

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

THE CHRISTIAN MINISTERIAL ALLIANCE, et al.,  
Plaintiffs,

v. Case No. 4:23-CV-471-DPM  
JOHN THURSTON, in his Official Capacity as Secretary  
of State of Arkansas, et al.,  
Defendants.



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REMOTE STREAMING DEPOSITION OF  
TRACI BURCH, PH.D.

TAKEN ON  
TUESDAY, OCTOBER 1, 2024  
10:08 A.M.

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**EXHIBIT**

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2 to 5

<p>Page 2</p> <p>1 REMOTE APPEARANCES</p> <p>2</p> <p>3 Appearing on behalf of the Plaintiffs:</p> <p>4 JOSEPH WONG, ESQUIRE</p> <p>5 LEAH C. ADEN, ESQUIRE</p> <p>6 NAACP Legal Defense Fund</p> <p>7 700 14th Street Northwest, Suite 600</p> <p>8 Washington, District of Columbia 20005</p> <p>9 (202) 682-1300</p> <p>10 (202) 682-1312 (Fax)</p> <p>11 jwong@naacpldf.org</p> <p>12 laden@naacpldf.org</p> <p>13</p> <p>14 -and-</p> <p>15</p> <p>16 IZI S. SILVERSTEIN, ESQUIRE</p> <p>17 O'Melveny &amp; Myers LLP</p> <p>18 2 Embarcadero Center, 28th Floor</p> <p>19 San Francisco, California 94111</p> <p>20 (415) 984-8700</p> <p>21 (415) 984-8701 (Fax)</p> <p>22 isilverstein@omm.com</p> <p>23</p> <p>24 -and-</p> <p>25</p>	<p>Page 4</p> <p>1 EXAMINATION INDEX</p> <p>2 PAGE</p> <p>3</p> <p>4 TRACI BURCH, PH.D.</p> <p>5 EXAMINATION BY MR. BRASCHER 7</p> <p>6 EXAMINATION BY MR. WONG 73</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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6 to 9

<p style="text-align: right;">Page 6</p> <p>1 REMOTE STREAMING DEPOSITION OF</p> <p>2 TRACI BURCH, PH.D.</p> <p>3 TAKEN ON</p> <p>4 TUESDAY, OCTOBER 1, 2024</p> <p>5 10:08 A.M.</p> <p>6</p> <p>7 THE REPORTER We are on the record, 10:08</p> <p>8 a.m. Dr. Burch, will you please raise your right</p> <p>9 hand?</p> <p>10 Do you affirm under penalty of perjury</p> <p>11 that the testimony you're about to give will be the</p> <p>12 truth, the whole truth, and nothing but the truth?</p> <p>13 THE DEPONENT: I do.</p> <p>14 THE REPORTER Thank you. Will each attorney</p> <p>15 please state their name and whom they represent.</p> <p>16 MR. BRASCHER: My name is Justin Brascher.</p> <p>17 I'm with the defendant representing the Secretary of</p> <p>18 State. I'm with the Arkansas Office of the Attorney</p> <p>19 General.</p> <p>20 MR. WONG: And my name is Joseph Wong, here</p> <p>21 on behalf of plaintiffs.</p> <p>22 MS. SILVERSTEIN: My name is Izi</p> <p>23 Silverstein. I'm also here on behalf of plaintiffs.</p> <p>24 THE REPORTER Counsel, please proceed.</p> <p>25 MR. BRASCHER: Thank you.</p>	<p style="text-align: right;">Page 8</p> <p>1 nods of the head, she can't pick that up and</p> <p>2 everything needs to be verbal?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And I'm going to assume that when I</p> <p>5 ask a question, if you answer, I'm going to assume</p> <p>6 that you understood it. And if you don't understand,</p> <p>7 feel free to tell me you don't understand my</p> <p>8 question and I will do my best to rephrase. Is that</p> <p>9 okay?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Is there any reason that you can't</p> <p>12 give full and complete answers today?</p> <p>13 A. No.</p> <p>14 Q. Okay. And then you understand that you</p> <p>15 have taken an oath to tell the truth and the whole</p> <p>16 truth?</p> <p>17 A. Yes.</p> <p>18 Q. Wonderful. Okay. What we'll start with is:</p> <p>19 What did you do to prepare for today's deposition?</p> <p>20 A. I met with the counsel for the plaintiffs</p> <p>21 a couple of times last week and primarily read my --</p> <p>22 reread my report and a few of the other materials</p> <p>23 that I cited in the report.</p> <p>24 Q. Do you recall what those materials would</p> <p>25 be?</p>
<p style="text-align: right;">Page 7</p> <p>1 TRACI BURCH, PH.D., having been first duly affirmed</p> <p>2 to tell the truth, was examined, and testified as</p> <p>3 follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. BRASCHER:</p> <p>6 Q. Dr. Burch, thank you very much for being</p> <p>7 here today. I know this was a quick turnaround to</p> <p>8 schedule this, and I very much appreciate you being</p> <p>9 flexible as we try to make this happen. Could you</p> <p>10 start by stating your full name and spelling your</p> <p>11 last for the record?</p> <p>12 A. Yes. My name is Traci Burch, B-U-R-C-H.</p> <p>13 Q. Thank you. And Dr. Burch, have you been</p> <p>14 deposed before?</p> <p>15 A. Yes.</p> <p>16 Q. How many times, approximately?</p> <p>17 A. Maybe -- between 10 and 15, I think.</p> <p>18 Q. Okay. So you know the drill by this point?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. All right. So then I'll go quickly</p> <p>21 through this. You understand that we've got a court</p> <p>22 reporter here that's writing down everything that we</p> <p>23 say?</p> <p>24 A. I do.</p> <p>25 Q. Okay. And you understand that uh-huh's or</p>	<p style="text-align: right;">Page 9</p> <p>1 A. For instance, I looked over, I think, the</p> <p>2 online information about the passage of the bill,</p> <p>3 such as the bill history, a few of those other</p> <p>4 materials. Kind of like in that vein.</p> <p>5 Q. Okay. Did you review any other materials</p> <p>6 to prepare for today's deposition?</p> <p>7 A. I also re-watched a couple of the hearings</p> <p>8 as well.</p> <p>9 Q. Okay. Do you recall which hearings those</p> <p>10 were?</p> <p>11 A. I think part of some of the Senate Chamber</p> <p>12 on the -- October 5th.</p> <p>13 Q. Okay. Any other documents or media that</p> <p>14 you viewed or looked over to prepare for today's</p> <p>15 deposition?</p> <p>16 A. Not that I can recall.</p> <p>17 Q. And is that the totality of what you did</p> <p>18 to prepare for today's deposition?</p> <p>19 A. Yes. The meetings and -- yes.</p> <p>20 Q. Dr. Burch, are you being paid to be here</p> <p>21 today?</p> <p>22 A. I am.</p> <p>23 Q. And who has retained you?</p> <p>24 A. I believe the LDF. I'm not --</p> <p>25 Q. Okay.</p>

