her know
15 -- my boss actually -- to let her know that I was running for a
16 partisan race, a bipartisan race, and that it was illegal for
17 me to do so because of the Hatch Act.

18 Pretty much at that time, the Hatch Act covered federal
19 employees, along with any entity that received federal dollars.
20 And the Alabama Department of Transportation receives federal
21 funding, so it was pretty much, I couldn't run.

22 Q Is it your understanding that the law has changed?

23 A Yes. The law has changed now. Federal employees still
24 can't run for an office. But if you work for another entity,
25 you can, if that entity receives federal dollars.

1 Q Did you receive any support from the Fayette County
2 Republican party before that campaign was suspended?

3 A Yes. They -- I went to training during that time too. It
4 was in Jasper that time. And so the training is something that
5 they did support me on.

6 Q Is there anything else that you can think of that they did
7 for you at that time?

8 A They also ran a newspaper ad at that time to tell about
9 the candidates that were running for office that year.

10 Q Are you registered to vote in Alabama?

11 A Yes, I am.

12 Q Do you recall having any problems registering to vote in
13 Alabama?

14 A No, ma'am.

15 Q Do you recall having any problems updating your voter
16 registration in Alabama?

17 A No.

18 Q Do you recall ever having any problems actually voting in
19 Alabama?

20 A No.

21 Q Are you aware of any problems in the Fayette County
22 election that we just had on November 5th?

23 A I don't know of any problems, no.

24 Q What year were you born?

25 A I was born [REDACTED], 1964. I'm sure you didn't ask me my

1 birthday, but I was born in 1964.

2 Q Okay. Did you attend segregated schools?

3 A Segregated, yeah. No. I didn't.

4 Q Okay. Segregated meaning there was a white school and a
5 black school?

6 A Yes. I didn't attend a segregated school. I think when I
7 started first grade, that was the first year of desegregation
8 in Fayette County.

9 Q What is your perception of how race relations are today in
10 Fayette County?

11 A In my opinion, I feel like they're pretty good.

12 Q Is that the same or different as the experiences that like
13 your father's generation would have had?

14 A They weren't too good back then. It was pretty bad.

15 Q But today, you're not aware of any issues?

16 A No. Not really.

17 Now, when I was really, really small, there was still some
18 issues, but not -- from the time I started school, it seemed to
19 be pretty much okay, yeah.

20 Q So that would be about the last 50 years?

21 A Yes. 50 -- 54 or so.

22 Q Okay. Thank you. I don't have any further questions.

23 The plaintiffs will have some questions for you.

24 A Okay. Thank you.

25 THE COURT: Counsel, I am not limiting you in any way,

1 but I am simply offering you an option. Would you prefer to
2 start now and then break for lunch in a little while or to
3 break for lunch now and start afterward?

4 MS. CARTER: We can break for lunch. Yes.

5 THE COURT: All right. It's noon. Let's come back at
6 1:15.

7 And can I have Mr. Ross and Mr. Davis in chambers at 1:05,
8 please? Thank you.

9 (Recess.)

10 THE COURT: Good afternoon, everybody. Please be
11 seated.

12 All right. You may proceed.

13 MS. CARTER: Thank you.

14 CROSS-EXAMINATION

15 BY MS. CARTER:

16 Q Good afternoon, Ms. Branyon.

17 A Good afternoon.

18 Q I'm Brittany Carter. I represent the Stone plaintiffs --
19 the Alabama NAACP plaintiffs. Pardon me.

20 I am going to ask you some yes-or-no questions.

21 A Okay.

22 Q Thank you. You ready to begin?

23 A I'm ready.

24 Q Ms. Branyon, you were born in Fayette County, correct?

25 A Correct, yes.

1 Q And you grew up in Fayette County?

2 A Yes.

3 Q And after some time away, you moved back to Fayette County
4 in 1999?

5 A Well, yeah. Yes, that's correct.

6 Q And you've lived there ever since?

7 A Yes.

8 Q You started to get involved in politics only after you
9 moved back to Fayette County?

10 A That's correct.

11 Q You ran for District 6 of the Fayette County Commission?

12 A Correct, yes.

13 Q And you ran in the Republican primary?

14 A Yes. For one time. I guess.

15 Q Yes.

16 A Yes.

17 Q So I'm talking about in the early 2000s.

18 A Yes. Well, 2020. Wait. Will you ask that question one
19 more time?

20 Q Did you first run for office in the 2000s?

21 A I think it was the 2000s.

22 Q Okay. And you ran for -- and one of the offices that you
23 ran for was District 6 of the Fayette County Commission?

24 A Yes.

25 Q And you ran in the Republican primary?

1 A Yes. I'm not sure anybody was opposing me. I can't
2 remember too good back that far.

3 Q Okay. So did you drop out of the Republican primary?

4 A Yes. The first time.

5 Q Okay. And what year are you talking about right now that
6 you're trying to think of?

7 A I'm sorry. I can't remember --

8 Q Okay.

9 A -- the year. It was way before 2020.

10 Q Okay.

11 A Yes.

12 Q Did you also become involved with the Fayette County
13 Republican Party around 2008?

14 A If that's the year Bill ran for sheriff, yes.

15 Q Okay. But you've only been involved on and off?

16 A When you say "involved," do you mean voting or going to
17 the meetings?

18 Q I'd say going to the meetings.

19 A Okay. I'd have to say that's yes on the on and off.

20 Q And so you mostly attend some meetings, but not all of the
21 meetings?

22 A No. My mom got sick, so I stopped attending so many
23 meetings.

24 Q Were you ever attending a lot of meetings?

25 A Yes. I was pretty much attending probably all of them

1 maybe.

2 Q Around what time are you thinking?

3 A Around the time Bill McCollum ran for sheriff.

4 Q And you've never held any officer level roles with the
5 local party?

6 A No.

7 Q In 2020, you ran again for the District 6 seat of the
8 Fayette County Commission?

9 A That's correct.

10 Q And at that time -- and that time around, excuse me, you
11 mostly campaigned on your own?

12 A Yes.

13 Q You didn't know many people in the local Republican Party?

14 A I knew a few people, but I didn't know that many people
15 within District 6 I would say.

16 Q And the Republican Party did not offer you financial
17 support at that time, correct?

18 A No.

19 Q So, is that correct?

20 A That is correct.

21 Q Thank you.

22 A Okay.

23 Q Sorry. I'm trying to understand.

24 A Okay. Not in the 2020, but the earlier one they did.

25 They -- it was the newspaper article and the training that I

1 went to in the earlier one that I had to drop out of. Earlier
2 race I had to drop out.

3 Q Okay. Thank you.

4 A Yes.

5 Q And so in the -- in the 2020 election --

6 A Yeah.

7 Q -- the Republican didn't -- the Republican Party didn't
8 support you with any volunteers, correct?

9 A Not per se with volunteers, no.

10 Q And you lost your 2020 election, correct?

11 A Yes.

12 Q Ms. Branyon, you have never been involved with the Alabama
13 State Republican Party, correct?

14 A No.

15 Q And then except for attending that one-day training you
16 mentioned, you've never attended a meeting of the State
17 Republican Party?

