

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

ALABAMA STATE CONFERENCE *
OF THE NAACP, et al., *
Plaintiffs, * 2:21-cv-1531-AMM
vs. * November 14, 2024
WES ALLEN, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendant. *

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

Proceedings recorded by OFFICIAL COURT REPORTER, Qualified
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P R O C E E D I N G S

(In open court.)

THE COURT: Good morning, everybody.

Next witness for the plaintiffs.

MR. ROSBOROUGH: Good morning, Your Honor. Plaintiffs
call Scott Douglas.

THE COURT: All right. If you'll come to the witness
stand, sir.

SCOTT DOUGLAS

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

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

THE WITNESS: My name is Scott Douglas; S-C-O-T-T,
D-O-U-G-L-A-S.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. ROSBOROUGH:

Q Good morning, Mr. Douglas. How are you today?

A Good morning. Fine. Thank you.

Q Can you please tell the Court your current employment?

A Yes. I'm currently employed at Greater Birmingham
Ministries.

Q When did you start at Greater Birmingham Ministries?

1 A I became executive director of Greater Birmingham
2 Ministries in 1993.

3 Q And how did you first become involved with Greater
4 Birmingham Ministries?

5 A My family and I, my wife and our 2-year old son moved from
6 Nashville to Birmingham in 1976. She was a grad student at
7 UAB, and I was currently unemployed. And we needed diapers for
8 our kid, and someone told me about Greater Birmingham
9 Ministries, and we went there and got free diapers for our son.

10 Q Did you continue your involvement after that initial
11 interaction?

12 A Yes. After that, I found out something about what they
13 did in the community, and I became a volunteer.

14 Q And what did that volunteering role entail?

15 A Oh, it was everything from door knocking around Get Out
16 the Vote to organizing food drives at my local church, to
17 helping attorney, incarcerated people settle into new homes in
18 communities, to -- a lot of things.

19 Q At a certain point, did you join the board of directors of
20 Greater Birmingham Ministries?

21 A Yes. In 1982, I became a member of the board of
22 directors.

23 Q Where did you grow up, Mr. Douglas?

24 A I grew up in Nashville, Tennessee.

25 Q And did you attend segregated schools there?

1 A Yes. My entire public school was segregated.

2 Q And I believe you testified to this, but just to be clear,
3 when did you move to Alabama?

4 A I moved to Alabama in 1976.

5 Q Before you became executive director of Greater Birmingham
6 Ministries, and if I refer to it as GBM, will you understand
7 what I mean?

8 A Yes. That's much easier.

9 Q Before you became executive director of GBM in 1993, what
10 were your previous jobs in Alabama?

11 A Oh, in Alabama. In Alabama, I was unemployed when I first
12 arrived here, March '76, but soon I got employment as
13 delivering ice, like the ice you get at the quick market sell
14 off the back of the truck to being a small metals assembler, to
15 being a janitor and others, steam vacuum cleaner service.

16 Q After that point, did you hold any other jobs?

17 A Oh, yes. Within three years, I was able to get a job with
18 the Southern Organizer Committee for economic and social
19 justice.

20 Q And what was your role at that organization?

21 A My role at what we call SOC, S-O-C, was to travel the
22 Southeast learning about stories of struggles of low income
23 people, people of color, black, poor, and white poor and
24 others, Vietnamese in the Bayou La Batre area.

25 Q What sort of issues did you work on in your role there?

1 A Yes. I covered more than just Alabama. In Mississippi,
2 we covered -- we uncovered the stories of black men being
3 lynched while in jail. And we also worked with -- mostly a lot
4 with the emerging environmental injustice movement among people
5 of color in the Deep South. At times, gave them resources to
6 help them adjust their pollution and poison issues.

7 Q After you left your position with S-O-C or SOC?

8 A Yes.

9 Q Where did you?

10 A I went to the partnership for the Marketing Foundation.
11 It was a national foundation that literally kind of funded the
12 work I did for SOC. So because I knew a lot of the groups on
13 the ground, I was able to give some reasonable assessments.
14 But why more funded should you go, these grass roots
15 organizations who didn't have a big presence, but would do an
16 effective work.

17 Q Finally, after that position, did you hold any other roles
18 before you took over as executive director of GBM?

19 A Yes. My final position before I became director of GBM
20 was I was -- the same strand, the first regional organizer for
21 environmental injustice for the Sierra club.

22 Q Let's talk a little bit more about Greater Birmingham
23 Ministries. Can you describe GBM's organizational mission?

24 A Yes. GBM's mission is to serve people, build community,
25 and pursue justice.

1 Q And I want to come back and talk about that a little more.
2 But first, what type of organization is GBM in terms of its
3 corporate structure?

4 A Yeah. GBM is a faith-based 501(c)(3) non-profit, and it's
5 governed by a board of directors.

6 Q What is GBM's membership structure, if any?

7 A Yes. We have two forms of membership; one is
8 organizational membership. Our term for it is sponsoring faith
9 communities. And they are predominantly denominations that
10 have signed on to becoming members of GBM, such as North
11 Alabama Conference United Methodist Church, the African
12 Methodist Episcopal Church -- the African-American Episcopal
13 Church, the Christian Methodist Episcopal Church, the African
14 Methodist Episcopal Church, Zion, the Roman Catholic Diocese,
15 and the Presbytery Sheppards Lapsley.

16 Q Do you have any other types of membership?

17 A Yes. In the local GBM area, we have our only direct
18 congregational members, like 16th Street Baptist Church.

19 Q Can you speak to whether GBM has individual members?

20 A Oh, yeah. Since 2015, GBM has had individual members.

21 Q And in terms of organizational members, which if any, are
22 elected in the Huntsville or Decatur areas?

23 A Of our denominational members are the Episcopal Diocese of
24 Alabama, the Christian Methodist Episcopal Church, the African
25 American Methodist Episcopal Church, African Methodist Church,

1 Zion, and the Presbytery Sheppards and Lapsley.

2 Q Do you have any understanding of the racial demographics
3 of those congregations?

4 A Yes.

5 Q And what is your understanding?

6 A Of those denominations, the Presbyterian Episcopal Diocese
7 are predominantly white, but they're multi-racial, and the
8 African Methodist Episcopal Church, the CME, Christian
9 Methodist Episcopal Church and African Methodist Episcopal
10 Church of Zion are African-American.

11 Q And which, if any, of GBM's organizational members are
12 located in the Montgomery area?

13 A The same ones I mentioned earlier.

14 Q Okay. Do you know of any African-American member church
15 leaders in the Huntsville area?

16 A Yes.

17 Q And who is that?

18 A Reverend Randy Kelley.

19 Q Okay. How does a faith community become an organizational
20 member of GBM?

21 A Yeah, sure. A faith community becomes, a member
22 sponsoring member of GBM by submitting a letter of inquiry,
23 which then presents in the dialogue about the mutual
24 responsibilities of incoming community and Greater Birmingham
25 Ministries.

1 Q And how, if at all, do organizational members participate
2 in GBM's governance?

3 A They participate -- by participating, they have
4 representatives on GBM's board of directors and also
5 contributing to the financial and volunteer base of Greater
6 Birmingham Ministries.

7 Q What is the structure of GBM's board of directors?

8 A The structure of the board of directors? Yes. It is
9 facilitated by -- well, the officers -- president,
10 vice-president, treasurer, and secretary. And this is the --
11 the managing core is the executive committee.

12 Q Approximately how big is the board of directors of GBM?

13 A Our board of directors is 42 people.

14 Q How, if at all, is that split between individual and
15 organizational members?

16 A Organizational members are about 32 and individual are 1.

17 Q And speaking of individual members, approximately how many
18 individual members does GBM have?

19 A Approximately 2,700.

20 Q Where are they located within Alabama?

21 A Individual members are located across the state of
22 Alabama, primarily in the Birmingham area, but from the north
23 to the south.

24 Q How does someone become an individual member of GBM?

25 A An individual becomes a member of GBM by a financial

1 donation and a commitment to the principles or values of
2 Greater Birmingham Ministries.

3 Q Do you know of any individual African-American members of
4 GBM in the Montgomery County area?

5 A Yes, I do.

6 Q And who is that or are they?

7 A Presdelane Harris for one -- Presdelane,
8 P-R-E-S-D-E-L-A-N-E. That's one word. Harris.

9 Q And do you have any awareness of whether Ms. Harris is a
10 registered voter?

11 A Yes, she is.

12 Q Okay. What is, to the best of your knowledge, the racial
13 and economic profile of the people Greater Birmingham
14 Ministries serves?

15 A Of our clients, the people we serve, I would say about 75,
16 80 percent African-American, 10 percent white, 5 percent
17 Latino.

18 Q What are GBM's programmatic areas?

19 A GBM's program areas shadow the -- our mission statement --
20 serving people, building community, pursuing justice. And
21 those relevant programs are direct services, providing
22 financial, food, and clothing and utilities assistance to low
23 income families.

24 Build the community.

25 Sustain interfaith dialogue and communications. Because

1 of the multiple faith communities in the state of Alabama, you
2 know, there are a lot of differences between he religions.
3 What we all have in common is love your neighbor as yourself.
4 And that's the band that holds us together.

5 Pursuing justice is our program of addressing issues and
6 policies that affect the poor and people of color unjustly.

7 Q Of the three programmatic areas, what parts of the state
8 do you pursue them in?

9 A Our direct services program is primarily the five-county
10 region around Jefferson County. The interfaith work and our
11 build a community work with faith communities is statewide.
12 Many of our sponsoring denominations are also statewide. Our
13 systems change work of pursuing justice is of necessity
14 statewide, yeah.

15 Q And in terms of systems change and pursuing justice, can
16 you discuss the types of examples of the types of policies GBM
17 works on that affect Alabamians statewide?

18 A There are a variety ranging from criminal justice to
19 environmental justice to education funding, to public
20 transportation, and, of course, voting rights.

21 Q I'd like to -- we will come back a little more to that,
22 but I would like to switch gears for a moment.

23 What is your understanding of the areas of the state of
24 Alabama at issue in this lawsuit?

25 A My understanding of the areas in this lawsuit is north

1 Alabama in the Huntsville Madison area and Montgomery.

2 Q What is GBM seeking to achieve by participating in this
3 lawsuit?

4 A GBM is seeking to achieve in this lawsuit a more
5 responsive -- yeah, a more responsive State Senate.

6 Q Can you say a little bit more about what you mean by more
7 responsive State Senate?

8 A Sure. For many African-Americans in north Alabama -- and
9 there are a few, more than a few -- to not have a reasonable
10 African-American representation means -- out of sight, out of
11 mind, unheard, not on anybody's agenda. There's no, you know,
12 person who represents them with shared lived experiences of the
13 conditions they face and obstacles they face.

14 Q Based on your experience, do you have any views of the
15 interaction between race and politics in Alabama?

16 A Based on my experience, race is politics in Alabama.

17 Q What do you mean by that?

18 A What I mean is that in my experience, from representation
19 in elected bodies to implementation of public policies, race
20 has been entrenched as a factor in decisions that leaders often
21 make.

22 Q Are you thinking of anything specific when you talk about
23 that?

24 A Specifically, I'm speaking of the absence of home rule.
25 And since -- in Alabama's counties and municipalities, where

1 the Legislature can overturn, nullify what was a legal action
2 by a municipality.

3 Q Why does that matter, if at all, particularly for the
4 communities you serve?

5 A It matters in my opinion to the communities that we serve
6 that if local elected officials take actions to benefit low
7 income people, black and white, and it's legal when they do it,
8 and then the Legislature convenes after that and nullifies, and
9 that creates a new law outlaws helping lower income people, in
10 this case, minimum wage increase.

11 Q Okay. You mentioned minimum wage increase. Can you tell
12 the Court a little bit more about that?

13 A Yeah. I'm sorry. In 2017, GBM was part of a coalition to
14 raise the minimum wage in the state of Alabama. Alabama wasn't
15 making a move towards it. So it began in Birmingham, was
16 moving towards convincing the city council to pass an ordinance
17 to raise the minimum wage from \$7 and a quarter to \$10.10 an
18 hour. After several months, they conceded, and the mayor
19 signed it into ordinance.

20 Within weeks, the Legislature convened and met and passed
21 a new law that nullifies, that nullified the GBM minimum wage
22 ordinance and preempted any other municipality in the state
23 anywhere else in the state from doing the same.

24 Q What effect did this have in your experience, if at all,
25 in other areas of the state, including the Huntsville and

1 Montgomery areas?

2 A Sure. Birmingham was the first, but before we succeeded
3 in winning Birmingham, there were already efforts in
4 Huntsville, Tuscaloosa, Montgomery, and Mobile.

5 Q Do you have any experience with whether this minimum wage
6 issue disproportionately affected any racial groups?

7 A The minimum wage issue disproportionately affected
8 particularly -- it affected all the poor people, but it
9 impacted African-American disproportionately based on the
10 distribution by race among the poor in Alabama where
11 African-Americans are only represented.

12 Q Does this -- how does this prohibition on raising the
13 minimum wage affect the political participation of black
14 Alabamians, if at all, in your view, your experience?

15 A Yeah. In my lived experience, experience of class I've
16 known, having to work more than one job to make basic ends meet
17 denies you the possibility of the civic -- civic and political
18 participation, everything from adult learning classes to PTA to
19 attending civil council meetings, to being able to regularly --
20 anyway -- as well as an absence of public transportation even
21 to vote.

22 When you work multiple part-time jobs, you make -- why
23 don't they vote absentee? Well, they're not planning to vote
24 absentee. They're planning to vote, Walk the Vote, for
25 instance, but your shift gets changed. That happens to shift

1 workers without their approval.

2 Q You just mentioned transportation. Are there any areas in
3 particular where you've observed deficiencies in transportation
4 concerning black Alabamians disproportionately?

5 A In Alabama, public transportation ridership is
6 disproportionately African-American because we're poor in
7 particularly urban areas. And so that means minimum access to
8 jobs, education, recreation, and health care without -- if you
9 don't have a car or can't afford a car.

10 Q And what does that have to do, if at all, with political
11 participation in your experience?

12 A It's almost like minimum wage. Lack of available adequate
13 accessible, affordable public transportation is a hindrance to
14 participation in a civic life of community, including voting
15 and participating, you know, participating in public meetings,
16 access to information by attending public hearings and others
17 as well as voting.

18 You could have well intended to vote if you have a car.
19 If you have to work overtime, you can get to the polls. But if
20 you have public transportation, ain't no way it's going to
21 happen.

22 Q Now, Mr. Douglas, can -- let's talk about health care.
23 Are there any particular areas where in your experience you've
24 observed the Alabama Legislature fail to respond to the health
25 care needs of black Alabamians disproportionately?

1 A Yes.

2 Q And can you speak to those?

3 A Particularly the refusal to expand Medicaid expansion to
4 the working poor of Alabama, some 300,000 families,
5 disproportionately African-Americans have been denied the
6 benefit of Medicaid expansion, which would be able to really
7 help increase the health care outcomes of those impacted
8 families.

9 Q Do you have any experience working with adults with low
10 literacy?

11 A Yes.

12 Q What is your experience?

13 A Our experience as -- at Greater Birmingham Ministries is
14 being able to help less literate adults be able to get the
15 assistance they need for the agencies that provide them.
16 There's a shyness there in adults seeking help with literacy
17 and a kind of embarrassment, but the latest organizations have
18 stopped doing literacy training in schools as much. They do it
19 in churches. Because as one counselor told us, schools is
20 where they thought they failed, yeah.

21 Q Have you experienced any racial disparities in literacy
22 deficiencies?

23 A I don't have statistics, but from my knowledge, my own
24 knowledge, I have, yes, in terms of the -- especially in urban
25 areas like Birmingham is, there are higher percentage

1 proportionately of African-Americans that didn't finish the
2 high school or get a GED.

3 Q I'd like to -- well, let me ask one more question there.

4 How, if at all, does lower literacy affect the ability to
5 participate politically?

6 A Lower literacy dispro -- lower literacy really hurts
7 participate in the civil discourse the civic education
8 discourse communications because what -- not a clear
9 understanding of which office -- elected office performs what
10 function and what relationship to you. We've gotten calls --
11 not calls -- at public hearings in public meetings even at GBM
12 where the question, who makes the decisions about what, you
13 know? Then you have to name them.

14 The city council does this, the county commission does
15 that, the Legislature does that. And that is not very well
16 known by a lot of adults, low income and low literacy.

17 Q Do you have any experience about whether lower literacy
18 adults face any challenges in the voting process particularly?

19 A Yes.

20 Q What's your experience?

21 A Our experience is -- with low literacy in adults in the
22 voting process is we're still part of this as being able to let
23 people -- we and other groups have to inform people about what
24 an amendment means on a ballot, what does it actually mean on a
25 ballot to where you can get voter ID, or where you can get a

1 non-driver's ID. At one point, we had grants to provide IDs,
2 but the funding ran out for that kind of work, yes.

3 Q And do you have any experience working to assist people
4 with lower literacy with voting forms?

5 A Yes.

6 Q What's that experience?

7 A We have done -- since 2012, produced a guide to voter
8 forms, voter registration forms as well as the voting process
9 itself that uses graphics, simpler language, big print so that
10 it is not so much fine print tech language that show people how
11 to register to vote, how to update their relatives so that you
12 vote where you live rather than going to the home house they
13 call it to vote where you were born across town and stuff, yes.

14 Q Do you have any experience -- in your experience, what are
15 the racial demographics of the people that are primarily taking
16 advantage -- need to take advantage of those resources around
17 voter forms?

18 A In our experience, based on where we are in Birmingham,
19 our experience is the highest proportion is African-American.

20 Q Do you have any reason one way or the other to doubt if
21 that's the case beyond Birmingham?

22 A I don't have that reason to doubt beyond Birmingham. For
23 instance, I do know it's pretty similar in Montgomery and
24 Mobile, in particular, and Huntsville. And but I don't know
25 how well spread -- widespread it is in the rural areas.

1 Q Mr. Douglas, have you previously run for elected office in
2 Alabama?

3 A Yes.

4 Q And what office was that?

5 A The mayor of Birmingham.

6 Q Did you run under a party banner?

7 A No. The municipal elections in Alabama are non-partisan.

8 Q When did you run for mayor?

9 A 2009.

10 Q And how closely do you follow State Senate races and other
11 political races in Alabama?

12 A I have followed them pretty closely since the 1980s.

13 Q Based on your experience with that and as a candidate, do
14 you have any observations about black candidates' ability to
15 fund raise in comparison to white candidates in Alabama?

16 A Yes.

17 Q What is your experience on that?

18 A My experience is that it is very difficult for first-time
19 black candidates to raise funds for political office,
20 sufficient funds for political office.

21 Q Do you have any understanding in your experience why that
22 is?

23 A Yes. It's because that -- well, it's because they're
24 first timers. But two is because the communities they come
25 from does not have the material wealth base to support them as

1 opposed to first timers say, for Mountain Brook.

2 Q Before we close, I would like to come back to your
3 discussion of public transportation.

4 A Yes.

5 Q And I think you were talking a little bit about the lack
6 of public transportation affecting black Alabamians.

7 Do you have any understanding or experience more
8 relevantly about why there are public transportation
9 deficiencies for black Alabamians?

10 A Number one, historically, and currently, more so
11 currently, African-Americans are proportionately --
12 disproportionately reliant on public transportation for
13 mobility.

14 But the reason our public transportation across the state
15 including Birmingham and Huntsville and Montgomery and Mobile
16 and the rural areas are so deficient is because in 1950s prior
17 to the Rosa Parks sitting on the back of the bus, the Alabama
18 passed a -- Legislature passed a constitutional amendment
19 forbidding the use of gas taxes and road taxes to pay for
20 public transportation.

21 As it is interpreted, it's because that the public
22 transportation desegregation movement had already begun across
23 the nation. And they decided to defund public transportation
24 through an amendment.

25 Q Thank you, Mr. Douglas. I have no further questions at

1 this time.

2 A Oh, thank you.

3 CROSS-EXAMINATION

4 BY MR. WALKER:

5 Q Good morning, Mr. Douglas. How are you?

6 A Good morning. Thank you.

7 Q Mr. Douglas, Greater Birmingham Ministries has not
8 identified any individual members in the Huntsville area, has
9 it?

10 A In the Huntsville area?

11 Q Yes, sir.

12 A Not to my knowledge.

13 Q And just to be clear, you mentioned Randy Kelly as someone
14 who was a member of an organization in Huntsville?

15 A Yes.

16 Q But he's not an individual member?

17 A No, he's -- he's a leader of an organizational member.

18 Q Yeah. And not an individual member; is that correct?

19 A To my knowledge, yes.

20 Q What programs does Greater Birmingham Ministries provide
21 in Huntsville?

22 A The programs that Greater Birmingham Ministries provides
23 in Huntsville are several; two in particular. We are a leading
24 partner with the Interfaith Mission Service of Huntsville.
25 Think of it as GBM's cohort of interfaith collaboration work in

1 Huntsville Madison County area.

2 We started in the same year, 1969, and been partners ever
3 since. Among those things are food drives, especially
4 overseas.

5 Q Could you ask you to speak up, please?

6 A Oh.

7 THE COURT: Feel free to adjust that microphone.

8 THE WITNESS: Thank you, ma'am. I appreciate it.

9 THE COURT: Absolutely.

10 THE WITNESS: Say it again. I'm sorry.

11 BY MR. WALKER:

12 Q Well, the general question I had asked you was to describe
13 whatever programs GBM has in Huntsville.

14 A We have collaborative programs in Huntsville, not just
15 with congregations and denominations in Huntsville, but
16 Interfaith Mission Service, which was created the same year
17 that GBM was, without knowledge of each other at that time.

18 But since then, we've been partners on global missions
19 work, for instance, clothing for children and adults overseas
20 and such.

21 We still maintain that partnership with them.

22 Q So clothing for children overseas. Are you saying that
23 GBM participates in collecting clothing for children?

24 A Yes. Yes.

25 Q Okay.

1 A And not only that, we also -- these -- some of these
2 clothes more recently have been brand new clothes donated by
3 retailers.

4 Q And GBM does not have an office in Huntsville, does it?

5 A No, it does not.

6 Q Okay. Does it have any staff members in Huntsville?

7 A Not residing in Huntsville, right, living in Huntsville,
8 no.

9 Q Well, the people who are collecting clothing in Huntsville
10 and doing other activities in Huntsville, are they GBM
11 personnel, or are they personnel from other agencies?

12 A They are not GBM person -- paid personnel, sure, no. But
13 they are from -- not just of agencies, but also from our
14 participating denominational membership churches.

15 Q Sure. Churches. And in Montgomery, what programs does
16 GBM have?

17 A In Montgomery, some of our collaboration work has been
18 around voter education and civic education with GBM's work.

19 Q And GBM, sir, does not have an office in Montgomery, does
20 it?

21 A No, but we do have volunteers.

22 Q Right.

23 A Yeah.

24 Q You don't have any staff, paid staff members in Montgomery
25 either?

1 A We had, but not now.

2 Q Okay. And what voter education and civic education does
3 GBM do in Montgomery?

4 A Well, in Montgomery, we are part of the Alabama Poor
5 People's Campaign, we are the sponsors of that. And we have
6 several volunteers who lead in that work. In addition, we have
7 a civic education course called the Power of Participation that
8 we have used across the state and also inside state prisons.

9 Q You mentioned -- I couldn't quite understand you -- that
10 you were -- that GBM, I'm sorry, sir, was a sponsor of the
11 Alabama -- I couldn't understand what you said.

12 A Poor People's Campaign.

13 Q Alabama Poor People's Campaign. What does it mean to say
14 that GBM is a sponsor of the Alabama Poor People's Campaign?

15 A As part of a national campaign, Poor People's Campaign; A
16 Fight for Moral Survival, the whole title, we are the Alabama
17 affiliate.

18 Q And what does that mean?

19 A It means that we are -- have the responsibility of
20 carrying out the program of the Poor People's Campaign
21 statewide across Alabama.

22 Q When the Alabama Poor People's Campaign conducts
23 operations -- does it conduct any operations in Montgomery
24 county?

25 A Yes. Get Out the Vote and voter registration activities,

1 as well as civic education activities.

2 Q And when those activities occur, are they conducted by GBM
3 personnel?

4 A They're conducted by unpaid volunteers.

5 Q Are the volunteers of GBM or the Alabama Poor People's
6 Campaign or first -- I mean, Dexter Avenue Baptist Church or
7 Hall Street -- or who?

8 A Repeat the question.

9 Q Yeah. Who are the volunteers? I understand they're
10 volunteers. Who are they from?

11 A Some of them attend Dexter, some of them attend Greater
12 Bethel A.M.E. Church, but they are -- maybe I can explain it
13 this way. They are organized by GBM staff people.

14 Q Are they members of GBM, to your knowledge?

15 A At least one I know is, is a paid member.

16 Q That would be Ms. Presdelane?

17 A No. That's an addition -- this is a newer person named
18 Valdoria Johnson.

19 Q Would you spell that name, please?

20 A V-A-L-D-O-R-I-A.

21 Q Johnson?

22 A Yeah.

23 Q And does -- is it Mr. or Ms.?

24 A Ms.

25 Q Does Ms. Johnson live in Montgomery County?

1 A Yes.

2 Q Do you know her address?

3 A I don't know it by heart.

4 Q Okay. Do you know if she's registered to vote?

5 A Yes.

6 Q How do you know that?

7 A Well, she voted.

8 Q How do you know that?

9 A She said so.

10 Q Okay. Other than individuals who have been convicted of a
11 crime of moral turpitude, are you aware of any legal
12 impediments that hinder people from voting?

13 A Other than crimes of moral turpitude?

14 Q Yes, sir.

15 A Yes.

16 Q Okay.

17 MR. WALKER: Could we see page 115, lines 6 through 13
18 of Mr. Douglas's deposition?

19 BY MR. WALKER:

20 Q Do you remember, Mr. Douglas, being deposed on April 23,
21 2024?

22 A Yes.

23 Q And do you remember that you were under oath at that time?

24 A Yes.

25 Q And that you testified that there were not any reasons why

1 you could not testify truthfully?

2 MR. ROSBOROUGH: Objection. Improper impeachment.

3 This answer does not contradict what Mr. Douglas just said. He
4 asked about moral turpitude, and he said no. And the answer
5 shows that he spoke to an additional issue.

6 THE COURT: Well, he can testify to that.

7 MR. ROSBOROUGH: Okay. Thank you, Your Honor.

8 BY MR. WALKER:

9 Q If you will look at the question you were asked, I will
10 read it to you, Mr. Douglas.

11 Other than voter identification, which I had not mentioned
12 in my question earlier, are there any other legal impediments
13 that you would point to that hinder people from participating
14 in the political process?

15 And your answer was: Other than identification and the
16 moral turpitude condition, you can't think of any; is that
17 correct?

18 A That's what I said at the time.

19 Q Okay. And is that still your answer?

20 A No.

21 Q Okay. What's your answer now?

22 A We've had cases which didn't come to mind of people who
23 have been denied the right to vote or told by the officials
24 they didn't have the right to vote that was outside of moral
25 turpitude that didn't qualify as moral turpitude. They were

1 lied to or misled.

2 Q When did that happen?

3 A It was happening before the change in moral turpitude law
4 and afterwards.

5 Q How do you know that?

6 A From clients we have talked to. Let me explain.

7 MR. WALKER: Your Honor, I object to the answer as
8 hearsay and move to strike.

9 MR. ROSBOROUGH: I -- he's responding to the way that
10 Mr. Walker phrased the question. I think we are entitled to at
11 least hear his full answer first.

12 MR. WALKER: It doesn't mean -- I'm sorry, Your Honor.

13 THE COURT: Well, I want to hear the answer. I mean,
14 I will say it's unclear to me whether it's going to be offered
15 for the truth or offered for some other purpose in response to
16 your question. So I want to hear the answer.

17 THE WITNESS: Repeat the question.

18 BY MR. WALKER:

19 Q I will repeat the question.

20 As I understood your testimony just now, and correct me if
21 I'm wrong, GBM has been contacted, you're aware, by some people
22 who were told they could not vote. Did I understand you?

23 A Correct.

24 Q And why were they told they could not vote?

25 A They were told -- when they tried to register to vote and

1 they asked had they committed any crimes, and they said they
2 did. And the officials would tell them, well, you are not
3 qualified to vote.

4 This is before the new moral turpitude.

5 Q This was before 2017?

6 A Before 2017.

7 Q And how many of these people were there, do you know?

8 A I didn't talk to every one of them, but we processed
9 dozens of individuals.

10 Q And were any of these people from Montgomery or Madison
11 County?

12 A Montgomery for sure.

13 Q Okay.

14 A And Birmingham.

15 Q And do you know if there was any legal impediment to their
16 voting?

17 A They thought there was a legal impediment to their voting,
18 and they did not know of the CERV process, the certificate of
19 eligibility to register to vote. No one had told them.

20 In fact, the Secretary of State has said it is not his job
21 to inform people how to get their voting rights restored.

22 Q Uh-huh. And was GBM able to help them get their voting
23 rights restored?

24 A Yes.

25 Q Okay. Are you aware of any such incidents after 2017?

1 A Yes.

2 Q Okay. When were those?

3 A Up until today.

4 Q Okay. How many?

5 A Some 200 individuals this year.

6 Q 200 this year?

7 A Yes.

8 Q 200 persons this year that you say came to GBM because
9 they had been told they could not vote or register to vote?

10 A Let's just say there have some who have been told they
11 could not and others who did not know they could.

12 Q What do you mean others who did not know that they could
13 vote?

14 A For instance, former incarcerated persons would tell us
15 that on exiting incarceration they were told they could never
16 vote again, which is untrue.

17 Q Was GBM able to help these people become eligible to vote?

18 A Yes. That number, yes.

19 Q Mr. Douglas, you have surprised me by talking about
20 numbers of people both before and after the moral turpitude,
21 the law relating to moral turpitude was passed in 2017, who you
22 say had been told they could not vote. Why did you not mention
23 these people in your deposition?

24 A I didn't think about both before and after. And the
25 stream is still going on.

1 Q You were well prepared for your deposition; isn't that
2 true?

3 A I thought so.

4 Q Okay. In fact, you met with your counsel five times in
5 preparation for your meeting; is that correct? We can check
6 your deposition if you want to.

7 A Yeah. Please check it.

8 Q I beg your pardon?

9 A I didn't count.

10 Q Okay. Do you have any reason to think I'm wrong?

11 A No.

12 Q Okay. And you read over the complaint and you read over
13 GBM's discovery responses also in preparation for your
14 deposition?

15 A Yes.

16 Q Okay. But despite all of that preparation -- and you knew
17 that you were being deposed as a 30(b)(6) member, too; is that
18 correct?

19 A Yeah.

20 Q Okay. Despite all that, you didn't mention these people
21 at your deposition, correct?

22 A Are you referring to my answer -- I can't think of any
23 other legal ones other than identification and the failure of
24 moral turpitude conditions?

25 Q That?

1 A Uh-huh.

2 Q And also that you just did not tell us about this issue at
3 all?

4 A What issue?

5 MR. ROSBOROUGH: Objection, Your Honor. Mr. Douglas
6 responds to questions at a deposition. He has -- it would --
7 it's improper impeachment. He has no duty to affirmatively
8 provide testimony that's not asked in response to questions,
9 and Mr. Walker has not pointed to any other question than the
10 particular one up on the screen right now.

11 MR. WALKER: The question is: Other than voter
12 identification, are there any other legal impediments that you
13 would point to that hinder people from participating in the
14 political process. He's testified that people were told or not
15 told that they could not vote or not told that they could vote.

16 THE COURT: I will allow the answer in response to
17 that.

18 MR. WALKER: Okay. Thank you, Your Honor.

19 MR. ROSBOROUGH: I'm sorry. Is there a question
20 pending?

21 THE COURT: I can read it back.

22 THE WITNESS: Thank you.

23 MR. WALKER: Your Honor, if I may have just a second.

24 THE COURT: Mr. Walker, would you like me to read back
25 the question that you had pending, or are you moving on to

1 another one?

2 MR. WALKER: Yes, ma'am, if you would.

3 THE COURT: Okay. It says: The question was:
4 Despite all that, you didn't mention these people at your
5 deposition, correct? The answer was: Are you referring to my
6 answer? I can't think of any other legal ones other than
7 identification and moral turpitude. That? And you said yes.

8 BY MR. WALKER:

9 Q And now you're testifying to people other than moral
10 turpitude, right?

11 A Yes.

12 Q Okay. Are you aware of black Alabamians who are
13 registered to vote and who don't?

14 A Say it again.

15 Q Are you aware of black Alabamians who are registered to
16 vote but who do not vote?

17 A I am aware, yes.

18 Q And that includes your personal neighbor?

19 A My who?

20 Q Your neighbor?

21 A My next door neighbor, one of my next door neighbors, yes.

22 Q And that person does not vote because he says he has a
23 lack of confidence in the voting system?

24 A Yes.

25 Q Is frustration about the effectiveness of our voting

1 system something that's shared with white voters, Latinx
2 voters, Asian voters, so far as you know?

3 A Repeat the question. Frustration about what?

4 Q Frustration about the effectiveness of our democracy is
5 not unique to black people, is it?

6 A It's disproportionately unique to black people.

7 Q When you say disproportionately, what's your basis for
8 saying that? Have you surveyed other people?

9 A I have not done any surveys on trusting government. I
10 have not done any.

11 Q Since January 1 of 2016, have you had any communication
12 with a GBM client or donor who wanted to become more involved
13 in politics in Alabama, but could not because they could not
14 engage with the Alabama Democratic party?

15 MR. ROSBOROUGH: Objection. Calls for hearsay.

16 THE COURT: That's asking if he's had any
17 communication. We don't know if it's going to be offered for
18 the truth of not. It's just about the fact of communication.

19 THE WITNESS: No.

20 BY MR. WALKER:

21 Q Have you had any communication with a GBM client or donor
22 who wanted to be more involved in politics in Alabama, but
23 could not because they could not engage with the Alabama
24 Republican party?

25 A No.

1 Q If GBM believes that an additional minority district can
2 be drawn -- excuse me. Does GBM believe that if an additional
3 minority district can be drawn, it must be drawn?

4 A Could you repeat the question? You cut off.

5 Q Sure. Does Greater Birmingham Ministries believe that if
6 an additional minority district can be drawn, it must be drawn?

7 A Yes, according to the Voting Rights Act.

8 MR. WALKER: Thank you. Your Honor, may I have a
9 moment?

10 THE COURT: You may.

11 BY MR. WALKER:

12 Q Sir, you testified earlier that black individuals were
13 disproportionately affected by Alabama not expanding Medicaid,
14 right?