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10 to 13

<p style="text-align: right;">Page 10</p> <p>1 A. -- exactly sure which -- how that</p> <p>2 arrangement works, but I've been primarily working</p> <p>3 with the LDF.</p> <p>4 <b>Q. Okay. Is that the Legal Defense Fund?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And how much are you being paid per hour?</b></p> <p>7 A. \$400.</p> <p>8 <b>Q. You said that you've been deposed between</b></p> <p>9 <b>10 and 15 times; is that correct?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Okay. And what sort of cases have you been</b></p> <p>12 <b>deposed in?</b></p> <p>13 A. They've all been cases involving voting.</p> <p>14 So some were under Section 2 of the Voting Rights</p> <p>15 Act, some were Arlington Heights, some were about --</p> <p>16 I don't exactly recall the kind of case. But, for</p> <p>17 instance, I was looking at something specific about</p> <p>18 either felony disenfranchisement or the like. So I</p> <p>19 don't know the exact statutes or framework that I</p> <p>20 was testifying in, in those cases.</p> <p>21 <b>Q. Okay. Do -- how many cases have you</b></p> <p>22 <b>testified in that you would say are of a similar</b></p> <p>23 <b>posture to this one?</b></p> <p>24 A. By similar in -- that -- you mean</p> <p>25 Arlington Heights or?</p>	<p style="text-align: right;">Page 12</p> <p>1 ahead and, on the record, say that we're going to</p> <p>2 mark that as Exhibit 1. And I will send that to the</p> <p>3 court reporter. Does every --</p> <p>4 THE REPORTER Exhibit 1.</p> <p>5 MR. BRASCHER: I'm sorry?</p> <p>6 THE REPORTER I'm just repeating back.</p> <p>7 Exhibit 1.</p> <p>8 (WHEREUPON, Exhibit 1 was marked for</p> <p>9 identification.)</p> <p>10 MR. BRASCHER: Thank you.</p> <p>11 BY MR. BRASCHER:</p> <p>12 <b>Q. Aside from the title might be incorrect on</b></p> <p>13 <b>that, does everything else look accurate to you?</b></p> <p>14 MR. WONG: Objection to form.</p> <p>15 THE DEPONENT: So by accurate, do you mean</p> <p>16 this is what I received?</p> <p>17 BY MR. BRASCHER:</p> <p>18 <b>Q. Correct.</b></p> <p>19 A. Okay. I think so, yes.</p> <p>20 <b>Q. Okay. Let's start with what -- can you</b></p> <p>21 <b>describe for me your educational background?</b></p> <p>22 A. Yes. So I did my undergraduate work at</p> <p>23 Princeton and majored in politics, which is what</p> <p>24 they call political science, with a minor in</p> <p>25 African-American Studies. And then my -- finished my</p>
<p style="text-align: right;">Page 11</p> <p>1 <b>Q. Correct. That they're not Section 2 of the</b></p> <p>2 <b>Voting Rights Act, but they are voting and</b></p> <p>3 <b>redistricting cases.</b></p> <p>4 A. Oh, okay. So I've testified in -- it's</p> <p>5 just easier to get out my CV account for you so I</p> <p>6 can be accurate.</p> <p>7 <b>Q. Not a problem.</b></p> <p>8 A. Okay. So I've testified in eight cases</p> <p>9 that have been either a redistricting case or</p> <p>10 Arlington Heights or -- yeah, redistricting or</p> <p>11 Arlington Heights.</p> <p>12 <b>Q. Okay. Of those Arlington Heights cases,</b></p> <p>13 <b>would those all be redistricting-related or were</b></p> <p>14 <b>some of them not redistricting-related?</b></p> <p>15 A. One was not redistricting-related. So</p> <p>16 Florida State Conference of the NAACP versus Lee was</p> <p>17 not related to redistricting.</p> <p>18 <b>Q. Okay.</b></p> <p>19 A. Yeah, that's right.</p> <p>20 <b>Q. Great. Not a problem. I guess the -- I</b></p> <p>21 <b>should go back. Do you have the deposition notice in</b></p> <p>22 <b>front of you?</b></p> <p>23 A. I do.</p> <p>24 <b>Q. Okay.</b></p> <p>25 MR. BRASCHER: And I'm just going to go</p>	<p style="text-align: right;">Page 13</p> <p>1 PhD at Harvard in both -- in two fields: Government,</p> <p>2 which is what they called political science; and</p> <p>3 then a separate field, social policy.</p> <p>4 <b>Q. Was that social policy? Is that what you</b></p> <p>5 <b>said?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And what did you do after you got your</b></p> <p>8 <b>PhD?</b></p> <p>9 A. Started my work -- my job here at</p> <p>10 Northwestern and the American Bar Foundation.</p> <p>11 <b>Q. And what do you do for the American Bar</b></p> <p>12 <b>Foundation?</b></p> <p>13 A. So at the American Bar Foundation, my</p> <p>14 title is research professor. And so we don't have</p> <p>15 students, but primarily I do the same research that</p> <p>16 I do at -- as a Northwestern professor. But, also, I</p> <p>17 have some service requirements, like I might serve</p> <p>18 on a hiring committee or advise graduate students</p> <p>19 right now. I -- or the policy committee, for</p> <p>20 instance. So there's different kinds of</p> <p>21 organizational service that I might complete.</p> <p>22 <b>Q. And what is the American Bar Foundation?</b></p> <p>23 A. It is a research institute that used to be</p> <p>24 part of the American Bar Association, but it's a</p> <p>25 separate organization now. So it's here in Downtown</p>