18 A No.

19 Q You also never attended a meeting of the Montgomery County
20 Republican Party?

21 A No.

22 Q Or the Madison County Republican Party?

23 A No.

24 Q Or the Morgan County Republican Party?

25 A No.

1 Q Or any other county Republican Party, other than Fayette
2 County?

3 A Just Fayette County, yes, because that's where I pretty
4 much live. I lived in Montgomery for a short time, but I
5 wasn't that involved with politics at that time.

6 Q So you didn't go to any Montgomery County Republican Party
7 meetings?

8 A No.

9 Q Thank you.

10 In 2024, you, again, ran for District 6 Commissioner in
11 Fayette County, correct?

12 A That's correct.

13 Q And you ran as a Republican, correct?

14 A Correct.

15 Q It is your understanding that District 6 is a
16 majority-black district, correct?

17 A Right now, I would say it's 50/50. When they established
18 it, it was majority black in the early days.

19 Q We'll get to that, yes, ma'am.

20 A Okay.

21 Q Black voters in District 6 asked you to run in 2024,
22 correct?

23 A Correct.

24 Q And black voters supported your candidacy, correct?

25 A Talking about voted for me or...

1 Q Even before voting for you, just supported you to --
2 encouraged you to run.

3 A Yes, they -- there was someone from the Democratic party
4 that encouraged me to run, yes.

5 Q Well, I'm not talking necessarily about the Democratic
6 party. Black voters.

7 A Yes.

8 Q And you won?

9 A Yes. I won.

10 Q Approximately how many people voted in the Republican
11 primary?

12 A Talking about this year or...

13 Q Yes.

14 A There was no primary --

15 Q Okay.

16 A -- this year.

17 Q Were the total votes in your election -- cast in your
18 election somewhere around 1,000 people?

19 A It was a little over a thousand.

20 Q A little over a thousand people --

21 A Yes.

22 Q A little over a thousand votes were cast in the election
23 that you won?

24 A Yes.

25 Q Okay. So now let's talk about District 6.

1 A Okay.

2 Q When you were a child, District 6 was redrawn to be a
3 majority-black district?

4 A Yes.

5 Q Before District 6 was redrawn as a majority-black
6 district, only white people had ever elected to the commission,
7 correct?

8 A I assume so. I was just a kid so I'm just assuming that's
9 correct.

10 Q The majority-black District 6 offered black people an
11 opportunity to be represented on the county commission,
12 correct?

13 A That's correct.

14 Q In fact, no black person has ever been elected to the
15 Fayette County Commission outside of District 6, correct?

16 A Not to my recollection.

17 Q So that's correct?

18 A Correct.

19 Q Okay. Thank you. I'm saying that because I think that
20 helps us a little bit more --

21 A Okay.

22 Q -- with me knowing what you mean by "no."

23 A Okay.

24 Q And you mentioned earlier that your opponent in 2024, this
25 most recent election, was John Underwood, correct?

1 A Yes, that's correct.

2 Q He is a Democrat, correct?

3 A Correct.

4 Q And you also ran against Mr. Underwood in 2020, correct?

5 A Yes.

6 Q And in that 2020 election, Mr. Underwood was the candidate
7 that black voters primarily supported, correct?

8 A I would have to say yes, because he won the race.

9 Q So now let's turn to another topic.

10 A Okay.

11 Q You've never been to a hearing in the State Legislature
12 about redistricting, correct?

13 A No. Not to my recollection.

14 Q And so turning a little bit to what you were talking
15 about, about the old days when you were a child.

16 A Okay.

17 Q When your father -- when you were a child -- when your
18 father was a child -- excuse me -- black people had to walk a
19 lot to get to places in Fayette County, correct?

20 A That's correct.

21 Q And so --

22 A That's what he told me.

23 Q Right.

24 A Okay.

25 Q Yes. Yes, ma'am.

1 And some white people would shoot at black people's feet
2 as they would walk around town, correct?

3 A Well, it wasn't around town. It was -- I think it was
4 along that kind of road, which I picture it as being County
5 Road 100 --

6 Q Okay.

7 A -- that he was talking about. He used to tell us stories
8 when we were kids about that.

9 Q And --

10 A But it didn't sound like it was in town. It sounded like
11 it was down where they lived, which would have been County
12 Road 100.

13 Q In Fayette County?

14 A In Fayette County.

15 Q Yes, ma'am.

16 And the Ku Klux Klan used to be in Fayette County,
17 correct?

18 A I assume. I'm pretty sure they were there, yes.

19 Q Your father told you, you were there -- they were there,
20 correct?

21 A Yes. And my brother, also.

22 Q Your father and your brother told you that the Ku Klux
23 Klan was in Fayette County?

24 A Yes.

25 Q You also -- you also experienced some racial

1 discrimination in high school in Fayette County related to the
2 National Honor Society, correct?

3 A I -- i felt like it was probably a little discrimination.
4 I can't remember exactly what it is -- it was, but I felt --
5 yeah, there was a little problem there.

6 Q Uh-huh.

7 A I mean, not like every day. It was just a particular
8 issue. It seemed to be a little -- a little problem.

9 Q It was an issue you experienced in your life, racial
10 discrimination, just -- that you remember being associated when
11 you were in high school?

12 A Well, that's what I assumed it was. I mean, it wasn't
13 ruled that, it was I just felt a little different about a
14 particular issue.

15 Q And as an adult, you filed a discrimination complaint
16 against the Florida Department of Transportation?

17 A Yes.

18 Q And that was a racial discrimination complaint?

19 A Yes. I felt like it was for my race. But now that I look
20 back, it could have been for another reason.

21 Q You worked at the Alabama Department of Transportation,
22 correct?

23 A That's correct.

24 Q When did you work there?

25 A I started in -- I believe it was 1998. January, I

1 believe.

2 Q And how long did you work there?

3 A From then until now.

4 Q Until now, correct?

5 A Yeah.

6 Q Is it okay if I call it ALDOT?

7 A That's fine.

8 Q You will know what I am talking about?

9 A Yeah, I will.

10 Q The atmosphere at ALDOT wasn't great when you started
11 there, right?

12 A It didn't seem to be too good. I think they were just
13 finishing up a trial or it could have been still going on. But
14 I was pretty much hired because it was ruled that they should
15 hire a certain number of black engineers. They felt like the
16 black engineers had been discriminated against in the past
17 concerning their registers or something like that and it was
18 ruled that they had to hire a certain number of black
19 engineers.

20 Q There had been a finding that there had been racial
21 discrimination at ALDOT?

22 A From what I understand. I was -- I was living in Florida.
23 I was one of those engineers that got hired.

24 Q You need a license to work at ALDOT, correct?

25 A Some positions you do need a license.

1 Q You sometimes heard white people say that your license was
2 not as good as theirs?

3 A Yeah. I did hear that. Yeah.

4 Q And you felt like you weren't promoted a time or two when
5 you should have been, correct?

6 A Correct.

7 Q And you believe that this was because of racial
8 discrimination, correct?

9 A I felt like it, yeah.

10 Q Okay.

11 A But this is within ALDOT now.

12 Q Excuse me?

13 A Within ALDOT, I felt that way.

14 Q Within ALDOT?

15 A Yeah.

16 Q Exactly.

17 A Not necessarily in my community.

18 Q Sure.

19 A Okay.

20 Q Thank you.

21 Do you know whether Fayette County receives any State
22 funding for public transit?

23 A Yes. They do, yeah.

24 Q Okay.

25 A Well, actually, I found out about the program when I was

1 working at ALDOT. There was a training program I had to
2 participate in and I found out about the transportation system
3 then.