15 A Correct.

16 Q Do you know what reasons the Governor and the Legislature
17 have for not expanding Medicaid?

18 A No.

19 Q They may be legitimate reasons; is that possible?

20 A Since I don't know, I have not heard a reason not to.

21 Q And the state's failure to expand Medicaid coverage
22 affects all lower income people, regardless of race; is that
23 correct?

24 A Yes.

25 Q And I think you said that it affected 300,000 people in

1 Alabama, over 300,000.

2 A The last count was 300,000.

3 Q Was that 300,000 people or 300,000 black people? I'm not
4 certain.

5 A 300,000 individuals.

6 Q Individuals. Thank you, sir.

7 A Uh-huh.

8 Q What's your source for that number?

9 A The -- I forgot the name of the agency, but it's -- it's a
10 health care officials -- the state of Alabama -- the question
11 was asked how many people lived in the notch of making too
12 little to afford private health care and too much for Medicaid.
13 It's a gap estimate.

14 Q What's the document you're referring to?

15 A I just seen it repeatedly from -- it's an agreed-on
16 statistics between those that support Medicaid expansion and
17 those opposed, but I can't quote the cite or source.

18 Q In the GBM --

19 A No. From the state of Alabama.

20 Q -- agreed upon --

21 A The --

22 Q -- by whom?

23 A I would say the state -- you can get it from the Alabama
24 State Department of Health. The numbers have not been
25 disputed. The money has been disputed, I guess.

1 MR. WALKER: Your Honor, if I could just a second.

2 THE COURT: You may.

3 MR. WALKER: Thank you, Mr. Douglas. That's all we
4 have for you.

5 THE WITNESS: Thank you.

6 THE COURT: Is there any redirect?

7 MR. ROSBOROUGH: Just a few, Your Honor. Thank you.

8 REDIRECT EXAMINATION

9 BY MR. ROSBOROUGH:

10 Q Mr. Douglas, Mr. Walker asked you a question about legal
11 impediments to voter registration a little while ago.

12 Can you think of any non-legal impediments that black
13 Alabamians disproportionately face regarding voter
14 registration?

15 A Yeah. Other than legal requirements, there's
16 misinformation or disinformation and lack of information. For
17 instance, other than legal, there's misinformation,
18 disinformation, and no information. The Secretary of State has
19 said that he would not -- it's not his job to tell people if
20 they're qualified to register to vote or not, particularly
21 people who are exiting incarceration.

22 Q And in your experience, has GBM participated in other
23 voting rights cases litigation?

24 A Yes. In 2010.

25 Q Has any of that litigation been successful?

1 A Yes.

2 Q What can you think of that has been successful in terms of
3 voting litigation that GBM has participated in?

4 A A key one was we were clients in the case that established
5 the Second Congressional Black District as a black opportunity
6 district in the state of Alabama, the second one.

7 Q Have you been involved -- has GBM been involved in any
8 cases involving the absentee voting process in the last year or
9 two?

10 A Yes. Particularly last year, too, yes.

11 Q And what is your understanding of the results of that so
12 far?

13 A The result of that so far is that the latest legislation
14 by the Legislature was not allowed to be enforced in time for
15 this current election, yeah, the SB-1.

16 Q And I'm sorry. What did you say?

17 A SB-1. I'm sorry. It wasn't in time --

18 Q Thank you, Mr. Douglas. I have no further questions.

19 A Thank you.

20 MR. WALKER: If I may follow up.

21 RECROSS-EXAMINATION

22 BY MR. WALKER:

23 Q Mr. Douglas, in response to a question by Mr. Rosborough,
24 he asked you about non-legal impediments, and you mentioned
25 misinformation, disinformation, and no information. Do I have

1 that correct?

2 A Correct. That was not legal impediments.

3 Q Yes. Yes. And you mentioned the Secretary of State. Are
4 you saying that the Secretary of State has provided
5 misinformation or disinformation to black Alabamians?

6 A No. I said he has -- well, black Alabamians is Alabamians
7 too, so all Alabamians, he's provided misinformation to. Not
8 misinformation. I'm sorry. No information to.

9 Q No information?

10 A That's right. The people are coming from exiting
11 incarceration are black, white, and brown.

12 Q I'm sorry, sir, I couldn't understand you.

13 A The people exiting incarcerations are all races -- black,
14 white, brown. And he made a public statement it is not his job
15 as Secretary of State to inform people of their voting rights
16 on exiting prison.

17 Q So if I understand you correctly, there may be people who
18 were convicted of felonies, have served their time, and may be
19 eligible to have their voting rights restored, and your
20 complaint is that the Secretary of State does not tell them
21 that?

22 A My complaint is Secretary of State nor the Department of
23 Corrections.

24 Q Okay. Is it the Secretary of State's job? Can you point
25 me to any case law or any statutory provision that says it's

1 the Secretary of State's job to do what you want him to do?

2 A I can't point to a single provision that cites it is the
3 Secretary of State's job to inform the public of what rules
4 exist and how they apply to the daily lives, no, I can't.

5 Q The Secretary of State is not responsible for registering
6 voters, is that office?

7 A The Secretary, that's a big position.

8 MR. ROSBOROUGH: Objection.

9 THE COURT: What's the objection?

10 MR. ROSBOROUGH: The objection is it seems to be
11 calling for a legal conclusion unless he's asking him in his
12 own personal experience, which I didn't hear.

13 THE COURT: I assume the question is about his
14 understanding, because that's the nature of his testimony is
15 just what his understanding is.

16 MR. WALKER: Yes, ma'am.

17 BY MR. WALKER:

18 Q Do you have an understanding whether the Secretary of
19 State is responsible for registering voters in the state of
20 Alabama?

21 A The -- I understand that he is not directly responsible.
22 The registrar's responsible and probate judges are responsible.

23 Q Which Secretary of State made the statement that he is not
24 responsible for informing people when they come from prison
25 that they can have their votes -- voting rights restored?

1 A The current -- I don't know if the current one or one
2 before Wes Allen.

3 Q You don't know?

4 A Huh-uh. But it was published in the papers.

5 Q Okay. Thank you, sir.

6 MR. ROSBOROUGH: Nothing further, Your Honor.

7 THE COURT: All right. Is there any reason I may not
8 excuse Mr. Douglas?

9 All right. Mr. Douglas, thank you for being with us this
10 morning.

11 THE WITNESS: Thank you.

12 THE COURT: You're excused.

13 (Witness excused.)

14 MS. SADASIVAN: Good morning, Your Honor. Plaintiffs
15 call Joseph Bagley.

16 THE COURT: All right. Good morning.

17 THE WITNESS: Your Honor, may I bring this with me?

18 THE COURT: You may. You may. I do not put people to
19 trial caffeine free. That will not be good for any of us.

20 THE WITNESS: No, Your Honor.

21 JOSEPH BAGLEY

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

24 THE COURTROOM DEPUTY CLERK: Speak loudly and clearly
25 into the microphone stating your name and spell it for the

1 court record.

2 THE WITNESS: Joseph Bagley, J-O-S-E-P-H, B-A-G-L-E-Y.

3 THE COURT: Sir, if you want to move that microphone,
4 you can, so you don't have to lean right into it the whole
5 time.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Just make yourself comfortable.

8 DIRECT EXAMINATION

9 BY MS. SADASIVAN:

10 Q Good morning, Dr. Bagley.

11 A Good morning.

12 Q You have been retained as an expert in this case?

13 A That's right.

14 Q Did you produce any written work in conjunction with your
15 expert?

16 A I did.

17 Q And what -- how many written reports did you provide in
18 this case?

19 A An initial report and a rebuttal report.

20 MS. SADASIVAN: Your Honor, can I have permission to
21 approach the witness with his reports.

22 THE COURT: Is there any objection? You may. And I
23 did not mean to start without somebody in that chair right
24 there. Are y'all good to go?

25 MR. DAVIS: We are good, Your Honor. I just wasn't

1 moving because I have got the real time set up here.

2 THE COURT: That's great. That's perfect.

3 BY MS. SADASIVAN:

4 Q Dr. Bagley, I handed you what's been marked as Plaintiffs'
5 Exhibit PX-19 and PX-21. Turning to the first document, PX-19,
6 do you recognize that document?

7 A I do. This is my initial report.

8 Q Okay. And the second document, PX-21?

9 A Yes. That's my rebuttal report.

10 Q Okay. If we can go to PX-20, slide 1.

11 Okay. Dr. Bagley, do you recognize the document in front
12 of you?

13 A Yes. This is a current copy of my CV.

14 Q Okay. Does that CV accurately reflect your professional
15 background?

16 A It does.

17 Q Okay.

18 MS. SADASIVAN: So I am going to be using an
19 illustrative aid in the slide deck that's been marked with
20 citations. It was provided to defendants last night.

21 THE COURT: Is there any objection?

22 MR. DAVIS: I'm sorry. Did she move to introduce?

23 MS. SADASIVAN: No. I am not moving to introduce the
24 demonstrative aid. I was just saying I plan to use one in
25 conjunction with his testimony, and it was shared with y'all

1 last night.

2 MR. DAVIS: Oh, yes. No, we have no objection to them
3 using demonstrative aids.

4 THE COURT: Great. Thank you.

5 BY MS. SADASIVAN:

6 Q Okay. Let's discuss your professional background. But
7 first, where were you born Dr. Bagley?

8 A I grew up here in Birmingham in Helena and Shelby County.

9 Q Did you grow up here in Birmingham?

10 A Yes. I went to Pelham High School for a year until my
11 family moved to Opelika which is where I graduated high school.

12 Q What is your educational background?

13 A I have an M. A. And a B. A. in history from Auburn
14 University and a Ph.D. in history from Georgia State
15 University.

16 Q And where are you currently employed?

17 A I'm employed at Georgia State University as associate
18 professor of history.

19 Q And how long have you taught at Georgia State?

20 A I have been teaching there for 11 years, I believe, 7
21 years on the tenured track, and I now have tenure.

22 Q What do you consider your areas of specialization?

23 A My examination fields were 19th and 20th Century United
24 States history and U.S. constitutional and legal history,
25 history of South Africa. In terms of my research and writing,

1 I would say American politics and law and race relations,
2 especially in the South.

3 Q And have you been published?

4 A Yes. I have a book published with the University of
5 Georgia press in 2018, and you see there that's *The Politics of*
6 *White Rights: Race, Justice, and Integrating Alabama Schools.*

7 Q And have you peer-reviewed later published work?

8 A Well, yes, my book itself obviously went through a
9 rigorous peer-review. Any book that's published, a historical
10 monograph with a university press is rigorously peer-reviewed.
11 And I myself -- you can see a little bit further down on the CV
12 -- have done peer-reviewing for numerous scholarly journals and
13 university presses, as well.

14 Q Can you talk a little bit more about the subject of your
15 book?

16 A Yes. It's distilled from my dissertation, which won the
17 John Matthews Award for an exceptional dissertation two-year
18 cycle. The dissertation itself was an attempt at an exhaustive
19 history of school desegregation litigation in Alabama and a
20 massive tome of like 800 pages. The book is a distillation of
21 that that looks at not just the school desegregation
22 litigation, but also the political machinations that came along
23 with that.

24 Q Have you won any awards?

25 A Yes. I was just talking about the Matthews award that my

1 dissertation won within the department of history at GSU.

2 Q Okay. And are you a member of any professional
3 organizations?

4 A I am. The Organization of American Historians, the
5 Southern Historical Association, the Alabama Historical
6 Association, the American Society For Legal History.

7 Q Have you testified as an expert in litigation before?

8 A I have. I testified in the *Milligan* litigation at the
9 preliminary injunction hearing. I testified in *People First*
10 *vs. Merrill* several years ago. I testified in South Carolina
11 in the *South Carolina State Conference of the NAACP vs.*
12 *McMaster* -- excuse me -- *vs. Alexander*. *McMaster* was the House
13 phase that was settled.

14 I offered an expert report and testified in a deposition
15 in Georgia State Conference of the NAACP versus State of
16 Georgia. And I believe that is it.

17 Q And do you recall if Courts have credited your testimony?

18 A Yes. The *Milligan* Court, Court in *People First*, and the
19 Court in *South Carolina State Conference*.

20 I should add that I submitted a report and testified in a
21 deposition also in -- I believe the styling is North Carolina
22 State Conference of the *NAACP vs. Berger*, and that was just a
23 few months ago.

24 Q Okay. And do you recall in what areas you were qualified
25 as an expert?

1 A I believe in Milligan and *People First*, it was as an
2 expert in Alabama political history and historical methodology,
3 something to that effect.

4 Q Okay. And do you recall how you were -- what expertise
5 you were offered for in *People First*?

6 A It was very similar -- political methodology, historical
7 methodology, and Alabama political history.

8 Q Okay.

9 MS. SADASIVAN: Your Honor, based on Dr. Bagley's
10 qualifications and those set forth more fully in his report, we
11 would offer him as an expert in Alabama political history,
12 political analysis, race relations, and historical analysis.

13 THE COURT: Any objection?

14 MR. DAVIS: No.

15 THE COURT: All right. Admitted.

16 BY MS. SADASIVAN:

17 Q Turning to page 2 of PX-19, what issues did you examine in
18 this case?

19 A I was asked by the plaintiffs in this case to offer my
20 opinion as to the totality of the circumstances and in the
21 challenged areas of Montgomery and Huntsville and to offer my
22 opinion as a historian as to whether given the totality of the
23 circumstances, black citizens in those areas have equitable
24 access to the political process.

25 Q Okay. And where geographically is your analysis focused?

1 A Metropolitan Huntsville Decatur and Metropolitan
2 Montgomery.

3 Q Let's talk about the methodology employed.

4 MS. SADASIVAN: John, can we pull up slide 5? 4.

5 BY MS. SADASIVAN:

6 Q What guided your analysis, Dr. Bagley?

7 A My analysis is guided by the common standards of
8 historiography as you see here. That's just a fancy way of
9 saying how we study and write about history. That means we
10 examine as broad a source base as possible, and we weigh all of
11 the evidence against other evidence equally.

12 We do not come in with presupposed conclusions. We let
13 the evidence take us to the conclusion. And as you can see
14 here, I reviewed a number of different sources, different
15 source types. That includes secondary sources. So
16 well-regarded or established historical monographs, scholarly
17 articles, contemporaneous and historical press coverage or
18 journalistic sources, primary sources in the form of government
19 documents, campaign literature, census data, relevant case law,
20 and other types and sources, exit polls, survey data, and so
21 on.

22 Q You mentioned secondary sources. You considered primary
23 sources, as well?

24 A Yes. So journalistic or press coverage would be
25 considered in most cases primary. Like I said, government

1 documents, relevant case law, and so on.

2 Q And you indicated newspaper articles. Are newspaper
3 articles reliable?

4 A They can be, yes. We, as historians, are I think best
5 trained among the humanities of the social sciences to evaluate
6 those kind of sources, and, again, always within the context of
7 other sources.

8 Q And are the sources you relied upon typical sources used
9 by historians?

10 A Yes.

11 Q What about social scientists?

12 A Absolutely.

13 Q Okay. Go to slide 6.

14 How did you structure your analysis, Dr. Bagley?

15 A I'm guided by the Senate Factors that were adopted by the
16 Court in the *Gingles* case.

17 Q And what are the Senate Factors?

18 A I will be brief. I know the Court is well aware of the
19 Senate Factors.

20 Factor 1 involves a history of discrimination touching the
21 right of minorities to -- or the ability of minorities to
22 participate equitably in the political process.

23 Factor 2 involves the presence of racially-polarized
24 voting.

25 Factor 3 involves practices or procedures that might

1 enhance the opportunity for discrimination.

2 Factor 4 involves access to candidate slating.

3 Factor 5 involves the effects of past discrimination in
4 areas such as education, employment, and health.

5 Factor 6 involves whether or not political campaigns have
6 been characterized by racial appeals.

7 Factor 7 involves the extent to which members of the
8 minority group have been elected to public office.

9 And there are two additional factors; 8 is whether there
10 is a lack of responsiveness on the part of elected officials to
11 the needs of the minority group.

12 And Factor 9 is whether a given policy is or could be
13 considered tenuous.

14 Q And why did you apply the Senate Factors?

15 A These, as I understand it as a historian, are what should
16 guide experts and Courts in determining if under the totality
17 of the circumstances the political process is equitably open to
18 minority voters and citizens, but also, too, this dovetails
19 perfectly with what I was explaining earlier in terms of just
20 how we go about studying and writing about history.

21 Q And did you review each of the Senate Factors?

22 A I did. Although my focus here is on Factors 1, 3, 5, 6,
23 7, and 8.

24 Q Okay. We'll go through your findings in detail
25 momentarily.

1 Can you please, though, summarize the conclusions you
2 reached with respect to the Senate Factors you considered?

3 A Yes. In my opinion, the Senate Factors that I considered
4 are present in the challenged areas to such an extent that --
5 and my understanding as a historian -- the political process is
6 not equitably open to black citizens of Alabama.

7 Q Did you read other expert reports in this case?

8 A Yes, I did. I was asked to review three of the experts
9 put forth, the reports entered by experts retained by
10 defendants.

11 Q Okay. And is that the subject of your report, PX-21, in
12 front of you?

13 A It is.

14 Q Okay. Before we go through each of the Senate Factors,
15 you mentioned you didn't consider Senate Factor 2?

16 A That's correct. I -- well, to the extent that I did not
17 myself conduct racially-polarized voting analysis, but I am
18 aware as a historian that Courts have repeatedly found that
19 racially-polarized voting is present in Alabama, including the
20 United States Supreme Court very recently.

21 Q Okay. So let's review each of the Senate Factors you
22 considered now. We will discuss Senate Factor 1 and 3
23 together.

24 Turn to page 4 of your report. Can you please summarize
25 your findings with respect to Senate Factor 1?

1 A Yes. Alabama has a long and ongoing history of
2 discrimination touching the ability of its black citizens to
3 participate equitably in the political process.

4 Q What time period does your report cover?

5 A I start in the 1960s with a very brief review of state
6 legislative redistricting.

7 Q Why did you begin in the 1960s?

8 A The 1960s was the first decade that the state was forced
9 to reapportion the State Legislature for the first time. And
10 that brought about the occasion for the state to redistrict for
11 the first time, as well.

12 Q Okay. And in your Senate Factor 1 analysis, broadly, what
13 types of discrimination did you examine?

14 A Well, first I'm -- like I said giving this review of state
15 legislative redistricting. After that, I touch on some other
16 probative issues involving recent discrimination.

17 Q Okay. Let's talk about the 1960s first, then, when the
18 state is first forced to reapportion. Can you describe the
19 1960s redistricting process?

20 A Yes. I will say that at the onset, what we're going to
21 see here is each decade there are -- there's a failure on the
22 part of the Legislature to pass equitable plans. And we see a
23 pattern of advancement for black citizens and backlash.

24 In the 1960s with the initiation of the *Sims* litigation,
25 that was actually brought as a one-person one-vote case, but

1 the Court in that case found that the plans that the
2 Legislature passed through were arbitrary, irrational,
3 discriminatory, and were designed plainly to avoid the election
4 of a black member of the Legislature.

5 MR. DAVIS: Your Honor, I would like to just preserve
6 an objection to this line of questioning on grounds of
7 relevance. I do not see what happened in the 1960s as being
8 relevant to whether there was vote dilution today. I know it
9 is customary for experts in these cases to go back that far. I
10 don't want to interrupt the flow. I just want to preserve an
11 objection to relevance.

12 THE COURT: Understood. I will allow it and give it
13 the weight it deserves. All right.

14 BY MS. SADASIVAN:

15 Q All right. Let's walk through the 1970s. What happened
16 with state legislative redistricting in the 1970s that you can
17 consider in your report?

18 A The *Sims* litigation was consolidated with another
19 complaint brought by E.D. Nixon in Montgomery on behalf of
20 black citizens in Birmingham, Mobile, and Montgomery. And the
21 Court in that case found that the plan -- the Legislature
22 passed through was again discriminatory, particularly in its
23 use of multi-member districts, which the Court found tended to
24 discriminate against black citizen.

25 Q And, actually, before we go any further, why is it that

1 you -- your report subscribed each of the redistricting cycles
2 between 1960 and the present?

3 A I think it's important to establish a pattern, and also
4 it's part of the totality of the circumstances. There's a
5 reason why the Senate Factors begin with a history of
6 discrimination touching the right of minority citizens to vote.

7 And it walks us through racially-polarized voting and the
8 effects of past discrimination. It's about connecting the
9 different pieces. And this is just one of those pieces.

10 Q And to be clear, did you identify a pattern in the history
11 of discrimination in voting that continues to the present day?

12 A Yes. And that is again a pattern of discrimination,
13 limited breakthrough on the part of black citizens and
14 backlash.

15 Q Take us through the 1980s.

16 A In the 1980s redistricting cycle, the Legislature failed
17 against to pass a valid enforceable reapportionment plan, or
18 redistricting rather, and was subjected twice to objections
19 from the Civil Rights Division of the Justice Department under
20 Section 5 of the Voting Rights Act.

21 And there was also a merits-based finding by a federal
22 court that the plan that the Legislature passed through, one of
23 the plans caused a retrogression in black voting strength, and
24 that involved cracking black population in Montgomery.

25 Q And what did you find with respect to legislative

1 redistricting in the 1990s?

2 A The 1990s is something of a turning point. And you can
3 see that structure in my report, such that there is sort of
4 1960s up to the 1990s and then 1990s up to the present.

5 During that 1990-cycle, some black leaders that had broken
6 through in the Legislature were able to negotiate with white
7 Democrats in the Legislature to formulate a plan, the so-called
8 Reed Buskey Plan. But that plan did not make it out of the
9 Legislature. Ultimately, it again takes litigation, and a
10 state court ultimately ordered the adoption of that Reed Buskey
11 Plan.

12 Q Okay. Before we come back to the Reed Buskey Plan, you
13 said black legislators broke through. What is your
14 understanding of how those black legislators came to be in
15 office?

16 A Through litigation, right. So there are no black members
17 of the Legislature prior to the 1960s. After the *Sims*
18 litigation, I believe there were -- the '60s *Sims* litigation,
19 there were two. And in the 1970s with the consolidated *Sims*
20 litigation, there are several more. And then by the time we
21 get to the 1980s, there are a few more.

22 Q Okay. And then you mentioned the Reed Buskey Plan. Can
23 you describe what that is just a little bit?

24 A Yes. As I said, black leaders in the Legislature in that
25 cycle were able to work with certain white Democrats to adopt

1 or to draw this plan.

2 As I said, the Legislature was not able to pass it out,
3 and it ultimately takes a state court to order the adoption of
4 that plan.

5 Q Is it your understanding that the Reed Buskey was in a
6 court-ordered plan?

7 A Yes.

8 Q Okay. What else did you look at, in terms of the 1990s
9 redistricting?

10 A As I mentioned, this is a pivotal point, in terms of
11 racial and party realignment in Alabama. And I don't think
12 it's coincidental that that pivot comes when you see black
13 leaders like Dr. Reed and Thomas Buskey exercising power within
14 the Legislature to draw this plan.

15 And I would add, too, that in terms of congressional
16 redistricting, the 1990s is also where we see the *Wesch*
17 litigation and the creation of CD7 as a majority-black district
18 that elects Earl Hilliard as the first black member of Congress
19 since Reconstruction.

20 What you begin to see then is accelerated -- you might
21 call it flight or deflection from the Democratic party on -- to
22 the Republican party on the part of white officials, for
23 example, by Governor Fob James, Secretary of State Jim Bennett,
24 for example.

25 They flip -- the state had white voters in the state had

1 begun to change their votes at like the presidential level in
2 the 1960s after the passage of the Civil and Voting Rights Act,
3 voting for Republican candidates generally with the exception
4 of Jimmy Carter. But they stayed loyal to the Democratic party
5 for several more decades into the 1990s. Part of the reason
6 for that is I think that George Wallace stayed a Democrat to
7 the very end, and of course he finally retires in the late
8 1980s.

9 But the point is you begin to see that accelerated switch
10 in the 1990s. And it's kind of like I say a pivot point or a
11 turning point.

12 Q Okay. We'll come back to that in a bit.

13 What occurred in the post-20 -- 2000 census cycle of
14 redistricting?

15 A In the 2000s, Republicans brought several challenges to
16 redistricting. None of those is ultimately successful. What
17 we ultimately see is that leadership of the party, particularly
18 Mike Hubbard as he explains in his book pioneered a strategy of
19 approaching remaining white Democrats and pressuring them more
20 or less to flip. And if they did not, to really make a
21 concerted effort to run against them and run them out of
22 office.

23 This is what Mr. Hubbard describes in his book, as I said,
24 *Swarming the State House*. He commissions a study of white
25 democratic legislators across the state. And as I said, makes

1 a concerted effort to either pressure them or run them out of
2 office.

3 And he describes what he calls a pilot program in 2006 and
4 2008 in those elections, which in his mind, set the table for
5 the elections in 2010, where the Republicans achieved an all
6 white at that time supermajority within the State Legislature.

7 Q And who is Mike Hubbard?

8 A He was a former representative in the State Legislature
9 from east Alabama.

10 Q And you mentioned George Wallace earlier. Who is George
11 Wallace?

12 A George Wallace was the -- once a validly segregationist
13 governor of the state who softened to an extent his views on
14 segregation per se, but also is one of the pioneers of sort of
15 coded racial language that maybe we will get into and talk
16 about under Senate Factor 6.

17 Q Can you describe state legislative redistricting in the
18 2010s?

19 A Yes. In my report, when I discuss the 2010-cycle, I have
20 what I think is a telling or prescient quotation from Senator
21 Del Marsh where once the Republican party achieves that
22 supermajority in 2010, he says, well, we are in a position now
23 to run over people if we have to.

24 At that time, I think with the exception, perhaps, of
25 Senator Billy Beasley, that would mean to run over black people

1 in the Legislature. And what you see in redistricting is a
2 plan passed through that a federal court ultimately determines
3 involved 12 state legislative districts, including in the
4 challenged areas that were deemed to be racial gerrymanders.

5 Q Okay. And what about in 2020?

6 A Well, in 2020, the State Legislature was found twice to
7 very likely have violated Section 2 of the Voting Rights Act in
8 its failure to draw a second majority majority --
9 majority-minority -- I'm sorry -- congressional district or
10 something quite close to it.

11 Q And is there a political party in the extensive history
12 you considered more closely associated with the voting related
13 discrimination you identified?

14 A No. I think the through line in terms of Alabama history
15 is that race is more durable than party. And that's another
16 reason why the '90s is a crucial pivot point.

17 In the 1990s and 2000 cycles, what's happening is that
18 both political parties, white people in both political parties,
19 white candidates I should say or legislators, are trying to
20 manipulate black voters, black citizens like pieces on the
21 chess board.

22 So, for example, there was a point in time where white
23 Democrats wanted to unpack black districts. So in the '90s, in
24 the '80s, there was not as sophisticated an understanding of
25 electability, you might say as we now have. And there was also

1 not as sophisticated an understanding of racially-polarized
2 voting.

3 And so, for example, with the creation of CD7, I think it
4 was created at like 65 percent black, which we would later
5 understand was maybe not necessarily the number that it needed
6 to be, to be electable.

7 So my point was going to be that there's a moment where
8 white Democrats are trying to hang on to power by unpacking
9 those districts and moving that black population into their own
10 districts so that they could stay in office. While at the same
11 time, Republicans understood that packing black districts could
12 make adjacent districts more white, which would be more
13 favorable in their view to get elected as Republicans.

14 So just in general, again, I think that race is the
15 through line.

16 Q Let's turn to areas outside of redistricting. Do you find
17 evidence of other recent discrimination in voting?

18 A Yes. I talk about on page 15 in 2016 the U.S. Department
19 of Transportation found that the state's closure of certain
20 driver's license offices had a discriminatory effect on black
21 citizens in Alabama in violation of Title VI of the Civil
22 Rights Act.

23 That same year, the state was forced to comply with the
24 Motor Voter law, the National Voter Registration Act, and to do
25 away with its practice of requiring documentary proof of

1 citizenship in order to register to vote.

2 And I should add that the finding on the DMV closures was
3 also related to voting insofar as you need an Alabama photo ID
4 to be able to vote.

5 Q Did you --

6 A I'm sorry. And then finally, just this year, the state
7 was subjected to a preliminary injunction finding that it very
8 likely has violated Section 208 of the Voting Rights Act in
9 terms of limiting assistance to illiterate, elderly, and
10 disabled voters.

11 Q And let's turn to page 15 again of your report. What were
12 your overall conclusions with respect to practices or devices
13 that enhance the opportunity for discrimination against black
14 people?

15 A Well, I would include those last few examples under Factor
16 3, as well. There's obviously a lot of overlap between Factors
17 1 and 3 insofar as the state has a history of using practices
18 and procedures that would tend to enhance the opportunity for
19 discrimination. So, again, I would add the Title VI finding
20 vis-a-vis the driver's license office closures and also the
21 preliminary injunction regarding SB-1 of this year and Section
22 208 of the Voting Rights Act being very likely violated, in
23 terms of barring assistance to illiterates, disabled and
24 elderly.

25 But I also talk in Factor 3 about at-large voting schemes

1 and the use of those both historically and very recently.

2 Q Let's talk about historically how at-large voting schemes
3 have been used. What was the *Dillard* litigation?

4 A *Dillard* was an omnibus voting rights case in the 1980s.
5 It's structured very similarly to the *Lee vs. Macon County* case
6 that I write about in my book. That is, it is a case that is
7 initially only directed at one county, but ultimately is
8 enlarged to include more statewide relief. And it's aimed
9 squarely at the use of dilutive at-large schemes, particularly
10 in conjunction with the state's numbered place law.

11 The Court in *Dillard* found that the numbered place law was
12 enacted specifically with discriminatory intent to enhance the
13 dilutive effect of these at-large schemes that were used in
14 county commissions and city councils and boards of education.

15 The upshot is that by the end of the 1980s, I think it's
16 something like 180 or so local bodies like that had been
17 compelled in one way or another to do away with those kinds of
18 schemes.

19 That includes the city of Decatur and the
20 Huntsville-Decatur area. It also includes in -- like in
21 related litigation, a case that was aimed at Madison County,
22 the city of Huntsville, so I think it included the Madison
23 County Board of Education, the Madison County Commission, and
24 the Huntsville City Council that were using at-large schemes.
25 And of course, no black members have been elected to any of

1 those bodies. And as a result of the *Dillard*-related
2 litigation in the late 1980s, all of those bodies were
3 compelled to adopt single-member district schemes.

4 It's similar in Montgomery with the only difference being
5 that the case that forces the Montgomery County Commission to
6 do away with its at-large scheme actually comes before *Dillard*
7 in late 1970s.

8 And just a few years after that, I talk about in my report
9 even though it wasn't an at-large scheme, the Montgomery City
10 Council. Mayor Emory Folmar at the time was found to have
11 engaged in intentional discrimination in redrawing the
12 Montgomery City Council districts, specifically as the Court
13 found to avoid the election of a black member of the council,
14 in particular, Dr. Joe Reed who we were talking about earlier.

15 Q On page 21 of your report, you describe the Decatur City
16 Council. How have at-large schemes operated in Decatur?

17 A As I mention earlier, it was one of the jurisdictions that
18 was compelled by way of the *Dillard* litigation to do away with
19 its at-large scheme. That was obviously in the 1980s.

20 What I'm writing about on page 21 is an effort by white
21 citizens in Decatur in the just the last four or five years to
22 add an at-large seat to a reduced size form of city government.

23 The upshot there, the significance is that it takes the
24 existing Decatur City Council coming forward and shooting that
25 down more or less by saying that if they were to do what these

1 white citizens wanted them to do, that would be a violation of
2 Section 5 of the Voting Rights Act.

3 Q Let's discuss Senate Factor 5. What types of evidence did
4 you consider in looking at Senate Factor 5?

5 A Senate Factor 5 asked us to examine the effects of past
6 discrimination in areas like employment, education, and health.
7 In particular, as those are -- in particular, those touch on
8 the ability of minorities to participate equitably in the
9 political process. And so I look at some socioeconomic
10 disparities here in the challenged areas.

11 Q Okay. And what -- why do you consider evidence of
12 socioeconomic disparities relevant to Senate Factor 5?

13 A This is kind of the sinew, if you will, that connects
14 Factor 1 and Factor 3 with Factor 2 and Factor 7. That's how
15 the totality of the circumstances is structured.

16 So what I mean is we can see clearly in the socioeconomic
17 disparities evidence of past discrimination -- Factors 1 and 3
18 -- that negatively impact the ability of black citizens to
19 elect their candidates of choice -- Factor 7.

20 Q And what have courts said about Senate Factor 5?

21 A In my understanding as a historian, very recently courts
22 have found that not only are these socioeconomic disparities
23 present and important, but they're both informed by the history
24 of discrimination, number one; and two, they do negatively
25 impact the ability of black citizens in Alabama to participate

1 effectively in politics by electing their candidates of choice.

2 Q Did you identify disparities between black Alabamians and
3 white Alabamians in Huntsville?

4 A Yes. If you look in particular at the census data, the
5 American Community Survey census data, you can see that in
6 Huntsville and in Decatur the western side of the Huntsville
7 Decatur combined statistical area that black citizens are more
8 likely to live in poverty.

9 They are less likely to have broadband Internet service or
10 any Internet access. They are more likely to be unemployed.
11 They're less likely to have access to a vehicle. They're less
12 likely to have health insurance. And they're more likely to
13 rely on food assistance benefits, SNAP benefits.

14 Q And did you identify disparities between black Alabamians
15 and white Alabamians in Montgomery?

16 A Yes. If you look at all the same indicia in Montgomery,
17 the takeaway is the same. Black people are more likely to be
18 unemployed. They're more likely to live in poverty at a
19 significant rate, less likely to have access, as I said, to a
20 vehicle, to Internet service, particularly broadband, less
21 likely to have health insurance, and so on.

22 Q Okay. Jumping ahead quickly to pages 25 and 26 of your
23 report, what did you identify with respect to disparities in
24 education?

25 A On page 25, I'm discussing a report issued by the Alabama

1 Department of Education in 2023 that lists schools with a
2 four-year cohort graduation rate more than 10 percent less than
3 the state four-year cohort graduation rate in two of the past
4 three years, and there are 19 schools listed there. And that
5 includes JAG or Greatz in Montgomery -- G-R-E-A-T-Z and JAG,
6 J-A-G, Johnson Abernathy Greatz. That is formerly Jeff Davis
7 High School.

8 Also on there is Percy Julian, which is formerly Robert E.
9 Lee High School. Those are high schools that were initially in
10 Montgomery all white, and indeed in the case of Jeff Davis,
11 created for that specific purpose. Those schools are now
12 overwhelmingly black.