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14 to 17

<p style="text-align: right;">Page 14</p> <p>1 Chicago, and we have research faculty from not just 2 Northwestern but other area universities as well as 3 there are some people who are full-time there as 4 well. 5 <b>Q. How long have you been at the American Bar 6 Foundation?</b> 7 A. 17 years. 8 <b>Q. And since you got your PhD, have you been 9 at Northwestern the entirety of that time?</b> 10 A. Yes. 11 <b>Q. And how long have you been at 12 Northwestern?</b> 13 A. Also 17 years. 14 <b>Q. And what positions have you held at 15 Northwestern?</b> 16 A. So I started out as an assistant professor 17 in the Political Science Department and was promoted 18 with tenure to associate I think in 2013 or 2014. 19 Then, most recently, I was promoted to full 20 professor. 21 <b>Q. And how long have you been a full 22 professor?</b> 23 A. 30 days. 24 <b>Q. Well, congratulations.</b> 25 A. Thank you.</p>	<p style="text-align: right;">Page 16</p> <p>1 <b>anything generally then that there's overlap?</b> 2 A. I've studied, for instance, some things 3 that are related. So thinking about legislative 4 hearings or intent or I've also looked at race -- 5 surveys and other data related to race and race in 6 ethnic politics, for instance. 7 <b>Q. Okay. But you haven't researched 8 specifically map -- congressional map making and 9 that sort of thing?</b> 10 A. No. 11 <b>Q. Okay. What about research into racial 12 gerrymandering?</b> 13 A. No, I haven't. 14 <b>Q. What sort of publications have you made in 15 your time as a professor as it relates to the 16 Arlington Heights factors?</b> 17 A. So I -- as I was saying before, I have 18 done some work looking at, for instance, legislative 19 hearings and legislative debates. So, for instance, 20 my -- I think my earlier -- some earlier work with 21 Jennifer Hochschild from 2007 as well as some later 22 work in -- I know it appears in our 20 -- some of 23 that work also appears in our 2012 book, 24 Transforming the American Racial Order, as well. 25 <b>Q. What is the -- I'm trying to come up with</b></p>
<p style="text-align: right;">Page 15</p> <p>1 <b>Q. Okay. So in your time at Northwestern and, 2 I suppose, at the American Bar Foundation, what has 3 been the focus of your research?</b> 4 A. Typically I work on American politics and 5 more broadly political behavior. And within that, 6 I've done research on how people participate in 7 politics, barriers to voting, and -- as well as how 8 interactions with the state can affect political 9 participation. I've also, excuse me, been -- I also 10 research race and racial inequality and racial -- 11 race and public policy. I think that probably covers 12 most of it. 13 <b>Q. Right now in your current position, what 14 would you say is your specific area of focus when it 15 comes to research? Do you have one?</b> 16 A. Yes. So I think -- I would describe my 17 current focus the same way, working on barriers to 18 voting, race and public policy, race in ethnic 19 politics, American politics, political behavior. 20 <b>Q. And has any of that research included 21 research into congressional redistricting?</b> 22 A. No. Not specifically about drawing maps, 23 for instance, or, you know, how districts were 24 drawn, things like that. 25 <b>Q. Okay. You say not specifically. Is there</b></p>	<p style="text-align: right;">Page 17</p> <p>1 <b>the right word. What is that 2012 book about?</b> 2 A. So broadly speaking, the book looks at -- 3 and thinks about what are the factors that are 4 markers for racial positioning and racial hierarchy 5 in the United States, and then thinks about factors, 6 broad-scale, social -- societal factors that could 7 either change, deconstruct, or reify the positioning 8 of racial groups relative to one another. 9 <b>Q. Have you published other books outside of 10 that 2012 book?</b> 11 A. Yes. 12 <b>Q. And how many other books have you 13 published?</b> 14 A. So my 2013 book, Trading Democracy for 15 Justice is one. And a 2023 piece: Which Lives 16 Matter? Factors Shaping Public Attention to and 17 Protest of Officer-Involved Killings, is a Cambridge 18 Element, which is a -- kind of like a smaller 19 monograph. 20 <b>Q. And so that 2013 book, what is that book 21 about?</b> 22 A. That book examines the relationship 23 between basically sending people to prison from a 24 neighborhood and how that might affect voter turnout 25 in the neighborhood that are left behind.</p>