4 Q Earlier, you -- you got a little emotional when discussing
5 people having issues -- in Fayette County having a hard time
6 accessing transportation to get groceries or to go to medical
7 appointments or things like that.

8 A That's correct.

9 Q So they still have trouble accessing transportation?

10 A I feel like people in the County probably still have
11 problems.

12 Q What was the race of those people you were talking about
13 in particular who had those troubles?

14 A They were both races, white and black. There was one
15 white lady that I tried to help. I think she had cancer or
16 something and her appointments were here in Birmingham and she
17 couldn't make it to those appointments, and that was -- that
18 was kind of upsetting to me.

19 Q And you mentioned a lot of those people primarily living
20 in the projects?

21 A Some lived in the projects, but some also lived out in the
22 County.

23 Q Okay. And was there a disparity between the people who
24 lived in the projects and the people who lived in the County?

25 Were the majority of people who lived in the projects

1 black people or...

2 A I wouldn't say that a majority is necessarily black. I
3 would say it's probably equal black and white in the projects.

4 Q Okay. Now, turning back to your time at ALDOT.

5 Other black co-workers have brought your attention to
6 situations where they also felt discriminated against in
7 promotions, correct?

8 A Yes.

9 Q And there have been instances where ALDOT didn't even want
10 to review the applications of black people, correct?

11 A Well, a particular office didn't want to do that.

12 Q Okay. A particular ALDOT office?

13 A Particular ALDOT office.

14 Q So I'll just discuss one situation.

15 A Okay.

16 Q You had interviewed a black woman?

17 A Yes.

18 Q You thought she had a good interview?

19 A That was the office I work in, yes.

20 Q Right. And -- but she wasn't hired because a colleague
21 had called around to ask about her?

22 A On that particular interview, yes, someone had called
23 around our -- he may have checked with someone in the office
24 first, and then he -- I think he called around to get
25 information on this particular lady. And he did that before

1 the interview.

2 Q And you didn't think that was fair to her?

3 A No, I didn't.

4 MS. CARTER: Your Honor, may I have a moment to confer
5 with counsel?

6 THE COURT: You may.

7 MS. CARTER: Thank you.

8 No further questions from me, Your Honor.

9 THE COURT: Thank you. Any redirect?

10 MS. MESSICK: Yes. Thank you.

11 REDIRECT EXAMINATION

12 BY MS. MESSICK:

13 Q Ms. Branyon, that situation you were just asked about with
14 a woman who a colleague didn't want to interview, was that a
15 one-time situation, or was that something that happened a lot?

16 A It was -- for this particular situation, it was one time.
17 And I ended up hiring the lady later on.

18 Q You hired her anyway?

19 A It was a different position that I hired her for. But,
20 yes, I did, because I didn't like the tone of what went on
21 prior to that.

22 Q But nobody stopped you from hiring her?

23 A No.

24 Q When ALDOT failed to sponsor you for some leadership
25 training, was there anything racial about that?

1 A No. We're a bureaucracy. Things move a little slowly.
2 It had to be approved down in Montgomery, so even the
3 individuals that was supposed to approve it, they said it was
4 okay and they were good with it. It was just taking too long,
5 and the leadership training was about to start.

6 Q You're a black voter. Do you believe that black voters
7 can only be represented by black officeholders?

8 A No, I don't feel that they can only be represented by
9 black officeholders.

10 Q And it was your opinion that John Underwood wasn't doing a
11 good job of representing his constituents?

12 A No. And there was another individual that was Democratic
13 with the board of education. I didn't feel like he was
14 representing his constituents well, either. I felt like they
15 were basically collecting a paycheck and going home.

16 Q Who was it that you're thinking of on the board of
17 education?

18 A His name is John Stowe -- Stove, I believe.

19 Q Was he up for election this year?

20 A He retired this year, so the candidates that ran for the
21 board of education seat in District 6 were both newcomers.
22 They weren't an incumbent.

23 Q Did you remember who they were?

24 A Yes. It was Bill McCollum and this lady called Portia
25 Stowe.

1 Q And that's the same Bill McCollum who's come up earlier in
2 your testimony today?

3 A Yes. It's the same Bill McCollum.

4 Q And if Bill McCollum ran for sheriff in 2002, would that
5 be when you started associating with the Republican Party in
6 Fayette?

7 A Yes.

8 Q Have you ever wanted to hold office with the Fayette
9 County Republican Party and been denied the opportunity?

10 A No. I -- I have too many other things to do to hold
11 office with them.

12 MS. MESSICK: Thank you. No further questions.

13 THE COURT: All right. Is there any reason I may not
14 excuse Ms. Branyon?

15 MS. CARTER: No.

16 MS. MESSICK: No, Your Honor.

17 MS. CARTER: No, Your Honor.

18 THE COURT: Ms. Branyon, thank you very much for being
19 with us today.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 THE COURT:

23 MS. MESSICK: The Secretary of State calls Colonel Jon
24 Archer.

25 THE COURT: All right. Colonel Archer, come to the

1 stand, please.

2 COLONEL JONATHAN ARCHER

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

5 THE COURTROOM DEPUTY CLERK: If you will be seated.
6 You can adjust the microphone as needed.

7 State your name and spell it for the Court record, please.

8 THE WITNESS: Sure. Jonathan, J-O-N-A-T-H-A-N, middle
9 initial W., last name Archer, A-R-C-H-E-R.

10 DIRECT EXAMINATION

11 BY MS. MESSICK:

12 Q Thank you, Colonel Archer. Do you have any degrees after
13 high school?

14 A Yes, ma'am. I have a master's in public administration
15 and a bachelor's of arts in criminal justice.

16 Q And where are those degrees from?

17 A University of South Alabama.

18 Q What year did you get your master's?

19 A 2002.

20 Q What do you do for a living?

21 A I am the director of the Department of Public Safety at
22 the Alabama Law Enforcement Agency.

23 Q And is it all right if I call the Alabama Law Enforcement
24 Agency ALEA?

25 A Yes.

1 Q How long have you been the director of Public Safety at
2 ALEA?

3 A Since March of 2023.

4 Q And what is ALEA?

5 A ALEA is the state law enforcement agency for Alabama.
6 It's made up of two parts -- the Department of Public Safety
7 and the State Bureau of Investigations.

8 Q And you're the director of the public safety component?

9 A Yes, ma'am.

10 Q How long have you been at ALEA?

11 A Since its creation on January 1, 2015.

12 Q What were you doing just before ALEA's creation?

13 A I was a lieutenant with the Alabama marine police at the
14 Department of Conservation and Natural Resources.

15 Q And in the months leading up to the creation of ALEA, what
16 were you doing?

17 A I was transferred to ALEA's secretary's office to assist
18 as the special response unit commander to assist with special
19 projects as the agency was beginning.

20 Q And when about was that?

21 A November of '14.

22 Q You've told us your first job at ALEA after it came into
23 being in 2015.

24 Can you tell me just briefly the positions you have held
25 since then?

1 A Since then, in March of 2016, I was assigned the marine
2 parole division as the central district commander. I remained
3 there until August 2017, where I was assigned to the driver's
4 license division as a captain. And then I served there until
5 March of '23, when I was appointed director.