13 The report next lists schools on the -- what used to be
14 called Failing Schools List, which is now called the Priority
15 Schools List, schools that earn bad grades, if you will.

16 The schools that are on that list for three out of the
17 past five years, and among those are Percy Julian, Greatz, nine
18 other predominantly black Montgomery schools, and also
19 Huntsville's Ronald McNair Junior High and Martin Luther King,
20 Jr., Elementary School.

21 So if we look at the challenged areas, we can see very
22 clearly disparities in education that are resulting from this
23 history of discrimination that we have been talking about.

24 Q And did you identify disparities in graduation rates?

25 A Yes. You can see that there are disparities in graduation

1 rates in these overwhelmingly now black public schools in these
2 areas.

3 Q All right. What role, if any, has the state played in the
4 discrimination in education you identified?

5 A I mentioned the *Lee vs. Macon County* case earlier. In
6 that case, the state was found to be operating as a matter of
7 policy a racially-dual school system and was forced over many
8 decades to use its power over local school boards to hold them
9 accountable to desegregate. That litigation, in terms of the
10 state being a party, drags on into the 2000s, I believe, until
11 about 2007.

12 Many cases are eventually then splintered off. Dozens of
13 those cases are still active. At the same time, there are
14 other cases.

15 So in 1963, when *Lee v. Macon* was first brought, several
16 other cases were brought because no one knew at that time that
17 *Lee v. Macon* would become this omnibus or umbrella vehicle for
18 the desegregation of a hundred or so school systems.

19 And so this is where I talk in the report about Huntsville
20 and Montgomery, in particular, the *Hereford* litigation in
21 Huntsville is ongoing. That case was also filed in 1963 and
22 remains active now.

23 Montgomery's case has been closed. It has achieved
24 unitary status. But I talk about in the report that if you
25 zoom out and look at the Montgomery Metropolitan area, you can

1 see what we were just talking about. There are overwhelmingly
2 black now public schools that are deemed to be failing that
3 have -- that are lagging behind in terms of graduation rates.
4 And yet you have suburban county school systems to the north or
5 to the east where schools are majority white and performing
6 much better and have better resources.

7 I believe I also talk about the Madison County case, which
8 is also still ongoing, Madison County and Huntsville City have
9 not attained unitary status. To do so, you have to satisfy --
10 satisfy what they call the Green Factors, in terms of faculty
11 assignment, staff assignment, obviously, student population.
12 But Huntsville and Madison have been unable to satisfy the
13 Green Factors in terms of student discipline.

14 In fact, in the Huntsville case, the Court found that the
15 discipline system very recently used by the city was
16 constitutionally flawed. The Court also in that Huntsville
17 litigation found that there were, quote, tenacious vestiges of
18 desegregation -- excuse me -- segregation in the Huntsville
19 system. And as I said, Madison County has also not been
20 released from its desegregation case.

21 And then finally, Decatur was recently released, Decatur
22 City. They attained partial unitary status, as I explain in my
23 report, in 2012. They remained under court order, in terms of
24 faculty assignment until, I believe it was 2019.

25 But if you look at my report, you can see per data from

1 the state's own department of education that since it's been
2 released, if you look at some of those Green Factor-type
3 indicia, like student discipline, you can see that Decatur is
4 -- you might call it black sliding. Black students are
5 disproportionately affected in terms of the city disciplinary
6 system. For example, they're more likely to be referred to a
7 law enforcement officer.

8 And another of the Green Factors I should have mentioned
9 earlier relative to Huntsville and Madison County, as well, is
10 that black students lack proportional access to advanced
11 placement in gifted courses and programs.

12 Q You've been talking about Decatur. Did you identify
13 commonalities between Decatur and Huntsville that you
14 considered relevant?

15 A Yes. As I mentioned earlier, Decatur is the western
16 anchor, if you will, of the Huntsville Decatur combined
17 statistical area. And there are a number of commonalities
18 running there -- obviously, they have been historically linked
19 by the Tennessee River. They're linked by an interstate spur.

20 They are a distinct tourism destination per the state's
21 own tourism board. They're improvement projects from the
22 Tennessee Valley Authority that involve Huntsville and Decatur
23 together. For example, they share a television market, these
24 kinds of things.

25 And, again, at the end of the day, they're part of the

1 same combined statistical area per the census bureau.

2 Q And turn to page 28 of your report. Did you identify any
3 recent discrimination in education in Athens?

4 A Yes. In Athens very recently, public officials there,
5 including a white principal and two white superintendents were
6 actually sentenced to prison for their involvement in a fraud
7 scheme. And that was a criminal case, obviously, but the Court
8 in that case was compelled to note that, albeit fraudulently,
9 what this episode involved was white officials funneling money
10 intended for black school children in public schools in the
11 Black Belt to white private school, ergo state-supported --
12 again, albeit fraudulently, but state-supported funding for
13 segregation education.

14 Q And you touched on this earlier, but can you describe what
15 discrimination in education you identified in Montgomery?

16 A Yes. So we talked about the school desegregation case for
17 the city that lasted until somewhat recently, but also, too, in
18 terms of the findings of the State Department of Education
19 regarding graduation rates, the presence perennially of
20 majority black schools in Montgomery on the Failing Schools
21 List.

22 Q And do you know, if at all, how long there were segregated
23 proms in Montgomery?

24 A Yes. I believe those continued into the 1990s.

25 Q Okay. And your report mentions white flight. What do you

1 mean by white flight?

2 A That can mean a few different things. Historically
3 speaking, for example, here in this city, when black families
4 started to move into neighbors like Fountain Heights just
5 blocks from here, white families would leave the neighborhood.

6 When school systems were subjected to initial school
7 desegregation orders, parents could remove their children for
8 private schools, or they could in the case of metropolitan
9 areas, move to suburban independent school systems. So those
10 are different forms of what might be considered white flight.

11 Q And did you --

12 THE COURT: Counsel, I hate to interrupt you, but I
13 realized that we have been going for almost two hours. And out
14 of deference to our lovely court reporter whose good graces I
15 would love to stay in very much, I'm wondering if this would be
16 a convenient time for our morning break.

17 MS. SADASIVAN: Sure, Your Honor. Yes.

18 THE COURT: Great. Thank you.

19 All right. It's 10:23. Let's come back at 10:40.

20 (Recess.)

21 THE COURT: You may proceed.

22 MS. SADASIVAN: Thank you, Your Honor.

23 BY MS. SADASIVAN:

24 Q Turning to page 22 of your report, did you identify any
25 disparities in the criminal legal system?

1 A Yes. Alabama's black citizens are grossly
2 disproportionately overrepresented in terms of the incarcerated
3 in Alabama.

4 Q And did you identify discrimination in transportation?

5 A Yes. As I understand it, there is no state funding for
6 public transit in the state. And black citizens are
7 disproportionally relying on public transportation in the
8 challenged areas.

9 Q Let's go to page 28. Can you discuss any evidence you
10 found concerning ongoing discrimination in health?

11 A You said page 28?

12 Q Yes, sir.

13 A Yes. I discussed here another finding under Title VI of
14 the Civil Rights Act. The state's department of public health
15 was found liable under that title in terms of discrimination
16 against black residents in the western Black Belt where waste
17 water and drinking water systems were failing. And citizens
18 are being held accountable for fashioning homemade waste water
19 and drinking water systems at the same time.

20 Q And what are some examples of discrimination in housing
21 you considered?

22 A I discussed on page 29 investigation by the U.S.
23 Department of Housing and Urban Development in 2020 in
24 conjunction with the Justice Department that found that the
25 city of Decatur was operating segregated public housing --

1 segregated and inequitable public housing.

2 Q Dr. Bagley, you've discussed disparities in housing, in
3 health, in education, in the criminal legal system, in access
4 to transportation, and other socioeconomic factors. How as a
5 historian do you account for the disparities you identified?

6 A Well, there's no way for me as an historian to account for
7 these disparities other than the state's history of
8 discrimination. And I think that's why the Senate Factors are
9 structured in the way that they are.

10 If you consider these disparities within the totality of
11 the circumstances, that is the inevitable conclusion.

12 Q Let's turn to Senate Factor 6. What's your understanding
13 of the term "racial appeal?"

14 A As I understand it, a racial appeal is an appeal that
15 would only be directed at one race. So this would involve
16 political campaign material, but also public statements by
17 elected officials.

18 This is another area where we can see very clearly how the
19 Senate Factors are related. What I mean by that is racial
20 appeals don't work if you don't have racially-polarized voting.

21 Racial appeals are also an indication that candidates and
22 elected officials are aware of racially-polarized voting, and
23 also at the same time, in terms of kind of a vicious cycle,
24 racial appeals drive racially-polarized voting.

25 Q And what, if any, background do you have in this area?

1 A Well, I discuss in my book what I call color masking.
2 This is a way of fashioning -- and in the case of my book --
3 laws that are what we used to describe as color blind; that is,
4 they don't use words like white, black, and race, but they are
5 geared specifically towards race.

6 Racial appeals work in a similar way.

7 Q And how do you identify the sources you considered in your
8 analysis of racial appeals?

9 A So I looked at recent campaigns. I tried to look at
10 statewide campaigns and elected officials but also in the
11 challenged areas.

12 Q And did you identify any trends in the form of racial
13 appeals over the time period you considered?

14 A Yes. You mentioned Wallace earlier. He was one of the
15 early masters of using coded racial appeals and what I call
16 color masked language. That was pretty common in the '70s and
17 the '80s and the '90s.

18 What we've seen in my opinion as a historian in the last
19 ten years or so is a trend back towards more overt racial
20 appeals. And I discuss some of those in my report.

21 Q Let's discuss some of those examples of racial appeals.

22 How were racial appeals used in the 2017 Senate campaign?

23 A So that campaign was between Judge Roy Moore and former
24 Senator Doug Jones. And what we can see is that both
25 candidates in that campaign relied on racial appeals. And even

1 though former Senator Jones is white, he used racial appeals to
2 appeal to black voters. And Judge Moore used racial appeals,
3 of course, to appeal to white voters.

4 Q And can you describe some of the statements candidate
5 Moore made that you describe as racial appeals on page 32?

6 A Yes. He was on record saying things to the -- not to the
7 effect of, but verbatim that times were better in our country
8 before the adoption of the Reconstruction amendments, the 13th,
9 14th, and 15th amendments, which, of course, ended slavery and
10 enfranchised black people in America as citizens.

11 Judge Moore acknowledged that, quote, Even though we had
12 slavery, things were better off, we were stronger in the
13 families, our country had a direction, and so on.

14 Q Dr. Bagley, you will see in front of you a demonstrative
15 aid. What is it demonstrating or showing?

16 A So this is Judge Moore indicating that democratic
17 operatives in Alabama are registering thousands of felons
18 across the state in an effort to swing the election to Doug
19 Jones. And we have two black men pictured below that, where it
20 says thousands of Alabama felons registered to vote.

21 This is remission of one of the quintessential or classic
22 racial appeals in American politics. George H. W. Bush's
23 campaign ran an ad featuring prominently the face of a black
24 man named William Horton who they decided to call Willie
25 Horton. This was an attempt to label candidate Dukakis as soft

1 on crime and someone who would unleash individuals like
2 Mr. Horton, criminals on innocent people. That was targeting a
3 furloughed campaign that Governor Dukakis had sponsored.

4 And this is similar here, but in regards to Senator Jones
5 supposedly registering thousands of felons.

6 Q And before we move on to candidate Jones, did you identify
7 any recent uses of the Willie Horton-esk ads in campaigns?

8 A Yes. Just this year in the election for the newly-created
9 Congressional District 2, candidate Dobson ran an ad that was
10 similar to this one that indicated that Congressman-elect --

11 MR. DAVIS: Your Honor, I want to object. They can
12 correct me. I do not believe this ad was disclosed in any of
13 Dr. Bagley's reports. I have not had the opportunity to review
14 this, and I don't know that I can effectively cross-examine
15 him.

16 Now, if it is in the report, I will withdraw.

17 MS. SADASIVAN: Your Honor, Dr. Bagley's reports were
18 due well before the November election and the candidates
19 running. He's aware of it because his knowledge is just that,
20 of what's happened. But, of course, the ads occurred after his
21 report in this case.

22 MR. DAVIS: It remains, though, I haven't seen it. I
23 don't know how I can effectively cross-examine him on that.

24 THE COURT: Was there any effort to supplement his
25 record with the ads if he was going to rely on them?

1 MS. SADASIVAN: Um --

2 THE COURT: Or late disclose them even though they
3 were allegedly public?

4 MS. SADASIVAN: No, Your Honor.

5 THE COURT: All right. That one's sustained, then.

6 MS. SADASIVAN: Thank you.

7 BY MS. SADASIVAN:

8 Q Okay. You can pull it back up.

9 Let's go to the next slide, slide 10.

10 Dr. Bagley, what do these demonstrative aids show, these
11 pictures?

12 A These are campaign ads for former Senator Jones that
13 indicate Judge Moore, quote, Led the fight to keep school
14 segregation in our constitution. And the key part of this, in
15 terms of it being racial appeal, is at the bottom where it says
16 Roy Moore is, quote, Not on our side. They're talking about
17 sides. And this way is a racial appeal, and especially if you
18 consider other ads run by the Jones campaign at right, where
19 he's compared to George Wallace there in the infamous quote,
20 Stand in front of the schoolhouse door.

21 Q Let's go to the next slide.

22 What does this show?

23 A This is another Jones campaign ad that is appealing to
24 black men in particular and to consider -- think if a black man
25 went after high school girls, would anybody try to make him a

1 senator. This is targeting Judge Moore.

2 Q And why is this a racial appeal?

3 A It very explicitly says, think if a black man did this,
4 and you have the face of the black individual there with a
5 skeptical look.

6 Q Okay. And what were your overall conclusions with respect
7 to racial appeals in the 2017 Senate campaign?

8 A I think it's important because it shows you that both
9 sides in this particular senate campaign used these kinds of
10 racial appeals.

11 Q Let's turn now to statements from representatives or
12 candidates in the areas in Montgomery and Huntsville.

13 What racial appeals did you consider in Huntsville?

14 A Former Congressman Mo Brooks who also held local elective
15 office in the Huntsville area repeatedly during his time in
16 Congress referred to a quote, War on whites. And talked about
17 the bloc vote. The bloc vote was coded racial appeal for the
18 black vote.

19 And I talk about on page 31 how Congressman Brooks said,
20 for example, they're trying to motivate the African-American
21 vote-to-vote block for Democrats by using every Republican as a
22 racist tool that they can envision.

23 He also channeled another of the classic racial appeals.
24 Ronald Reagan talked about the welfare queen to gin up this
25 idea that black citizens were cheating the welfare system by

1 using this one example of this one particular African-American
2 woman.

3 Congressman Brooks talked about social welfare recipients
4 as slackers who did not deserve hard working people's tax
5 dollars.

6 Q What about in the Montgomery area?

7 A Former State Representative Will Dismukes was a
8 Neo-Confederate organization in Prattville in Autauga County
9 and talked repeatedly about the, quote, Hateful days of
10 Reconstruction and glorified the days of the redemption that
11 followed that, which, of course, established white supremacy in
12 the state.

13 He also talked derisively about George Floyd who he
14 described as a, quote, drug career criminal, and then
15 encouraged people in terms of the removal of Confederate
16 monuments to channel their anger over that into, quote,
17 Something constructive as our ancestors did by rebuilding their
18 homes and lives during the hateful years of Reconstruction.

19 Q And what are other examples of racial appeals you
20 considered in your report?

21 A Well, I talk about a campaign ad run by former Supreme
22 Court Chief Justice Tom Parker who posted about taking on the
23 Southern Poverty Law Center in an ad that featured the face of
24 Congresswoman Maxine Waters in California, and the Court found
25 there was no other reason for the Congresswoman to appear in

1 the ad other than to draw attention to her race.

2 I also would point to the former chair of the
3 Redistricting Committee in the House, Representative Pringle
4 has run a campaign ad where he indicates that if you are white
5 like him, that everybody tries to blame all of society's
6 problems on you, that would be a quintessential racial appeal
7 in my opinion.

8 Q Let's move on to Senate Factor 7. The lack of minority
9 electoral success in the jurisdiction. What were your
10 conclusions?

11 A Black candidates have had very little success in terms of
12 elections to statewide office. Over the decades, they have had
13 more success, in terms of getting elected to the State
14 Legislature, more so in the House than in the Senate. But that
15 has typically been through enforcement of the Voting Rights
16 Act, through either litigation or administrative action, and
17 typically through the creation of majority-minority districts
18 or opportunity districts.

19 Q And to what degree are black people represented in the
20 State Senate in the challenged areas?

21 A There are no senators serving from the Huntsville-Decatur
22 area. There are two serving in the greater Montgomery area.

23 Q Okay. Let's move on to Senate Factor 8. What did you
24 look at to determine whether Alabama is responsive to the needs
25 of its black citizens?

1 A The most glaring example that I point to is the state's
2 failure to draw, at the behest or the request of black citizens
3 and black legislators, a second majority-minority congressional
4 district or something close to that.

5 The state was subject twice to -- was found twice to have
6 very likely have violated the Voting Rights Act in terms of its
7 refusal to do that, and ultimately was compelled by way of the
8 Milligan litigation to do that.

9 The other example that I point to is the state's repeated
10 failure to expand Medicaid, something that black citizens and
11 black legislators have been calling for, for some time,
12 something that former Governor Bentley's own task force called
13 for, something that even very recently Congressman-elect
14 Figures has said would be his number one priority once he takes
15 his seat in Congress.

16 Q And do you know whether, if any, how many jurisdictions
17 are subject to preclearance in Alabama?

18 A Yes. I should have mentioned earlier when we were talking
19 about at-large voting schemes, localities in Alabama have very
20 recently been compelled to do away with those kind of schemes,
21 in particular, Jefferson County and the Board of Education and
22 Pleasant Grove. As part of the consent records that were
23 adopted in those cases, both of those were bailed in to -- or
24 bailed in under Section 3 of the Voting Rights Act to
25 preclearance. And more recently, the town of Newbern was

1 bailed in, as well, due to white officials' refusal to seat the
2 newly elected black mayor of that town.

3 Q Okay. And you described earlier that the subject of your
4 second report, PX-21, is a response to the reports of Drs.
5 Carrington, Reilly, and Bonneau?

6 A That's correct.

7 Q And what were your overall conclusions with respect to the
8 testimony offered by Dr. Carrington?

9 A Dr. Carrington responds to my initial report by offering
10 what he describes as a fuller narrative of party realignment,
11 in which he is trying to -- as he puts it -- mute race as a
12 factor in party realignment in Alabama.

13 My overall finding with respect to that is that while his
14 report in putting forth this core set of issues beyond race
15 might tell us a little bit about party realignment nationally
16 and over the long term, it doesn't do much at all to explain
17 party realignment specifically in Alabama.

18 Q What's meant by the term "realignment?"

19 A That process that I was referring to earlier that begins
20 in some ways in -- well, even as early as the New Deal, but
21 accelerates in the 1960s, when white democratic voters changed
22 their votes at the presidential level.

23 In Alabama, though, you don't see a real shift, in terms
24 of the way that people vote in statewide elections and local
25 elections until the 1990s. And Dr. Carrington's report doesn't

1 really help us understand why that happened, when and how it
2 did, in my opinion.

3 Q Okay. And what were your overall conclusions about the
4 role that race plays in party identification?

5 A There's a general consensus in the historical field, and I
6 think in the field of political science, as well, and I cite to
7 a number of those authorities in my rebuttal, that appreciates
8 the other issues that Dr. Carrington is talking about and the
9 role that they played, but that nonetheless recognizes that
10 race has been the primary driving factor in this realignment
11 process.

12 Q And what did you find with respect to how race versus
13 other social issues currently affect political affiliation?

14 A Dr. Carrington talks about, for example, opposition to
15 abortion as an important factor in realignment. But I cite to
16 statistics in my rebuttal that show that roughly half of
17 Alabama's black citizens oppose abortion in nearly all cases.

18 So if Dr. Carrington's analysis was correct, we would
19 expect to see roughly half of black voters in Alabama voting
20 for Republicans, but this is not the case.

21 Take also opposition to increased LGBTQ rights. I cite to
22 statistics that show that a substantial number of black
23 Alabamians oppose same-sex marriage. So, again, if
24 Dr. Carrington's analysis was correct, we would expect to see a
25 concomitant number of black voters in Alabama voting

1 Republican. And we don't.

2 There are other issues, as well --

3 Q What did you find with respect to how black voters
4 identify, in terms of religious conservatism?

5 A That's another issue that Dr. Carrington talks about. I
6 note in my rebuttal report that a majority of -- a vast
7 majority of black citizens in Alabama identify as Christian,
8 and a very large number of those individuals also identify as
9 evangelical Christians or born-again Christians. A large
10 number of those individuals also identify as conservative.

11 So, again, under Dr. Carrington's analysis, if we see that
12 a large number of black Alabamians consider themselves
13 conservative or evangelical Christians, we would expect to see
14 them voting Republican, and we don't.

15 So at the end of the day, the rhetorical question is,
16 what's left is an explanatory factor and, the answer is, of
17 course, race.

18 Q And what were your overall conclusions with respect to the
19 testimony offered by Dr. Wilfred Reilly?

20 A Dr. Reilly engages my observation about the
21 overrepresentation of black citizens in Alabama prisons. His
22 argument there and elsewhere is that black citizens are
23 overrepresented in prisons in other states, which in my opinion
24 and as a historian, is -- I think I describe it as unnecessary
25 what-aboutism.

1 And I mean that from the standpoint of a Senate Factors
2 analysis. Just again, in my opinion as a historian, my
3 understanding of the Senate Factors is jurisdictionally
4 focused. There's nothing in there that asks us to compare a
5 given jurisdiction, in this case, the state of Alabama with
6 other states. It's about identifying, in this case, the
7 presence of something important under Senate Factor 5 and not
8 then asking, okay, is that indicator present in equal greater
9 way in another state. The follow-up question should be, okay,
10 are there other indicia under that factor, or are there other
11 factors present in the state of Alabama?

12 Q And what were your overall conclusions with respect to the
13 testimony offered by Dr. Bonneau?

14 A My understanding of Dr. Bonneau's testimony is that he
15 believes black candidates in Alabama have lost races not
16 because they're black, but because they run as Democrats.

17 I point to, in my rebuttal, the primary and the
18 newly-drawn Congressional District 2 where I believe two
19 very-well qualified black candidates ran and did very, very
20 poorly. And a relatively unqualified and very young white
21 candidate did better. I believe they placed at the very bottom
22 of the list of candidates in that primary.

23 Q And in your opinion, does Dr. Bonneau's analysis include
24 an accounting of realignment and how that would affect races?

25 A No. He does not address that.

1 Q Okay. And with respect to Dr. Reilly, does he engage the
2 history of discrimination in the criminal legal system in
3 Alabama?

4 A No. No.

5 Q Okay. Dr. Bagley, can you please summarize the
6 conclusions you have drawn about the ability of black people to
7 let candidates of choice participate in the political process
8 in Montgomery and Huntsville areas?

9 A In my understanding under the totality of the
10 circumstances framework, in the challenged areas, black people
11 lack equitable access to the political process in terms of
12 their ability to elect candidates of their choice.

13 Q And what were your findings with respect to the presence
14 of the Senate or absence of the Senate Factors?

15 A In my opinion, the Senate Factors are all present in the
16 challenged areas.

17 MS. SADASIVAN: Your Honor, at this time, I would like
18 to move in what were previously marked as Plaintiffs' Exhibits
19 19 and 21 into evidence.

20 THE COURT: 19 and 21. Any objection?

21 MR. DAVIS: No objection, Judge. And since he has
22 been speaking about Dr. Carrington and Dr. Hood's report and I
23 guess Dr. Bonneau's, too, we would move to admit those.

24 MS. SADASIVAN: We don't have any objection to that,
25 although we assume that the witnesses will testify live, and

1 it's -- it's -- with respect to, we reserve all of our like
2 relevance and other objections.

3 MR. DAVIS: Sure.

4 THE COURT: Got it. Okay.

5 MR. DAVIS: They will be Exhibits 3, 4, 5, 6, counting
6 the CVs, and 1.

7 THE COURT: All right. I have 5 and 1 on my
8 already-admitted list.

9 MR. DAVIS: I beg your pardon?

10 THE COURT: Okay. So 3, 4, and 6?

11 MR. DAVIS: Yes.

12 THE COURT: Defendant's 3, 4, and 6 just to be clear
13 on the record.

14 MR. DAVIS: Yes.

15 THE COURT: All right. So any objection to the
16 admission of those? You can reserve your other objections.

17 MS. SADASIVAN: As long as it's a reserve, no, Your
18 Honor.

19 THE COURT: All right. And those are admitted. And
20 you can still make objections to their testimony when they
21 testify live.

22 They are all testifying live, right?

23 MR. DAVIS: Oh, yes.

24 (Plaintiffs' Exhibit 19 admitted in evidence.)

25 (Plaintiffs' Exhibit 21 admitted in evidence.)

1 (Defense Exhibit 3 admitted in evidence.)

2 (Defense Exhibit 4 admitted in evidence.)

3 (Defense Exhibit 6 admitted in evidence.)

4 MS. SADASIVAN: And before I pass the witness, Your
5 Honor, can I have just a moment to confer?

6 THE COURT: You may.

7 BY MS. SADASIVAN:

8 Q Dr. Bagley, you described an analysis in your report by
9 Dr. Reilly, and you referred to the Moynihan Report. Would you
10 mind describing your conclusions with respect to Dr. Reilly's
11 reliance on that report?

12 A I don't know that he relied specifically on the report,
13 but my analysis of his own report was that it was very similar
14 to the Moynihan Report in terms of attempting to explain the
15 kind of socioeconomic disparities that I was discussing by
16 noting that black people are more -- black children are more
17 likely to be raised in single-parent homes and this sort of
18 thing.

19 That report, of course, was widely discredited,
20 particularly by way of the later Kerner Commission Report,
21 which held up what -- again, I said it's been the consensus
22 among historians ever since that racism and the history of
23 discrimination were the primary drivers of that.

24 Q Okay.

25 MS. SADASIVAN: No further questions at this time,

1 Your Honor.

2 THE COURT: All right.

3 CROSS-EXAMINATION

4 BY MR. DAVIS:

5 Q Good morning, Dr. Bagley.

6 A Hello, Mr. Davis.

7 MR. DAVIS: Jim Davis for the defendant.

8 BY MR. DAVIS:

9 Q Dr. Bagley, let's look, please, at page 35 of your report
10 in the conclusion.

11 And if you see it on the screen in front of you, is your
12 conclusion that the Senate Factors you addressed are present in
13 Alabama, especially in the challenged areas, and support a
14 finding, under the totality of the circumstances that SB-1
15 impermissibly dilutes the voting strength of black voters?

16 A As a historian, of course, that determination legally
17 speaking is ultimately up to the Court.

18 Q What I want to start with is how are you defining vote
19 dilution?

20 A An inability of black citizens to participate equitably in
21 the political process and to elect candidates of choice.

22 Q Okay. So is it your understanding that what you presented
23 in the report is evidence that in your opinion supports the
24 conclusion that blacks are unable to participate equitably in
25 the political process and elect their candidate of choice?

1 A Based on the totality of the circumstances and the
2 presence of the Senate Factors, that would be my understanding
3 as a historian.

4 Q Okay. You used the term "equitably." Do you mean that
5 the same way as if I said participate equally in the political
6 process?

7 A More or less, yes.

8 Q Well, okay. Tell me what you mean, then. How is it
9 different from equal participation?

10 A I think it's fair to say equal.

11 Q Okay. Did you approach your report with a bias against
12 Alabama?

13 A No.

14 Q Did you attempt to present only evidence to support your
15 conclusions while omitting evidence that cuts the other way?

16 A I don't believe so.

17 Q In writing your report, have you assumed the truth of any
18 statement made by a Democratic Legislature -- legislator that
19 criticizes a Republican legislator or initiative?

20 A Is that referring directly to somewhere in my report?

21 Q In general. If a Democrat in the Alabama Legislature
22 says, We don't like what the Republicans are doing, we think
23 there's bad motive, for example, are you assuming that what the
24 Democrats say is always true?

25 A No.

1 Q Are you assuming that any allegation lodged against a
2 Republican legislator is well founded?

3 A Could you ask that again, please?

4 Q Sure. For purposes of your report, if you see any
5 accusations against a Republican legislator, particularly in
6 terms of race, accusations of a racial motive, are you assuming
7 that that allegation or accusation is well founded?

8 A Not necessarily.

9 Q And do you assume that everything reported in the
10 newspaper article is true?

11 A In which newspaper articles? Any?

12 Q Any. As part of your process as a historian, you see
13 something in a newspaper article, is it your assumption that
14 what the news reports is true?

15 A Not necessarily. This cuts to what I was saying at the
16 very onset of my testimony. You have to approach anything
17 reported in a newspaper or in the press with skepticism, with
18 historical context, and you have to weigh that against other
19 evidence.

20 Q I want to go back to your discussion of redistricting in
21 the 1960s. How was what happened there in any way probative of
22 whether a vote is being diluted in 2024?

23 A In my understanding, the Senate Factors ask us to begin
24 with a history of discrimination touching the ability of
25 minority citizens to be able to vote, to participate equitably,

1 equally in the political process. And for that reason, began
2 in the 1960s because that is the moment in which we began to
3 see state legislative redistricting, the state emerging from a
4 period of complete disenfranchisement of its black citizens,
5 and then continuing to engage in discrimination as determined
6 by courts in successive redistricting cycles.

7 Q Are you assuming that if white people drawing district
8 lines in the 1960s acted in a discriminatory way, then
9 different white people who drew district lines in 2021 and 2023
10 also must have discriminated?

11 A No, sir.

12 Q Okay. So, then, can you articulate me any foundation if
13 you believe that what happened in the '60s is actually relevant
14 to the question of whether a vote is currently diluted?

15 A Well, I -- I would understand, I think, your criticism if
16 I discussed the 1960-cycle, and it immediately jumped to the
17 2020-cycle.

18 The '60s is relevant to what happened in the '70s, is
19 relevant to what happened in the '80s, and so on. It's a
20 matter of historical mosaic, if you will.

21 Q As you understand the Senate Factors -- to make sure we're
22 on the same page -- is it your understanding that the question
23 is not whether someone's vote used to be diluted, but whether
24 there is vote dilution in the present?

25 A I think both are relevant to the totality of the

1 circumstances.

2 Q Okay. You discuss litigation around 1972 involving state
3 legislative districts in your report, correct?

4 A Yes, sir.

5 Q Did the Court in that litigation order the Legislature to
6 use a new plan that would likely result in the election of
7 additional black legislators?

8 A Yes.

9 Q Let's look at page 6 of your report, please, and the first
10 full paragraph.

11 And before we look at that, Dr. Bagley, is it not true
12 that this plan the Legislature was going to use, this -- this
13 was requiring them to use districts for the first time, right?

14 A Single-member districts.

15 Q Single-member districts.

16 Before this time, they elected by counties?

17 A Yes, sir.

18 Q Okay. Now, you quote the Speaker of the House, Sage
19 Lyons, as saying that it's going to be a terrific problem to
20 implement.

21 Are you in any way saying that the Speaker Lyons means
22 something racial by calling this a "terrific problem"?

23 A I think there's an undertone there. Obviously, he's
24 talking about at one level administrative difficulties. This
25 was something that was going to require significant effort to

1 implement administratively.

2 But I think given the historical context and the context
3 of the time, there is an undertone of, well, now we've been
4 forced by a court to adopt a plan that very likely is going to
5 lead to the election of more than just two black state
6 legislators.

7 Q What evidence do you have that his comment had anything to
8 do with race as opposed to just the logistical problems?

9 A Again, the context. The state just several years prior
10 had been forced in that very same litigation to adopt a plan
11 that led to the election of the very first two black
12 legislators, and, again, the state was compelled to do that.
13 And here again is compelled to adopt a plan that's not
14 discriminatory.

15 So within that context, I think it's fair to draw that
16 conclusion.

17 Q You think it's fair to conclude that he must mean
18 something racial because he's white and the court ordered
19 something that was going to be good for black candidates?

20 MS. SADASIVAN: Objection, Your Honor. That
21 mischaracterizes his testimony.

22 THE COURT: He can say so if that mischaracterizes his
23 testimony.

24 THE WITNESS: Could you ask again, Mr. Davis, please?
25

1 BY MR. DAVIS:

2 Q Sure. You said, if I understood you correctly, it's fair
3 to draw the conclusion that he must have meant something racial
4 because they were ordered to use a plan that would likely
5 result in the election of black people?

6 A Not necessarily. Again, it's about context. If we had no
7 context in terms of what had just occurred in the previous
8 decade, what occurs in the next decade, which is once again,
9 the state passes a discriminatory plan, I think it's fair to
10 draw attention to this.

11 Q Let's look at Defense Exhibit 104, please, in the second
12 page of that exhibit.

13 Dr. Bagley, is this an article that you cite in footnote 8
14 of your report?

15 A Yes.

16 Q All right. The fourth paragraph of the left column, let's
17 look at that first few lines, please.

18 A Okay.

19 Q Doesn't that article note the logistical problems -- I am
20 going to read it if I can. It says, Aside from the logistics
21 problems in the new plan, which are formidable, but can be
22 overcome?

23 A Yes.

24 Q And then let's look at the bottom paragraph of the left
25 column that goes on over to the top.

1 MR. DAVIS: Can we blow that up, please?

2 Okay. And then the -- yes -- okay.

3 BY MR. DAVIS:

4 Q I apologize, Dr. Bagley.

5 Does this paragraph not say, Even more ironic, at least on
6 the surface, is the seeming indifference the present
7 Legislature has faced the prospect of a big increase in black
8 representation. But looking below the surface, one can see
9 that in Alabama, as in almost every state of the union, the big
10 fight in the Legislature is between rural interests and urban
11 interests.

12 A Yes, sir.

13 Q So does this reporter not say they think the Legislature
14 was fairly indifferent to the prospect of more blacks being
15 elected to the Legislature?

16 A There were a couple of things. First, contextually, just
17 on the page, they note that it's ironic, its seeming
18 indifference, and it's at least on the surface.

19 But more importantly, let's contextualize that
20 historically. Again, we're talking about a State Legislature
21 that until just a few years before this had deliberately
22 maintained itself as an all -white body. And then if we
23 contextualize that moving forward, we're talking about a
24 Legislature that in the 1980s again passed a discriminatory
25 plan.