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18 to 21

<p style="text-align: right;">Page 18</p> <p>1 Q. And then you took --</p> <p>2 A. So --</p> <p>3 Q. Oh, sorry. Go ahead.</p> <p>4 A. Oh, I was just going to say, so it's a</p> <p>5 book -- so -- but it's -- that's the -- that's kind</p> <p>6 of, broadly speaking, what the book is about. But</p> <p>7 there's, for instance, some chapters where I'm doing</p> <p>8 other things like mapping the geography of</p> <p>9 incarceration, for instance.</p> <p>10 Q. Sure. And I understand that I'm asking you</p> <p>11 to paint a broad brush, so I understand, like,</p> <p>12 there's a reason -- if I really wanted to know I</p> <p>13 could read the book. I understand. And then also</p> <p>14 understand I'm asking you questions that you're,</p> <p>15 like, I probably already put this in my CV or</p> <p>16 attached to my report. I'm just trying to get these</p> <p>17 things in the record so that then we can talk about</p> <p>18 them further. That's all.</p> <p>19 A. No, that's fine.</p> <p>20 Q. Okay. No problem. And then you said you</p> <p>21 had a 2023 publication?</p> <p>22 A. Yes. So: Which Lives Matter? Factors</p> <p>23 Shaping Public Attention to and Protest of Officer-</p> <p>24 Involved Killings.</p> <p>25 Q. And what was that publication about?</p>	<p style="text-align: right;">Page 20</p> <p>1 science journal.</p> <p>2 Q. And how often is that published?</p> <p>3 A. Quarterly.</p> <p>4 Q. And what does your work involve as an</p> <p>5 editor of that publication?</p> <p>6 A. So I --</p> <p>7 THE REPORTER Please repeat your last</p> <p>8 question, Mr. Brascher.</p> <p>9 MR. BRASCHER: Sorry.</p> <p>10 BY MR. BRASCHER:</p> <p>11 Q. What does your work involve as the editor</p> <p>12 of that publication?</p> <p>13 A. So it's multifaceted. So in general when</p> <p>14 people submit research articles to the journal, I'm</p> <p>15 the person who first reads them, decides whether to</p> <p>16 put them through to into the publication process or</p> <p>17 reject them immediately. I lead a team of -- an</p> <p>18 editorial committee who might advise me about</p> <p>19 decisions about manuscripts and publications. I</p> <p>20 solicit reviews, anonymous reviews of each article</p> <p>21 that we decide to put through our publication</p> <p>22 process and then along with the editorial committee,</p> <p>23 come to a decision about whether to publish or</p> <p>24 reject articles based on revision, the -- or</p> <p>25 recommend some kind of revisions. I might help</p>
<p style="text-align: right;">Page 19</p> <p>1 A. So that one was about for -- when people</p> <p>2 are killed by police, when does the public mobilize</p> <p>3 in response to particular incidents. So I look at</p> <p>4 voter turnout as well as protests, and also -- or</p> <p>5 and collective data about the kinds of people who</p> <p>6 are -- who die in officer-involved incidents.</p> <p>7 Q. All right. Are you a member of any</p> <p>8 professional organizations or anything like that?</p> <p>9 A. I'm typically a member of the American</p> <p>10 Political Science Association, but that may have</p> <p>11 expired. I can't remember if I -- it's -- I'm</p> <p>12 supposed to renew it annually, and I can't remember</p> <p>13 if I have so far this year. But typically I maintain</p> <p>14 my membership in APSA.</p> <p>15 Q. Sure. I understand. I have a couple of</p> <p>16 those too. Then they reach out and they go: We want</p> <p>17 your money again.</p> <p>18 A. Yeah. The timing is just...</p> <p>19 Q. Yeah. Okay. Any other professional</p> <p>20 organizations?</p> <p>21 A. None that I can think of at the moment.</p> <p>22 Q. Okay. Are there any publications that you</p> <p>23 are involved in either as a writer or as an editor?</p> <p>24 A. Yes. So I am currently the editor-in-chief</p> <p>25 of Law and Social Inquiry, which is a law and social</p>	<p style="text-align: right;">Page 21</p> <p>1 authors revise their articles. We also run a</p> <p>2 graduate student paper prize. So it's -- or</p> <p>3 sometimes we have a symposium. So it's typical work</p> <p>4 for an academic journal.</p> <p>5 Q. Fair. Okay. So let's get into what you've</p> <p>6 done here as an expert. What specifically would you</p> <p>7 say you are an expert in?</p> <p>8 A. For this case, I believe I'm here to opine</p> <p>9 on the Arlington Heights factors with respect to the</p> <p>10 passage of HB1982 and SB743.</p> <p>11 Q. So are you testifying today as an expert</p> <p>12 in the Arlington Heights factors? Is that what</p> <p>13 you're an expert in?</p> <p>14 MR. WONG: Objection to form.</p> <p>15 THE DEPONENT: I -- the -- so the -- yes.</p> <p>16 That's what I'm -- my -- I think that my expertise</p> <p>17 is, again, in race and public policy, race and</p> <p>18 politics, racial inequality. And so I'm here to</p> <p>19 opine on those Arlington Heights factors from that</p> <p>20 perspective.</p> <p>21 BY MR. BRASCHER:</p> <p>22 Q. Okay. So you're -- you are here as an</p> <p>23 expert in race and public policy and maybe in race</p> <p>24 and voting as it pertains to the United States?</p> <p>25 MR. WONG: Objection, calls for a legal</p>