6 Q Did you remain a captain the entire time you were in the
7 driver's license division?

8 A No, ma'am. During the course of that time, I was promoted
9 to chief of the driver's license division.

10 Q As the director of public safety, do you have any
11 continuing involvement with the driver's license division?

12 A I oversee that division as a part of my duties. It has a
13 driver's license director that handles the day-to-day
14 operations, so that director reports to my office.

15 Q And that director, is that the job that you had when you
16 were chief?

17 A Correct. It was formerly chief but was reclassified to a
18 director's position.

19 Q Thank you.

20 What does ALEA's driver's license division do?

21 A The driver's license division is tasked with credentialing
22 and examining applicants for Alabama driving privileges.

23 Q Is that everybody on the roads?

24 A That is everybody on the roads, if they are driving a
25 commercial vehicle, noncommercial vehicle, they're operating a

1 motorcycle, they're operating a vessel on Alabama waterways.
2 The driver's license division responsible for offering
3 examination and issuing the credentials to those Alabamians.

4 Q Plaintiffs have offered Joseph Bagley as an expert in this
5 case. And in his expert report and in his testimony yesterday,
6 he's made some statements about suspending driver's license
7 offices in 2015.

8 Did you have any role in that change of driver's license
9 hours?

10 A Yes, ma'am.

11 Q And what role did you have?

12 A During my time in the ALEA secretary's office, I was
13 advising on a number of special projects, and one of those was
14 related to the suspension of operations in driver's licenses
15 offices.

16 Q Let's talk about the driver's license services that ALEA
17 offered --

18 A Uh-huh.

19 Q -- in early 2015.

20 Well, first of all, about how many credentials were issued
21 by the driver's license division in 2015?

22 A On average, it's about 1.2 million per year.

23 Q And is that both driver's licenses and nondriver's IDs?

24 A Yes, ma'am.

25 Q Okay. What kinds of driver license offices did ALEA have?

1 A We have district offices. We have 12 of those, plus a
2 headquarters. And we had 63 field officers.

3 Q And that's in 2015?

4 A That is in 2015.

5 Q Were there ways that a citizen could conduct a driver's
6 license transaction without going to an ALEA office?

7 A Yes. There were, in 2015, 122 county partner offices.
8 Those would be operated by probate judges or license
9 commissioners, revenue commissioners or revenue directors,
10 depending on the county in Alabama and who handles the
11 licensing services in that county.

12 Q Were there other ways in 2015 that a citizen could get a
13 driver's license or do a driver's license transaction?

14 A Yes. We had also launched an online services that would
15 have allowed customers to renew their Alabama driver's license
16 or nondriver ID card or order a duplicate in the event they had
17 lost their credential.

18 Q And were there any other ways that a citizen could conduct
19 a driver's license transaction in 2015?

20 A No, ma'am.

21 Q What about the kiosks?

22 A The self-service kiosks were still in play in a few
23 locations throughout the state in our offices where a customer
24 could go up to the kiosk and complete a renewal, yes.

25 Q Okay. I want to talk a little bit more about the

1 services.

2 So you said the online services you could do renewals or
3 duplicates of driver's licenses and nondriver IDs, correct?

4 A Yes, ma'am.

5 Q Was the online function available 24 hours a day, 7 days a
6 week?

7 A Yes.

8 Q The county partners, you said there were 122 locations in
9 2015?

10 A Yes, ma'am.

11 Q What services could they offer?

12 A They could offer renewal and replacement of both nondriver
13 and driver's licenses. They could change addresses, and they
14 would take a new credential photo.

15 Q Could they change names?

16 A They could in 2015.

17 Q What services could the ALEA field offices provide in
18 2015?

19 A They could also renew and do -- issue duplicates. They
20 also could transfer in out-of-state licenses. They could
21 complete first-time issuances of new drivers in Alabama. They
22 conducted all knowledge tests, skills tests for Class D
23 drivers, but we could not do CDL skills tests at the field
24 offices.

25 Q What is a STAR ID?

1 A A STAR ID is Alabama's version of the real ID. And it is
2 a -- it is a credential process that came out of the federal
3 real ID act of 2005, where a customer is required to bring
4 proof of authorized presence, proof of social, and proof of
5 principle residence to an ALEA exam office, where we review and
6 add those to their record and we add the star to their license.

7 Q And in 2015, could a citizen get a STAR ID at an ALEA
8 field office?

9 A Yes, ma'am.

10 Q When were the field offices open? Were they like Monday
11 through Friday 8:00 to 5:00?

12 A No. Field offices had usually one to two days service
13 days. They were not open usually 8:00 to 5:00 because we had
14 to account for examiner travel so that they could drive to the
15 field office from the district office, set up the equipment,
16 power everything on, and then begin servicing customers.

17 And then at the end of the day, they would have to close
18 early than 5 o'clock to allow shut down and then travel back to
19 the district office.

20 Q And you said they were generally open one or two days a
21 week?

22 A Yes, ma'am.

23 Q And then for fewer than eight hours depending on how much
24 time was needed for the travel and the setup and the breakdown
25 and the further travel?

1 A Yes, ma'am.

2 Q Were the field offices like buildings owned by ALEA?

3 A No, ma'am. They were spaces provided to ALEA by our
4 county partners free of lease. We simply came into a provided
5 room, and we set up the equipment and issued credentials on
6 that day.

7 Q I want to talk about the ALEA district offices in 2015.
8 What services could they provide?

9 A They, as well, could handle all of the transactions that
10 the field offices could. Your first-time issuances, your
11 out-of-state transfers, as well as all the knowledge testing,
12 be it Class D, M, V. You could also complete all your CDL
13 knowledge testing, as well as your skills testing there.

14 And we also processed foreign national customers at our
15 district offices. We also had reinstatement offices
16 co-inhabited in those district offices where customers in
17 need of reinstatement service could also obtain service.

18 Q What is Class D?

19 A Class D is your basic driver's license in Alabama. That
20 is referred to as a non-commercial license.

21 Q And Class M?

22 A That is required to operate a motorcycle or motor-driven
23 cycle in the state of Alabama.

24 Q And Class V?

25 A "V" is for "vessel." That is to operate a motorized

1 vessel on Alabama waterways.

2 Q Were the district offices' buildings owned by ALEA?

3 A Yes.

4 Q And were they open generally Monday through Friday?

5 A Generally open Monday through Friday 8:00 to 5:00.

6 Q And then you said there were 12 district offices and that
7 included headquarters; is that right?

8 A Yes, ma'am.

9 Q And were the services at headquarters the same as at the
10 other district offices?

11 A In 2015, no, ma'am. They were -- we did not do issuances
12 at headquarters. Headquarters was strictly back office and
13 records management.

14 Q What about reinstatements?

15 A We did do reinstatements there and processed mailing
16 reinstatements as well there.

17 Q What is your understanding of the fiscal shape that the
18 driver's license division was in when ALEA was formed?

19 A It was in dire straits that there was a deficit run -- it
20 was costing the agency a tremendous amount of money to continue
21 to operate driver's license at a -- we were operating at a
22 loss.