1 So whereas this one reporter may take a seeming
2 indifference, I think that's contactually, that's hard to
3 impute.

4 The other thing I would say is if there was an
5 indifference, it's probably that there is a resignation on the
6 part of these legislators that this is a plan that's being
7 order by a Court, number one; and number two, you can see
8 elsewhere in the article it speculates as to how many new black
9 members might be elected. And it's not a very large number.

10 So I think that these legislators that this reporter is
11 referring to no doubt understood that these new black
12 legislators will probably not much of an impact in terms of
13 exercising power within the Legislature.

14 And in terms of the second part, historically, prior to
15 that time, this reporter is correct. The big fight in the
16 Legislature was between the so-called big mules, the
17 industrialists here in Birmingham, and on the other hand, the
18 'burbans, the wealthy, you might say landed gentry of the Black
19 Belt.

20 The reason that prior to the 1960s that was the divide in
21 Alabama politics is because black people could not participate
22 at all in Alabama politics. So this is the moment in the '60s
23 and the '70s where that old divide between Black Belt and city
24 interests gives way to racial politics.

25 Q We're going through this line of questioning, because in

1 your report, you quote the Speaker as saying the new plan was
2 going to be a terrific problem and imply that he meant
3 something racial by that, that the terrific -- that the problem
4 he was addressing was the election of blacks.

5 But you would agree with me that there were logistical
6 problems?

7 A Yes.

8 Q You would agree with me that the reporter identified and
9 confirmed that there would be logistical problems?

10 A Yes.

11 Q We agree the reporter said that the legislators seemed
12 indifferent to the prospect of electing blacks?

13 A That is this one reporter's take on it. I would add,
14 though, insofar as there were logistical or administrative
15 problems, this is, of course, a problem of the Legislature's
16 own making in its inability to pass non-discriminatory
17 redistricting plan.

18 Q Well, that's not the question. I'm saying even though we
19 agree there are logistical problems and there's a perfectly, I
20 would suggest, non-racial explanation for the Speaker's comment
21 and evidence from the people watching the legislator in person
22 and following them at the time saying they were indifferent to
23 that, you think as a historian, you can look back over
24 five decades and know better than the reporter did what the
25 Speaker's intent was?

1 A In this particular case, given the context, yes, I do.

2 Q Okay. On page 10 of your report, you quote someone named
3 Pete Matthews. Who was Pete Matthews?

4 A He was a Montgomery lobbyist and former public service
5 commissioner.

6 Q And you quote him -- last sentence of the first paragraph
7 as -- this is in the '90s, correct?

8 A Yes, sir.

9 Q You quote him as saying that new Republican voters, quote,
10 did not like black people.

11 So what is your opinion here, that Pete Matthews said that
12 thing, or that what Pete Matthews was saying is true?

13 A I'm offering this as just one piece of evidence along with
14 the conclusions of a noted political scientist at the
15 University of Alabama. So I would not take this one lobbyist's
16 quotation as the Gospel truth without additional context.

17 Q Well, what opinion are you presenting to the Court? Are
18 you telling the Court that it's your opinion that Republican
19 voters in Alabama in the 1990s did not like black people?

20 A I think some of them.

21 Q How many?

22 A I don't know.

23 Q Who are they?

24 A Individually, I couldn't tell you.

25 Q What is your evidence of that?

1 A In this particular paragraph, the findings of a
2 well-regarded political scientist at the University of Alabama.

3 Q What in that paragraph supports your conclusion that some
4 voter in the '90s did not like black people?

5 A Could you ask that again, please?

6 Q What is it in this paragraph that contains evidence that
7 supports your conclusion that some Republican voters in the
8 '90s did not like black people?

9 A Professor Cotter finding that the Republican party's
10 resurgence was driven by the exploitation of race.

11 Q So is it your opinion that Cotter is correct, that he was
12 saying is true?

13 A Could ask you that again, please.

14 Q Is it your opinion in this case that what Patrick Cotter
15 said in this paragraph is true?

16 A I think that's the opinion of not just Professor Cotter,
17 but other historians and political scientists. It's not to say
18 -- a alluded to this earlier in my testimony -- it's not to say
19 that the entirety of realignment is explained by race or racism
20 or racial animosity, but recognizing that that is, indeed, a
21 significant driver of it, and it's also I would add not about
22 any one individual and what's in their heart.

23 What I am concerned with in this report, of course, is the
24 totality of the circumstances.

25 Q No. I understand. Well, I want to understand the scope

1 of what you're claiming.

2 Is Pete Matthews -- was he a Republican or Democrat?

3 A I can't recall.

4 Q Okay. Could we pull up Exhibit 105, please, Defense
5 Exhibit 105?

6 We looked at this at your deposition, if you recall,
7 Dr. Bagley.

8 Is this an obituary of Charles Matthews?

9 A It appears to be, yes.

10 Q And does it not say in the first line there that Pete is
11 a -- I guess a nickname for him?

12 A Yes.

13 Q All right. Let's go to the second page. And let's look
14 at ten lines down.

15 Now, Pete Matthews you said was like a member of the
16 Public Service Commission, correct?

17 A Yes.

18 Q Lobbyist.

19 Can we blow up -- okay. Look at the line on the screen
20 now that begins, Of Alabama. And it says he also attended a
21 number of Democratic National Conventions as a delegate, does
22 it not?

23 A Yes.

24 Q What does that suggest to you about his party affiliation?

25 A That he was a Democrat.

1 Q Does it make a sense to you when somebody says Republican
2 voters don't like black voters whether it's a Democrat who
3 might have an ax to grind as to a political enemy or a
4 Republican who is confessing something?

5 A Sorry. That was a long one. Could you run it back for
6 me?

7 Q Yeah. It was. Wouldn't it make a difference assessing
8 Pete Matthews' comment whether he's address -- talking about
9 his political opponent or his own party?

10 A It would perhaps.

11 Q Did you do anything to find out whether he was a
12 Republican or a Democrat before you submitted your report?

13 A I can't remember, but I wouldn't just note that this is,
14 again, one line of a very long report that contextualize I feel
15 like not only within the report broadly, but again also within
16 the paragraph, which we're examining.

17 Q I understand. But we're looking for whether some of these
18 one lines have foundation.

19 Have you ever met Pete Matthews?

20 A No.

21 Q Have you ever spoken to him?

22 A No.

23 Q Do you have any idea how good he was at reading people?

24 A Could you ask me again?

25 Q Do you have any idea whether he had a talent of knowing

1 what was in someone else's heart, and whether they really did
2 or did not like someone?

3 A No.

4 Q Do you know how many Republican voters Pete Matthews was
5 acquainted with before he made this statement?

6 A No.

7 Q Do you have anything to assess the veracity of Pete
8 Matthews's statement other than someone quotes him as making
9 it?

10 A Again, the additional context within the paragraph.

11 Q Are you offering an opinion that Republican voters in 2024
12 do not like anybody because of their race?

13 A No.

14 Q You addressed redistricting in the '90s cycle. And what
15 is your understanding of the Black Voting Age Population that
16 was required to be in the majority-black district in Alabama's
17 congressional plan?

18 A My understanding of what it was supposed to be as
19 determined by the Court?

20 Q Yes. What was ordered?

21 A I don't remember, but I believe it was somewhere around
22 65.

23 Q Yeah.

24 A Roughly.

25 Q Do you know if there was evidence at that time that that

1 was what was required for the district to perform for black
2 voters?

3 A That, I think was the general understanding at that time,
4 yes.

5 Q Do you know if whether some blacks of the Legislature were
6 saying that was still necessary after the 2000 and 2010 census?

7 A After 2000 and 2010?

8 Q Yes.

9 A It's possible. There was some dissension on that point.
10 I think you and I in our many depositions discussed that there
11 was dissension among some black leaders at times in terms of do
12 we want a more robust black population in this district versus
13 could we draw two electable districts, for example.

14 Q There were differences of opinion among members of the
15 Legislature, correct?

16 A Yes.

17 Q Including among back black members of the Legislature?

18 A At times, yes, sir.

19 Q In your direct examination, you discussed former Speaker
20 of the House Mike Hubbard and the elections when Republicans
21 became a majority of the Legislature.

22 That's on page 11 of your report. Is there anything
23 sinister about a party that's in the minority going to be in
24 the majority?

25 A Not necessarily, no.

1 Q And if you are going to do that, wouldn't it be logical to
2 focus on seats that they had the best chance of flipping?

3 A Sure.

4 Q And doesn't it make sense what Hubbard said that they were
5 looking for districts where there were a lot of Republicans'
6 vote cast in other races, but that district kept sending
7 Democrats to the state Legislature?

8 A That was part of Mr. Hubbard's quotation and where he also
9 adds that they were targeting white Democrats specifically.

10 Q Yeah. Are you saying he was targeting him because they
11 were white or because that's where the Republican votes were?

12 A Both.

13 Q What's your evidence that he was targeting them on account
14 of race?

15 A Well, he says it himself.

16 Q When he says --

17 A Sorry, Jim.

18 Q No. When he says he was looking at white districts?

19 A Yes. White Democrats. He commissioned a study of white
20 democratic districts, and in my understanding, he doesn't go on
21 to say, well, I also approached black Democrats and attempted
22 to flip them to the Republican side, for example.

23 Q Do you know whether he did?

24 A I don't know that he did.

25 Q Let's look at page 13 of your report, please, the first

1 full paragraph.

2 After the 2010 elections, Dr. Bagley, did the Legislature
3 assign members to the Reapportionment Committee?

4 A Yes.

5 Q And you know how it was staffed in this paragraph, do you
6 not?

7 A Yes.

8 Q This is after Republicans gained the majority of seats in
9 the Legislature, right?

10 A Correct.

11 Q And how was it staffed?

12 A You mean in terms of numbers?

13 Q Yes.

14 A 16 members, 10 white Republicans and 6 black Democrats.

15 Q What's the point of including this in your report?

16 A This was the cycle in which the Legislature was found to
17 have drawn 12 districts that were judged to be racial
18 gerrymanders.

19 Q Well, you note that it's -- the next sentence says, Black
20 legislators protested this representation?

21 A Yes, they do.

22 Q Please continue.

23 A Favoring instead a non-partisan commission.

24 Q Why note that for purposes of your report?

25 A This is indicative of black legislators feeling like that

1 their concerns were not addressed.

2 Q Are you expressing an opinion on how the committee should
3 have been staffed?

4 A No. I'm just putting forth the black legislators were in
5 favor of a non-partisan commission.

6 Q Are you offering an opinion on whether that was a valid
7 concern?

8 A I think they thought it was a valid concern, and that's
9 really why I'm reporting it here.

10 Q But you're the one that's been submitted as an expert.
11 Are you submitting an opinion that you think it was a valid
12 concern?

13 A I would say that had they instead had a non-partisan
14 commission to oversee the process, you might not have ended up
15 with racial gerrymander.

16 Q When Democrats held the majority, did they ever ask for a
17 non-partisan commission?

18 A I can't remember when those calls first came about. It's
19 something that's been called for, for a long time.

20 Q Do you have any evidence that any Democratic member of the
21 Alabama Legislature wanted to adopt a non-partisan commission
22 before Republicans gained a majority?

23 A I'm not certain, again, when those calls came about.

24 Q Are you contending that in order to be discriminatory,
25 Republicans, even though they had a majority of seats in the

1 Legislature, should have given Democrats a majority of seats on
2 the committee?

3 A No.

4 Q Now, at the end of that paragraph, you say those maps were
5 drawn behind the scenes by familiar characters, including
6 consultant Randy Hinaman and noted gerrymander whiz Thomas
7 Hofeller. Did I read that directly?

8 A You did.

9 Q And these maps, those are redistricting maps drawn after
10 the 2010 census?

11 A Yes.

12 Q What is your evidence that the maps were drawn by Thomas
13 as you say in this report?

14 A What I mean here is Hofeller was part of the process. I
15 don't think that Hofeller was in the map room drawing maps. I
16 don't mean to impute that. In fact, if you look at the
17 footnote there, 39, the notes there indicate that, quote,
18 Republican gerrymander whiz had wider influence and was known,
19 and the last part of that footnote is, Gerrymandering expert
20 worked with Alabama Republicans on 2011 redistricting lines
21 documents show.

22 So, again, I'm not trying to say that Hofeller was in the
23 room drawing the maps. He was just part of the process.

24 Q To set the stage, some of Hofeller's personal
25 correspondence got out after he passed away, correct?

1 A I believe that's correct.

2 Q And that's how you started reporting, hey, this political
3 consultant was involved in these various states?

4 A I think that's correct, yes.

5 Q And you agree that there's nothing in that record that
6 suggests Hofeller was drawing maps in Alabama?

7 A Correct.

8 Q Okay. You address the Alabama Legislative Black Caucus
9 case challenging the 2011 maps, correct?

10 A Yes, sir.

11 Q Do you have any understanding of what the state's
12 arguments were in that case?

13 A I can't recall exactly. It was a gerrymandering case.
14 I'm sure it was very complicated, in terms of whether or not
15 race predominated in the drawing of certain district lines.

16 Q Would you agree with me that the plaintiffs' claims were
17 that Black Voting Age Population levels were kept too high in
18 certain districts?

19 A If you represent that, I would not disagree.

20 Q If you don't know, you don't know. But didn't the state
21 say we thought Section 5 required us to keep the same levels of
22 Black Voting Age Population?

23 A I believe that is correct, yes.

24 Q Do you think that an effort to comply with the Voting
25 Rights Act albeit maybe one based on a misunderstanding of

1 Section 5's requirement that that's equivalent to the kinds of
2 racial discrimination in Alabama's past?

3 A Could you ask that again, please?

4 Q Sure. If the Legislature, when it was found to have
5 violated Section 5 was actually trying to comply with the
6 Voting Rights Act, but misunderstood Section 5's requirements,
7 do you think that's equivalent to the kind of discrimination
8 you see further back in Alabama's past?

9 A I think it's part of the broader historical mosaic.

10 Q Very different, is it not, if they're making an effort to
11 comply and they have a misunderstanding of the requirements
12 versus they're defying it?

13 A I understand that was their argument.

14 Q Do you have any evidence that that's not what they
15 believed?

16 A No.

17 Q So you discuss Alabama's felon disenfranchisement law in
18 your report, do you not?

19 A Very briefly, yes, sir.

20 Q Do you know if that law has ever been challenged?

21 A Yes. I believe it was. It involved, if I am not
22 mistaken, the issue of what constitutes crimes of moral
23 turpitude.

24 Q Let's make sure we're talking about the same thing.

25 There was a felon disenfranchisement provision in the 1901

1 constitution, right?

2 A Yes, sir.

3 Q And that was challenged -- and the Court enjoined it and
4 said that was discriminatory?

5 A Correct.

6 Q Then later Alabama passed a new law. Was the new law
7 challenged?

8 A Where is this in the report?

9 Q Page 15, according to my notes, is where you addressed
10 this.

11 A Yes, sir. And the question is: Was the replacement law
12 challenged?

13 Q Correct.

14 A I can't recall.

15 Q Okay. Do you know if you researched that?

16 A I'm sure I did. Obviously, it's still in place. So if
17 there was a challenge, it was unsuccessful.

18 Q You addressed the investigation by the United States
19 Department of Transportation. How did that end?

20 A I believe the state agreed to reopen the closed offices
21 and provide assistance.

22 Q Did Alabama admit any liability?

23 A No.

24 Q Did any court find that Alabama discriminated as part of
25 the -- that temporary closure of driver's license offices?

1 A No.

2 Q Do you know how the state determined which offices would
3 be closed?

4 A I believe they said a number in terms of foot traffic and
5 closed the ones that had the least amount of foot traffic.

6 Q So you have no evidence that they were targeting those
7 licenses in heavily black areas, do you?

8 A No.

9 Q You said on direct that it may have some ability on
10 people's -- that it -- you said on direct those closures might
11 have an effect on people's ability to vote because that was one
12 of the places where you could get a photo ID, right?

13 A Yes.

14 Q Do you know had those offices been closed whether there
15 was anywhere else in the county a voter could have gotten an ID
16 for purposes of voting?

17 A There was. And I would just add that the relevance of
18 this to the totality of the circumstances is discriminatory
19 effect. I'm not trying to talk about intent here.

20 Q Well, I know. But I'm asking about effect and what effect
21 it could have. You agree, even if those offices were closed,
22 people could go elsewhere in the same county and get an ID for
23 purposes of voting?

24 A If they had adequate transportation, yes, sir.

25 Q I didn't write down a page number for this, Dr. Bagley,

1 but in your report, do you not -- you say Alabama was forced to
2 comply with the NVRA regarding a citizenship requirement?

3 A Yes, sir.

4 Q I'm unable to point you to a specific location in your
5 report right now.

6 A Jim, I believe it's 15, the same page as the DOT.

7 Q I appreciate that. Oh, I see. It's in the same
8 paragraph.

9 A Yes, sir.

10 Q Okay. Now, you cite to -- in footnote 48, the *League of*
11 *Women Voters vs. Newby*, correct?

12 A Yes, sir.

13 Q What -- did you read that decision?

14 A Yes.

15 Q Was Alabama a party to that suit?

16 A That was a complicated posture, if I'm not mistaken. I
17 think it was a federal agency that had allowed this provision
18 to go through, and then they were actually the target of it.
19 But the upshot was that the state was compelled ultimately to
20 comply.

21 Q Let me tell you my understanding. You tell me if we
22 disagree. I want to make sure I've got it right. Isn't it
23 true that Alabama asked --

24 A The Election Assistance Commission?

25 Q Yeah.

1 A Yes.

2 Q They asked them to put a citizenship requirement on the
3 federal voter application form that would be used in Alabama?

4 A Yes, sir.

5 Q At one point, that federal commission, the director,
6 Mr. Newby I guess said, yes, we'll put it on?

7 A Yes, sir.

8 Q Then other people sued the director and said, wait a
9 minute, you didn't comply with the Administrative Procedures
10 Act?

11 A That was my understanding, yes, sir.

12 Q So Alabama wasn't a party to that?

13 A True.

14 Q The Court didn't order Alabama to do anything?

15 A Correct.

16 Q The Court didn't say Alabama had done anything wrong by
17 requesting that requirement?

18 A No.

19 Q You addressed the People First case in your report?

20 A Yes. Yes, sir.

21 Q That case was -- was it not about absentee voting
22 procedures in the COVID era?

23 A Correct.

24 Q Were the plaintiffs challenging new procedures instituted
25 for that election or long-standing procedures?

1 A The latter.

2 Q Did Alabama have different absentee voting procedures for
3 black voters than they did for white voters?

4 A No.

5 Q And how was the case resolved?

6 A I believe there were preliminary injunctions that were
7 ultimately stayed. And then the appeal was dismissed, I
8 believe.

9 Q Was Alabama required to make any changes in its absentee
10 voting procedures for the 2020 general election?

11 A Ultimately, again, those -- the rulings were stayed.

12 Q And Senate Factor 3, that is the use of at-large voting
13 schemes with enhancing devices, correct?

14 A In part, yes. In practices and procedures -- excuse me --
15 stuttering is bad today -- that would enhance the opportunity
16 for discrimination.

17 Q Do you know how many states have majority vote
18 requirements for primary elections?

19 A No.

20 Q Do you have any reason to think Alabama's the only one?

21 A No.

22 Q You talked about the at-large systems and *Dillard*
23 litigation and all that. Do you discuss in your report any
24 at-large system that is currently in place?

25 A I don't believe so, insofar as I discuss the Pike Road

1 community. I believe they have an at-large electoral system
2 for their town council.

3 Q Okay. Do you have any reason to think that an at-large
4 system that is no longer in effect could dilute someone's vote
5 today?

6 A Of course not. I just include a discussion of those
7 because Factor 3 asks us the extent to which those kind of
8 systems have been used. So I -- in my reading of Factor 3, it
9 involves both the historical use of those schemes and
10 contemporary practices or procedures.

11 Q Now, on page 21, you talked about this in direct, some of
12 the litigation in Decatur involving Gary Voketz?

13 A Yes.

14 Q So he wanted the city to switch from a five-member council
15 to a three-member council?

16 A Yes.

17 Q And the city said we can't do that because that would
18 eliminate a black seat?

19 A Right.

20 Q So what's the point of this being in your report?

21 A Well, it's an effort on the part of white citizens to
22 institute those kinds of changes. Obviously, the city council
23 in this case did what was right, in terms of the law.

24 Q One guy, right?

25 A In terms of this litigation, but I believe he was

1 successful, in terms of the referendum the citywide referendum.

2 Q But in the end, no changes were made?

3 A That's correct.

4 Q Senate Factor 5, that's where you address ongoing effects
5 of past discrimination, correct?

6 A Yes, sir.

7 Q Okay. What is it about being a historian that makes you
8 more qualified than others to look up present day sociology
9 statistics or socioeconomic statistics?

10 A I'm sure there are other social scientists who might be
11 more qualified than me, but this is among the things that we as
12 historians would assess particularly in this kind of inquiry.

13 Q And you say there is no way historically to account for
14 the disparities you address apart from systemic discrimination,
15 correct?

16 A Yes.

17 Q What is systemic discrimination?

18 A Historical and ongoing discrimination.

19 Q What evidence do you cite for the proposition that there
20 can be no other cause other than systemic discrimination?

21 A I don't know as an historian what other cause there would
22 be.

23 Q What analysis did you do to determine that the cause of
24 socioeconomic caps was discrimination?

25 A The historical analysis that's in my report broadly

1 speaking. And, again, it cuts to what the Senate Factors ask
2 us to do. Is there a history of discrimination? Does it
3 involve the kind of schemes and devices under Factor 3? Do we
4 see present day disparities? And I believe it -- in the Senate
5 Factors report itself, either that or in *Gingles* in the
6 subsequent jurisprudence, that if you can indicate that there's
7 racially-polarized voting and there are these systemic
8 iniquities, you don't have to draw a straight line to factor X
9 of previous discrimination to factor Y of socioeconomic
10 indicia.

11 Q But you are offering an opinion in your report that,
12 without question, this is caused by historical discrimination?

13 A Yes.

14 Q And I'm asking what you did to test that.

15 A All I could offer to you is the totality of the report.

16 Q Okay. Did you consider any other possible causes?

17 A Well, you could explain it through biological racism, but
18 obviously, I don't ascribe to that view.

19 Q And I am certainly not making that claim.

20 A Of course. And I wouldn't impute that upon you either.

21 Obviously, Dr. Reilly has a different approach. I disagree
22 with him and his conclusions, but, true, there are other
23 attempts to explain it.

24 Q Being a historian doesn't make you an expert in all the
25 social sciences, does it?

1 A Of course not.

2 Q Of course not. So what is it about your training as a
3 historian that qualifies you as an expert to determine what
4 caused a gap in, for example, income?

5 A Well, we understand the history of discrimination, as I've
6 laid out -- at least in very small measure, in terms of this
7 report and previous reports that you've seen. And, for
8 example, I didn't just talk about these census data. We're
9 talking about ongoing desegregation litigation, for example,
10 ongoing findings of violations of Title VI for example. So
11 there's plenty more to it.

12 Q You say that black citizens are grossly overrepresented in
13 Alabama's prison system, correct?

14 A Yes, sir.

15 Q Is there any state, to your knowledge, where black
16 citizens are not overrepresented in prisons?

17 A No.

18 Q Are black citizens overrepresented in federal prisons?

19 A Yes.

20 Q Do you know how the level of overrepresentation in Alabama
21 compares to the level of overrepresentation in other states?

22 A Not off the top of my head. I believe that Dr. Reilly
23 speaks to that in his report. I think that comparing Alabama
24 to other states -- in my understanding, as an historian of the
25 Senate Factors analysis, the results test, that's beyond the

1 scope of what I was asked to do.

2 Q Okay. And if you want to refer to it in your report,
3 we're -- the issues I'm discussing you address at the bottom of
4 page 22.

5 And you mention in your report a lawsuit alleging that
6 black inmates are being disproportionately denied parole,
7 right?

8 A Yes.

9 Q Have there been any findings in that lawsuit?

10 A I can't recall exactly what posture that's at, at this
11 point. I don't think it's been fully adjudicated.

12 Q For the record, I am going to try to ask a better
13 question.

14 Are you aware that any court in that litigation has found
15 that Alabama has done anything wrong?

16 A No.

17 Q Is it your position that unproven allegations should be
18 held against the state?

19 A No. I'm simply including this is part of the broader
20 picture.

21 Q Okay. Well, all you can offer, though, is that someone's
22 made a claim?

23 A That's correct. In this particular instance, yes.

24 Q And you haven't addressed any -- or viewed any evidence in
25 that case, have you?

1 A I haven't -- say again, please.

2 Q Have you viewed any of the evidence presented in that
3 case?

4 A Not directly, no.

5 Q So you don't know if the plaintiffs' allegations have any
6 foundation or not?

7 A Not yet, no.

8 Q Okay. Have you pointed to any laws in your report that
9 are in existence in Alabama -- that are presently enforced --
10 that you contend make it harder for black citizens to register
11 to vote or cast a ballot than it is for white people?

12 A Current laws?

13 Q Yes.

14 A Nothing that -- could you ask it again, please?

15 Q Sure. Do you contend that there are any laws presently
16 enforced in Alabama that make it harder for black citizens to
17 register to vote or cast a ballot than it does for white
18 people?

19 A No. And we were just talking about socioeconomic
20 indicators, the ongoing effects of past discrimination.
21 Certainly, that could have a dispersate impact racially in
22 terms of black citizens' ability to participate.

23 Q So I understand that you are contending that if someone
24 has lower income, someone makes \$10,000 a year, lacks reliable
25 access to a vehicle, it's harder for that person to participate

1 in the political process than it is for someone with much
2 greater means?

3 A Sure.

4 Q Okay. And I asked you this in your deposition: Let's say
5 you have two voters, one is black, and one is white. They both
6 have -- they both make \$10,000 a year. Neither has a reliable
7 vehicle. Neither has broadband. Is it anymore difficult for
8 the black voter to participate in the political process than
9 the white voter?

10 A No. Although I would say black citizens are
11 overrepresented among those groups of people, one; and, two,
12 when we're considering a totality, it's not just about being
13 able to identify as a member of a political party registering
14 to vote. It's about -- at the end of the day, it is also about
15 the ability to elect your candidates of choice.

16 MR. DAVIS: For the Court's planning, if I continue, I
17 might be able to finish by 1:00. I'm not certain.

18 THE COURT: I think it sound like a great time for
19 lunch.

20 All right. It's noon now. Let's come back at 1:15.

21 (Recess.)

22 THE COURT: Good afternoon. Welcome back. Please be
23 seated.

24 You may proceed.

25 MR. DAVIS: Thank you, Judge. With your generous

1 break, I have tried to streamline some.

2 BY MR. DAVIS:

3 Q Dr. Bagley, you testified earlier about a divide between
4 black and white Alabamians related to the divide between urban
5 and rural, right? Did I understand that correctly?

6 A I don't think so.

7 Q Okay.

8 A This is in reference to what the Alabama Journal article
9 was saying.

10 Q Yes. I think that was -- it was context of that
11 discussion.

12 A Yeah. The old divide between urban and rural Black Belt
13 and big city was all white, if that's what you mean.

14 Q Let me -- I asked a bad question.

15 A Okay.

16 Q Do you contend that there's no longer a political divide
17 in Alabama between urban and rural interests?

18 A No.

19 Q Okay. You spoke in your direct examination about certain
20 similarities that you believe exist between the city of Decatur
21 and the city of Huntsville, right?

22 A Yes.

23 Q Why is that in your report?

24 A Well, it's -- Decatur is part of the Huntsville combined
25 statistical area, and plaintiffs asked me to look at that area

1 as more part of the challenged areas.

2 Q If they have similarities or not, does that have anything
3 to do with vote dilution or ability to participate in the
4 political process?

5 A Not necessarily.

6 Q Are you doing history when you're looking at Decatur and
7 Huntsville and seeing if they have certain similarities?

8 A They do have historical connections.

9 Q Are you doing history when you look to see if they're
10 similar right now?

11 A I think their similarities now are informed by their
12 shared history to an extent.

13 Q Do you dispute that Huntsville and Madison County schools
14 are working to improve educational opportunities for their
15 students?

16 A No.

17 Q Decatur schools have now achieved unitary status, right?

18 A As of 2019, I believe, yes, sir.

19 Q When you say that a school system is still under a
20 desegregation order, you don't mean that that school is
21 prohibiting black students from attending any particular
22 school, right?

23 A No.

24 Q So this is -- that means, does it not, that the school is
25 still trying to unpack some leftover effects of prior policies?

1 A I think that's fair to say.

2 Q You would agree that can't be done overnight?

3 A Certainly not.

4 Q You said there was an investigation in Huntsville schools
5 -- this is in your report.

6 A Okay.

7 Q And you said there was an investigation in Huntsville
8 schools in 2014 into students' social media accounts?

9 A Yes, sir. Mr. Davis, what page is that, if you don't
10 mind? Sorry.

11 Q No. In spite of my best efforts. It's going to be around
12 23.

13 A Okay.

14 Q Yes.

15 A I have it, yes, sir.

16 Q Okay. And you say it led to the disproportionate
17 expulsion of black students, correct?

18 A Yes.

19 Q What was the nature of that investigation?

20 A The school system paid a former FBI agent to investigate
21 students' social media accounts.

22 Q Were they investigating only black students?

23 A No.

24 Q How many students were expelled?

25 A I don't recall.

1 Q Do you know how many were black and how many were white?

2 A I know that the nature of the finding in the footnote is
3 that disproportionately they were black.

4 Q Do you have any personal knowledge as to whether it was,
5 in fact, disproportionate?

6 A No.

7 Q Do you know in any white students were not expelled even
8 though they had the same kind of social media posts as the
9 black students who were expelled?

10 A I do not.

11 Q Do you have any reason to suspect that Huntsville was
12 using different standards for students based on race?

13 A I don't think it's about intent, necessarily. I think
14 that the relevant fact here is the disproportionate effect.

15 Q And you said the Decatur school system had -- I think what
16 you called some backsliding, and there were disproportionate
17 number of black students referred to law enforcement?

18 A Yes.

19 Q That's from your direct exam. I don't believe that's in
20 your report. I'm sorry.

21 A I believe it is.

22 Q That wasn't an accusation.

23 A No, no.

24 Q Similar to the Huntsville investigation, do you have any
25 evidence that Decatur was using different standards based on

1 race for which students it referred to law enforcement?

2 A No.

3 Q The case involving the Athens school system, that was
4 fraud committed by two school officials, correct?

5 A Maybe three, but, yes, sir, it was a fraud case, criminal
6 case.

7 Q Okay. Do you have any understanding or evidence that the
8 state of Alabama was involved in that or facilitating the
9 fraud?

10 A No.

11 Q Now, you note in your report that the parties to the
12 Huntsville desegregation case were scheduled to file a joint
13 status report on February 1st of this year?

14 A Yes.

15 Q Have you reviewed that?

16 A I have not.

17 Q Okay. For a clear record, then, you can't say one way or
18 the other whether the parties attest that progress is being
19 made?

20 A Let me find this in the report. Do you have a sense of
21 where it is, Mr. Davis?

22 Q It will be right in that area.

23 To be fair, Dr. Bagley, it came out the day before your
24 report was due.

25 A Okay.

1 Q I'm not making any -- I'm not meaning to suggest you
2 should have seen it or suggest in your report. I simply want
3 to ask if you have read it since then to see whether the
4 parties have testified about any progress?

5 A I have not.

6 Q Okay. What is the Accountability Act that you discuss?
7 And, that, I can tell you is on page 26 of your report.

8 A Okay. That is the program that allows for vouchers to
9 attend -- participate in private schools if you are in a
10 priority school.

11 Q Now, you say in your report that, quote, These options
12 have failed to afford the vast majority of black students in
13 these underperforming schools better educational opportunity.

14 Do you know how many students have used the Accountability
15 Act options to go to a better school?

16 A I don't have that precise number. My basis for that was
17 simply that if you look at the priority schools list, you would
18 continue to see disproportionately majority black schools and
19 overall a disproportionate number of black students in those
20 schools.

21 Q Do you have any evidence of black students who have
22 attempted to transfer to charter or private school but were
23 unable to do so?

24 A Not of any specific ones, no.

25 Q So the record will be clear, I mean to ask, do you have

1 evidence of any black students who attempted to use the
2 opportunities under the Accountability Act, but were unable to
3 do so?

4 A No.

5 Q Now, you point out that most of the participating private
6 schools are predominantly white. What's the relevance of that?

7 A Well, again, I think it comes back to effect. And, again,
8 if you continue to see on the priority list overwhelmingly
9 black schools, then that is something you would consider under
10 Senate Factor 5 as disproportionate effect.

11 Q But by pointing it out in this section -- I want to make
12 sure I understand -- are you testifying that it wouldn't --
13 that a school would not provide a better opportunity for a
14 black student on grounds that that transferee school is
15 majority white?

16 A No.

17 Q And are you suggesting that the majority white schools are
18 not welcoming to black students?

19 A No.

20 Q Do you contend that a parent in Montgomery or Huntsville
21 who decides to send their kids to private school is engaging in
22 white flight?

23 A Could you ask that again, please?

24 Q Sure. Is it your position that a parent in -- I'm saying
25 Montgomery and Huntsville because those are the areas we're

1 talking about. Are you contending that a parent in those areas
2 who decides to send their children to a private school that
3 they are engaging in white flight?

4 A I think that phenomenon is less about individual
5 motivations and more about the bigger picture. Like I said, if
6 you zoom out and look at these metropolitan areas, it's more a
7 matter of what is the milieu in that metropolitan area. I
8 don't think it's about pinpointing individuals or individual
9 families.

10 Q Are you suggesting that a parent who sends his or her kid
11 to private school doesn't want their kid to go to school with
12 black kids?

13 A No.

14 Q Where is the town of Pike Road?

15 A It's east of the city of Montgomery, southeast.

16 Q Do you contend Pike Road to be a white flight community?

17 A Yes.

18 Q Now, let's look at the third full paragraph of that
19 report.

20 A Okay.

21 Q And you quote a woman named Patty Payne. Who is Patty
22 Payne?

23 A I don't know her personally, but she you might say is a
24 city booster of sorts.

25 Q Okay. And you say -- you quote Ms. Payne -- it says, The

1 town's leadership has sought to preserve and protect what they
2 saw their preferred way of life in the face of encroachment
3 from the city of Montgomery?

4 A Yes.

5 Q Okay. You call that language color masked?

6 A Sure.

7 Q What do you mean by that?

8 A Well, when you see things like "preferred way of life"
9 that harkens back to me to phrases like "freedom of
10 association," which you look at the work of prominent
11 historians like Kevin Kruse who studied white flight in
12 Atlanta, that kind of language is deliberately devoid of words
13 like white, black, or race but intended to impart a sort of
14 freedom of choice you might say.