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<p style="text-align: right;">Page 22</p> <p>1 conclusion.</p> <p>2 THE DEPONENT: I think -- again, I'm -- so</p> <p>3 the way I would describe my expertise is that I'm</p> <p>4 here to, again, look at the passage of these -- of</p> <p>5 HB1982 and HB743 related to my expertise in race and</p> <p>6 public policy, race and politics in order to provide</p> <p>7 evidence that is relevant for an Arlington Heights</p> <p>8 analysis by the three-judge panel.</p> <p>9 BY MR. BRASCHER:</p> <p>10 Q. Okay. So let's -- you have your report in</p> <p>11 front of you?</p> <p>12 A. I do.</p> <p>13 MR. BRASCHER: Okay. I would like to, I</p> <p>14 don't know, sort of digitally mark that as Exhibit</p> <p>15 2, then, Ms. Court Reporter.</p> <p>16 THE REPORTER Exhibit 2.</p> <p>17 (WHEREUPON, Exhibit 2 was marked for</p> <p>18 identification.)</p> <p>19 MR. BRASCHER: Thank you.</p> <p>20 BY MR. BRASCHER:</p> <p>21 Q. Okay. So what -- first of all, is this the</p> <p>22 only report you have made in this case?</p> <p>23 A. Yes.</p> <p>24 Q. Do you intend to supplement this report in</p> <p>25 any way?</p>	<p style="text-align: right;">Page 24</p> <p>1 process.</p> <p>2 Q. How many --</p> <p>3 THE REPORTER Dr. Burch, will you please</p> <p>4 repeat your last sentence? It was about -- it ended</p> <p>5 with meeting notes.</p> <p>6 THE DEPONENT: Yes. The meeting notes that</p> <p>7 took place during the process.</p> <p>8 BY MR. BRASCHER:</p> <p>9 Q. How many Arlington Heights factors are</p> <p>10 there?</p> <p>11 A. So I have five listed here.</p> <p>12 Q. And are you an attorney, Dr. Burch?</p> <p>13 A. No.</p> <p>14 Q. Have you attended law school?</p> <p>15 A. No.</p> <p>16 Q. So let me ask you about your opinions in</p> <p>17 general -- what are your opinions generally that</p> <p>18 you've presented in this report?</p> <p>19 A. So my opinions are summarized in the</p> <p>20 report on Page 4. And in -- so in -- I can go</p> <p>21 through each of those bullet points. So my first, I</p> <p>22 talk about based on my analysis of the legislative</p> <p>23 record, members of the Arkansas General Assembly</p> <p>24 were aware of the racial impact of the enacted plan</p> <p>25 and understood that the precincts that were moved</p>
<p style="text-align: right;">Page 23</p> <p>1 A. I haven't been asked to. I -- but I -- if</p> <p>2 I am, then I would provide a supplement. But I don't</p> <p>3 have one forthcoming.</p> <p>4 Q. So, yeah. It's not a trick question. I am</p> <p>5 --</p> <p>6 A. Okay.</p> <p>7 Q. -- simply trying to make sure that this is</p> <p>8 all that there's going to be and this is all that</p> <p>9 we're discussing. So this is the one report. What --</p> <p>10 you're talking -- we're talking about the Arlington</p> <p>11 Heights factors. Can you describe for me what the</p> <p>12 Arlington Heights factors are?</p> <p>13 A. Yes. So there are some guidelines that are</p> <p>14 set forth in the case Village of Arlington Heights</p> <p>15 versus Metropolitan Housing Development Corporation.</p> <p>16 And so my understanding of those factors involve</p> <p>17 looking at the historical background of the</p> <p>18 legislation and racially disparate impact. In my</p> <p>19 report, I'm not focusing on those two, I'm focusing</p> <p>20 on the other -- many of the other factors. So the</p> <p>21 sequence of events reading up to the enactment of</p> <p>22 the plan, procedural or substantive deviations from</p> <p>23 the normal decision-making process, and also looking</p> <p>24 at the contemporary statements, meeting notes,</p> <p>25 administrative records of the decision makers in the</p>	<p style="text-align: right;">Page 25</p> <p>1 out of Pulaski County were disproportionately Black</p> <p>2 and Hispanic relative to the rest of the county, and</p> <p>3 that was not dispute -- that impact was not disputed</p> <p>4 on the record.</p> <p>5 Second, supporters of the enacted map</p> <p>6 refused to consider the negative effects of HB1982</p> <p>7 and SB743 on minority voters and their voting</p> <p>8 strength even though they were warned about those</p> <p>9 effects. My analysis of the sequence of events</p> <p>10 leading up to the passage of the bills, I find that</p> <p>11 they were adopted in a rush process that lacked</p> <p>12 transparency. And also there were some -- there was</p> <p>13 some use of anomalous procedures that deviated from</p> <p>14 the process that legislators had articulated at the</p> <p>15 beginning for considering congressional maps</p> <p>16 following the 2020 census.</p> <p>17 I also concluded that the priorities of</p> <p>18 the legislators were to enact a map that kept</p> <p>19 population deviations below 1 percent, kept all</p> <p>20 counties and cities whole, and respected certain</p> <p>21 communities of interest. And -- however, those goals</p> <p>22 were abandoned in favor of a map that instead split</p> <p>23 counties and cities and had the results of cracking</p> <p>24 the minority population of Pulaski County.</p> <p>25 And finally, I find that political</p>