23 Q Don't you charge people for driver's licenses?

24 A Yes, ma'am. But the price of the license is set forth in
25 statute, and all of the money from the driver's license fees

1 does not return to driver's license for production of the
2 license. So it was costing us more to produce the license than
3 we were able to charge in fees.

4 Q What was the staffing like at the driver's license
5 division when ALEA was formed in January 2015?

6 A We had double digit vacancies in our examining staff, in
7 the field offices, and the district offices. We were
8 significantly short-handed.

9 Q Did that have any impact on the experience of your
10 customers?

11 A Yes, ma'am. We were unable to service customers in a
12 timely manner and were faced daily with long wait times and
13 customers being turned away who couldn't receive service.

14 Q The offices that had changes in 2015, broad category, what
15 offices were those?

16 A Field offices.

17 Q And how would suspending office hours in field offices
18 address the situation that you have described?

19 A Field offices were staffed out of the district offices.
20 We sent examiners out to those locations. And when we were
21 experiencing such short staff, it was decided that there was --
22 it would be better to suspend operations in those offices so
23 those examiners could remain at the district offices to service
24 more customers.

25 Q So you were not firing anybody. You didn't have savings

1 from reducing staff when the field offices had their hours
2 changed?

3 A No, ma'am. We did not fire anyone.

4 Q And instead, you were bringing the staff from the field to
5 the district offices where the lines were?

6 A Yes, ma'am.

7 Q Were all of the field offices closed?

8 A No, ma'am.

9 Q Do you know if there was any kind of line drawn as to
10 which offices would be closed?

11 A The line was based on the number of transactions in an
12 office over a period of a year, and that was the line.

13 Q And do you know what the line was?

14 A Any office with less than 2,000 customer transactions in a
15 year.

16 Q Are you aware of whether there were any exceptions to that
17 2,000 transaction?

18 A No, ma'am.

19 Q Guide?

20 A No, ma'am.

21 Q How many field offices had their office hours suspended?

22 A 31.

23 Q Did you ever hear any ALEA employee from the secretary of
24 ALEA on down say that the decision as to which offices would
25 have changes was being made on the basis of race, color, or

1 national origin?

2 A No, ma'am.

3 Q I'd like to show you Exhibit 128.

4 Colonel Archer, I can't see it. Can you see it?

5 A Yes, ma'am.

6 Q Do you recognize this document?

7 A Yes, ma'am.

8 Q Can you tell me what it is?

9 A Yes. This is a document explaining during the year of
10 2014 all of our driver's license transactions.

11 Q Did you have a role in the creation of this document?

12 A Yes. I would have had a role.

13 MS. MESSICK: I move to introduce Defendant's
14 Exhibit 128.

15 THE COURT: Any objection?

16 MS. ALLEN: No objection.

17 THE COURT: All right. Admitted.

18 (Defense Exhibit 128 admitted in evidence.)

19 BY MS. MESSICK:

20 Q Colonel Archer -- I'm sorry. I have got some sort of
21 warning on mine.

22 Looking up at the top in the section with the green
23 highlight where it says, "Transactions," what is that top piece
24 telling us?

25 A This is showing the total statewide transactions, which

1 would have included every driver's listen or identification
2 card-related interaction with a person performed by any
3 government office in Alabama.

4 Q And when it's talking about where it says "Total local
5 office transactions," is that the community partners?

6 A That would be the county partner.

7 Q I'm sorry. County partners.

8 So the county partners are actually doing more
9 transactions than ALEA is by a little bit?

10 A Yes, ma'am.

11 Q And then where it says "total ALEA suspended offices"?

12 A Yes, ma'am.

13 Q What is that telling me?

14 A That would have -- that shows you the number of -- if, in
15 2014, using the transaction numbers from 2014, the number of
16 transactions that would have been impacted if those offices
17 were suspended operations.

18 Q So in 2014, there were just over 33,000 transactions at
19 the offices that had their hours suspended?

20 A Yes, ma'am.

21 Q Okay. How much is that in the context of the overall
22 transactions being done in the state?

23 A 2.1 percent.

24 Q And how much -- what -- what does the 4.43 percent mean?

25 A That would have been the percentage against ALEA-only

1 transactions, so when comparing just our transactions.

2 Q So the field offices that were suspended in 2015
3 represented 4.43 percent of ALEA's transactions and 2.1 percent
4 of the total transactions in 2014?

5 A Yes, ma'am.

6 Q I want you to look further down on that page.

7 The potential online transactions with the red. Do you
8 see that?

9 A I do.

10 Q What is that section telling us?

11 A So this data is based on -- is from 2014. We began online
12 transactions in 2015. So looking back at '14, we are looking
13 at transactions that now would be able to be completed online.

14 Q Okay. So in 2014, there were 5,423 transactions at an
15 office that would be suspended in 2015 that, in 2015, could
16 have been done online?

17 A Yes. You are correct.

18 Q Okay. Thank you.

19 I'd now like to move to Exhibit 131.

20 Do you recognize this document?

21 A Yes.

22 Q What is it?

23 A It is a list of field offices and their locations and days
24 of week and hour of operations of the 31 that were suspended
25 operations.

1 Q Did you have a role in this document's creation?

2 A Yes.

3 MS. MESSICK: I move to introduce State's Defendant's
4 Exhibit 131.

5 THE COURT: 131, any objection?

6 MS. ALLEN: No objection, Your Honor.

7 THE COURT: Admitted.

8 (Defense Exhibit 131 admitted in evidence.)

9 BY MS. MESSICK:

10 Q What does Exhibit 131 tell us about how often the offices
11 to be suspended were opened?

12 A In the column Days of the Week, it shows the number of
13 days that each of these offices were open per week. And then
14 next to that column would be the -- I can't make out the header
15 on this, but I know that's the hours that they were open
16 allowing time for them to -- that would be the time that they
17 could serve as customers.

18 Q Okay. And so how many days a week were most of these
19 offices open?

20 A One day a week.

21 Q And can you summarize for us what kind of office hours
22 they had?

23 A Mostly around seven hours, so it would have been -- it
24 varied based on how far the examiner had to travel from. So,
25 but most of them were around six to six and a half hours.

1 Q Okay. When -- and this is the list of the offices that
2 were actually suspended?

3 A Yes, ma'am.

4 Q When these offices were suspended, what options remained
5 available to Alabama citizens to conduct driver's license
6 transactions?

7 A The -- they would still be able to go to ALEA district
8 offices, other field offices. They could have gone to a county
9 partner office, or they could have gone online.

10 Q And how long did the office suspensions last?

11 A Approximately 30 days.

12 Q I'd like to show you know State Defendant's Exhibit 256.

13 Sir, do you recognize this document?

14 A Yes.

15 Q And what is it?

16 A The memorandum of agreement between the U.S. Department of
17 Transportation and the Alabama Law Enforcement Agency.

18 MS. MESSICK: Your Honor, I move to introduce State
19 Defendant's Exhibit 256.

20 THE COURT: 256. Any objection?

21 MS. ALLEN: No objection, Your Honor.

22 THE COURT: Admitted.

23 (Defense Exhibit 256 admitted in evidence.)