15 Q Didn't Ms. Payne talk a lot about the rural nature of Pike
16 Road at the time she wrote the article you're quoting?

17 A I think in the rural nature meaning the historical nature
18 of Pike Road, yes.

19 Q Are you suggesting that what Ms. Payne is really saying
20 is that they don't want black people to move to Pike Road?

21 A No. In fact, I think there's something like maybe
22 30 percent black residents of the town.

23 Q Are you suggesting that she meant this language that
24 you're quoting in a racial way?

25 A I'm saying that there are undertones that would suggest

1 that, yes.

2 Q Do you think that's how she meant it?

3 A I think it's possible, yes.

4 Q Okay. Even though there's a perfectly non --
5 understandable non-racial motivation for that being the rural
6 versus urban interest?

7 A Yeah. If you take her -- her verbatim word, yes.

8 Q Are you calling her a bigot?

9 A No.

10 Q Are you assuming that Patty Payne and others in Pike Road
11 did not want to live around black people?

12 A No. But I would just note that the majority of the
13 population is white, and the majority of the leadership of the
14 town and of the school board is, as well.

15 Q Well, you say, do you not, beginning -- let's go to the
16 bottom of page 26. The next paragraph and the first paragraph
17 of the next page. So you say, Given the middle class suburban
18 nature of Pike Road by that time and considering the color
19 masked language Payne used, it is evident that white boosters
20 wanted to establish a public school system that was not only
21 majority white in its student population, but also under
22 majority white, if not all white leadership?

23 A Yes.

24 Q Correct? Okay. And you believe you have a foundation and
25 evidence to make that claim?

1 A I do.

2 Q So Pike Road was formed, you say, by fewer than 400
3 residents in 1997, correct?

4 A Correct.

5 Q How many blacks were among those people?

6 A I'm not certain.

7 Q Were there any blacks on the first town council?

8 A I believe there might have been one, yes.

9 Q Have any blacks served on the town council since then?

10 A I am aware that as of last I looked, there were no
11 members, no black members of the town council.

12 Q None today?

13 A As of this previous -- prior to the election, this month.

14 Q But do you know if any have served on the town council in
15 the past?

16 A At least one.

17 Q Do you know if any have served on the school board in the
18 past?

19 A At least one.

20 Q Do you know if any are serving on the school board now?

21 A I'm not certain as I sit here.

22 Q Pike Road does have a school system of its own, does it
23 not?

24 A It does. It's severed from the county system.

25 Q Do you know what percentage of the students are black?

1 A I would assume similar to the population of the town
2 itself.

3 Q Well, what is the population of the town itself? Let's go
4 to page 27 of your report, in the first sentence of the first
5 full paragraph.

6 You say as of the 2020 census, the Pike Road CCD has a
7 population of 23,023 -- 9,462 white alone and 8,375 black or
8 African-American alone.

9 It's pretty close to equal, isn't it?

10 A Pretty close.

11 Q Do you still think looking at the population that Pike
12 Road was founded by people who wanted their kids to go to a
13 mostly white school and wanted to live under all white or
14 mostly white leadership?

15 A Well, yes. If you, again, consider that they used an
16 at-large election system, all you need is 50.1 percent to
17 maintain control of that system. And, again, if you consider
18 that they -- white residents and white students are the
19 majority, then that's significant.

20 Q Well, this is a system that has elected black leaders to
21 its town government, correct?

22 A Yes, but not nearly in proportion to the numbers that we
23 see right here.

24 Q When you count other minorities, do you even know if
25 whites are a majority within the city of Pike Road?

1 A Not off the top of my head.

2 Q You make a point that Pike Road incorporated a majority
3 white neighborhood called The Waters, right?

4 A Yes.

5 Q Do you know if Pike Road has incorporated majority-black
6 neighborhoods in its history?

7 A I'm not certain, but I would assume so given the growth in
8 the black population.

9 Q You have a discussion on page 27 about the sale of a
10 school building between -- between Montgomery County schools
11 and Pike Road schools, correct?

12 A Yes.

13 Q You quote a woman named Arica Watkins Smith. Who is she?

14 A A black member of the Montgomery Public School Board.

15 Q You quote her as saying at the time they were considering
16 the sale, she says, quote, You take a predominantly black
17 middle school, sell it to a predominantly white school system,
18 that is segregation.

19 Do you contend that it is segregation to sell a building
20 from one school system to the other?

21 A No.

22 Q Why did you include that in your report?

23 A That's her view. It's the view of a public school
24 official in Montgomery expressing her frustration. I think
25 it's relevant.

1 Q Even though you know that it's not segregation?

2 A Not segregation, per se.

3 Q Is it segregation in any way to sell a building?

4 A According to Ms. Watkins Smith in this case.

5 Q Do you think she's correct?

6 A I think she has a point.

7 Q What does Senate Factor 6 ask?

8 A Senate Factor 6 involves the presence of racial appeals.

9 Q You discussed this beginning on page 30. And actually, in
10 your words, Senate Factor 6 asks us to consider whether
11 political campaigns have been characterized by overt or subtle
12 racial appeals, correct?

13 A Yes.

14 Q And let's look at the people you list in your report who
15 have made what you contend is a racial appeal. So first, you
16 have Tommy Tuberville, right?

17 A Yes.

18 Q Mo Brooks?

19 A Correct.

20 Q Will Dismukes?

21 A Indeed.

22 Q Scott Beason?

23 A Yes.

24 Q Roy Moore?

25 A Yes.

1 Q Doug Jones?

2 A Okay.

3 Q Tom Parker?

4 A Yep.

5 Q Tom Merrill?

6 A Yes, sir.

7 Q Did I get them all that's actually addressed in your
8 report?

9 A I believe so, plus Larry Dixon in the Beason paragraph.

10 Q Okay. Fine. What statements do you list that these folks
11 made that were made actually as part of a political campaign?

12 A Well, we looked on direct specifically at the 2017
13 campaign between Judge Moore and Senator Jones.

14 Q Any others?

15 A The Pringle television ad. The Dobson ad that I think was
16 not allowed to be admitted.

17 And then let me see.

18 Q Please refer -- it's not a memory test.

19 A Sure.

20 Q You do talk about an ad that Tom Parker --

21 A Tom Parker, yes.

22 Q None of the rest were made in the course of a political
23 campaign, were they?

24 A Well, my understanding of the Senate Factor is that I can
25 consider elected officials' public statements that are not

1 necessarily campaign mailers or television advertisements or
2 the like.

3 Q What authority are you aware of that says that this Senate
4 Factor considers not only political campaigns, but anything a
5 politician says any time?

6 A That's my understanding of this Senate Factor.

7 Q Okay. How many of the people that I listed -- that you
8 listed, rather, are still in office?

9 A That's a great question. I believe Representative
10 Pringle, Senator Tuberville, obviously.

11 Q Yes.

12 A And Congressman Brooks stepped down to run for Senate.
13 And that is possibly it.

14 Q Chief Justice Parker?

15 A Yes.

16 Q Will Dismukes. Do you know how he left office?

17 A How he left office?

18 Q Yes.

19 A He either resigned or was compelled to I think on account
20 of some of these remarks.

21 Q Was anything that you list that he said made -- scratch
22 that.

23 Were any of the comments that you attribute to Will
24 Dismukes addressed to the voting public?

25 A Well, as an elected official, I think anything that Former

1 Representative Dismukes said could be considered as such.

2 Q Well, what evidence do you have that most voters even knew
3 about these comments?

4 A Let me remind myself in what context those were made. But
5 I would just say that, again, as an elected official, he's got
6 a high profile obviously in Montgomery and perhaps across the
7 state. So these -- and these were statements that were made in
8 the public realm.

9 Q Something stated in private can't really be a racial
10 appeal, can it?

11 A Are you referring to the Beason conversations?

12 Q I wasn't referring to anything in particular. I'm trying
13 to understand where you're drawing a line.

14 A I understand. Could you ask the question again?

15 Q Sure. Let's say somebody's having dinner at their home
16 with a few friends and says something that we would all
17 consider to be extremely racially insensitive, and that person
18 is a politician, but he's saying it in the privacy of his
19 dining room, is that a racial appeal?

20 A No. But if we had a record of it, we could consider it
21 along with other evidence.

22 Q You showed us some pictures of campaign advertising by
23 Doug Jones when he was running in 2017, correct?

24 A Yes.

25 Q Were those ads as you see them, do you think they were

1 designed to shut black voters out of the process or pull them
2 into the process?

3 A They were designed to appeal to black voters to vote for
4 Senator Jones.

5 Q On page 33, you address Senate Factor 7, which is the
6 extent to which members of the minority group have been elected
7 to public office, correct?

8 A Yes, sir.

9 Q And one of the points you make is that black citizens of
10 Alabama currently hold no statewide offices, right?

11 A Yes.

12 Q Do any Democrats currently hold statewide office in
13 Alabama?

14 A I don't believe so.

15 Q On the next page, page 34, you address responsiveness to
16 the minority community. And on that factor, you cite Alabama's
17 decision thus far at least not to expand Medicaid. My question
18 is: Do you know if other states have declined to expand
19 Medicaid?

20 A There are several, yes.

21 Q Would you agree that there are reasons having nothing to
22 do with race that a state might make that decision?

23 A Yes.

24 Q Turning to your rebuttal report, Dr. Bagley.

25 On page 12 of your rebuttal report, you quote Wayne Flynt.

1 For the record, who is Wayne Flynt?

2 A Wayne Flynt is an eminent historian of Alabama history,
3 who is emeritus faculty at Auburn University.

4 Q And you quote him as saying that when my Mike Hubbard ran
5 for reelection in 2014, he was basically running against Barack
6 Obama?

7 A Yes.

8 Q Now, what do you mean? Obviously, Mike Hubbard wasn't on
9 the ballot as President Obama's political opponent. What do
10 you mean when you say -- or when he says he was running against
11 Barack Obama?

12 A That that was a campaign strategy that he was utilizing to
13 capitalize on backlash against Obama's election.

14 Q Do you think Professor Flynt was correct?

15 A I do.

16 Q Have you studied that campaign?

17 A Of course.

18 Q Wasn't Barack Obama president in 2014 when this campaign
19 took place?

20 A Yes.

21 Q And he was of a different party than Representative
22 Hubbard, was he not?

23 A Of course.

24 Q Isn't it common for politicians to run against the
25 President if the President is of a different party?

1 A Certainly. But this was the first black elected President
2 of the United States.

3 Q Was he supposed to run against Jimmy Carter or Bill
4 Clinton? I mean, he's the sitting President. Do you think he
5 should have changed the strategy because Prescient Obama was
6 black?

7 A No. I think the point here is it's, of course, not
8 uncommon to run against a sitting president. But, again,
9 President Obama was the first black President. I have cited to
10 other authorities in my initial report who have analyzed the
11 backlash against that election, and certainly Mr. Hubbard would
12 have been aware of that, and I think Professor Flynt's point is
13 that that was part of his strategy. I obviously respect
14 Professor Flynt's opinion in this particular instance.

15 Q Wouldn't you expect in the 2026 elections around the
16 country there will be a whole bunch of people running against
17 President Trump?

18 A Of course.

19 Q As at least as we're using that language? Is there
20 anything wrong with that if they disagree with the sitting
21 President's policies?

22 A Not at all.

23 Q Look -- well, on page 15 of your rebuttal report, you
24 quote Professor Flynt again. And there's a block quote there,
25 and the last sentence Professor Flynt says, Race defines

1 Alabama completely.

2 Is that true?

3 A I think in the context that Professor Flynt is talking
4 about, it is true.

5 Q Do you contend that all aspects of life in Alabama is
6 defined by race?

7 A No.

8 Q Earlier you said that statements made in private might be
9 considered racial appeals when considered alongside other
10 evidence if I heard you correctly?

11 A Yes.

12 Q What other evidence?

13 A The campaign literature that we were looking at, for
14 example.

15 Q Wouldn't you need to know if that communication had
16 actually reached to any voters?

17 A You mean private conversations?

18 Q Yes.

19 A Well, I guess in the case of Beason's comments and Dixon's
20 comments, those did come to light in the *McGregor* litigation,
21 and I think one of the takeaways there was that the leadership
22 of the party was engaged in trying to depress the black vote
23 turnout.

24 Q Something said in private, how can that cause someone's
25 vote to be diluted?

1 A I don't know that it would in and of itself.

2 Q Back to Professor Flynt's comments when he -- his opinion
3 he said race defines Alabama completely.

4 Is that a quote from a scholarly article? It's page 15 of
5 your rebuttal report.

6 A It is from a piece on al.com.

7 Q Isn't he just giving a personal opinion, which he is, of
8 course, entitled to hold?

9 A I think he's giving a scholarly opinion. Just because it
10 was a statement made in the press and not a historical
11 monograph or scholarly article doesn't make it not a scholarly
12 opinion.

13 Q Does being a historian and a really good one, does that
14 make Flynt an expert in sociology or psychology?

15 A I think a lot of Professor Flynt's work dovetailed with
16 sociology. I'm not so sure about psychology.

17 Q Okay. If a white -- well, let's say a member of the
18 Legislature who is a black Democrat proposes a bill, introduces
19 it to the Legislature, on the other side you have a Republican,
20 and this Republican is white, and that white member of the
21 House of Representatives disagrees strongly with the policies
22 underlying the bill that's being sponsored by the black
23 Democrat?

24 A Okay.

25 Q Do you think that white Republican legislator should

1 support that bill even though he or she disagrees strongly with
2 the policies?

3 A No.

4 Q Okay. The white legislator doesn't have to change the
5 vote based on the race of who introduced the piece of
6 legislation?

7 A No.

8 Q Okay. Do you contend that every statement made by a
9 historian is a statement of history or historical research?

10 A Not necessarily, no.

11 Q Do you express any opinion in this case on whether white
12 voters in Alabama today in 2024 who tend to vote Republican do
13 so for racial reasons?

14 A I don't know about the motivation of any specific voter.
15 I'm just trying to present the totality of the circumstances
16 and presence of the Senate Factors.

17 Q Do you contend that Alabama Republican voters today are
18 motivated by the southern strategy from the '80s and '90s or
19 that you allege took place?

20 A Could you ask that again, please?

21 Q Yeah. And I will try to do it better.

22 I am going to skip that.

23 To ask it a slightly different way, do you contend that
24 white voters in Alabama in 2024 who tend to support Republicans
25 are racially biased?

1 A No.

2 Q You respond to Dr. Carrington, right, in his opinions
3 about why there was a shift of white voters in the Alabama in
4 the South from the Democrat to the Republican party?

5 A Yes.

6 Q And Dr. Carrington suggested that there are some issues
7 and beliefs involved that he thinks motivates voters?

8 A Yes.

9 Q If a voter -- let's say, we have a voter in Alabama, and
10 that voter is very much pro life, that's an extremely important
11 issue to that voter, do you have a judgment of which political
12 party is more likely to align with that voter's interest?

13 A I think I would have to know more about the prospective
14 voter make that determination.

15 Q What more would you need to know?

16 A What other issues sets are important to them, for example.

17 Q I'm not asking which party would support -- if that voter
18 would agree with all parties. I'm saying life -- pro life
19 policy is the single most-important issue for that voter, do
20 you know which party is at least associated with supporting pro
21 life interest?

22 A Is the voter white or black?

23 Q In my hypothetical, it doesn't matter.

24 A Well, if they're black, they're probably voting for
25 Democrats. And if they're white, the opposite is true.

1 As we pointed out on direct, look at the numbers in terms
2 of -- you said pro life, right? So if half of black citizens
3 or black voters in Alabama are strongly opposed to abortion in
4 all cases, you would expect half of them to vote Republican,
5 but that's simply not the case.

6 Q Let me ask it a different way.

7 Do you have a sense of which political party tends to
8 garner support for the most pro-life supporters?

9 A The Republican party.

10 Q And take a hypothetical voter, and to simplify things,
11 let's say this voter is a single-issue voter?

12 A Okay.

13 Q Doesn't care about anything except this person is
14 extremely pro choice, and all they care about is whether a
15 candidate is pro choice or not. Do you have a sense of which
16 political party that voter is likely to support?

17 A All other factors being excluded, the Democrat party.

18 Q What if a voter feels really strongly about protecting
19 Second Amendment freedoms?

20 A I would think that person would identify with the
21 Republican party.

22 Q What about a voter whose main priority is governmental
23 policies that fight against climate change? Do you have a
24 sense of which party that voter would likely support?

25 A I don't think that was in Dr. Carrington's report or mine,

1 so I would say that's kind of beyond the scope.

2 Q Do you not know? That's fine.

3 A Ask again, please.

4 Q Sure.

5 Hypothesizing, a voter, a single-issue voter who cares
6 about fighting against climate change, they want strong
7 environmental policies?

8 MS. SADASIVAN: I am going to object, Your Honor.
9 This is beyond the scope of Dr. Bagley's expertise. It was not
10 brought up in his deposition. It has not come up in his
11 reports.

12 THE COURT: I think if he doesn't know the answer, he
13 can just say that. But you are not asking him about his report
14 right now, are you? A hypothetical?

15 MR. DAVIS: I'm just asking a hypothetical.

16 THE COURT: All right.

17 THE WITNESS: The Democrat party.

18 BY MR. DAVIS:

19 Q Okay. Do you think Alabama voters are smart enough to
20 know what position the parties take on issues like this?

21 A I think many of them are.

22 MR. DAVIS: May I?

23 THE COURT: You may.

24 MR. DAVIS: No further questions, Your Honor.

25 THE COURT: All right. Thank you.

1 MS. SADASIVAN: Can I have just a moment to confer?

2 THE COURT: You may.

3 REDIRECT EXAMINATION

4 BY MS. SADASIVAN:

5 Q Dr. Bagley, you identified patterns of discrimination in
6 Senate Factor 1 that continue to the present day?

7 A Yes.

8 Q Okay. And are there black Alabamians today who were alive
9 in the 1960s?

10 A Absolutely.

11 Q Who were impacted by the redistricting that you described?

12 A Indeed, and segregated education, as well.

13 Q And you were asked about the redistricting process in the
14 1970s. With respect to the *Sims* litigation, was your
15 understanding of that case that the Court found the Secretary's
16 redistricting plan was discriminatory?

17 A Yes.

18 Q And were you quoting Mr. Lyons to give context to that
19 Court finding?

20 A Yes.

21 Q Now, Mr. Davis showed you portions of an Alabama Journal
22 article from footnote 8 of your report.

23 Was that the only citation you included in footnote 8?

24 A No.

25 Q Okay. What else did you cite?

1 A I'm sorry. Bear with me. I've cited also the -- well,
2 the *Sims* decision itself, Act number 3 of the Alabama
3 Legislative Acts 1973 special and regular sessions, a Don
4 Wasson, W-A-S-S-O-N, article from the Montgomery Advertiser,
5 and two separate articles from the Alabama Journal.

6 Q And -- I don't --

7 MS. SADASIVAN: Can you pull back up Defense
8 Exhibit 104 that you showed Dr. Bagley earlier? You can?
9 Okay. DX-104. I believe it's page 2.

10 BY MS. SADASIVAN:

11 Q Okay. If you can look at the second column where it
12 begins -- I apologize. Can you go to the second paragraph from
13 the bottom of column 2? Can you just quickly read that
14 starting with, The possibility?

15 A This possibility already has some of the rural legislators
16 licking their chops. One Black Belt legislator who has had
17 more than his share of troubles with the urban bloc is looking
18 forward to the outcome.

19 Quote: When they adopt the plan, he says, I'll tell you
20 what you're going to get from Jefferson County: Six
21 Republicans, six Negroes, six Kluxers, K-L-U-X-E-R-S, and two
22 fools. They won't be able to agree on anything, and I can beat
23 every damn one of them.

24 Q And what did you understand by the term urban bloc?

25 A So in this case, in this context, urban bloc is meaning

1 black voters.

2 Q Okay. Mr. Davis implied that the rural urban divide was
3 not about race. Can you describe how, if at all, the rural and
4 urban divide bears on race today?

5 A Prior to the '60s, it was, as I described earlier, in
6 terms of the old 'burban planter class versus what were known
7 as the big mule industrial lists. But after passage and
8 enforcement of Voting Rights Act into the 1970s and '80s, urban
9 bloc became code language for the black vote.

10 Q And when you were discussing Senate Factor 5 I believe
11 with Mr. Davis, did you -- did you say that was the only place
12 you described the present effects of discrimination?

13 A I don't believe so.

14 Q Okay. Are black people disproportionately affected by the
15 state's attempt to limit assistance to voters as required by
16 Section 208 of the VRA?

17 A Yes.

18 Q And are black people disproportionately affected by felony
19 disenfranchisement.

20 A Yes.

21 Q Are black people less likely to possess a photo ID?

22 A Yes.

23 Q How does the state of Alabama lack of early voting affect
24 black voters?

25 A I believe it disproportionately affects them there, as

1 well.

2 Q And do you consider these current barriers to political
3 participation?

4 A I do.

5 Q Mr. Davis also asked you about the meaning of ongoing
6 court supervision and enforcing the promises of *Brown vs. Board*
7 *of Education*.

8 What is your understanding of ongoing court supervision,
9 the meaning or import of ongoing court supervision?

10 A Well, it's been 60 years since -- well, not since Brown.
11 It's been 70, right? But 60 years since the initial school
12 desegregation cases were filed. And I think it's particularly
13 telling that some of these school systems, dozens, in fact,
14 continue to be unable to free themselves of this litigation.

15 And I think I talked in the initial report about some of
16 the court's findings in the *Hereford* case that tenacious
17 vestiges of segregation and constitution of flawed discipline
18 systems and these sorts of things.

19 Q So speaking of *Hereford vs. United States* which you
20 discuss in footnote 4 or when you -- which you discuss, can we
21 pull up that case and go to footnote 4, please?

22 Dr. Bagley, can you please take a look at that and then
23 share whether or not it's your understanding that the
24 disparities in discipline do not differ by race or not affected
25 by race?

1 A Here -- the initial question Dr. Gregory has ruled out
2 other possible explanations for discipline disparities, such as
3 socioeconomic status and severity of conduct. It says, So
4 controlling for these explanations, that allowed Dr. Gregory to
5 conclude that race was a, quote, Robust predictor of dispersate
6 outcomes in discipline.

7 Q Mr. Davis also talked about Pike Road with you in the
8 context of white flight.

9 In that context, what were you referring to Pike Road as a
10 white flight destination from?

11 A All that means is it's a community outside of a central
12 city where there is a white majority, an independent school
13 system, an independent governing structure that has taken shape
14 demographically, politically since the 1950s, '60s, or more
15 recently.

16 Q And are you -- do you know what the current black
17 population of Montgomery is?

18 A Off the top of my head, I am not certain, but I would
19 venture to guess in the range of 65 percent or so.

20 Q And do you know what the composition of Montgomery public
21 -- do you have any knowledge about what the composition of
22 Montgomery public schools looks like?

23 A Again, I don't know the exact figure, but it would
24 certainly be higher than 65 percent.

25 Q Okay. And on page 15 of your -- oh, actually, turning to

1 Senate Factor 7, have any white Democrats held elected office
2 in the last decade?

3 A Yes.

4 Q How many?

5 A I'm not certain. You say in the last decade? I'm not
6 sure.

7 Q Okay. More than one?

8 A Yes.

9 Q Okay. And have any black Democrats held any statewide
10 elected office in the last decade?

11 A No.

12 Q I apologize. Black people?

13 A No.

14 Q Page 15 of your rebuttal report, you were asked about a
15 block quote you included from Dr. Flynt where he said, Race
16 defines Alabama completely. What was the context in which
17 Dr. Flynt said that?

18 A He was talking about politics.

19 Q Okay.

20 A And I'm sorry -- and education, as well.

21 Q And what do you understand that to mean?

22 A That that is the primary factor and not certainly the only
23 factor.

24 MS. SADASIVAN: Can I have just one minute to consult?

25 THE COURT: You may.

1 MS. SADASIVAN: That's all the questions I have, Your
2 Honor.

3 THE COURT: All right.

4 MR. DAVIS: No further questions.

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

7 MR. DAVIS: No, Your Honor.

8 THE COURT: All right. Dr. Bagley, thank you very
9 much. You're excused.

10 (Witness excused.)

11 THE COURT: All right. Plaintiffs' next witness.

12 MR. CAMPBELL-HARRIS: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. CAMPBELL-HARRIS: Plaintiffs call Ms. Williams to
15 the stand.

16 THE COURT: All right.

17 MR. CAMPBELL-HARRIS: It was a little chilly in the
18 courtroom, so she was warming up in the war room.

19 THE COURT: Understood. Is there a consensus that
20 it's a little chilly in the courtroom?

21 TARI WILLIAMS

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

24 THE COURTROOM DEPUTY CLERK: Please adjust the
25 microphone to where it's comfortable for you, and you can pull

1 it down. There you go.

2 Please speak loudly and clearly into it. State your name
3 and spell it for the record.

4 THE WITNESS: My name is Tari Williams, you spell it
5 T-A-R-I, last name Williams, W-I-L-L-I-A-M-S.

6 THE COURT: You may proceed.

7 DIRECT EXAMINATION

8 BY MR. CAMPBELL-HARRIS:

9 Q Good afternoon, Tari. How are you?

10 A Good. How are you?

11 Q Doing very well.

12 Where did you grow up?

13 A I grew up in the Birmingham metro area.

14 Q And where do you currently live?

15 A I live in an area called Pleasant Grove.

16 Q And how long have you lived in Alabama?

17 A Most of my life with the exception of attending undergrad,
18 attending college.

19 Q Have you lived anywhere else?

20 A In Alabama?

21 Q Outside of Alabama.

22 A No.

23 Q Did you graduate from high school?

24 A Yes.

25 Q And did you go to college?

1 A Yes.

2 Q And did you do schooling after college?

3 A Yes. I went to college in Maryland, University of
4 Maryland College Park. And I attended law school in Baltimore,
5 the University of Baltimore School of Law.

6 Q Okay. When did you return to Alabama?

7 A I think it was around 2000.

8 Q Okay. And where do you currently work?

9 A Greater Birmingham ministries.

10 Q How long have you worked at Greater Birmingham Ministries?

11 A On and off, for about 20 years.

12 Q And is it okay if we go ahead and call Greater Birmingham
13 Ministries GBM for short?

14 A Yes.

15 Q What is your title at GBM?

16 A My current title is organizing director.

17 Q What are your responsibilities as organizing director?

18 A As organizing director, I lead GBM's staff volunteers,
19 board members, and I work with the community around systems
20 change, which are basically quality of life issues that people
21 living in poverty face.

22 Q What are some of the quality of life issues that GBM works
23 on?

24 A We work on issues related to affordable housing, food
25 insecurity, public transportation, public benefits, voter

1 registration, civic engagement, things of that nature.

2 Q What kinds of voter registration work does GBM do?

3 A We do assistance in education around civic engagement,
4 civic education. We do voter registration drives and events.
5 We offer assistance with voter rights restoration, answer
6 questions, and provide education on resources.

7 Q Thank you.

8 What is rights restoration?

9 A So currently in the state of Alabama, if an individual is
10 convicted of a crime of moral turpitude, they lose their voting
11 rights. And then they have to go through a process in order to
12 get those rights restored. And so we help individuals navigate
13 that process.

14 Q What is a crime of moral turpitude?

15 A I can't define a crime of moral turpitude, but there's a
16 list. There's -- the state of Alabama has a list of crimes
17 that are considered crimes of moral turpitude, and we basically
18 just follow the list.

19 Q Do you know whether all criminal convictions in Alabama
20 result in a loss of voting rights?

21 A They do not. All criminal convictions are not crimes of
22 moral turpitude. The crime -- the list of crimes of moral
23 turpitude, it's a list of maybe about 50, no more than 60
24 crimes in all.

25 Q And who decides what crimes qualify on that list of 50

1 crimes as crimes of moral turpitude?

2 A It's a law. It's a state law.

3 Q Thank you.

4 Are any racial populations disproportionately impacted by
5 the crimes qualifying as crimes of moral turpitude?

6 A In our work that we do, which is primarily with low income
7 populations and individuals, we overwhelmingly see
8 African-Americans, specifically males that have issues related
9 to voter rights restoration.

10 Q How long have you been assisting individuals with
11 restoring their voting rights?

12 A In all the years that I've been at GBM with the exception
13 of maybe like the first year or two.

14 Q And how many years is that?

15 A About 20. I have worked at GBM twice. The first time I
16 worked there about six or seven years. And then I came back,
17 and this last time I've been there about 15 years.

18 Q Roughly how many individuals has GBM assisted with
19 restoring their voting rights?

20 A Hundreds. Now, we engage and encounter, I mean, over the
21 years thousands of individuals, but one-on-assistance
22 assistance has been well over a hundred.

23 Q And can you speak to what race of individuals have -- has
24 GBM disproportionately served over the 20 years or so that you
25 have been working?

1 A Primarily black men.

2 Q Let's speak a little bit more about the rights restoration
3 process in Alabama.

4 What steps must someone take in order to restore their
5 voting rights?

6 A So you must first complete whatever sentence was imposed
7 at the time you went to court. So if that was a period of
8 incarceration, then you must complete that period of
9 incarceration.

10 If there's any type of supervision requirements, which
11 would be considered parole or probation, you must complete
12 that, as well.

13 If there are any fines, fees, or restitution, we currently
14 we reference them as LFOs -- legal financial obligations -- you
15 must pay all of those off related to that crime of moral
16 turpitude before you can be considered eligible -- what we call
17 CERV eligible -- certificate of eligibility to register to vote
18 -- before you are considered CERV eligible. Then you have to
19 put in the application.

20 Oh, and you must not have any pending felonies when you
21 put in the application.

22 Q And when you say CERV, is that when you're referring to
23 the certificate of being eligible to vote again, or can you
24 define CERV for me?

25 A CERV, C-E-R-V, Certificate of Eligibility to Register to

1 Vote.

2 Q Thank you. Can you speak to some of the challenges that
3 you have witnessed returning citizens face when reentering
4 society after incarceration?

5 A Sure. After entering incarceration, and sometimes, you
6 know, it depends on the length of the incarceration, whether
7 somebody served 20 years versus 2 years, there's difficulty
8 finding employment, especially if you have been incarcerated
9 for an extended period of time, you may not have the requisite
10 skills for what the job market is today and things of that
11 nature.

12 There are literacy issues. There are housing issues. And
13 then there are the -- what do you call -- the mental issues
14 related to the stigma of being in prison, the issues related to
15 being separated from your family and now having to rebuild
16 those connections, rebuilding trust with the community that you
17 live in, things of that nature.

18 Q Thank you.

19 Where in Alabama are the individuals located who GBM
20 assists with restoring their voting rights?

21 A So although GBM is located in downtown Birmingham, we do
22 work statewide. We go to various events normally in
23 partnership with other organizations so that we can provide
24 assistance directly to the community members that need it.

25 We -- GBM has a program called Return My Vote, where we

1 work with students from the University of Alabama who can help
2 individuals with consultation or requests to find out whether
3 or not they are eligible or on the path to being eligible to
4 restore their voting rights.

5 We also have a program, Alabama Poor People's Campaign,
6 that works across the state in various areas, generally around
7 what I referred to earlier as quality of life issues.

8 Q Thank you.

9 You mentioned the CERV form earlier. Who approves the
10 CERV forms?

11 A Someone at the Alabama Bureau of Pardons and Paroles. All
12 the CERV forms go to them, and so whoever their staff or
13 assigned person is.

14 Q Can we call Alabama Bureau of Pardons and Paroles ABPP for
15 short?

16 A Sure.

17 Q Okay. Can you provide any other examples of ABPP
18 impacting voting rights and voter registration in Alabama with
19 the populations you serve?

20 A Well, so everyone must fill out a form to initiate getting
21 their voting rights back if you have lost it. Let me clarify
22 that. If you've lost your voting rights, you must be the
23 person to initiate getting those voting rights back.

24 That form asks for information related to the crimes of
25 moral turpitude, and often times individuals don't know which

1 crimes are considered crimes of moral turpitude unless they
2 have some list, you know. There's no way for them to know
3 that.

4 It also asks dates and counties and different types of
5 information that if you're someone who have been incarcerated
6 for an extended period of time, you may not know all of that
7 information or have access to that information. So we're able
8 to help provide access for that particular type of information.

9 There are also situations where the website isn't always
10 kept up to date. And so as recently as a week ago, there are
11 two different forms, there are two different CERV forms on the
12 website, and so if you don't know which form you're looking
13 for, you may end up filling out the wrong form.

14 Q Thank you. Can you provide any additional examples of the
15 impact that Alabama's moral turpitude laws have on black
16 Alabamians' ability to participate in Alabama's elections which
17 we have not already discussed?

18 A Not at this time.

19 Q Okay. What other issues have you observed with returning
20 citizens having their voting rights restored?

21 A So when individuals have their voting rights restored,
22 that's just one step. After you get your voting rights
23 restored, you still then must apply to register to vote.

24 Some individuals assume that after voting rights are
25 restored that they're somehow registered or are registered to

1 vote, but there is another step.

2 So when your application is approved, you take a copy of
3 that application or that letter -- it's -- although it's called
4 a certificate, it's really just a letter. You get a copy of
5 that letter. You fill out a voter registration form, and you
6 attach a copy, or you include a copy when you turn in your
7 voter registration form. And then you are registered to vote.

8 Many individuals may not recognize or really understand
9 all the requirements around voting, meaning what type of ID you
10 need, where your polling precinct may be located, what are the
11 polling hours, things of that nature.

12 Q Okay. Thank you.

13 And you referenced a website earlier that ABPP had. Can
14 you recall that website that was that you were speaking to?

15 A It is their website, so I -- yeah. I don't know. I guess
16 if you just Google it what is -- it's their website.

17 Q And when you say "they," who are you referring to?

18 A Oh, the Alabama Bureau of Pardons and Paroles.

19 Q Thank you. Let's talk about GBM civic engagement. Can
20 you provide some examples of how GBM offers civic education on
21 the voting process?

22 A Sure. We have several programs or modules that we use.
23 We use one, which is called Power Participation, where we go in
24 communities, and we teach a series of workshops about voting
25 and the voting process.

1 We also teach individuals about having a voice and being
2 responsible and connected in their community.

3 And so our civic engagement workshops not only include
4 information about voting, but we often come into contact with
5 individuals who can't vote.

6 And so we want them to understand how they can be
7 civically engaged and also be responsible citizens in their
8 community.