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<p style="text-align: right;">Page 26</p> <p>1 motivations aren't sufficient to explain the effect 2 of the map of -- on minority voters in Pulaski 3 County as it was possible to rebalance the 4 populations among the congressional districts while 5 producing four solidly Republican congressional 6 districts, and without splitting any counties or 7 cities. 8 Q. In general, are -- is that -- let me ask 9 it this way: Are all of your opinions about this 10 case contained within your report? 11 A. Yes. 12 Q. So you -- there are no other opinions that 13 you intend to offer in this case that are not 14 contained within your report? 15 A. Yes, that's true. 16 Q. Is it your opinion that the Arkansas 17 Congressional Map intentionally discriminates on the 18 basis of race? 19 A. So I think that's a legal conclusion. My 20 -- that -- so I'm not -- I don't think I expressly 21 write that here. 22 Q. Okay. So then is it your opinion that race 23 was a factor in the decision-making in regard to 24 these -- in the Arkansas Congressional Map? 25 A. So the way I express that is on Page 6. I</p>	<p style="text-align: right;">Page 28</p> <p>1 three Arlington Heights factors, but I'm not drawing 2 -- I don't -- I don't think I specifically draw -- 3 again, I think that -- I'm not drawing the legal 4 conclusion based of -- you know, based on doing the 5 Arlington Heights analysis fully if that's what you 6 mean. 7 BY MR. BRASCHER: 8 Q. Yes, thank you. I appreciate it. Okay. So 9 let me ask you this: Are you familiar with the 10 Supreme Court's recent decision in Alexander, which 11 involved a South Carolina map? 12 A. I've heard of it, yes. 13 Q. Okay. Are you familiar with what the 14 Supreme Court has said in that decision? 15 A. I haven't read it fully. 16 Q. Okay. Are you familiar with what Alexander 17 says about a presumption of legislative good faith? 18 A. I have heard that, yes. 19 Q. Okay. What is your understanding of what 20 that means? 21 MR. WONG: Objection, calls for a legal 22 conclusion. 23 THE DEPONENT: My understanding is not much 24 beyond the -- there was a -- the -- sorry, the 25 Supreme Court said that there's a presumption of</p>
<p style="text-align: right;">Page 27</p> <p>1 just say that the evidence supports the inference of 2 racial intent, but I don't, again, draw the full 3 conclusion, both because, again, I'm only examining 4 three factors here. And I think the -- again, that's 5 how I would state my conclusion. 6 Q. Okay. I guess what I'm trying to narrow in 7 on is are you offering an opinion on whether this 8 map was racially motivated? 9 A. I think I'm offering an opinion on just 10 the three Arlington Heights factors. 11 Q. Okay. So you do not have an opinion as to 12 whether the Arkansas -- the 2020 Arkansas 13 Congressional Map was drawn in a racially motivated 14 way or not? 15 MR. WONG: Objection to form. 16 THE DEPONENT: I'm just -- no. The opinions 17 I'm offering are about the three Arlington Heights 18 factors that I examined. 19 BY MR. BRASCHER: 20 Q. Okay. And -- okay. So -- and so -- okay. 21 So then you have no conclusions about the motivation 22 or intent of the legislators? 23 MR. WONG: Objection to form. 24 THE DEPONENT: I think that my opinions 25 are, again, related and based on my analysis of the</p>	<p style="text-align: right;">Page 29</p> <p>1 legislative good faith. So I don't exactly know what 2 that means or if there's a test or whatever that's 3 accompanied that. 4 BY MR. BRASCHER: 5 Q. Okay. So then when you were doing your 6 Arlington Heights analysis here, were you applying a 7 presumption of legislative good faith? 8 MR. WONG: Objection, outside the scope of 9 the report, calls for a legal conclusion. 10 THE DEPONENT: No. I was just looking, 11 again, at the specific questions as the -- the 12 specific factors that I was looking at and reporting 13 those. 14 BY MR. BRASCHER: 15 Q. Okay. So as an expert, do you have a 16 specific methodology that you use to go about your 17 analysis? 18 A. Yes. So with respect to looking at the 19 materials, I first make sure that I try to gather as 20 many materials as I can, both the videos and other 21 information and debates, and to the extent that I 22 can, find other statements made by legislators and 23 decision makers outside of that process. And so I 24 first start by reviewing all of those statements and 25 materials to be sure that I both have a broad</p>

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<p style="text-align: right;">Page 30</p> <p>1 understanding of the structure of the debates, what 2 the debates look like as well. Any other kinds of 3 administrative notes, bill histories, bills 4 themselves, other kinds of documents, I make sure I 5 gather all of those -- that information as well. 6       So it's a big process of data gathering. 7 And then I kind of start simultaneously trying to 8 think through first, timing. So what happened when, 9 and making sure that I document key events in the 10 passage and when they happen in relation to other 11 events. And I also spend time, to the extent that I 12 can, making any notes or kind -- or examining 13 content to see what decision makers themselves said 14 and thought they were doing. So their comments -- 15 I'm looking for specific kinds of comments. So their 16 comments about, their discussion of, their notes of, 17 what the process is, any indication that I might 18 have about meetings or their expectations about the 19 process. If there are other documents available as 20 well that kind of support those, I make sure I keep 21 track of that. 22       Next, I also try to analyze the 23 legislative record to see whether they're -- the 24 different legislators are providing any information 25 about their goals, their motivations, what they hope</p>	<p style="text-align: right;">Page 32</p> <p>1 <b>legislative hearings?</b> 2       A. So I just -- specifically what I said, so 3 listening to those hearings and floor debates and 4 taking notes, again, of the key themes and 5 discussions that took place between legislators, 6 making notes of what was -- you know, what was not 7 discussed or what was absent if I think it's -- 8 excuse me, relevant. Who spoke. Who is it -- or who 9 was able to speak, if there were any expressed 10 goals, any discussions of, for instance, procedures 11 or what their expectations were based on knowledge 12 -- again, what knowledge was available to 13 legislators. 14       So listening to those hearings that -- 15 listening to those hearings and debates and other 16 proceedings just to the -- see the extent that those 17 kinds of -- that how -- the -- things like that came 18 up. 19       <b>Q. Okay. I should ask actually, now, where --</b> 20 <b>the data that you analyzed, where did you get that</b> 21 <b>data from?</b> 22       A. So there is a -- I don't have it 23 specifically cited here, but there's a website that 24 you can link to from the Arkansas General Assembly, 25 and it has like a little calendar with the -- where</p>
<p style="text-align: right;">Page 31</p> <p>1 to get out of the process, what's important to them. 2 I want to look for key themes that come up in the 3 debates on the floor or even in other statements 4 that they are motivated by. I also try to make a 5 note or keep a note about any discussions of, for 6 this case, race or where race was discussed or how 7 it came up and under what circumstances. And I also 8 try to think through as well, again, not just 9 relying fully on statements, but if there's any 10 evidence that I can use to either corroborate or 11 question or, again, fit together all of this into a 12 coherent whole for what happened. 13       <b>Q. Okay. I had one -- and you might have kind</b> 14 <b>of partially answered it, but I'm going to drill it</b> 15 <b>on a little bit. On Page 4 of your report, you say</b> 16 <b>-- let me find it specifically. Near the end of your</b> 17 <b>scope methods and sources section, you say: I rely</b> 18 <b>on methods and sources that are used commonly among</b> 19 <b>political scientists and other social scientists</b> 20 <b>such as analyzing legislative hearings and debates,</b> 21 <b>newspaper articles, and other records and</b> 22 <b>administrative documents. That's in your report,</b> 23 <b>correct?</b> 24       A. Yes. 25       <b>Q. Okay. What do you mean by analyzing</b></p>	<p style="text-align: right;">Page 33</p> <p>1 you can click on the specific hearings that I note 2 in my report. And, also, data on the bills, for 3 instance, came from -- I downloaded from that 4 website. I also got some documents and information 5 from plaintiff's counsel, particularly the 6 deposition testimony, and I think they provided me 7 with some other documents as well listed in the back 8 of my report. But some -- like I said, some of those 9 senate bills and the like, I was able to get myself. 10 So they do speak -- 11       <b>Q. Okay.</b> 12       A. -- about those as well, I think. 13       <b>Q. You were able to obtain those on your own?</b> 14       A. Yes. 15       <b>Q. Okay. And then the other part of that</b> 16 <b>sentence, you say: I rely on methods and sources</b> 17 <b>that are commonly used -- or used commonly among</b> 18 <b>political scientists and other social scientists. So</b> 19 <b>the methods that you've articulated here today,</b> 20 <b>would you say that that is common among the academic</b> 21 <b>and political scientist community?</b> 22       A. I think so. I would characterize it as 23 pretty similar to, for instance, content analysis. 24 For instance, the work that I was doing with the 25 hearings and listening to the debates, for instance.</p>