24 BY MS. MESSICK:

25 Q When did you first become aware of this memorandum?

1 A In 2017, when I was transferred to the driver's license
2 division.

3 Q Do you remember seeing the memorandum at that time?

4 A I -- I was working for a chief who told me about the
5 memorandum of agreement and the expectations that we were to
6 required to carry out as a part of the terms of the agreement.

7 Q Were you responsible for helping to ensure ALEA's
8 compliance with this agreement?

9 A Yes, ma'am.

10 Q And were you shown this memorandum of agreement at a
11 deposition this summer?

12 A Yes, ma'am.

13 Q Have you read it again this week?

14 A Yes, ma'am.

15 Q Dr. Bagley's report, which is Amended Plaintiffs'
16 Exhibit 19, at page 29, in the second full -- or the second
17 full paragraph, third sentence, says: The USDOT found that the
18 Alabama Department of Transportation and the Alabama Law
19 Enforcement Agency were violating Title VI of the Civil Rights
20 Act, and he continues.

21 Do you see that?

22 A Yes, ma'am.

23 Q What does this memorandum of agreement say about the
24 Alabama Department of Transportation?

25 A Nothing.

1 MS. ALLEN: Objection, Your Honor. The document
2 speaks for itself.

3 THE COURT: He answered.

4 MS. MESSICK: Thank you.

5 BY MS. MESSICK:

6 Q Looking at page 1 of the memorandum of agreement, did ALEA
7 agree with any findings made by the Department of
8 Transportation?

9 A No, ma'am.

10 Q Looking at page 8 of the memorandum of agreement, did ALEA
11 admit liability?

12 A No, ma'am.

13 Q In broad strokes, what did the memorandum of agreement
14 require?

15 A It required that we maintained existing office hours and
16 days of operations in our field offices. It also added -- we
17 also added additional service hours in some field offices. It
18 required ALEA to appoint a Title VI coordinator. And it also
19 required that we enact a community engagement plan any time
20 that there was plan changes in the operations of the driver's
21 license division to allow community stakeholders to provide
22 input.

23 Q Is this memorandum of agreement still in effect today?

24 A No, ma'am.

25 Q Thinking about ALEA's district offices and field offices

1 today, is ALEA providing services in terms of locations and
2 hours that are at least at the level that was required by the
3 memorandum of agreement?

4 A Yes, ma'am.

5 Q Dr. Bagley's report at page 15, in the third paragraph
6 begins: In 2015, the U.S. Department of Transportation found
7 that the State's selective closure of driver's license offices
8 disproportionately affected black people's ability to register
9 to vote and, thus, violated the Civil Rights Act.

10 What does the memorandum of agreement say about voting?

11 A Nothing.

12 Q Thank you.

13 THE COURT: All right.

14 MS. ALLEN: May I proceed, Your Honor?

15 THE COURT: You may.

16 MS. ALLEN: Amanda Allen for the plaintiffs.

17 CROSS-EXAMINATION

18 BY MS. ALLEN:

19 Q Good afternoon, Colonel Archer. You may remember that we
20 met before, not too long ago, but I will be asking you a few
21 yes or no questions on behalf of the plaintiffs today.

22 A Okay.

23 Q The special projects that you worked on for ALEA around
24 2014, 2015, included addressing the driver's license office
25 closures, correct?

1 A Yes.

2 Q You became aware around early 2015 of a plan being
3 assembled to close driver's license offices, right?

4 A Yes.

5 Q You were included in communications about the decision to
6 close some of the driver's licenses offices, right?

7 A Yes.

8 Q You don't recall whether you were asked for your input on
9 what metrics should be used to determine what offices should be
10 closed, correct?

11 A Yes.

12 Q You don't recall at what point the decision was made to
13 use low customer volume as a metric for determining what
14 offices to close?

15 A No, ma'am.

16 Q Your role was just to assemble documentation to educate
17 State officials at the Legislature as to the reason why ALEA
18 was closing offices, right?

19 A Yes.

20 Q ALEA staff member, John Thomas Jenkins, directed you to
21 assemble the documentation, correct?

22 A Yes.

23 Q You aren't familiar with the standard practice of budget
24 discussions with the executive branch, right?

25 A At that time, no.

1 Q You reviewed the list of driver's license offices that
2 were going to be closed at that time?

3 A Yes.

4 Q You didn't create the list of driver's license offices to
5 close, right?

6 A No, ma'am.

7 Q You weren't a part of any decisions to remove any driver's
8 license offices from the list, correct?

9 A Correct.

10 Q You never met with Governor Bentley about the driver's
11 license office closures, right?

12 A Correct.

13 Q You never met with any member of Governor Bentley's staff
14 about the office closures, correct?

15 A Correct.

16 Q You don't recall how Governor Bentley spoke about the
17 decision to close driver's license offices, correct?

18 A Correct.

19 Q You don't recall whether the driver's license office that
20 was in State Senator Gerald Dial's district was on the list,
21 correct?

22 A I do not. Correct.

23 Q You met with Secretary Spencer Collier less than three
24 times during the time that discussions of closing driver's
25 license offices occurred, right?

1 A Correct.

2 Q So you weren't aware that Secretary Collier testified that
3 a plan to --

4 MS. MESSICK: Objection. She's -- her question is
5 going to introduce hearsay. She's -- Secretary Collier is not
6 here. She's -- there's a deposition that he gave in another
7 case, many years ago, that -- based on the deposition of
8 Colonel Archer that was taken in the Congressional cases.

9 I am assuming she is about to start telling us what he
10 testified to in that separate deposition and that's hearsay.

11 MS. ALLEN: Your Honor, may I respond?

12 THE COURT: You may.

13 MS. ALLEN: This information is not being offered for
14 the truth of the matter asserted.

15 On direct examination, Colonel Archer testified to his
16 involvement in the decision-making process behind how to and
17 what metrics were going to be used to close the offices and
18 this line of questioning is just being used to explore the
19 extent of his knowledge and involvement.

20 MS. MESSICK: But she's -- what he testified about is
21 which offices were closed and the minimal impact that that had
22 the state and I don't think that it is relevant. But even if
23 it were, she's trying introduce testimony that is made by
24 somebody who's not here today.

25 If they want to know what Spencer Collier thought, they

1 can bring him.

2 THE COURT: Well, I think she's not offering it for
3 what Spencer Collier thought. I think it's being offered to
4 probe the extent of this witness's knowledge, so not for the
5 truth of its content about what --

6 MS. MESSICK: Well, but it assumes that Spencer
7 Collier is right and this witness is wrong is what --

8 THE COURT: Well, I don't have to make that
9 assumption --

10 MS. MESSICK: Okay.

11 THE COURT: -- if it's not being offered for its
12 truth.

13 MS. MESSICK: Well, with that understanding, I've got
14 no problem with it.

15 THE COURT: All right.

16 BY MS. ALLEN:

17 Q You, Colonel Archer, had just testified that you met with
18 Secretary Spencer Collier less than three times during this
19 time period that driver's license offices were in discussion to
20 be closed, right?

21 A Correct.

22 Q So you weren't aware that Secretary Collier testified that
23 the plan to close driver's license offices came from
24 Governor Bentley's advisor, Rebekah Mason, correct?

25 A I am not familiar with it, no.

1 Q And you are not aware that Secretary Collier's testimony
2 that Ms. Mason requested that ALEA close driver's license
3 offices in districts of members who opposed the Governor's
4 budget, correct?