9 We also do a series of workshops where we use puzzles and
10 games, especially for individuals that may have some literacy
11 issues. So we use a series of videos, puzzles, games of that
12 nature that teaches voting rights history.

13 It does role plays or role modeling how someone can talk
14 to their employer about voting on a particular day or how
15 someone can go to the school board, just different -- different
16 things -- who's responsible for the garbage? Who's responsible
17 for stray dogs in your neighborhood? Who's responsible for pot
18 holes, things of that nature.

19 Q You have mentioned literacy issues. Are there any
20 populations in your experience that are disproportionately
21 experiencing these literacy issues that you speak of?

22 A I will say the majority of people that we do the workshops
23 for are African-Americans.

24 Q Ms. Williams, I would like to take a step back and talk
25 more about GBM's work involving discrimination in Alabama more

1 broadly.

2 Can you tell what, if any, practices you have observed in
3 Alabama that make it disproportionately harder for black
4 Alabamians to vote which we have not already discussed?

5 A I would say, because there's a long history of racism and
6 discrimination, it puts people at a disadvantage, especially
7 educational opportunities. And so which is why we often
8 encounter individuals that have some literacy issues.

9 Being that public transportation isn't well funded in a
10 lot of the areas that we work with, we encounter individuals
11 with transportation needs and issues and things of that nature,
12 which is also a concern when it comes to voting.

13 That's all I can think of right now.

14 Q Thank you. Speaking to the transportation concerns, can
15 you provide any examples of difficulties or barriers that black
16 voters in Alabama face when attempting to vote either in person
17 or absentee?

18 A So as far as absentee voting is concerned, we do have a
19 law around -- with restrictions on providing absentee voting
20 assistance, which is something GBM has received a lot of
21 requests from in prior history because we work. We also work
22 with a lot of elderly individuals, individuals who are unable
23 to navigate the Internet or who may not have a working computer
24 at home. And so when they would come to us for food, they may
25 ask us if we would print out a absentee ballot application for

1 them.

2 So at one point, we could and we did do that. We no
3 longer -- we no longer do that.

4 Also, with providing assistance with individuals who may
5 need assistance in turning in that application and things of
6 that nature.

7 So that has definitely impacted individuals' ability as
8 far as absentee voting, because a lot of the services that we
9 provided before, we're no longer able to provide that, meaning
10 we can't just print out the applications and have them sitting
11 in our waiting room for anybody to pick up if they -- if they
12 need it.

13 As far as voting registration, was that the other
14 question?

15 Q Correct.

16 A As far as voting registration is concerned, filling out
17 the voter registration application, when individuals -- at the
18 bottom, there is a statement that says, I affirm that I'm
19 providing truthful information and things of that nature,
20 sometimes individuals are afraid and concerned to fill out that
21 application, afraid that they may be wrongly filling out an
22 application because they don't know.

23 They think just because they have been in prison or just
24 because they've been in a courtroom or a court case or
25 something of that nature that they may have lost their voting

1 rights. And so they don't want to fill out an application when
2 they really don't know what's going on.

3 Q You mentioned absentee voting. Why do you no longer offer
4 the assistance for folks who want to vote absentee?

5 A There's been a recent change in the law. And so there is
6 a law that restricts organizations or individuals who receive a
7 salary or something of that nature from assisting people with
8 absentee ballot applications.

9 Q And in your experience, were there any populations who
10 were disproportionately seeking assistance voting absentee when
11 GBM was offering those services?

12 A We primarily received the request from black elderly
13 individuals.

14 Q Thank you. In your experience, Ms. Williams, how
15 responsive has Alabama's Legislature been to the needs of black
16 Alabamians?

17 A Over the years working at GBM, we have supported
18 legislation that would provide better access for people living
19 in poverty that would provide better health care, better pay,
20 as far as wages and things of that nature, and almost every one
21 of those bills were defeated.

22 I'm thinking of one in particular where Birmingham, which
23 has a large population of low-income individuals, wanted to
24 raise its minimum wage. It voted to raise the minimum wage,
25 but before it could be implemented, the State Legislature

1 blocked it, changed the law in a sense where Birmingham could
2 not raise that minimum wage.

3 Q You mentioned laws and bills about health care. Can you
4 speak a little bit more on what you're referring to exactly?

5 A The expansion of Medicaid.

6 At GBM, we see a lot of individuals who are I guess what
7 you call in the gap. They don't make enough -- they make just
8 a bit above the poverty guidelines, but then they don't quite
9 make that additional income that they need to really be a part
10 of the health care market.

11 And so we encounter individuals who are in the gap who
12 often ask us for assistance with purchasing medication, may
13 sometimes ask us for assistance -- I'm trying to think
14 specifically. We recently had a request for -- from an elderly
15 client for Depends, you know, for adult diapers. And this is
16 someone who came to us for food, and so thinking along those
17 terms.

18 Q And, again, in your experience, have there been any
19 specific racial populations who have been disproportionately
20 impacted by not being able to purchase these medications that
21 they need?

22 A Yes. So GBM is an organization where we provide direct
23 services.

24 So we provide -- we have a food pantry where we provide
25 food to individuals. We have a clothing closet where we

1 provide clothing. We have a Christmas program. We have a
2 school supply program. We have different direct services
3 programs.

4 And so the program is open to everybody. We have no
5 restrictions other than that you must be in need, and we do an
6 intake process for that.

7 And the overwhelming majority of individuals that come to
8 our program are African-Americans.

9 Q Thank you.

10 MR. CAMPBELL-HARRIS: May I have a moment to confer
11 with my colleagues?

12 THE COURT: You may.

13 MR. CAMPBELL-HARRIS: No more questions, Your Honor.
14 Thank you so much, Ms. Williams.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MR. WALKER:

18 Q Good afternoon, Ms. Williams. I'm Dorman Walker. I
19 wasn't at your deposition, so it's nice to meet you.

20 A Thank you. Nice to meet you.

21 Q I have got just a few questions for you.

22 A Okay.

23 Q You talked about GBM's good efforts to help people to vote
24 and to restore their voting rights. And I want to ask you some
25 questions about that.

1 What primarily -- how would you primarily describe the
2 clientele of GBM's -- of GBM's clients in the areas of voting
3 rights, voting restoration?

4 A They're primarily African-American and male.

5 Q And is that -- is that -- and I'm not saying that you
6 would not help white males if they came -- but is that because
7 your activities are primarily targeted towards the
8 African-American community or you work with African-American
9 churches or other agencies? Is there a reason for that?

10 A So it's not targeted. So GBM, we do have congregational
11 members. We are what you call -- I forget the word. We have a
12 variety of faith communities that are a part of our membership,
13 Catholic, Jewish, Greek, Muslim. It's a variety.

14 We do events wherever we're called. And they're not
15 targeted to a specific race or things of that nature. I mean,
16 we do help white people. We help Hispanic people. But the
17 overwhelming majority of individuals that use our services are
18 African-American.

19 Q Okay. And you also testified that a majority of the
20 people that you see who need assistance with voter rights
21 restoration are also males, black males, I believe you said?

22 A Yes.

23 Q Okay. Which is consistent with the population that you
24 primarily serve?

25 A Yes.

1 Q Okay. Every person who's convicted of a felony in Alabama
2 of moral turpitude loses their voting rights; is that correct?

3 A That is correct.

4 Q Okay. Regardless of their race?

5 A That is correct.

6 Q You're not in any way claiming that that law is applied in
7 a discriminatory manner?

8 A I'm -- I'm not claiming that individuals who --

9 Q I can ask my question better.

10 A Okay.

11 Q We're in agreement that everyone, regardless of race, who
12 commits a crime of moral turpitude in Alabama loses their right
13 to vote?

14 A Yes.

15 Q Okay. And could I go ahead and say that we're also in
16 agreement that poor Alabamians of every race are impacted by
17 the state's failure to increase or expand Medicaid coverage?

18 A Yes.

19 Q In your deposition, you talk some about registering people
20 to vote. And you testified that GBM conducts about three or
21 four voter registration activities in a month. Do you recall
22 that?

23 A Yes.

24 Q And in your deposition, you said that at those activities,
25 you and maybe other volunteers that work with y'all will

1 explain the voter registration form to people so that they can
2 understand it and complete it; is that correct?

3 A I think so, yes.

4 Q Yeah. And it's not a difficult form to fill out, is it?

5 A It's not difficult if you have a certain level of
6 education and understanding.

7 Q Right. But is that a criticism you could make of every
8 form? Is there anything unduly difficult about the Alabama
9 voter registration form?

10 A No.

11 Q Okay. It's just that if you're not well educated or if
12 you're not literate, every form is difficult?

13 A Sure.

14 Q In registering to vote in Alabama -- well, let me ask you
15 this question: Putting aside instances relating to voting
16 rights restoration, when was the last time you can remember
17 someone having difficulty registering to vote?

18 A I will tell you that we also work with homeless
19 individuals.

20 Q Uh-huh.

21 A And it's difficult because sometimes they don't understand
22 the residency rules.

23 Q Uh-huh.

24 A And so having to explain what the residency rules are and
25 being able to put an address or not put an address on the forms

1 so that they understand that.

2 But right now, nothing else is coming to mind as far as
3 recent, someone having recent difficulty that I could think of.

4 Q And are you making any sort of claim that it's racially
5 discriminatory for the state of Alabama to ask for residency
6 information on the voter application?

7 A Oh, no. I'm not claiming that.

8 Q In your testimony in your deposition, you were asked about
9 a few people who a few years ago GBM became aware of, you said
10 it was about ten, who somehow had lost the right to vote,
11 they'd been on the polling list, and they somehow got removed
12 from it. Do you recall that part of your deposition?

13 A I recall, but I don't -- that wasn't -- so in the
14 deposition I referenced, we were at a Second Chance job fair.

15 Q Uh-huh.

16 A Is that what you're talk about? I don't think they were
17 already on the polling.

18 Q Oh, okay. I misunderstand that.

19 A Right. Right.

20 Q But you were able to help them get back on the polling
21 list; is that correct?

22 A So what happened was we assisted them with filling out
23 their certificates of eligibility to register to vote. And if
24 I remember correctly, it was these individuals that we then
25 learned -- the application had been changed, like a new

1 application was now being in use.

2 We were not aware of it. We had no notification of it.
3 And so we had actually assisted these individuals with filling
4 out the wrong application. And as it was instructed to us,
5 these new applicants needed to be on the new application. And
6 so we were not able to follow up and get back in touch with
7 everybody in order to get their information on the new
8 applications.

9 Q But I believe you testified that the ones that you were
10 able to follow up with were --

11 A Yes.

12 Q -- able to register.

13 A Yes.

14 MR. WALKER: One moment please, Your Honor.

15 Thank you, Ms. Williams.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you.

18 MR. CAMPBELL-HARRIS: Nothing from plaintiffs, Your
19 Honor.

20 THE COURT: Excellent. Thank you. Is there any
21 reason I may not excuse Ms. Williams?

22 MR. WALKER: No, ma'am.

23 MR. CAMPBELL-HARRIS: No.

24 THE COURT: Thank you, Ms. Williams, for being with us
25 today, and you are now excused from being on the stand.

1 (Witness excused.)

2 THE COURT: All right. Plaintiffs' next witness?

3 MR. ROSS: May we have a few minutes, Judge?

4 THE COURT: Why don't we take our break a few minutes
5 early. Let's keep it short.

6 It's 2:43 now. 2:42. Let's be back at 2:55.

7 (Recess.)

8 THE COURT: All right. Be seated.

9 MR. DAVIS: Your Honor, I have spoken with plaintiffs'
10 counsel. May I raise a brief scheduling issue?

11 THE COURT: You may.

12 MR. DAVIS: It looks like we may finish with Dr. Burch
13 tonight or maybe just have a brief time left over in the
14 morning. We presently have Dr. Reilly, defense expert who will
15 testify tomorrow. We have two fact witnesses scheduled to
16 come.

17 As things stand, I presently think there's a chance we
18 could finish mid-afternoon tomorrow with what is currently
19 lined up.

20 Also, it could go to 5:00. We all know how that goes.

21 I can arrange for -- or try to arrange for a third fact
22 witness to come tomorrow, but there's a chance that witness
23 might drive two hours to get here, and we not get to him or
24 her.

25 Does the Court have a preference with whether we take the

1 chance of finishing a little early in the afternoon, or we
2 bring in a witness who may or may not get to testify?

3 I will add whether or not we bring in a third witness, I
4 think we are very safely on track to finish with trial
5 testimony by Wednesday end of day or Thursday morning.

6 THE COURT: Got it.

7 Okay. Have y'all discussed this amongst yourselves, and
8 is there a group preference?

9 MR. ROSBOROUGH: We don't -- the plaintiffs don't have
10 a strong preference, Your Honor. We will do whatever the Court
11 thinks is best.

12 THE COURT: Okay. And do we have people trying -- I
13 know we have people trying to get back to Montgomery. Do we
14 have people trying to catch flights tomorrow afternoon?

15 MS. CARTER: Dr. Burch.

16 MR. ROSS: Not in the way that matters, Your Honor.

17 THE COURT: All right. Okay. So let's do this:
18 Let's -- not bring the last fact witness for tomorrow. Because
19 either we will finish mid-afternoon, or we will go until the
20 end of the day anyway. And I think either of those things is
21 okay with our present time table.

22 But I would hate to have somebody sitting here who we
23 don't get to.

24 MR. DAVIS: I understand. You understand we want to
25 make the best use of the Court's time.

1 THE COURT: Yes. Thank you. I appreciate that.

2 And I will say, and I don't want to jinx it because as
3 soon as I say it out loud, it will, but I feel like everything
4 has gone very smoothly. We have made very good use of time.
5 And I feel like we're in a very good position to be sure that
6 we will be finished next week.

7 That was really my worry was I don't think we all want to
8 be together the week of Thanksgiving.

9 So thank you for raising it.

10 MR. DAVIS: Thank you.

11 MS. CARTER: Good afternoon.

12 THE COURT: Good afternoon.

13 MS. CARTER: Plaintiffs call Dr. Traci Burch.

14 TRACI BURCH

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

17 THE COURTROOM DEPUTY CLERK: If you will be seated.
18 Please speak loudly and clearly into the microphone. State and
19 spell your name for the record.

20 THE WITNESS: My name is Traci, T-R-A-C-I, Burch,
21 B-U-R-C-H.

22 THE COURT: Dr. Burch, if you will raise that
23 microphone just a little bit. Thank you so much. You may
24 proceed.

25 MS. CARTER: So, Your Honor, I would like to ask to

1 approach the witness to provide a folder containing three
2 documents premarked as Plaintiffs' Exhibits 11, 12 and 13. And
3 if other people would like a copy, I have those, as well.

4 THE COURT: Any objection?

5 MR. SMITH: No objection, Your Honor.

6 THE COURT: All right. You may.

7 MS. CARTER: And so, I should have said this before,
8 but Plaintiffs' Exhibit 11 is Dr. Burch's expert report, 12 is
9 her CV, and 13 is her rebuttal report. I will also be using an
10 illustrative slide deck, and that has been marked with
11 citations that correspond with Dr. Burch's report and was
12 shared with defendants last night.

13 THE COURT: All right. Any objection to the
14 illustrative?

15 MR. SMITH: No objection to the use of the
16 demonstrative, Your Honor.

17 THE COURT: All right. Thank you.

18 DIRECT EXAMINATION

19 BY MS. CARTER:

20 Q Please state your name for the record.

21 A Yes. My name is Traci Burch.

22 Q Dr. Burch, let's discuss your background and
23 qualifications.

24 So you have what's been marked as Plaintiffs' Exhibits 11,
25 12, and 13?

1 A I do.

2 Q Do you recognize these documents?

3 A Yes. These are the expert reports that I submitted in
4 this case; one from February and one from April, as well as my
5 CV that was current I believe as of February. I believe my CV
6 was current as of February.

7 Q Okay. And so just for the clarity of the record, what is
8 exhibits -- what is Plaintiffs' Exhibit 11?

9 A Plaintiffs' Exhibit 11 is the February 2nd expert report
10 that I submitted.

11 Q What is 12?

12 A Plaintiffs' Exhibit 12 is the CV.

13 Q And is there anything missing from your CV that you would
14 like to add?

15 A There are some updates. For instance, I've been promoted
16 to professor of political science at Northwestern. I've also
17 taken over as editor in chief of an academic journal, Law and
18 Social Inquiry, and I also have some -- I have done some
19 presentations and invited talks since then.

20 Q And what is Plaintiffs' Exhibit 13?

21 A Plaintiffs' Exhibit 13 is the rebuttal report that I
22 submitted April 19th, 2014.

23 MS. CARTER: I would like to move Plaintiffs' Exhibits
24 11, 12, and 13 into evidence.

25 THE COURT: Any objection?

1 MR. SMITH: No objection.

2 THE COURT: Admitted.

3 (Plaintiffs' Exhibit 11 admitted in evidence.)

4 (Plaintiffs' Exhibit 12 admitted in evidence.)

5 (Plaintiffs' Exhibit 13 admitted in evidence.)

6 MS. CARTER: Thank you.

7 BY MS. CARTER:

8 Q So, Dr. Burch, could you please describe your educational
9 background for the Court?

10 A Yes. I received my bachelor's degree from Princeton
11 University in politics, which is what they call political
12 science with a minor in African-American studies. And my Ph.D.
13 I finished at Harvard in government, which is what they call
14 political science, and in social policy, which is a separate
15 field at the Kennedy School of Government.

16 Q And what is your current occupation?

17 A Currently, I am both a professor of political science at
18 Northwestern as well as a research professor at the American
19 Bar Foundation.

20 Q In your scholarship, do you have any particular focus?

21 A Yes. So my in my work, I focus on political behavior and
22 political participation and barriers to voting. I've also done
23 research into race and ethnic politics, as well as the ways
24 that -- interactions with the government and the criminal
25 justice system affect political behavior and attitudes.

1 Q And does any of your research focus on southern politics?

2 A Yes. Most of my -- much of my published work examines
3 voting and participation in southern states. And also my -- in
4 my expert work, I've done work in southern states, including
5 Alabama, as well.

6 Q Any other states besides Alabama?

7 A Yes. I've done research in Georgia, Florida, North
8 Carolina, Missouri, and again also expert work in several
9 states.

10 Q What is your experience analyzing or conducting surveys?

11 A So I work with surveys. I was trained to analyze surveys,
12 and I also have done so in my published work in several
13 articles. I also served on the scientific advisory board for
14 one of the longest running surveys in the United States, the
15 General Social Survey, which is housed at the National Opinion
16 Research Center at the University of Chicago.

17 Q And how long have you taught at Northwestern?

18 A 17 going on 18 years.

19 Q So is that since 2007?

20 A Yes.

21 Q Okay. Are you a tenured professor?

22 A Yes.

23 Q When did you get tenure?

24 A 2014.

25 Q And what courses do you teach at Northwestern?

1 A I've taught courses such as our introduction to the legal
2 system, law and the political arena for undergraduates, as well
3 as race and public policy for both Ph.D. students and
4 undergraduates. I taught courses on the welfare state for
5 Ph.D. and undergraduate students and also political behavior
6 for Ph.D. students, as well.

7 Q Do you hold any fellowships or outside appointments other
8 than your teaching position at Northwestern?

9 A Yes. So the American Bar Foundation, I hold a joint
10 appointment there in addition to my appointment at
11 Northwestern.

12 Q And what is the American Bar Foundation?

13 A So the American Bar Foundation is a research institute
14 kind of like a think tank that's associated with the American
15 Bar Association, but it's a separate institution.

16 Q And how long have you been a researcher at the American
17 Bar Foundation?

18 A Since 2007, the same amount of time.

19 Q And have you been published in peer-reviewed books or
20 journals?

21 A Yes. Most of my publications are in peer-reviewed books
22 and journals with the exception of the occasional book review
23 of someone else's work. I think there are two of those.

24 Q Okay. Are those publications listed on your CV?

25 A Yes, they are.

1 Q And you sort of suggested it, but how many of those are
2 peer-reviewed?

3 A Almost all of them.

4 Q All but those two?

5 A Yes.

6 Q That were book reviews? Perfect.

7 Can you tell the Court about your service as a
8 peer-reviewer for any academic journals related to political
9 participation?

10 A Yes. I have served as a peer-reviewer for several
11 journals in political science, sociology and criminology,
12 including our flagship journals in political science, the
13 American Political Science Review, American Journal of
14 Political Science, Science Nature, the American Sociological
15 Review, and I've also served on the editorial boards of
16 Political Behavior, which is our -- the subfield's journal of
17 the American Political Science Association for the Elections
18 Public Opinion and Voting Behavior section.

19 And I'm also, like I said, currently editor in chief of an
20 academic journal. So I'm -- now run a peer-review process of
21 several articles, as well.

22 Q Have you received any awards or recognitions in your
23 field?

24 A Yes. I have received several awards. So my dissertation
25 won the Best Dissertation in Political Science at Harvard, as

1 well as several national awards from the American Political
2 Science Association, including for the Best Dissertation in
3 American Politics, state -- and Best Dissertation State and
4 Local Government.

5 My book, my sole-authored book *Trading Democracy For*
6 *Justice* for also won several prizes from the American Political
7 Science Association. Again, national awards -- and national
8 awards including the Ralph Bunche Award and awards from the Law
9 and Courts Association and the Urban Politics section.

10 Q And, Dr. Burch, have you testified as an expert witness or
11 as an expert before in a voting rights case?

12 A Yes.

13 Q Or in voting rights cases? Excuse me. Sorry.

14 I'm going to ask that again.

15 Dr. Burch, have you testified as an expert before in
16 voting rights cases?

17 A Yes, I have.

18 Q Okay. Roughly, how many cases have you testified in at
19 trial or in a deposition as of the submission of your original
20 report?

21 A I have 13 cases listed here.

22 Q And are all of those listed on your CV?

23 A Yes, on my CV. There have been -- I have been deposed in
24 some cases recently, though, as well.

25 Q That are not listed on your CV?

1 A That are not listed on my CV.

2 Q And which cases are those?

3 A Those are *CMA vs. Thurston*, the *Milligan vs. Allen* case
4 and *Pierce* -- I can't remember the full case citation.

5 Q And how many of them involved enforcement of Section 2 of
6 the Voting Rights Act?

7 A I believe most of the cases involved Section 2 of the
8 Voting Rights Act enforcement.

9 Q And were any of them in Alabama?

10 A Yes. I was an expert in *People First V Merrill* that was
11 here in Alabama.

12 Q And what is your understanding of whether courts have
13 admitted you as an expert in the cases in which you have
14 testified at trial?

15 A I have been admitted in all of the cases.

16 Q And what is your understanding of whether courts have
17 credited your testimony?

18 A I believe they have.

19 MS. CARTER: Your Honor, I would like to move to have
20 Dr. Burch admitted as an expert witness in political and social
21 science and political behavior.

22 THE COURT: Any objection?

23 MR. SMITH: No objection, Your Honor.

24 THE COURT: Admitted.

25 MS. CARTER: Thank you.

1 BY MS. CARTER:

2 Q Dr. Burch, I want to discuss your involvement in this
3 case. Did you prepare any written reports for this case?

4 A Yes. I prepared two reports.

5 Q What were the dates those reports were submitted?

6 A So my initial report was submitted February 2nd of 2024,
7 and then I also submitted a report on April 19th of 2024.

8 Q And were both of these reports signed under oath?

9 A Yes, they were.

10 Q And do these reports accurately reflect the opinions you
11 are prepared to offer in this case?

12 A They do.

13 Q I would like to discuss your first report, PX-12.

14 MS. CARTER: Can we pull up PX-12 at page 1 paragraph
15 1? I think that's the CV, so that's 13.

16 So 12. Okay. No. 12. So the --

17 THE WITNESS: I have it listed -- I'm sorry. I have
18 it listed as PX-11 in my binder.

19 MS. CARTER: I'm sorry. PX-11. Thank you.

20 BY MS. CARTER:

21 Q So, Dr. Burch, what were you asked to do in your first
22 report in this case?

23 A So I was asked by counsel for the plaintiffs to evaluate
24 evidence from Alabama statewide, but also several counties in
25 the greater Montgomery and Huntsville area. Those counties

1 were Crenshaw, Elmore, Limestone, Madison, Montgomery, and
2 Morgan Counties. And I was asked to look at voting
3 participation by race in those counties as well as analysis --
4 conduct an analysis relevant to Senate Factor 5, which is the
5 extent to which minority groups -- whether there are
6 disparities in socioeconomic status, in this case, between
7 black and white Alabamians that might affect voter registration
8 and turnout.

9 Q And can you briefly summarize your overall conclusions?

10 A Yes. Based on my analysis, I found that there were racial
11 disparities in that white Alabama residents were better off
12 with respect to voting participation, as well as all of the
13 socioeconomic factors that I examined for this case, including
14 educational attainment, median income, poverty rates,
15 involvement with the criminal justice system, and overall
16 health status.

17 Q And did you reach any conclusions concerning disparities
18 in socioeconomic status?

19 A Yes. So those disparities in socioeconomic status, I did
20 find them both statewide as well as the counties that I
21 examined for this case.

22 Q Okay. Let's discuss your findings with respect to
23 education.

24 In your research, what did you find is the most important
25 predictor of voting?

1 A So in my research, I briefly reviewed the literature here
2 in my report, and I found that socioeconomic status is an
3 important factor in predicting voting. And of that -- of the
4 components of socioeconomic status, educational attainment is
5 the most important predictor of voting.

6 In fact, as one article that I cite says, The powerful
7 relationship between education and voter turnout is arguably
8 the most well-documented and robust finding in American survey
9 research.

10 And that's from page 8 and 9 of my report.

11 Q And how exactly does educational attainment affect voting
12 participation?

13 A So in general, we, in political science think about voting
14 -- in all activity as costly. That is, it takes time, money,
15 effort to engage in politics, especially to vote. And, for
16 instance, you have to take time to learn about candidates. You
17 have to learn how and where to register to vote. You may even
18 have to pay money to obtain documents, like a birth
19 certificate, a certified birth certificate to be able to vote.
20 And so even going to your polling place may incur costs, such
21 as lost wages if you are an hourly worker and have to take time
22 off to go to the polls.

23 So voting is -- so resources such as income and education
24 better allow voters to bear the costs of participating in
25 politics in general and voting in particular.

1 Q Did you determine that much of the impact of socioeconomic
2 status happens through education?

3 A Yes. So education in and of itself has a direct effect on
4 voting. But also -- excuse me -- as I say in my report,
5 educational attainment affects income, poverty, and employment.
6 And so they -- it also has an indirect affect through those
7 variables, as well.

8 Q Okay.

9 MS. CARTER: I'd like to show Plaintiffs'
10 demonstrative slide 1.

11 BY MS. CARTER:

12 Q Dr. Burch, can you explain what this chart shows, please?

13 A Yes. So this chart is showing my analysis of statewide
14 educational attainment, which is the highest degree earned for
15 people in Alabama age 25 and older.

16 And that's typically the metric we use because we want
17 people to kind of have a chance to go through college and get
18 their education.

19 And the source for these data are the -- and you'll see
20 throughout for most of these charts -- is the 2021 American
21 Community Survey, which is a survey of -- does the tens of
22 thousands, hundreds of thousands of people that the Census
23 Bureau runs every year.

24 Unlike the census, the Census Bureau asks more detailed
25 questions about the demographic characteristics of people in

1 the United States in the American Community Survey, so they
2 also ask questions about like education and socioeconomic
3 status.

4 So in this chart, I use the data as I said from the
5 American Community Survey, and this is statewide, so we're
6 using the one-year estimates.

7 And what we can see across the graph is that for white
8 non-Hispanic people in Alabama, about 10 percent of them have
9 just finished -- didn't finish high school as their highest
10 educational attainment.

11 Black people are worse off. To the extent that in this,
12 15 percent of black people didn't finish, didn't even finish
13 high school.

14 If we look -- continue to look across the groupings of
15 bars, we can see that as we move across, black people in the
16 darker green bars are more likely to be concentrated in these
17 lower two categories. A majority of black Alabamians have
18 either not finished high school at all or only finished high
19 school, whereas of -- for white people in Alabama, almost
20 60 percent of them have achieved at least some college or an
21 associate's degree or even a bachelor's degree or higher.

22 That's important, again, because education is very
23 strongly associated with voting.

24 So people in these lower categories of educational
25 attainment, like less than high school, are much less likely to

1 vote than people who have achieved a bachelor's degree or
2 higher.

3 Q And so at the bottom here, the source says, 2021 American
4 Community Survey, one-year estimates.

5 What is the American Community Survey one-year estimate?

6 A So the American Community Survey as I said before -- the
7 Census Bureau collects data every year. But because our
8 country is so big, they don't -- they're able to collect data
9 statewide, and in most big metropolitan areas annually, but
10 some smaller geographies like counties, they may survey every
11 other year or every three years.

12 And so the one-year estimates are good for statewide, but
13 as you'll see in the next slides where we talk about the
14 counties, we move to five -- the five-year estimates to make up
15 for the fact that some counties aren't present in every year.

16 Q Okay.

17 MS. CARTER: If we can move to Plaintiffs'
18 demonstrative slide 2. Thank you.

19 BY MS. CARTER:

20 Q Dr. Burch, can you explain what this chart shows?

21 A I think you skipped -- thank you.

22 So this chart is basically showing you the same evidence
23 that I just showed you. So it's -- from -- still from the
24 American Community Survey 2021 estimates -- this time they're
25 the five-year estimates, because now we're looking below the

1 state level at counties.

2 And what we see in this chart is just for the percent of
3 the people in each county that don't have a high school
4 diploma. They haven't finished high school by race. Again, we
5 see the same pattern that we saw statewide replicated in all of
6 these counties.

7 Crenshaw didn't have enough data. It wasn't available.
8 But for all these other five counties, we see that black --
9 that white people are much more likely to have finished high
10 school than black people. And in some counties, for instance,
11 in Elmore County, twice as many black people lacked a high
12 school diploma as white residents in that county.

13 MS. CARTER: And I'd like to next move to slide 3.
14 Thank you.

15 BY MS. CARTER:

16 Q Dr. Burch, can you explain what this chart shows?

17 A So this chart is again similar to the first two charts we
18 saw -- is looking at county-level data from the American
19 Community Survey, but this time we're looking the people at the
20 higher end of the educational attainment spectrum.

21 And here, even at the county level, we see again
22 replicated the very same pattern that we saw statewide, that
23 white people are much more likely to be in this higher
24 education category that's associated with higher voter turnout.

25 Again, larger proportion of white people in each of these

1 counties are in this highest participation, highest education
2 category.

3 Q And so this chart reflects the group most likely to
4 participate in politics?

5 A Yes, and most likely to vote.

6 Q I'd like to move to slide 4.

7 What does this data show with respect to test scores?

8 A Yes. So these data come from footnote 51 on my report --
9 the footnote 31 on the -- sorry.

10 The footnote 31 in my report. And, basically, it's
11 looking at data from the Alabama Department of Education. And
12 it tells us how many students are -- are not proficient at
13 grade level in all of these subject areas.

14 And we can see that black students, a higher proportion of
15 black students are not meeting the expectations of their grade
16 level in all the subject matter -- subject areas, including
17 English and language arts, math, and science.

18 Q And what is causing these disparities in educational
19 attainment?

20 A In my report, I discuss the effect of contemporary and
21 historical discrimination on these gaps in -- and disparities
22 in educational attainment and test scores.

23 Q Okay. So let's talk a little bit more about that.

24 So can we pull up PX-11 at page 9, the second full
25 paragraph.

1 Dr. Burch, what is the historical discrimination that you
2 are referring to as causing disparities in educational
3 attainment?

4 A So here, I am talking specifically about the long history
5 of separate but unequal education in Alabama. Alabama's public
6 schools remain segregated well into the 1960s, even after the
7 decision was handed down in *Brown vs. The Board of Education* in
8 1954. And Alabama schools didn't really begin the process of
9 desegregation in earnest until the late 1960s, early 1970s.

10 So as a result, I note in my rebuttal report that --
11 sorry. Just finding the page. In 2020, because this history
12 of educational segregation is so recent, in the 2020 general
13 election, 38.6 percent of votes in that general election were
14 cast by people age 60 and older, people who were at least
15 school age in 1965, which means they were partially educated
16 during a time when Alabama still had segregated public schools.

17 And so, again, it's -- that's a large fraction of the
18 electorate that is effected by this system of legal
19 segregation.

20 Q And you mentioned it a bit, but why is this history of
21 discrimination in the 1960s, 1970s, and 1980s relevant to
22 today?

23 A Again, because those are the people that are still in the
24 electorate. So if I didn't have access to a good public school
25 or I didn't have equal access to Alabama universities when I

1 was in my school years, that's going to affect overall
2 educational attainment by race in Alabama.

3 And, again, that's a large proportion of the electorate
4 that was at least partially educated during this time when
5 schools were segregated by law.

6 Q And we can pull this slide down.

7 How does the fact that a parent or grandparent, for
8 example, was subjected to discrimination affect younger people
9 today?

10 A So studies have talked about the intergenerational
11 transfer of socioeconomic status. And so, again, if say, for
12 instance, my parent suffers from -- suffered from
13 discrimination, that determines where they live, where I can go
14 to school, whether they can help me with my homework.

15 And so my -- my -- and that's just one of the many ways
16 that a parent or an older generation's socioeconomic status can
17 affect younger people going forward.

18 Q Can we pull up the rebuttal report PX-12 at page 5?

19 Now, it may be PX-13. That's right. 13. My apologies.
20 Thank you.

21 That's -- I'd say the middle of the page -- the second
22 full paragraph. Sorry. The first full paragraph. Thank you.
23 Yeah. Sure. That works.

24 So, Dr. Burch, what are some examples of contemporary
25 discrimination that you are referring to earlier as causing

1 disparities in educational attainment?

2 A Yes. So as I note here in my report, my rebuttal report,
3 I talk about the fact that courts have found that there are
4 multiple school districts that provide black students with
5 unequal education, such as in Madison County, where black
6 students faced barriers to participating in gifted and advanced
7 programs and also again disparities in school discipline.

8 I also make a note of other findings of segregated proms
9 in other extracurricular activities, access to advanced
10 placement classes in the state, as well.

11 I also note that in my report that segregation, school
12 segregation still plagues many districts in Alabama and in some
13 cases has gotten worse since 1990.

14 Q Thank you. We can pull this down.

15 Dr. Burch, what other socioeconomic factors did you
16 analyze in your report?

17 A I also looked at income, unemployment, poverty, health
18 insurance, and factors like that.

19 Q Broadly speaking, how do these factors affect voting?

20 A So, again, it ties back to what I discussed earlier with
21 respect to a -- whether a person has the resources to overcome
22 the costs of voting. So studies have shown that income and
23 other of these socioeconomic factors are important because of
24 their ability -- voters' better ability to bear the cost of
25 voting if they are higher on these metrics.