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<p style="text-align: right;">Page 34</p> <p>1 But other -- again, relying on newspapers, relying 2 on meeting notes, records. Yes, that's common. 3 <b>Q. Okay. And is there any sort of set</b> 4 <b>standards for how to go about this analysis within</b> 5 <b>the academic or political scientist community?</b> 6 A. I think the basic standard for doing any 7 kind of empirical research is to -- including 8 content analysis and others, is to do as I did here, 9 which is cast a wide net. So make sure that you're 10 examining all of the relevant materials in a way 11 that allows you to get a full picture of the 12 proceedings. And so, again, I think that the main 13 point here is to be sure that you are examining a 14 full collection of data and -- so that if you -- in 15 order to be able to give a full and accurate picture 16 of what happened so that if you -- and the standard 17 that, for instance, I teach my graduate students in 18 doing this work is that you -- if you collect your 19 data and analyze it in a way where: A, you can be 20 wrong; and B, if you were wrong, you would know -- 21 you would find it out. 22 So that is the -- I think the standard 23 that most methods empirical research and political 24 science and other social sciences follow. 25 <b>Q. That makes sense to me. Is that -- what</b></p>	<p style="text-align: right;">Page 36</p> <p>1 more in depth into your report, Dr. Burch. 2 THE DEPONENT: Sure. 3 THE REPORTER We are off the record, 10:56 4 a.m. 5 (WHEREUPON, a recess was taken.) 6 THE REPORTER All right. Now I'm ready. 7 It's -- we're back. 8 MR. BRASCHER: Okay. 9 BY MR. BRASCHER: 10 <b>Q. All right. So you say at one point in your</b> 11 <b>report that you analyzed the sequence of events; is</b> 12 <b>that correct?</b> 13 A. Yes. 14 <b>Q. So what does it mean and what does it look</b> 15 <b>like for you to analyze the sequence of events?</b> 16 A. So in -- for these bills, I started not 17 just with the appearance of HB1982 and SB743. I 18 began with the redistricting process going back to 19 some training sessions that were held, meetings that 20 were held with the joint house and senate state 21 agencies and governmental affairs committees, and 22 also the considering of other redistricting bills as 23 well. So for me, I was able to look at the process 24 of -- the entire redistricting process leading up to 25 and through the passage of those bills.</p>
<p style="text-align: right;">Page 35</p> <p>1 you just articulated, is that set anywhere in any 2 organization or is that written down anywhere as 3 like these are the standards? 4 MR. WONG: Objection to form. 5 THE DEPONENT: I don't know if it's written 6 down in that -- in those words, but there are 7 certainly books, for instance, that talk about 8 research design that would enumerate those certain 9 -- those kinds of principles. 10 BY MR. BRASCHER: 11 <b>Q. Okay. But just in terms of sort of the</b> 12 <b>universal guidelines that everyone in your area or</b> 13 <b>field goes by, is there any sort of written set of</b> 14 <b>guidelines or rules for this sort of methodology</b> 15 <b>that's out there?</b> 16 MR. WONG: Objection to form. 17 THE DEPONENT: I can't think of anything 18 off the top of my head. Again, I can think of books 19 that are generally about research design and 20 research methodology that are generally applicable 21 across, again, content analysis and other kinds of 22 projects. 23 MR. BRASCHER: Great, thank you. If you 24 don't mind, can we take a five-minute break? And 25 then we can come back and we will look -- we'll go</p>	<p style="text-align: right;">Page 37</p> <p>1 <b>Q. And what did you learn from looking at</b> 2 <b>that entire process?</b> 3 A. So I was able to see both -- again, the -- 4 based on the chart that I have on Figure 1, when 5 certain events and bills and hearings and meetings 6 took place, when public comment took place. And I 7 was also able to see not just the timing and when 8 things took place, but also legislators' reactions 9 to that timing and sequence of events -- and 10 sequence, as well as information about when they 11 learned things and when they had discussions, for 12 instance. 13 <b>Q. Okay. So let's get a little more specific</b> 14 <b>then. Specifically in this instance, what about the</b> 15 <b>sequence of events was relevant to you?</b> 16 A. I'm not sure what you mean by relevant. 17 <b>Q. Sorry. Relevant or stood out to you as you</b> 18 <b>were doing your analysis.</b> 19 A. So I think what I note in my report 20 specifically is that the -- in particular, once 21 HB1982 and SB743 were introduced the evening of 22 October 4th, the process proceeded very quickly. I 23 believe the word I used is rushed through the 24 general assembly. 25 <b>Q. And so you -- yeah, you used the word</b></p>