5 MS. MESSICK: Objection.

6 May I have a standing objection and understanding that
7 this is not being offered for the truth of the matter asserted?

8 THE COURT: You may.

9 MS. MESSICK: Thank you.

10 THE WITNESS: Could I ask you to repeat the question,
11 please.

12 BY MS. ALLEN:

13 Q Yes. Colonel Archer. Yes.

14 You were not aware of Secretary Collier's testimony that
15 Ms. Mason requested that ALEA close driver's license offices in
16 districts of members who opposed the Governor's budget,
17 correct?

18 A No, I was not familiar.

19 Q And you aren't aware that Secretary Collier told ALEA to
20 find -- and you aren't aware that Secretary Collier told ALEA
21 to find some post hoc, facially neutral and arbitrary basis to
22 close these offices, right?

23 A I am not aware of it, no.

24 Q You also aren't aware that Secretary Collier testified
25 that when he presented this purportedly neutral plan to the

1 Governor's staff, the Governor ordered ALEA to retract the
2 closure of the driver's license office in the Governor's ally,
3 Senator Jim Dial's district, correct?

4 A I'm not familiar with that.

5 Q You agree that no one at ALEA ever looked at whether the
6 closures would affect some Alabamians more than others,
7 correct?

8 A I know that I didn't look at that particularly. I can't
9 say no one at all at ALEA.

10 Q Is it your testimony today that you don't know whether --
11 or is it your testimony today that you don't know whether no
12 one at ALEA ever looked at whether closures would affect some
13 Alabamians more than others?

14 A Correct.

15 Q Colonel Archer, do you recall participating in a
16 deposition in this case?

17 A Yes, ma'am.

18 MS. MESSICK: Objection. The deposition was not in
19 this case.

20 BY MS. ALLEN:

21 Q I'm sorry. Let me rephrase.

22 Do you recall participating in a deposition in the case
23 *Milligan v. Allen*, correct?

24 A Yes.

25 Q And do you recall that deposition being about August 5th,

1 2024?

2 A I believe, yes.

3 Q And you swore to tell the truth in that deposition?

4 A Yes, ma'am.

5 MS. ALLEN: Can we pull up Colonel Archer's deposition
6 in *Milligan v. Allen* from August 5th, 2024?

7 Can we turn to page 29?

8 BY MS. ALLEN:

9 Q Colonel Archer, do you see on page 29, lines 17 through
10 21?

11 A Yes.

12 Q Do you see where I asked you: Did anyone ever discuss
13 whether closures would affect some Alabamians more than others?

14 And then you answered: No, ma'am.

15 A Yes.

16 Q No one at ALEA ever looked at whether the closures would
17 have a disparate effect on black Alabamians, right?

18 A Correct.

19 Q Governor Bentley resigned, correct?

20 A I believe so.

21 Q He resigned during the House investigation into his affair
22 with Ms. Mason, correct?

23 A I don't recall the exact circumstances of his resignation.

24 Q There was a State House investigation, correct, into
25 Governor Bentley?

1 A I don't -- I don't recall the exact course of his
2 resignation and what was the catalyst of that.

3 Q So you are not aware that Secretary Collier reported
4 Ms. Mason to the Alabama Attorney General because he was
5 concerned that the closures violated the Voting Rights Act?

6 A No, I am not familiar.

7 MS. MESSICK: Object to the form.

8 I mean, I'm sorry. Objection. She's got no foundation
9 for that. I don't know where that's coming from.

10 MS. ALLEN: Your Honor, I'm simply asking, if I may
11 respond, about his knowledge or lack thereof surrounding the
12 circumstances of the closure of these driver's license offices.

13 MS. MESSICK: Again, she is assuming that what she is
14 saying is right and asking if he knows about they matters that
15 she's asserting as factual. And I am not aware of any evidence
16 in this case that supports that statement. And she certainly
17 hasn't established it here today.

18 THE COURT: I will give it the weight that it
19 deserves, but it's a question about his awareness, so if he is
20 not aware of it, then he can say that.

21 MS. MESSICK: Okay. But he's also not asserting -- he
22 is not agreeing that it's true either, right? It's the same as
23 before. You're not assuming the truth of the statement.

24 THE COURT: Well, the -- her question isn't evidence.
25 So she's not offering her question as evidence. It's just his

1 answers that are evidence. So if he says he's not aware of it,
2 then there's no basis for me to assume the truth of it.

3 MS. MESSICK: Thank you, Your Honor.

4 BY MS. ALLEN:

5 Q Colonel Archer, the savings for ALEA surrounding the
6 circumstances of the closure of these driver's license offices
7 was just \$200,000, right?

8 A Correct.

9 Q I want to turn your attention to the discussion that you
10 had on direct examination about the U.S. Department of
11 Transportation investigation and agreement.

12 If I say DOT, would you understand me to mean the U.S.
13 Department of Transportation?

14 A I -- yes.

15 Q In 2016, the U.S. Department of Transportation found that
16 the State of Alabama violated Title VI of the Civil Rights Act
17 for the closures of the driver's license offices in the Black
18 Belt, correct?

19 A I know there was an investigation into that, but I
20 don't -- I don't have my -- there was a -- the findings I -- I
21 think the agency and the U.S. Department of Transportation
22 agreed to enter the MOA to settle all these matters.

23 Q Is that a yes to my question?

24 A Yes.

25 Q You're aware that the DOT asked that the driver's license

1 offices be reopened because they believed that the closures
2 discriminated against black people in the Black Belt, right?

3 A The offices were already reopened.

4 Q So is that a yes to my question?

5 A The offices were already reopened.

6 Q Let me ask this: You know that the DOT asked that these
7 offices remain open because they believed that the closures
8 discriminated against black people in the Black Belt?

9 A Yes. They asked that they remain open, yes.

10 Q And that's because they believe that the closures were
11 discriminating against the black people in the Black Belt,
12 right?

13 A Yes.

14 Q You are not aware of any information that contradicts the
15 DOT's finding that the driver's license office hours reductions
16 had a disparate impact on black people, correct?

17 A Correct.

18 Q The DOT memorandum of agreement with ALEA represents
19 ALEA's official position on the issue, correct?

20 A Correct.

21 Q And the memo states that the Department of Transportation
22 has concluded that African-Americans residing in the Black Belt
23 region of Alabama are disproportionately underserved by ALEA's
24 driver's licensing services causing a disparate and adverse
25 impact on the basis of race, correct?

1 A Yes.

2 MS. ALLEN: Your Honor, if I can have a moment to
3 confer with co-counsel.

4 THE COURT: You may.

5 BY MS. ALLEN:

6 Q Colonel Archer, just a few more questions.

7 ALEA offices offer voters an opportunity to register to
8 vote, correct?

9 A Correct.

10 Q Are you aware of a 2016 agreement between ALEA and the
11 U.S. Department of Justice that requires ALEA to comply with
12 the federal motor voter law of 1993?

13 A I do.

14 Q If we could pull up the 2016 agreement. Turning your
15 attention to paragraphs 1 through 4 of the agreement.

16 Do you see that on your screen?

17 A Yes, ma'am.

18 Q And will you read paragraphs 1 through 4 for us, please?

19 A By letter dated September 8, 2015, the United States
20 notified the State of Alabama that the principal Deputy
21 Assistant Attorney General for the Civil Rights Division of the
22 U.S. Department of Justice had authorized litigation against
23 the State and appropriate State officials to enforce the Motor
24 Voter provision of the National Voter Registration Act of 1993,
25 NVRA 52 U.S.C. 20504.