1 Q I'd like to show slide 5 in the demonstrative. Thank you.
2 Dr. Burch, can you explain what this chart shows us,
3 please?

4 A Yes. So this chart is looking at statewide for Alabama
5 and also -- and in the very last bin of bars statewide for
6 Alabama as well as in the counties for which I have data, the
7 median income for Alabama households by race of the
8 householder.

9 Median income is a much better measure of what we call
10 central tendency, that is kind of like the middle of the
11 distribution in this case than the average, because the
12 averages for income distributions are always skewed by
13 billionaires.

14 So we look at the median, which means that half of
15 households are below, and half of households are above that
16 number.

17 And what we can see is that the median income for Alabama
18 households for white households in the light green is tens of
19 thousands of dollars higher than the median income for black
20 households in the darker green, both statewide and in every
21 county that I studied.

22 Q So what does that mean about the status of white-headed
23 households in statewide and in each of the counties that you
24 studied?

25 A They just have more money available to the household

1 generally. But, again, income translates into resources that
2 can be used for politics and voting.

3 Q I would like to show slide 6 in the demonstrative.

4 Dr. Burch, can you explain what this chart shows us,
5 please?

6 A This chart shows us again data from the 2021 American
7 Community Survey statewide and at the county level. We see
8 unemployment data for civilians non-military for Alabamians
9 aged 16 and older.

10 Unemployment rates across all of the counties and
11 statewide are higher for white people -- sorry -- higher for
12 black people in Alabama than for white people in Alabama.
13 Sometimes more than three times as high.

14 Q And I'd like to show slide 7 in the demonstrative.

15 Dr. Burch, can you explain what this chart shows?

16 A Yes. So poverty -- so this is looking again at the data
17 from the American Community Survey. And this time, we're
18 looking at family poverty.

19 Poverty is measured as for a household of a given size
20 income below a certain threshold, usually somewhere in the
21 \$20,000 range, and that includes after benefits and wages and
22 all kinds of income.

23 And what we can see in Alabama is that there are both
24 statewide and in the counties that I examined, the poverty
25 rates are for black households, black families are much higher

1 than those for white families.

2 Again, for instance, in Montgomery, poverty rate -- family
3 poverty rates are six times as high for black families than for
4 white families.

5 Q And just to clarify, when you say that this income
6 includes wages and benefits, do you mean all cash, and in kind
7 transfers, things like that?

8 A Yes.

9 Q I'd like to show slide 8 in the demonstrative.

10 Dr. Burch, can you explain what this chart shows us,
11 please?

12 A Yes. So this is just another measure of mean. So this
13 chart shows the percentage of Alabama households that are
14 receiving food assistance by race. And similar to what we saw
15 with the poverty data, black households are much more likely to
16 be receiving food assistance, food stamps, and SNAP than white
17 households at the county level and statewide.

18 Again, I will note, though, that the previous slide about
19 poverty still takes into account things like food stamps and
20 other kinds of transfers. So even if they're receiving these
21 benefits, it's not fully alleviating the gap. This is the gap
22 -- the poverty gap is the left over after benefits like this
23 are taken into account.

24 Q Thank you. And I'd like to move to slide 9.

25 Dr. Burch, can you explain what this chart shows us,

1 please?

2 A So this chart is looking at the percentage of Alabama
3 residents who don't have health insurance by race. And we see,
4 again, on the last column statewide the uninsured rate for
5 black Alabamians is higher at 11 percent compared to white
6 Alabamians at 8 percent.

7 And it's also higher in some of the counties that I
8 studied here as well including Elmore, Madison, and Montgomery
9 Counties.

10 But black and white people have about the same rate of
11 lack of insurance in Morgan County, and white people are more
12 like likely to be uninsured in Limestone County. But again, in
13 most of the counties in statewide, black people are more likely
14 to be uninsured.

15 Q So staying on health care, are there other racial
16 disparities in health in Alabama besides just lacking health
17 insurance?

18 A Yes. So other overall indicators of health show that
19 black Americans are in worse health than white people in
20 Alabama. So, for instance, the rates of infant mortality is
21 nearly three times higher for black infants than for white
22 infants, which is again an overall measure of health.

23 And life expectancy at birth. So black women are expected
24 to live about a year less than white women in the state, while
25 black men are expected to live 3.6 fewer years than white men

1 in Alabama.

2 Q And why are things like this, health care access, relevant
3 to voting?

4 A So there's been some research that shows that poor health
5 can lead to lower voter turnout. In fact, that's one of the
6 reasons we expect that voting drops off in old age, because
7 people are less -- it's less easy for people to vote.

8 And it could have something to do with the availability of
9 free time or money that could be devoted to participating. But
10 it also could have something to do with cognitive functioning
11 or physical disability that just makes it really hard for
12 people to get to the polls.

13 Q I'd like to show slide 10 in the demonstrative.

14 Dr. Burch, can you explain what this chart shows us?

15 A Yes. So, again, from the 2021 American Community Survey,
16 this time we're looking at the percentage of Alabama households
17 without a computer by race.

18 And, of course, the vast majority of people have access to
19 a computer or tablet or some kind of device at home, but among
20 the people who don't, we can see that there's still a racial
21 disparity in terms of not having access to a computer at home.

22 And so in some counties such as Elmore and Morgan,
23 15 percent and 17 percent of black households don't have access
24 to a computer at home.

25 Q Let's show slide 11.

1 Can you explain what this chart shows us?

2 A So this is -- this chart is showing the percent of Alabama
3 households that don't have Internet access on any device by
4 race.

5 And, again, most people do have access to Internet in
6 their homes, but both statewide and in the counties that I
7 studied, black people are more -- black households are more
8 likely to not have access to the Internet at all.

9 And, in fact, these are pretty high rates, so statewide
10 about 20 percent of black households don't have any Internet
11 access at home, and in Morgan County, that goes up to
12 25 percent of black households.

13 Q And we can put this down.

14 Why is Internet and computer access relevant to voting?

15 A Internet and computer access are relevant to voting for a
16 number of reasons. It's easier to find information about your
17 polling place or about registering to vote if you can just look
18 it up on the Internet.

19 But also, it might be easier for people to make a copy of
20 their ID if they need to submit -- apply for to vote absentee.

21 Q I'd like to show slide 12 in the demonstrative. Thank
22 you.

23 Can you explain what this chart shows us?

24 A Yes. So this chart shows us the percentage of Alabama
25 households that don't have access to any vehicle, and, again,

1 by race.

2 And, again, much like computers and Internet, most people
3 do have access to a vehicle at home, but among the people who
4 don't, black households are much less likely to be able to
5 access a car both statewide and in all of the counties here.

6 Q And about how much less likely are they to lack access to
7 a car?

8 A So, for instance, in Montgomery, black households are more
9 than three times -- almost three times as many on a percentage
10 basis black households don't have access to a car.

11 Q You can take this down. Thank you.

12 Did you come to any conclusions about how racial
13 disparities in transportation affect voting?

14 A Yes. So the political science literature generally finds
15 that, for instance, polling place access is -- transportation
16 matters for whether a person can get to their polling place.

17 So people with cars are not really sensitive to changes in
18 distance to a polling place. But when you don't have a car,
19 then distance to a polling place matters.

20 And so for black people who are less likely to have access
21 to a car at home, then the polling place distance matters more.

22 In states where you have greater access to no-excused
23 absentee voting, voters tend -- who live far from their polling
24 places and don't have a car tend to just switch vote by mail,
25 but that option is not as available here in Alabama.

1 And so that racial disparity in transportation can matter
2 with respect to being able to get to the polling place.

3 Q And in -- to the extent you are able, why is the ability
4 to access no-excuse absentee voting not available in Alabama?

5 A Alabama has rules for -- I think you have to have an
6 excuse to vote absentee.

7 Q Okay. Are there racial disparities and wait times at
8 polling places in Alabama?

9 A Yes. I do cite a study that shows -- that found that
10 there was a racial disparity in wait times at polling places.
11 And they, for instance, use cell phone data to study -- to
12 study things like wait times and how long people waited at
13 polling places, and I cite that on page 19.

14 Q Can we pull up PX-11 page 19 and look at the third full
15 paragraph?

16 Dr. Burch, does Alabama have a photo ID law?

17 A Yes.

18 Q Do black and white Alabamians possess photo ID at the same
19 rates?

20 A No. So in an analysis of data from 2016 found that black
21 and Hispanic registered voters were more -- a higher percentage
22 of them lacked any form of acceptable photo ID.

23 Q What are some of the requirements for voting absentee?

24 A A voter would need to provide a copy of their photo ID.

25 And then the ballot I think has to be witnessed by either two

1 witnesses or a notary.

2 Q How do -- and can we go back to page 19, the fourth
3 paragraph? Yes.

4 How do the absentee voting requirements impact black
5 absentee voters?

6 A To the extent that a person may need to use a computer,
7 for instance, to -- or pay money to get a copy of their ID, or
8 to -- or black people have less access to computers at home.
9 So they may have to pay money.

10 And, again, financial resources, there's a disparity in
11 financial resources to be able to pay money to get photocopies.
12 If you can't find two witnesses, you may need to use a notary.
13 And notaries I found can charge money to notarize ballots. And
14 if you need the notary to come to you, they also charge extra
15 for that, too.

16 I found that they charged \$5, sometimes more, to notarize
17 ballots and other documents.

18 Q We can take this off.

19 So, Dr. Burch, let's discuss your findings with respect to
20 the criminal justice system.

21 Are there racial disparities in the criminal justice
22 system?

23 A Yes. In Alabama, according to the Bureau of Justice
24 statistics, black people are disproportionately represented
25 among prison and probation populations. So about 53.3 percent

1 of people in prison and about 51.6 percent of people on
2 probation were black in Alabama.

3 Q And are there racial disparities in convictions and
4 sentencing?

5 A Yes. So I found that --

6 Q And while you're looking, can we go to page 18 of that
7 same document, the second full paragraph?

8 A Yes. So I found with respect to criminal justice in
9 Alabama, that studies show that even after controlling for
10 factors such as crimes severity, criminal history, and
11 demographic context, black people still receive longer
12 sentences than white people in the state.

13 Q Does contact with the criminal justice system impact
14 political participation?

15 A Yes. So in my work and work of other people, a growing
16 body of research has generally found that negative interactions
17 with the government across a number of bureaucracies, including
18 experiences of getting -- applying for public benefits or
19 including frustration with voting and other kinds of negative
20 experiences and interactions with government bureaucracies,
21 that these can shape the ability and desire of a person to
22 interact with the government in the future, because it changes
23 how people see the government and their expectations as
24 citizens and how they understand their relationship to the
25 government.

1 And so here on page 18, I talk specifically about the
2 growing body of research that finds that particularly with
3 respect to criminal justice interactions. And so there are
4 several studies that have found that these negative contacts
5 with the criminal justice system, so being stopped by police in
6 a way that you feel is unfair, or being arrested, or
7 incarcerated, they could have an effect on turnout, meaning
8 that they make it so that people just -- because of what I
9 write is through the, quote, Combined forces of stigma and
10 punishment and exclusion -- I write on page 18 of my February
11 report -- those impose barriers and diminish attitudinal
12 factors like civic capacity, government trust, individual
13 efficacy, and social connectedness that can make people vote
14 more.

15 So, again, these kinds of negative interactions over time,
16 be it through the criminal justice system or other kinds of
17 bureaucracies, can affect voting.

18 Q So, Dr. Burch, would you say that there are direct and
19 indirect effects to contact with the criminal justice system?

20 A Yes. I also talked specifically about the -- a big direct
21 effect being the Alabama's felony disenfranchisement law, which
22 prevents some people in prison on probation or parole who have
23 been convicted of felonies from voting if they've been
24 convicted of certain crimes involving moral turpitude.

25 And they may still be denied the right to vote, for

1 instance, if they need to pay fines or fees or were convicted
2 of certain crimes.

3 And so the sentencing project estimates that only -- over
4 300,000 people are prevented from voting in Alabama. That was
5 their estimate for the 2022 election. And the rate for black
6 people in Alabama is higher. They estimate about 14.7 percent
7 of people -- black people in Alabama can't vote because of a
8 felony conviction.

9 Q And what role, if any, does discrimination play in these
10 disparities?

11 A So as I noted, in my rebuttal report, these -- there are
12 some -- several studies that look at the ability to explain
13 these racial gaps using legally relevant factors, like the type
14 of crime the person committed, or that person's criminal
15 history, or even sometimes demographic factors, such as like
16 the jurisdiction, rural versus urban courts, and the like.

17 And that -- these studies have shown consistently that,
18 for instance, work by -- I cite work by Ballmer and Crutchfield
19 and coauthors, there's a whole body of research that finds, for
20 instance, that differential crime commissioned by black people
21 in Alabama doesn't explain the incarceration gap. In fact, it
22 explains the incarceration gap in some states, but it explains
23 less than half of the incarceration gap in Alabama.

24 Moreover, as I said before, I cite a study by Flagenberg
25 (phonetic) and Miller that finds that, again, even after

1 controlling for all of the factors that you think should affect
2 sentencing, like what the crime actually was, and the criminal
3 history of the person, they still find that race predicts
4 sentencing.

5 Q Have courts found discrimination in jury selection?

6 A Yes. So courts have found that prosecutors in Alabama use
7 peremptory strikes against black jurors in a racially
8 discriminatory manner.

9 Q Now, let's discuss your findings with respect to voter
10 turnout.

11 Did you analyze political participation in any specific
12 counties in Alabama?

13 A Yes. I looked at the six counties that I discussed before
14 -- Crenshaw, Elmore, Limestone, Madison, Montgomery, and Morgan
15 Counties.

16 Q And what are your conclusions?

17 A So both statewide and in the counties that I just listed,
18 white people were more likely to vote in both 2020 and in the
19 2018 general elections than black people.

20 Q How did you measure disparities in political
21 participation?

22 A So several ways, actually. So, primarily, I measured
23 disparities in political participation using data on voter
24 registration by race or votes cast by race from the Alabama
25 Secretary of State's office divided by the Citizen Voting Age

1 Population tabulations for those -- special tabulations
2 released by the Census Bureau. I also used survey data, as
3 well.

4 Q What kind of survey data?

5 A So first I used data from the Current Population Survey,
6 which is also a survey like the American Community Survey
7 that's fielded by the Census Bureau, but monthly. And every
8 November of a federal election year, they ask questions about
9 voting. And so I was able to use that information to look at
10 voter registration and turnout in Alabama. And I believe in
11 2020 -- yes, in 2020.

12 I also looked at the Cooperative Election Study, which is
13 a survey that is fielded by a research team -- led by a
14 research team at Harvard and MIT and also fielded by research
15 teams across the country, and they collect data on -- I've seen
16 waves with 50,000. The most recent wave I think had 70,000
17 people. So that's representative at the state level. And they
18 ask questions about voting, as well, and also then follow up
19 with to see if voters actually voted when they said they did.

20 Q And you -- is the name of the monthly survey you mentioned
21 the Current Population Survey?

22 A Yes.

23 Q Okay. Is it accepted practice in your field to measure
24 voting participation using voter turnout?

25 A Yes, it is.

1 Q Why?

2 A Voting turnout is the best estimate of whether a person is
3 voting and participating in politics. We can use registration,
4 but, again, registration data may not reflect the actual fully
5 -- the actual intention of voters because it also -- whether a
6 person is registered also reflects, for instance, purging
7 practices that can vary from place to place, lists maintenance,
8 practices, or even deadwood.

9 Q So is it your testimony that voter turnout is a more
10 appropriate measure of political participation in the context
11 of Senate Factor 5?

12 A Yes. For instance, and when I look at voter registration
13 and I compared it in my report, what I found using the Current
14 Population Survey, voter registration according to when you ask
15 people are you registered to vote in Alabama in 2020, that was
16 about -- there was about a 10 percentage point gap between
17 black and white Alabamians.

18 But according to the Secretary of State's statewide data,
19 that that gap was only 2, about 2.2 percentage points.

20 So, again, the registration data from the survey is
21 reflecting that it is -- that disparity is a good way of seeing
22 that registration data that's on the books might not be as
23 reflective of voters' actual intentions and expectations for
24 various reasons.

25 Q Thank you.

1 So let's get into the turnout data. I would like to show
2 the demonstrative slide 13.

3 Dr. Burch, what does this chart show you?

4 A So this chart is voter turnout by race. And here in the
5 far left, we have statewide and the counties that I was asked
6 to discuss in this case. And this is for the 2020 general
7 election.

8 And this is -- the data presented here are the data on
9 votes cast by race from the Alabama Secretary of State divided
10 by the Citizen Voting Age Population.

11 And we see in the lighter green bars statewide and in all
12 of the counties that I have listed here, white people in those
13 counties voted at higher rates than black people in those
14 counties. That gap is about 9.3 percentage points statewide
15 and is bigger in the counties that I've asked to discuss -- I
16 was asked to discuss here ranging from I think 9.7 percentage
17 points in Limestone County to a 16.2 percentage point gap in
18 Elmore County.

19 Q Okay. And let's go to slide 14. Thank you.

20 Dr. Burch, what does this chart show us?

21 A So these are the similar data, votes cast by race divided
22 by CVAP from the Alabama Secretary of State, but this is for
23 the 2018 general election.

24 And, again, statewide, we see turnout overall is lower
25 because it's a mid-term election. It's not a presidential

1 year. The gap is about 3.3 percentage points between black and
2 white voters statewide. But in the counties, again, we see
3 bigger gaps. So, for instance, a 6-point gap between black and
4 white voters in Crenshaw, what looks like almost 13 points in
5 Elmore, nearly 7 points in Montgomery, for instance.

6 Q So we're seeing consistent gaps in turnout between the two
7 elections?

8 A Yes. And also I think I make a note that in note 17, we
9 see those gaps in 2014 and 2010, as well.

10 Q What role does age play in voter turnout?

11 A Age like several variables has been shown to affect voter
12 turnout mostly positively, so to the extent that the older
13 people generally are more likely to vote than younger people.
14 But, again, even if you control for age, as all of the analyses
15 that I cite do, you still see the persistence of socioeconomic
16 factors in explaining voter turnout.

17 Q So, Dr. Burch, can you summarize, then, your conclusions
18 about socioeconomic disparities and their relationship to voter
19 turnout?

20 A Yes. So as I've shown here today, there are large gaps in
21 socioeconomic wellbeing between black and white people in
22 Alabama, whether you measure that using data on education,
23 income, poverty, health, access to computers and Internet.

24 Each of those factors as I discuss in my report has been
25 shown to affect voting, such that people who are worse off on

1 those factors tend to vote less than people who are better off.

2 And then as we would expect, because there this turnout
3 gap -- sorry -- because there is this gap in socioeconomic
4 status on factors that affect voting, we do see, as I've shown
5 here, a turnout gap in all of the ways and for all of the
6 jurisdictions that I studied here in Alabama.

7 Q In your opinion, are the experiences of poor black people
8 and poor white people in Alabama the same?

9 A They may be -- excuse me -- they maybe have different
10 experiences, but typically, what political scientists have
11 found with respect to how socioeconomic status and race work,
12 political scientists have always found that when -- for
13 instance, when black people reach educational parity with white
14 people, they can vote at similar or even higher rates, because
15 education is such an important individual-level determinant of
16 black political participation.

17 But because educational opportunity is not available
18 equally to black and white people in Alabama and traditionally
19 hasn't been, scholars in political science typically think of
20 race as operating through education and socioeconomic status to
21 affect voting.

22 So a widely-cited study that I cite in my report, my April
23 report, on page 14, Verba, Schlozman, Brady, and Nie find that,
24 Racial disparity and political participation are shaped by
25 unequal access to political resources such as education.

1 And so that's -- this finding is consistent with the idea
2 that, quote, Race in education interact to affect
3 participation.

4 Q Dr. Burch, let's turn to your rebuttal report analysis of
5 defendant's expert reports. Which of the defendant's expert
6 reports were you responding to in your rebuttal report?

7 A So I was asked to address first the argument made by
8 Dr. Reilly that racial disparities between black and white
9 Alabamians are the result of cultural practices of black people
10 rather than systemic discrimination.

11 And I was also asked for Dr. Carrington's report to
12 address the argument that voting patterns by race reflect
13 partisanship rather than racial attitudes or racial policy
14 preferences.

15 Q So starting with Dr. Reilly, did you agree with his
16 conclusions about cultural practices and their relationship to
17 disparities?

18 A No.

19 Q Broadly speaking, why not?

20 A Because Dr. Reilly's conclusions about cultural practices
21 in racial discrimination were -- not only did he not support
22 them using peer-reviewed surveys or other studies or other
23 kinds of evidence, he also just didn't engage with any of the
24 peer-reviewed work in social science over the past decades that
25 would reach the opposite conclusion.

1 When you do discuss that literature, it's -- you reach the
2 opposite conclusion that racial discrimination does matter to
3 these disparities as I show in my rebuttal report.

4 Q What do you think about his claim that racism is a locally
5 unique variable?

6 A I thought that claim was again not very clear and also not
7 supported.

8 So Dr. Reilly at some point seems to suggest by locally
9 unique that he is saying that racism is -- he seems to be
10 referring to Jim Crow or systems of slavery and seems to locate
11 it only in the Old South.

12 At other points, he talks about social attitudes about
13 race relations or racial -- interracial marriage, and again
14 only locates -- or argues that that happens really only in the
15 South -- the Deep South. And so I thought that not only was
16 that argument unclear, it wasn't well supported.

17 So, for instance, Dr. Reilly uses this argument that he
18 says -- I think in a footnote -- that race relations between
19 white and black people are very good or somewhat good. And he
20 says that in 2000, about 70 percent of white and black people
21 agreed with that statement.

22 But then that -- the way he framed that ignores the past
23 20 years of developments in which race relations have --
24 perceptions of race relations have declined among both groups.

25 Q Okay. So I would like to show the slide 16 in the

1 demonstrative.

2 Dr. Burch, slides -- maybe 15. Okay.

3 So you were beginning to talk about it. What do you think
4 about Dr. Reilly's claim that interpersonal -- racial attitudes
5 have improved?

6 A So these data come from Gallup. Gallup produced this
7 chart where they asked people, would you say that relations
8 between white and black people are very good, somewhat good,
9 somewhat bad, or very bad. And the percentage of white adults
10 and black adults during the time that Dr. Reilly focuses on at
11 the beginning of this chart in the early 2000s, it is high.

12 But then again, you start to see a gradual decline in the
13 number of black people who say that -- declines by over half.
14 But white people also think differently about whether race
15 relations between black and white people are very good or
16 somewhat good.

17 So I thought talking about that -- those data from the
18 earlier period and then just ignoring everything that happens
19 since was misleading.

20 Q Do people who have experienced racism of one kind or
21 another in Alabama ever migrate to other states?

22 A Yes. So Dr. Reilly talks about racism only happening in
23 Alabama. But, again, people who, for instance, were educated
24 in the Jim Crow South, might have migrated to other places. So
25 you might see the effects of experiencing racism in Alabama in

1 other places, too. So it doesn't necessarily -- it doesn't
2 necessarily mean that what happens in Alabama stays -- stayed
3 in Alabama, as it were.

4 Q I would like to show the next slide, 16.

5 Dr. Burch, are discriminatory educational systems in
6 Alabama limited to the Jim Crow era?

7 A No. So this chart shows data on segregation in school
8 districts. And it's important to note for two reasons: The
9 first is that as we just looked down in Alabama -- these data
10 are for 2014, I believe.

11 Districts that are high segregation between black and
12 white are darker blue, and lighter blue districts are
13 relatively low segregation between black and white students.
14 And we can see that a lot of districts in Alabama are at least
15 medium, or in some, are high segregation.

16 But it's also important to note when Dr. Reilly says that
17 racism is a, quote, Locally unique variable to the Deep South,
18 although it is true that there are worse district -- there are
19 more segregated districts in the Deep South, you actually see
20 segregated districts across the United States. And so while
21 those phenomena of discrimination may be worse in the South,
22 they actually happen everywhere.

23 School desegregation -- or districts in 45 states have
24 been under school desegregation orders throughout the United
25 States, not just in Alabama.

1 So people experience -- black people experienced
2 discrimination in education across the country.

3 Q And let's pull up the rebuttal report, which I think is
4 PX-13, page 8, the second full paragraph.

5 Okay. So, Dr. Burch, what do you think about Dr. Reilly's
6 claim that racial disparities in education are created by
7 racial disparities in cultural characteristics like valuing
8 education?

9 A So Dr. Reilly provides very little evidence to support
10 that claim. So, for instance, he says -- he points to
11 differences in study habits, and he cites a blog post from
12 Brookings that actually finds that the reason there are gaps in
13 study time between black and white students is unequal access
14 to advanced placement in other kinds of rigorous classes. So
15 racial discrimination is explaining those differences in study
16 habits.

17 He also talks about -- he uses a newspaper article about
18 Nigerians, Nigerian Americans to talk about -- to imply that
19 they're really -- again, it's just a newspaper article about
20 Nigerian Americans and how they study hard.

21 There's also a book from 2003, which is the only scholarly
22 research that he cites, but, again, that doesn't account for
23 the ensuing 20 years of research and events, that have taken
24 place since that book was written, and some of it directly
25 contradictory to the book that he cites.

1 Q So moving to the top of page 9 of -- thank you -- that
2 first paragraph, is school funding a factor in accounting for
3 racial disparities in education?

4 A Yes. So public school -- so Dr. Reilly again talks about
5 locally unique racism. And one of the things that I talked
6 about is that school funding does matter for a student
7 achievement. And lots of studies have found that school
8 funding matters.

9 So, of course, Alabama has its own problems with respect
10 to school funding. It's already in the bottom in the United
11 States with respect to spending on public school students. And
12 in many of the districts in this -- that we're talking about in
13 this area, funding is even lower than the state average. And
14 in other studies by the University of Alabama, find that test
15 score gaps are actually a function of a lack of qualified math
16 and science teachers in certain areas of the state, also
17 broadband access is a factor, as well.

18 So here we talk about both the importance of school
19 spending and finance to education generally, and these kinds of
20 structural barriers faced disproportionately by black people in
21 Alabama are ignored in Dr. Reilly's report.

22 Q So let's go to -- staying on the same document, page 10,
23 at the first full paragraph. Thank you.

24 What do you think of Dr. Reilly's claim that less than
25 1 percent of the racial wage gap is attributable to racism?

1 A Again, Dr. Reilly cites one article, one report by June
2 O'Neill of the Congressional Budget Office from 1990 and
3 ignores the vast majority of literature in economics and other
4 social sciences that directly examines the -- racism in the
5 labor market.

6 So there are several famous studies that are pretty
7 rigorously conducted where researches are controlling for all
8 manner of differences between people, such as education and
9 human capital.

10 Some of the famous studies you may have heard of are audit
11 studies where researches took identical resumes and just
12 changed the name -- names at the top, like Kesha and Jamaal on
13 one of the resumes, and like John and Sally on the other
14 resumes and sent those out to companies and found that black
15 resumes, identical resumes that had black-sounding names at the
16 top were less likely to get called back, less likely to be
17 hired than resumes with the white-sounding names.

18 So there are -- again, this article has been cited more
19 than 7,000 times. So there's just -- in a wide variety of
20 research that finds, for instance, Pager and Quillian and
21 another famous article find that in the labor market, black
22 applicants are penalized more for having drug convictions than
23 white applicants.

24 They also wrote an article that found that a black person
25 without a criminal conviction was less likely to get called

1 back for -- by an employer than a white person with a criminal
2 conviction.

3 So, yeah, there's just a lot of evidence and research that
4 he just doesn't engage at all when making these claims.

5 Q So even after controlling for other factors, these studies
6 found racial disparities in hiring?

7 A Yes.

8 Q So are all things not equal because black people are
9 subject to discrimination? Is that what the data shows?

10 A So what the data show is that when you think about all of
11 the things that might affect employment other than race -- so
12 education, the quality of the school you went to, human --
13 other measures of human capital, once you control for that or
14 even do experiments that control for those factors, you still
15 see that race predicts success in the labor market.

16 Q Looking at the last paragraph on page 10 here, what did
17 you find with respect to EEOC charges?

18 A So in Alabama, about 700 charges of racial discrimination
19 were filed with the EEOC -- economic -- the Equal Employment
20 Opportunity Commission -- in each fiscal years 2020, 2021, and
21 2022. Nationally about 15 percent of those charges are found
22 to have merit.

23 Q And moving to the top of page 11 the first paragraph.

24 Thank you.

25 What did you find with respect to access to jobs,

1 specifically in the Black Belt?

2 A So much is -- was the case with education. Dr. Reilly
3 does not pay attention to structural barriers that can be
4 disproportionately affect the ability of black people to find
5 employment.

6 So there are people living in Alabama's Black Belt
7 according to researchers at the University of Alabama. They
8 face structural barriers such as a lack of manufacturing jobs
9 in business growth.

10 In the Black Belt counties, very few were above the
11 statewide average of 22.4 businesses per 1,000 residents, but
12 there are also some Non-Black Belt counties -- I think like
13 Elmore -- that don't -- that are below that threshold, as well.

14 We also see in other areas job losses to automation can
15 differentially affect low-skilled workers and also especially
16 in the Black Belt. And as I saw showed you in the previous
17 slides, lack of high speed Internet access can limit access to
18 remote work.

19 Q And looking at the last paragraph on page 11, what do you
20 think of Dr. Reilly's claim that the racial disparity in the
21 criminal justice system is caused by black people being serious
22 criminals?

23 A So as I said before, the research doesn't bear that out.
24 I cite research. Again, there's a body of research by Ballmer,
25 Crutchfield -- Crutchfield has written several articles in

1 which they show that differential involvement in crime, violent
2 crime, they even have articles that look at even finer grain
3 crime-types don't predict -- don't explain the incarceration
4 gap by race in Alabama.

5 It explains -- it does a better job of explaining that gap
6 in some states, especially midwestern and northeastern states,
7 but not in Alabama. And it never has, even from the '80s.

8 So it just is the case that the people who have studied
9 the relationship between criminal behavior and incarceration
10 rates find that it does not explain the incarceration gap in
11 Alabama.

12 Q You can take this down.

13 And what do you think of Dr. Reilly's claim that variables
14 like marital status and fatherlessness explain racial
15 disparities in voter turnout?

16 A So Dr. Reilly doesn't really provide any substantiation of
17 those claims about marital status or fatherlessness or age. He
18 doesn't produce any -- I don't believe he cites any scholarly
19 literature or explain how he thinks that those things -- not
20 having a father affects voting among adults.

21 He doesn't provide any statistical analyses to support
22 that claim.

23 Q Turning to the top of page 14, please. How do race and
24 educational attainment affect voter turnout?

25 A So as I said before, Dr. Reilly was arguing that

1 controlling for what he calls tertiary variables makes this
2 relationship go away.

3 And, again, political scientists have researched this for
4 a long time, and the way that that relationship works is that
5 racial disparities in political participation are shaped by
6 unequal access to political resources such as education.

7 Again, race and education interact to affect participation.

8 Another way of thinking about that is race is working --
9 the effective race on education is how that -- the race -- the
10 racial disparities affect voter turnout.

11 Q And is educational opportunity available equally to black
12 and white people in Alabama?

13 A Again, as I have shown, no.

14 Q Now, turning to Dr. Carrington's report.

15 What was your understanding of -- well, I think you
16 mentioned earlier your understanding of his conclusions, but
17 did you agree with the conclusions in Dr. Carrington's report?

18 A No. Dr. Carrington primarily was relying on
19 national-level data to argue that racial preference -- racial
20 gaps in partisanship are shaped by preferences on economic
21 policy, foreign policy, and social issues. And I disagreed
22 with those conclusions.

23 Q And what is the scholarly consensus on the role of race
24 and racial attitudes in partisanship and vote choice?

25 A So the scholarly consensus is that race is very important

1 to parties and partisanship and vote choice and politics at
2 large.

3 So, for instance, I have a quote here -- the most
4 authoritative book in the field by Eric Schickler finds that,
5 quote, Political observers take for granted the distinction of
6 the Democratic party as the party of Civil Rights and racial
7 liberalism while the Republican party is associated with,
8 quote, greater resistance to government programs to redress the
9 problems of racial inequality.

10 And so this dichotomy between racial liberalism and racial
11 conservatism, most observers including Schickler, Carmines, and
12 Stimson locates 1964 as the watershed election for the
13 cementing of the parties along that dimension nationally.

14 I think most observers agree that at the sub-national
15 level, voters as well as parties in states began that
16 transformation, but it was a longer process than 1964.

17 Q And what does research show with respect to this sort of
18 partisan sorting of the masses after 1964?

19 A So research shows that race was really important. So, for
20 instance, on page 15 of my report, I cite research that shows
21 that, The exodus of Southern white voters from the Democratic
22 party between 1958 and 1980 was a reflection of racial
23 attitudes rather than income or other non-race-related policy
24 preferences.

25 And also Valentino and Sears at the University of Michigan

1 found that, In the South, racial attitudes more than
2 ideological shifts or other policy preferences explained an
3 increasingly large part of candidate choice and partisanship
4 between white voters between 1972 and 2000.

5 So race is very important for explaining those shifts away
6 from the Democratic party to the Republican party and the
7 realignment in the South.

8 Q And what is the research that examines 2008 onward show?

9 A So research that focuses on 2008 onward finds strong
10 evidence of the effects of race with respect to partisanship
11 and polar -- and issue polarization, which is kind of like how
12 people are aligning on policy preferences in the electorate.
13 And that's in response, of course, to the election of President
14 Barack Obama.

15 Q And that is because President Barack Obama was a black
16 presidential candidate?

17 A Yes, and elected, yes.

18 Q And aside from President Obama, how do racial
19 considerations shape evaluations of other candidates according
20 to the research?

21 A So in addition to having -- being strongly predictive --
22 racial attitudes being strongly predictive of white voters'
23 willingness to support President Obama, evaluations of other
24 candidates, as well, are shaped by race.

25 So beginning with 2008, minority voters, African-American,

1 Latino, and Asian voters shifted their support towards
2 Democratic presidential candidates, and support for Democratic
3 candidates among white voters decreased. So the electorate
4 began to polarize more by race.

5 Q And how are party and race linked in the American mind
6 according to the research?

7 A So research has shown that there is -- that even many of
8 the policy preferences that Dr. Carrington claims are not race
9 related, such as negative partisan affect, economic and
10 anxiety, anti-democratic citizens, those are increasingly
11 themselves explained by racial attitudes and anxieties.