1 Two, the principal Deputy Assistant Attorney General
2 authorized litigation following an investigation in which the
3 United States gathered evidence that established noncompliance
4 with the Motor Voter provision of the NVRA.

5 Number 3, the United States and the State of Alabama share
6 the goals of ensuring that the requirements of the Motor Voter
7 provision of the NVRA are met and ensuring that Alabama's
8 citizens enjoy the benefits envisioned by that provision.

9 4, the United States and the State of Alabama have
10 negotiated in good faith and hereby agree to this M.O.U. as an
11 appropriate means to further their shared goals.

12 MS. MESSICK: Your Honor, before she continues, may I
13 bring the witness some water?

14 THE COURT: Certainly.

15 BY MS. ALLEN:

16 Q Colonel Archer, this is the 2016 agreement that we were
17 just discussing, correct?

18 The 2016 agreement between ALEA and the U.S. Department of
19 Justice?

20 A Yes.

21 Q And is this your understanding of how that agreement
22 operated?

23 A Yes, ma'am.

24 MS. ALLEN: No further questions, Your Honor.

25 THE COURT: All right. Thank you.

1 MS. MESSICK: Is that M.O.U. in evidence?

2 MS. ALLEN: It is not, Your Honor. And we didn't move
3 to enter it into evidence.

4 THE COURT: Okay.

5 MS. MESSICK: May we have just one minute?

6 THE COURT: You may.

7 REDIRECT EXAMINATION

8 BY MS. MESSICK:

9 Q Colonel Archer, that language that you just read, did the
10 State of Alabama admit that it was in violation of any federal
11 law?

12 A No, ma'am.

13 Q Are you aware of any litigation related to that memorandum
14 of understanding?

15 A No, ma'am.

16 Q Are you aware of any litigation related to the memorandum
17 of agreement that we have been discussing with the Department
18 of Transportation and the change in driver's license offices?

19 A No, ma'am.

20 Q Is the M.O.U. with the Department of Justice concerning
21 the Motor Voter provision of the National Voter Registration
22 Act still in effect? Is that M.O.U. still active?

23 A I believe so, yes, ma'am.

24 MS. MESSICK: Would you guys mind bringing up the
25 termination date of that document? Page 14.

1 BY MS. MESSICK:

2 Q Colonel Archer, when does this document say it will
3 terminate?

4 A This M.O.U. shall terminate three years from its effective
5 date, unless extended by consent of parties.

6 Q And looking above that, when was its effective date?

7 A Shall be effective immediately upon the execution of the
8 last signatory.

9 MS. MESSICK: And, John, would you do me the favor of
10 please showing him when the signatures are?

11 BY MS. MESSICK:

12 Q When is the signature for the United States?

13 A November 12th, 2015.

14 Q And I think there are -- that's page 16 and we have got
15 several more pages.

16 The Northern District U.S. attorney signed when?

17 A November 12th, 2015.

18 Q The Middle District U.S. attorney signed when?

19 A November 12th, 2015.

20 Q And the Southern District U.S. attorney signed when?

21 A November 12th, 2015.

22 Q And when did the State sign?

23 A November 13th, 2015.

24 Q And another signature for the State?

25 A November 12th, 2015.

1 Q And Secretary Collier?

2 A November 12th, 2015.

3 Q Is this M.O.U. still in effect?

4 A No, ma'am.

5 Q Thank you.

6 THE COURT: All right. Is there any reason I may not
7 excuse Colonel Archer?

8 MS. ALLEN: None from us, Your Honor.

9 MS. MESSICK: None, Your Honor.

10 THE COURT: All right. Colonel Archer, thank you for
11 being with us today. You are excused.

12 Mr. Davis, I think you may have told me earlier that
13 that's the State's last witness for the day, but I confess that
14 I can't recall.

15 MR. DAVIS: You are correct, Judge. I don't think
16 anybody should listen to me on guesses of how long things are
17 going to last. Things went quicker than I expected. We have
18 no more witnesses today.

19 THE COURT: Well, you will never meet opposition from
20 me for things going quicker than any lawyer in the room ever
21 expected.

22 We will recess early today then unless there are matters
23 we need to take up.

24 MR. DAVIS: I don't think so. I am prepared to tell
25 the Court how I see the next week unfolding. Again, I don't

1 know how good a guess that will be, but I will tell you what we
2 have scheduled if you want to hear it.

3 THE COURT: I would. Thank you.

4 MR. DAVIS: By my count, we have four experts and five
5 fact witnesses left to go.

6 On Monday -- and I have discussed this with plaintiffs'
7 counsel. On Monday, we intend to call Sean Trende, an expert;
8 Josh Roberts, a fact witness; and Adam Carrington in that
9 order.

10 On Tuesday, we can finish Dr. Carrington in the morning if
11 we have not finished with him on Monday. Then Trey Hood, an
12 expert, will testify. And then some fact witnesses. I do not
13 know how many. We're working on scheduling those.

14 We also are prepared to start Dr. Bonneau, an expert, on
15 Tuesday, should we finish early enough in the day that we need
16 to fill some time.

17 Am I right about that, Mr. Taunton?

18 MR. TAUNTON: Yes.

19 MR. DAVIS: Yes. On Wednesday we will either finish
20 Dr. Bonneau or start him and do whatever remaining fact
21 witnesses we have left.

22 THE COURT: Okay. All right. That's very helpful.

23 Thank you.

24 Mr. Rosborough, you look like you were about to say
25 something.

1 MR. ROSBOROUGH: Just to clarify because just in case
2 it's a counting -- it's probably just a counting thing. By my
3 count, you have six fact witnesses left?

4 MR. DAVIS: Well, it's possible I have left someone
5 off.

6 MR. ROSBOROUGH: I just want to -- in case there's an
7 additional witness you are not calling or anything like that.
8 I just want to make sure we are on the same page. I'm sure
9 it's probably just counting.

10 MR. DAVIS: What I have on my list is Mr. Roberts will
11 go Monday, then Copeland, Landers, McCollum and Payne. Coley.
12 You are correct.

13 MR. ROSBOROUGH: Okay. Six.

14 MR. DAVIS: Six. I apologize.

15 I still do not expect to have a problem dispersing those
16 fact witnesses among Tuesday and Wednesday after we're done
17 with Mr. Roberts.

18 THE COURT: Okay. All right.

19 Does the group have a preference for whether we start at
20 8:30 or 9:00 a.m. on Monday? Let's say 8:30, bright and early
21 Monday morning. Is that good?

22 Okay. All right. I'll see you all at 8:30 Monday
23 morning.

24 And you know how to find us over the weekend if you need
25 us. I will just remind you that Frankie will be back next

1 week, but not until Monday. So if you need us, it goes to
2 chambers, not to Frankie specifically.

3 And, Sarah, thank you very much for being with us this
4 week.

5 All right. Y'all have a great weekend.

6 (Whereupon, the above proceedings were concluded at
7 2:40 p.m.)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K Decker

11-15-2024

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255