12 And so even when you survey people -- as I cite in my
13 report, 97.2 percent of Americans think that the typical
14 Republican is white. And you can activate how people --
15 responses to political parties based on race and vice versa.

16 Also white respondents who think that the Democratic party
17 is mostly African-American are less favorable towards Democrats
18 overall and more favorable to Republican and take more
19 conservative positions on political issues.

20 So these ideas of race and the racial -- the idea that in
21 -- among Americans parties have racial identities is another
22 indicator that partisanship is increasingly tied to race in
23 this time period.

24 MS. CARTER: Your Honor, may I confer with counsel for
25 a moment?

1 THE COURT: You may for a moment.

2 MS. CARTER: Thank you, Dr. Burch. I will pass the
3 witness.

4 THE COURT: All right. Thank you.

5 CROSS-EXAMINATION

6 BY MR. SMITH:

7 Q Good afternoon, Dr. Burch.

8 A Hi.

9 Q I know we have met before, but just to reintroduce myself,
10 my name is Brenton Smith, and I am representing Secretary Allen
11 in this case.

12 Now, Dr. Burch, you testified earlier about sort of some
13 differences between voter registration data between Secretary
14 of State data and survey data. Do you recall that?

15 A I do.

16 Q Deadwood purging and list maintenance; is that right?

17 A Yes. I did use those terms.

18 Q And do you cite anything in your report that shows that
19 deadwood affects black registration rates more than white
20 registration rights?

21 A No.

22 Q Could we pull up PX-11, page 10?

23 And, Dr. Burch, this is your chart showing statewide
24 educational attainment, right?

25 A Yes, it is.

1 Q Now, the some college option on this chart, does that
2 include things like associates degrees?

3 A Yes, I believe it does.

4 Q Does it include vocational training?

5 A It may, yes.

6 Q Is there anything else that it includes?

7 A There are also some people who probably took some classes
8 but may not have completed a certificate or other.

9 Q Sure. Do the bars on this chart total to 100 percent for
10 each racial group?

11 A They look like they're close.

12 Q But it purports to be the whole universe of educational
13 attainment?

14 A Let's see. So for black -- it's close -- it looks like
15 it's close, just from eyeballing it.

16 Q So based on this chart, 10 percent of white adults 25 and
17 over have less than a high school diploma or the equivalent,
18 right?

19 A Can you repeat that?

20 Q Of course.

21 10 percent -- around 10 percent of white adults 25 and
22 over have less than a high school diploma or the equivalent?

23 A That's right.

24 Q And so 90 percent have at least that?

25 A That's right.

1 Q Okay. And so then looking at black adults of 25 and over,
2 15 percent have less than a high school diploma or equivalent,
3 right?

4 A That's right.

5 Q So 85 percent have at least that?

6 A Yes. That's a 5-percentage point disparity.

7 Q Right. Does Alabama have lower rates of college education
8 compared to other states?

9 A There may be -- it may be lower compared to some states,
10 but higher compared to others.

11 Q Do you know roughly where it falls in the 50 states?

12 A I don't recall.

13 Q Okay. Can we pull up PX-11 page 12?

14 And, Dr. Burch, Figure 5 here, this is percentage of the
15 population with a bachelor's degree or higher age 25 or older,
16 right?

17 A Yes.

18 Q Okay. And so this is broken down by the five counties
19 that you were studying for which you had data?

20 A Yes.

21 Q Okay. So comparing the counties here, black adults in
22 Madison County have a higher rates of bachelor's degree
23 attainments compared to white adults in neighboring Limestone
24 and Morgan County, right?

25 A Yes.

1 Q And looking at Montgomery black adults' rates, they appear
2 to be within a couple of percentage points of white adults in
3 Elmore County, right?

4 A It -- probably close. It looks like it's still lower,
5 though.

6 Q Maybe 24, 26, looks like on either side of about
7 25 percent, would you say?

8 A It could be. I don't recall.

9 Q Can we pull up PX-11, page 9? And could we blow up the
10 last full paragraph here?

11 So, Dr. Burch, you opined that the racial disparities that
12 you have laid out in some of these previous figures are caused
13 in part by historical and contemporary discrimination in
14 education. Do you see that?

15 A I do.

16 Q What is the other part?

17 A The other part could be -- I think what I meant here by
18 this sentence is -- sorry. I'm trying to -- sorry. It's late
19 in the day. As far as -- I'm trying to think of something
20 other than historical and contemporary discrimination in
21 education. But I think for the most part, those factors that I
22 talk about are very important.

23 So edge -- so, again, I think that it's a large part.

24 Q I'm sorry. What was the last part?

25 A I just say that historical and contemporary discrimination

1 are a large part. I can't think of anything right now as I'm
2 sitting here what else that I might have argued that might have
3 been -- that I might have been referencing.

4 Q Okay. Can we pull up PX-13 page 4, the rebuttal report?
5 And could we blow up sort of that last paragraph?

6 So, Dr. Burch, here you set out, In 2020, 38.6 percent of
7 votes in the Alabama general election were cast by people age
8 60 and older. People who were at least school age in 1965 when
9 Alabama still maintained separate and unequal schools for black
10 and white students statewide. Did I read that right?

11 A Yes.

12 Q What percentage of those voters actually attended
13 segregated schools?

14 A Well, if they went to school at all in Alabama, I think I
15 have here 64 percent of Alabamians aged 60 and older were born
16 in Alabama, so at least 60 percent of them.

17 Q Okay.

18 A Would have attended a segregated school at some point.

19 Q Do you cite any evidence here that these older black
20 voters in Alabama who went to segregated schools, in fact,
21 participate in the political process at lower rates than
22 younger who went to integrated schools?

23 My question was: You don't cite to any evidence here that
24 these older black voters in Alabama who went to segregated
25 schools, in fact, participate in the political process at lower

1 rates than younger voters who went to integrated schools,
2 right?

3 A No. That's not the point. The point is that even within
4 the same age group, black voters -- because they had less
5 access to equal educational opportunities -- will vote -- would
6 have to vote less than white voters because they are in those
7 lower educational categories. So holding age constant, that's
8 the point of that.

9 Q That wasn't my question. My question was: Do you cite
10 any evidence that those older black voters, in fact, turn out
11 at lower rates compared to younger voters who went to
12 integrated schools?

13 A No, because that's not the point.

14 Q Okay. And you don't cite any evidence that black voters
15 who go to schools subject to desegregation orders turn out to
16 vote at different rates than voters who went to schools not
17 subject to desegregation orders, do you?

18 A No.

19 Q Could we go to page 9 of the rebuttal report -- page 13,
20 and you can blow up that top paragraph.

21 So, Dr. Burch, I want to focus here on sort of the second
22 full sentence that's talking about, A study by the University
23 of Alabama finds that lower test scores between black and white
24 students in Alabama result in part from a lack of qualified
25 math and science teachers. Did I read that right?

1 A Yes.

2 Q And you're citing to this O'Brien, et al, K through 12
3 STEM education in Alabama's Black Belt for that point, aren't
4 you?

5 A Yes.

6 Q That document doesn't say anything about race, does it?

7 A No. It just talks about disparities in counties in the
8 Black Belt, many of which are mostly black. And it talks about
9 -- and it specifically here talks about test score gaps.

10 Q How many of the counties in the Black Belt are mostly
11 black?

12 A Most of them. But, again, I think that the argument --
13 I'd have to see the exact quote, but I think the argument
14 they're making is that test score gap is about -- they're
15 relating that test score gap to qualified math and science
16 teachers in the Black Belt.

17 Q Right. But it doesn't say anything about black students
18 and white students, does it?

19 A I think the lower test score gap is about black and white
20 students.

21 Q You think that PX-150 talks about black students and white
22 students?

23 A It says -- again, I think it's talking about the -- isn't
24 it talking about the test score gap?

25 Q Well, that's what your report says. I'm asking: Does the

1 study that you cite actually say any about a test score gap
2 between black students as opposed to just students in the Black
3 Belt?

4 A I'd have to go back and review the report. All I have is
5 what I -- how I characterized it here.

6 Q Are there white students in the Black Belt?

7 A Yes, there are.

8 Q What's the racial makeup of the Black Belt?

9 A So, again, I'd have to go back and look specifically at
10 some of the districts in those areas, because it's not
11 necessarily the case that -- because of white flight, the
12 district makeup -- the school district makeup may not reflect
13 the pattern of residency in that area.

14 Q My question was: How many white students are in the Black
15 Belt?

16 A So -- so my answer to you is: I don't know how many -- I
17 think that the school districts in the Black Belt are
18 disproportionately black relative to the number of white
19 students in the district.

20 Q Which of the counties that you were specifically examining
21 in this case are considered to be part of the Black Belt?

22 A I think Montgomery and Crenshaw.

23 Q But not the other four?

24 A I can't recall about the other -- maybe -- I'm sure about
25 Montgomery and Crenshaw. There may be one other.

1 Q Moving sort of up a couple of lines. The last clause of
2 this first line here says, Per pupil, expenditures were even
3 lower than the state average in all but three of the districts
4 in the counties at issue in this case. Did I read that right?

5 A Yes.

6 Q How many of those counties are majority black?

7 A I don't recall off the top of my head sitting here.

8 Q How many of those school districts are majority black?

9 A Again, I don't recall while I'm sitting here.

10 Q Do Black Belt schools spend less per pupil than Non-Black
11 Belt schools?

12 A I don't -- is there -- are you pointing me to a specific
13 line in my report?

14 Q No. I'm just asking you a question. Do Black Belt
15 schools spend less per pupil than non-Black Belt schools?

16 A I think what I'm talking about here is the specific
17 district here in this -- at issue in this case. And so, yes,
18 in those districts, per pupil expenditures are lower than the
19 state average in all but three of the districts. But I don't
20 think I characterize the counties -- the black expenditures in
21 the Black Belt counties generally because -- as you've pointed
22 a out, only two were -- or maybe three counties are in the
23 Black Belt.

24 Q So why did you look at Black Belt studies at all here?

25 A Again, some of these studies, as I noted on my direct

1 actually have data for all the counties in Alabama. So the one
2 -- I believe when I talk about diminished access to broadband
3 Internet, I look specifically -- there, I'm talking about the
4 relationship between Internet and availability of Internet for
5 remote work. But I also show that in the counties that we are
6 talking about here, there's a disparity in Internet access.

7 Q Are you talking about the Katsinas study?

8 A So I'm talking about right here on page 9, footnote 34.

9 Q Would you read the title of that study?

10 A The title of that study is -- footnote 34, Internet
11 Disparities in Alabama and the Black Belt.

12 Q So that's only examining the Black Belt?

13 A It says Alabama and the Black Belt.

14 Q Okay.

15 A So it's got -- yeah. It's not just in the Black Belt.

16 Q Is the Black Belt in particular -- educational disparities
17 in the Black Belt relevant to this case?

18 A As I said for two counties, sure. But those studies
19 contain data from other counties, as well.

20 Q Okay. Could we pull up PX-150 on page 2?

21 So, Dr. Burch, this is the O'Brien study that we were just
22 discussing.

23 And if we could zoom in on the last full paragraph here.

24 Now, the last full sentence of this, Dr. Burch, it says,

25 Despite schools in the Black Belt spending on average \$800 more

1 per student than non-Black Belt schools, \$10,538 compared to
2 \$9,734, Black Belt schools performed significantly worse than
3 the rest of the state in math and science.

4 Did I read that correctly?

5 A You did.

6 Q Did you consider the difference in expenditure in forming
7 your opinions in this case?

8 A Again, when I talked about the difference in expenditure,
9 I focused on this counties that were -- that I discuss in
10 footnote 31, the ones in the counties at issue in this case, so
11 Tallassee city, Huntsville city, and the like.

12 Q So you didn't consider this?

13 A Only to the extent that I do look at Madison County --
14 Madison County, Montgomery County, and Crenshaw County.

15 Q And this here does say a couple of lines up, The best
16 performing counties are those with typically higher income
17 levels and/or lower poverty rates like Baldwin, Shelby, and
18 Madison Counties, right?

19 A I see that.

20 Q And Madison County is a county at issue that you looked
21 at?

22 A Yes.

23 Q Okay. We can take that down.

24 Are any of the school districts that you examined in
25 jurisdictions with primarily black local officials?

1 A I did not study local officials.

2 Q Did any of the school districts you looked at have
3 majority-black school boards?

4 A Again, I didn't study local officials for this -- for my
5 report.

6 Q Wouldn't it be relevant to whether discrimination is at
7 work or some other factor might explain these differences?

8 A Wouldn't what be relevant?

9 Q If the school boards are, in fact, majority black?

10 A Are you -- are you saying that black people can't
11 discriminate against -- or black people --

12 Q I'm just asking is it relevant in your opinion?

13 A Again, I think here what's relevant to me is the presence
14 of a structural barrier. And that structural barrier exists
15 regardless of who is in charge of the school district.

16 Q Regardless of the race of that person or persons?

17 A Yes, the structural barrier still exists.

18 Q And, Dr. Burch, you discuss a number of socioeconomic
19 factors in your report, right?

20 A I do.

21 Q And for those, you're just reporting the ACS numbers for
22 those particular measures; is that right?

23 A Yes.

24 Q And your report doesn't attempt to quantify the effect
25 that any single one of these factors has on voter participation

1 in Alabama, right?

2 A No. I rely on the political science literature in that
3 regard.

4 Q Can you tell us if any black voters in Alabama are, in
5 fact, prevented from voting because of their wealth?

6 A I think the argument that I am making here is that it is
7 harder for people with lower income, education, and
8 socioeconomic status to vote. And so I can't point to a
9 specific person, but, yes, because it is more difficult, there
10 probably are people who are prevented from voting.

11 Q How many?

12 A Again, I don't know the answer to that. All I can tell
13 you is that there are disparities.

14 Q How does a gap in Internet access affect someone's ability
15 to participate in the electoral process and elect a candidate
16 of their choice?

17 A So, again, as I said before, Internet access can matter
18 both in terms of overcoming the informational costs of voting,
19 like finding access to your polling place, finding information
20 about registering, being able to check your status of your
21 registration, find information about candidates, all of these
22 things are easier with the Internet.

23 Q Do you have to find information about candidates in order
24 to vote?

25 A I mean, the democratic theorist in me would hope so.

1 Q Could we pull up PX-13 at page 10, maybe page 11? Okay.
2 The first paragraph, if we could zoom in there.

3 So, Dr. Burch, here you're talking about sort of
4 employment differentials in the Black Belt; is that right?

5 A Yes.

6 Q Is that because of race or some other factor?

7 A I believe the discussion I'm having there relates to
8 structural barriers to access to jobs. So the argument is that
9 in some counties in Alabama, there is -- it's just harder in
10 general for people to have jobs, get jobs, especially those
11 that are affecting -- that might affect low-skilled workers.

12 So, again, given the educational disparities that living
13 in a county that has fewer employment opportunities can affect
14 -- can affect black workers worse.

15 Q So that wasn't my question. My question was: Are there
16 fewer jobs in the Black Belt because of racial discrimination
17 or some other factor?

18 A So, again, what I'm saying here is that the fewer jobs in
19 the Black Belt are because of structural -- or is a structural
20 barrier to black employment. And that, in and of itself, can
21 be caused by something, for instance, a lack of investment, a
22 lack of tax incentives to attract jobs, a lack of investment by
23 banks, banks not lending to people to start small businesses.
24 There could be a number of reasons why there would be a lack of
25 investment in that geographic space.

1 Q And are those structural barriers attributable to racial
2 discrimination?

3 A Again, that is an area that historically has been
4 neglected, in terms of infrastructure and investment.

5 Q But is racial discrimination responsible for these
6 structural obstacles that you're talking about?

7 A Historically, yes.

8 Q Doesn't this lack of access to jobs in the Black Belt
9 affect its white residents, as well?

10 A It can. But, again, as I say here, job losses to
11 automation detrimentally affect low-skilled workers. And,
12 again, there are disparities in terms of the extent to which
13 black versus white people fall into that category.

14 Q What percentage of Alabama's black population lives in a
15 Black Belt county other than Montgomery?

16 A I don't know off the top of my head.

17 Q Montgomery is a Black Belt county, right?

18 A Yes.

19 Q Are there any manufacturing jobs in Montgomery?

20 A Yes. I'm sure there are.

21 Q And lower down in this paragraph, kind of four lines up
22 from the bottom, all the way to the right, you are talking
23 about automation, which you say, Detrimentially affects
24 low-skilled workers and is expected to continue to plague the
25 Black Rural South in Alabama and other states.

1 Did I read that right?

2 A Yes.

3 Q Is job loss to automation caused by racial discrimination?

4 A Again, job loss to automation in some cases can be caused
5 by discrimination, but it's also again just the presence of --
6 it impacts black workers more because of the fact that they're
7 more likely to be low skilled because of discrimination.

8 So even if a particular employer is just automating, the
9 position of black workers relative to white workers in a
10 particular area, their skill set and the like is affected by
11 all of the factors that I talked about on direct.

12 Q What is the Black Rural South?

13 A So that, I believe, is an expression that is from --
14 sorry. I'm trying to find where I am here. The actual report
15 that I am talking about here, and it's that -- I'm citing, they
16 are talking about the future of work in the Black Rural South.
17 And they are not just talking about Alabama, but they are also
18 talking about for instance Mississippi and other places.

19 Q Shifting gears a little bit. You testified earlier about
20 polling place distance. Do you recall that?

21 A Polling place?

22 Q Distance.

23 A Yes.

24 Q And how that affects voter turnout?

25 A Yes.

1 Q Did you examine polling place distance in any of the
2 counties you looked at for these other measures?

3 A No. Other than -- no.

4 Q Who sets polling places?

5 A Could be the county maybe with some guidance from the
6 Secretary of State. There could be laws about it.

7 Q Could be what?

8 A There could be also guidance in terms of laws.

9 Q These socioeconomic disparities that we're talking about,
10 do these exist in other states, as well?

11 A Some do.

12 Q The ones that you have discussed?

13 A Yes.

14 Q Okay. Did you review Dr. Hood's report?

15 A I did.

16 Q Do you disagree with his conclusion that these disparities
17 exist in nearly every state with a black population of greater
18 than 10 percent?

19 A I thought that Dr. Hood's conclusions were incomplete
20 because, again, he -- I think he leaves out most of the states
21 in the United States. And I also thought that his conclusions
22 were incomplete with respect to the fact that he doesn't
23 provide any evidence or explanation as to the source of those
24 disparities.

25 Q But do the disparities exist in every state that he looked

1 at?

2 A I don't -- I didn't test his data to disagree with that.

3 Q Okay. Is Alabama's white population worse off on many or
4 all of these metrics compared to the white population in those
5 comparison states?

6 A Could you show me? I don't recall right off the top of my
7 head Dr. Hood's report.

8 Q Sure. Could we pull up DX-5, page 8?

9 So, Dr. Burch, this is a page of Dr. Hood's report looking
10 at educational disparities between -- it's a range that's got
11 white, black, and it's got the 20 comparison states, as well as
12 Alabama.

13 So let's look at high school or equivalence or even the
14 left half of this table.

15 A Uh-huh.

16 Q Do you see the top, the black high school or equivalent
17 rate is 85 percent?

18 A I see that for Alabama.

19 Q Okay. And how many states are below that 85 percent?

20 A For which group?

21 Q For black, high school or equivalent.

22 A Okay. Who is below?

23 Q Who's below?

24 A Looks like Alabama -- black people in Alabama are worse
25 off than black people in all of the states on this table except

1 Louisiana and Mississippi.

2 Q What about New York?

3 A Let me see New York. 84.9 and 85 -- I don't know if
4 that's a statistically significant difference. So I would also
5 say, okay, New York and South Carolina and Florida are also at
6 85.

7 Q Okay. And looking at the light gray, it's 89.8 percent
8 for Alabama; is that right?

9 A Right.

10 Q How many states are below that?

11 A Let's see. Mississippi, and it looks like Louisiana is at
12 90, so, again, I don't know if that .2 difference is
13 significantly different.

14 Q Is 90 more than 89.8?

15 A So, again, statistically because this is a survey, it
16 could -- they -- I don't know -- those could be within the
17 margin of error of each other, so they would statistically be
18 the same.

19 Q So but the only state here that's below is Mississippi,
20 and then you said maybe Louisiana?

21 A Yes.

22 Q Is that right?

23 A That's right.

24 Q Okay. What about for college? B.S. or higher, the black
25 rate is 19.2 percent, right?

1 A I see that.

2 Q How many states are below that?

3 A Six states.

4 Q And the white rate is 30.1 percent B.S. or higher?

5 A Yes.

6 Q And how many states are below that?

7 A Three states.

8 Q Which three?

9 A I have Arkansas -- sorry. Louisiana is even. And
10 Mississippi.

11 Q So white residents in Alabama are worse off educationally
12 than white residents of all of these other states or than most
13 of these other states; is that right?

14 A So, again, the way I would characterize this table is that
15 black residents of Alabama are worse off than most black and
16 white people everywhere and in all of these states. And white
17 residents are worse off relative to other white residents, but
18 not relative to black residents in Alabama or in other states.

19 Q But you agree that white residents on the whole are worse
20 off compared to white residents of these other states?

21 A With respect to education, yes.

22 Q Why is that?

23 A Well, as I said before, Alabama does not -- is among the
24 lowest in the country with respect to expenditures on
25 education.

1 Q Are white Alabamians worse off on these measures on
2 average because of the racial discrimination?

3 A Against white people?

4 Q Either group.

5 A I guess -- yeah, I guess I don't understand your question.
6 Are you -- so are you saying that the state of Alabama is
7 discriminating -- asking if the state of Alabama is
8 discriminating against white people?

9 Q No. My question is: Are white Alabamians worse on these
10 measures compared to other states because of racial
11 discrimination?

12 A Are white Alabamians doing worse in -- I'm sorry. I'm
13 just having trouble following your logic.

14 So you're asking across the states are -- I guess I'm -- I
15 don't understand who's doing the discriminating across the
16 states.

17 Q So is it not your opinion that white Alabamians are doing
18 worse on these measures compared to other states because of
19 racial discrimination against either white or black Alabamians?

20 A So I'm not opining that other states are discriminating
21 against white Alabamians.

22 Q That wasn't my question. I wasn't asking about other
23 states.

24 Are white Alabamians worse off because of racial
25 discrimination against black Alabamians?

1 A White Alabamians worse off generally because of
2 discrimination against black Alabamians?

3 Q On these metrics.

4 A I'm sorry. I'm not trying to be difficult. I'm just
5 having trouble following the logic of the question you're
6 asking.

7 So can you maybe expand a little bit on the mechanism or
8 the pathway that you're asking me about a little bit in your
9 question?

10 Q I think we agree with premise, right, that white
11 Alabamians, their educational attainment in general is lower
12 than most of these comparison states, right?

13 A Yes.

14 Q Okay. Is that difference, the fact that white Alabamians
15 are worse on most of these educational attainments, is that
16 attributable in any way to racial discrimination in Alabama?

17 A So, okay. I understand what you're saying.

18 So, yes, so there are studies, for instance, that show
19 generally that expenditures on education -- so social
20 expenditures in general are related to race and racial
21 diversity.

22 So in general, places that are more racially diverse tend
23 to have less generous public expenditures.

24 So in that way, yes, it could be the case that the status
25 of white Alabamians is, in fact, related to racial

1 discrimination.

2 Q Okay.

3 A Another example of that is adopting the failure to adopt
4 generous policies of welfare, for instance. It's just a lot of
5 different kinds of research that has shown that public spending
6 on things like education, on things like social welfare
7 programs and the like are related to the racial diversity of an
8 area.

9 Q We can take that down.

10 Dr. Burch, how does infant mortality affect political
11 participation?

12 A So as I said before, infant mortality, as well as overall
13 mortality rates are a general measure of health. And so health
14 does affect voter turnout. And so I'm just -- that's just a
15 measure of health.

16 Q Do either of those measures in particular have any direct
17 effect on political participation?

18 A To the extent that they're indicators of health.

19 Q Okay. So then how does infant mortality impact turnout
20 behavior?

21 A So infant mortality rates are a sign that -- again, of
22 health in a population.

23 So a population that's less healthy has -- tends to have
24 more of their infants die. And so, again, a population that's
25 less healthy is in and of itself less likely to vote. So it's

1 an indicator.

2 Q I understand it's an indicator, and that might be a
3 general measure, but that specific indicator, infant mortality,
4 doesn't affect voter turnout, does it?

5 A I can't -- yeah. I don't -- I'm not sure what you -- you
6 mean, like if some -- if children die, do people vote less?

7 Q No. My question is just: Does infant mortality affect
8 voter turnout?

9 A Again, I don't know how to answer your question other than
10 the way I've already answered it.

11 Q Okay. Do any of these health measures affect other rural
12 communities in Alabama?

13 A You mean like infant mortality and mortality rates
14 generally?

15 Q Any of the health measures you looked at.

16 A I think that the only one -- the only other one I looked
17 at is health insurance, and I have that chart for the counties
18 in particular.

19 Q My question is: Does it affect any other rural
20 communities?

21 A I don't have any data on that here.

22 Q Okay. So, Dr. Burch, can we pull up PX-13, page 12, and
23 the middle paragraph? The middle paragraph. Sorry.

24 Dr. Burch, shifting gears a little bit into criminal
25 justice.

1 So in this paragraph, you're talking about disparities in
2 violent crime rates; is that right?

3 A Yes.

4 Q And are you citing FBI data here?

5 A Yes.

6 Q From the FBI's Crime Data Explorer?

7 A Yes.

8 Q And do all arrests end in equal periods of incarceration?

9 A No.

10 Q Some don't end in incarceration at all, do they?

11 A That's right.

12 Q Do all crimes committed even result in an arrest?

13 A No. Not all crimes are even known to police.

14 Q And so arrest rates don't translate exactly to
15 incarceration rates, right?

16 A I agree with that. In fact, I think that's the point that
17 I'm making. But, again, Dr. Reilly's arguing that crime rates
18 and arrests -- that crime rates are -- can account for the
19 incarceration gap. And, again, studies that I cite show that
20 that's not the case.

21 Q So I want to focus on about five lines down all the way to
22 the right, the sentence that starts, Moreover only 80 more
23 black people were arrested for committing crimes against
24 persons in Alabama than white people in 2022 -- a low number
25 that cannot account for the 2:1 incarceration difference

1 between black and white violent offenders.

2 Did I read that right?

3 A Yes.

4 Q And so although you're using FBI data here, you're mixing
5 and matching the FBI's definitions of violent crime and crimes
6 against persons, aren't you?

7 A I think I wrote -- I specifically said "arrested for
8 committing crimes against persons."

9 Q And then at the end of the next sentence, do you say
10 "violent offenders?"

11 A Yes.

12 Q And in the first sentence, you say, "disparities in
13 arrests for violent crime," do you not?

14 A Yes. But I think I'm also accounting -- talking about the
15 sentence -- more referencing the sentence before that there.

16 Q Which one?

17 A Research shows that even in the 1980s, racial disparities
18 in arrests for violent or other crimes did not explain fully
19 the black, white imprisonment gap in Alabama.

20 Q So are you saying in this paragraph you are not talking
21 about violent crime?

22 A No. So I'm saying that disparities in arrests for violent
23 crime still do not account for that gap. So I am just
24 continuing that thought.

25 Q Can we pull up DX-407, please, and if we can kind of zoom

1 in on the top left corner where the web bar is, the FBI logo?

2 So, Dr. Burch, is this a page from the FBI's Crime Data
3 Explorer?

4 A It is.

5 Q Okay. And this is data that you cited?

6 A Yes.

7 Q And if we could zoom in on that, and this particular
8 dataset -- if you look kind of in the middle of the page, this
9 is, Arrest Offense Counts in Alabama; is that right?

10 A It is.

11 Q And for 2022?

12 A Yes.

13 Q Okay. If we could go to the bottom page 3 -- all the way
14 to the bottom of page 3. If we could zoom in below the green
15 bar.

16 So, Dr. Burch, here the FBI defines violent crime as being
17 composed of four offenses: Homicide, murder and non -- which
18 is murder in non-negligent manslaughter, rape, robbery, and
19 aggravated assault; is that right?

20 A I see that.

21 Q If we could go up to page 2 and zoom in on the bottom left
22 box.

23 So this box is showing arrests for crime against person
24 offenses; is that right?

25 A I see that, yes.

1 Q And so in addition to the four violent crimes we just
2 discussed, this also includes simple assault, sex offenses
3 except rape and prostitution, and commercialized vice, two
4 human trafficking categories, and manslaughter by negligence;
5 is that right?

6 A Yes.

7 Q Which of these is the biggest category?

8 A Simple assault.

9 Q And simple assaults are not violent crimes under the FBI's
10 definition?

11 A No, they're crimes against persons.

12 Q Okay. If we could go back down to page 3 and zoom in kind
13 of the top half. The right side. Okay.

14 So this dataset, at the top, you see crime select is for
15 simple assault; is that right?

16 A Yes.

17 Q Okay. And then in the bottom left, we have a box that's
18 titled "arrestee race?" Do you see that?

19 A I do.

20 Q And simple assaults broken down by race for 2022, there
21 were 5,078 arrests of white offenders for simple assaults; is
22 that right?

23 A Yes.

24 Q And 4,371 for black or African-American?

25 A I see that.

1 Q And so that's a difference of 707?

2 A I will take your word for it.

3 Q And so without simple assaults in the category, the
4 violent crime arrest differential was not 80. It's more like
5 787, isn't it?

6 A Yes. The arrests.

7 Q Okay. Pull up DX-409.

8 And, Dr. Burch, is this also a page from the FBI's Crime
9 Data Explorer?

10 A It looks like it.

11 Q Okay. If we could go down to page 2, and this one -- this
12 dataset is titled, "national incident-based reporting system,
13 details reported in Alabama." Do you see that?

14 A I do.

15 Q And in the crime select box, we have got all violent
16 offense?

17 A Yes.

18 Q And this is for 2022, as well?

19 A Yes.

20 Q Okay. And then if we could look at the offender race box.

21 And so this overarching category is all violent crime
22 offender versus victim demographics. In the left-hand box, we
23 see "offender race." Do you see that?

24 A I do.

25 Q And black or African-American, there are 10,361 reported

1 incidents in which the offender race was black?

2 A I see that.

3 Q And 4,957 reported incidents in which the offender race
4 was white?

5 A I see that.

6 Q Can we pull up DX-408 and page 11 of it -- actually, let's
7 start at page 1.

8 Dr. Burch, have you cited this kind of document monthly
9 statistical reports from the Alabama Department of Corrections?

10 A Yes.

11 Q And this is a monthly statistical report for February of
12 2024?

13 A Yes.

14 Q Okay. If we could go to page 11.

15 Do you see the box, kind of middle -- bottom middle of the
16 page, "violent offenders by race and sex?"

17 A I see it.

18 Q Okay. And so the black male percentage of violent
19 offenders is 59.3 percent?

20 A I see it.

21 Q And the black female is 2.3 percent; is that right?

22 A Yes.

23 Q And so in total, black offenders in ADOC custody, violent
24 offenders in ADOC custody are 61.6 percent of the violent
25 offender population; is that right?

1 A Yes, that's the population.

2 Q And looking at white violent offenders, white males are
3 33.8 percent of this population?

4 A I see it.

5 Q And white females are 3.4 percent?

6 A I see that.

7 Q And so 37.2 percent of the violent offender population are
8 white; is that right?

9 A I see that.

10 Q Okay. If we could go up to the jurisdictional population
11 at the top.

12 So here we see the white jurisdictional population -- the
13 white jurisdictional population is 45.2 percent, right?

14 A I see that.

15 Q And the black is 53.7 percent of the population?

16 A Yes, I see that.

17 Q Okay. So there's about an 8 percentage point differential
18 between white violent offenders and the white total
19 jurisdictional population, isn't there?

20 A You're asking me about the box you just --

21 Q From 37.2 percent to 45.2 percent.

22 A You -- that's -- those are the numbers we just had from a
23 couple of questions ago?

24 Q Yes.

25 A The 37.2.

1 Q Yes.

2 A Sure.

3 Q I'm sorry.

4 A I just said sure.

5 Q Okay. We can take this down.

6 A I'd like to note, though -- could you go back to that
7 chart?

8 Q It's not a question.

9 A Oh, sorry. I wasn't -- sorry. I was just responding to
10 -- just saying as a note to the question you just asked me. So
11 when you asked me about the difference between the 37.2 and the
12 45.2.

13 Q Yeah.

14 A So I just wanted to note that I am not quite sure --
15 again, just based on the data, the reports that I cite in my
16 report that these numbers that you talk about with violent
17 offenders versus inmate population that those two things --
18 like I don't want to leave the impression that those two things
19 translate directly for one or the other.

20 So you -- sorry. So you were linking the jurisdictional
21 population to the violent offenders population, and, again, all
22 of the studies that I cite are controlling for at the
23 population level issues such as crime rates and saying that
24 those do not account.

25 Q So that's not my question, Dr. Burch. I'm talking about

1 the numbers.

2 A Sorry. I was -- again, so what you were asking me was --
3 again, you asked about -- you said violent offenders by race
4 and sex 37.2, and then you said -- you basically asked me if
5 that translated to the jurisdictional population.

6 Q Let me back up.

7 A And so --

8 Q Let me back up, Dr. Burch. Is the violent offender
9 population a subset of the jurisdictional population?

10 A Yes.

11 Q Okay.

12 MR. SMITH: Your Honor, I would move to admit DX-407,
13 408, and 409.

14 THE COURT: Any objection?

15 MS. CARTER: No objection.

16 THE COURT: All right. 407, 408, 409 are admitted.

17 (Defense Exhibit 407 admitted in evidence.)

18 (Defense Exhibit 408 admitted in evidence.)

19 (Defense Exhibit 409 admitted in evidence.)

20 MR. SMITH: Can we pull up the rebuttal report page --

21 THE COURT: Let me ask: Are you switching to a
22 different line of questions?

23 MR. SMITH: I am, Your Honor.

24 THE COURT: Okay. So we have been going for well over
25 two hours and are within striking distance of the time that I

1 have warranted that we have to be out of the courtroom. And
2 rather than rush you to finish in that amount of time, I think
3 the better course is for us to recess now for the day, and then
4 cross can finish, and any redirect can occur in the morning.

5 Is there any objection to us reconvening at 8:30 in the
6 morning?

7 MS. CARTER: No objection, Your Honor.

8 THE COURT: From the state?

9 MR. SMITH: No, Your Honor.

10 THE COURT: Okay. All right. We'll be recessed then
11 now for the day, and I will see everybody at 8:30 in the
12 morning.

13 (Whereupon, the above proceedings were concluded at
14 5:23 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K Decker

11-14-2024

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255