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<p style="text-align: right;">Page 38</p> <p>1 rushed. And when you're -- when you say rushed, 2 rushed relative to what? What are you comparing it 3 to that makes this rushed? 4 A. In my discussion and use of that word, I'm 5 saying two things. One, I do think, for instance, my 6 chart shows that certain things happened within -- 7 you know, certain aspects of the process happened 8 within minutes. But in general, I am relying on the 9 discussion and the impressions from the legislators 10 themselves who describe the process that way. 11 Q. So you observed through your research that 12 some legislators called this process rushed; is that 13 accurate? 14 A. Yes. As well as, again, my notes here that 15 certain processes happened with -- you know, within 16 minutes of one another. And so it was difficult -- 17 and then so I also noted the difficulty that people 18 had in basic understanding of what they were voting 19 for, things of that nature. 20 Q. Okay. So let's talk about that. So 21 something happening with minutes or things like 22 that, is that abnormal for the redistricting 23 process? 24 MR. WONG: Objection to form. 25 THE DEPONENT: I think my point here in</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Do you agree with me that if you opposed 2 the map and it was voted on and passed anyways, that 3 that could frustrate you? Independent of the 4 process. 5 MR. WONG: Objection to form. 6 THE DEPONENT: I don't know -- well, I -- 7 and the -- when I make that statement, I'm referring 8 to prior to passage. And I don't know that that 9 would refer to -- I don't know if confusion would 10 result from that, but I'm referring to prior to 11 passage. And also, that statement encompasses people 12 who ultimately voted on -- or voted for the map or 13 were in favor of it. 14 BY MR. BRASCHER: 15 Q. So I guess what I'm trying to drill in on 16 is are you saying that this was rushed compared to 17 other redistricting processes that you've observed? 18 A. No. My point here is that the process was 19 rushed in and of it -- the markers of the rush in 20 and of itself were there internally in both the 21 debates about the process, the discussions among the 22 legislators, their reactions, their frustration, 23 their confusion, and the confusion also of the 24 public as well, even -- and again, even looking at 25 the timeline.</p>
<p style="text-align: right;">Page 39</p> <p>1 this sequence of events is that the rushed process 2 is -- was qualitatively different from earlier in 3 the process before October 4th in terms of the 4 amount of time for considering. But it was also one 5 in which there were some -- that the rush itself and 6 the timing and the manner of minutes led to some 7 issues with respect to legislators being able to 8 have their questions answered or legislators being 9 able to make meetings or the public feeling that 10 they could make it up to comment. 11 So there was both -- so the minutes 12 mattered in terms of the -- it -- the effect that it 13 produced, which is, again, confusion and 14 frustration, which I think is a sign of anomaly. 15 BY MR. BRASCHER: 16 Q. Okay. So confusion and frustration is a 17 sign of anomaly. Is -- that's one of your opinions? 18 MR. WONG: Objection to form. 19 THE DEPONENT: Yes. That's one of the 20 statements that I have here on Page 7. As I show, 21 the record reflects that HB1982 and SB743 were 22 rushed through the general assembly in a way that 23 confused and frustrated many legislators who were 24 not involved in drafting the maps. 25 BY MR. BRASCHER:</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. You talked about anomalous procedures; is 2 that correct? 3 A. Yes. 4 Q. What were the anomalous procedures? 5 A. So I, beginning on Page 17, discuss 6 several procedures that were considered 7 objectionable by the legislators. And again, even 8 people who supported, ultimately supported, or even 9 indicated at the time that they supported the 10 legislation, the initial departure from the ranking 11 process, again, that one, I think, I included just 12 as a sign of how seriously the legislature was 13 taking that ranking process. The main ones, I think, 14 that I focused on here are, first, the push to 15 extract SB743 from committee as well as a little bit 16 above that, which is the push -- sorry, let me find 17 the page. The substitution on Page 20 -- 19 and 20, 18 the substitution of HB1982 for HB1971 is a departure 19 from the procedure they agreed upon. 20 Q. Okay. And so what I want to make sure I'm 21 clear on is you're saying that this is -- this -- 22 what you call anomalous procedures, that's a 23 departure from what they had agreed upon, but not 24 necessarily a departure -- sorry. I'll break the 25 question up.</p>

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<p style="text-align: right;">Page 42</p> <p>1           <b>Your position is that that's a departure</b>  2 <b>from what the legislature had agreed upon in terms</b>  3 <b>of the process?</b>  4           MR. WONG: Objection to form.  5           THE DEPONENT: Yes. So it's -- yes. So it's  6 anomalous because they had agreed that they would  7 rank the bills. HB1971 was the one that was ranked  8 highest, so that was the one that would be favorable  9 by the committee, and then the swap was -- went  10 counter to that expected process.  11 BY MR. BRASCHER:  12           <b>Q. But you're not saying that this process or</b>  13 <b>procedure was anomalous in relation to other</b>  14 <b>redistricting processes and procedures; is that</b>  15 <b>right?</b>  16           MR. WONG: Objection to form.  17           THE DEPONENT: Other redirecting processes  18 and procedures like from other states? No, I'm not.  19 BY MR. BRASCHER:  20           <b>Q. At one point you talked about a motion to</b>  21 <b>extract; is that right?</b>  22           A. Yes.  23           <b>Q. What is a motion to extract?</b>  24           A. So the -- in this particular case, SB743  25 was being considered by the senate, state agencies,</p>	<p style="text-align: right;">Page 44</p> <p>1 rationale for why the bills were rushed. I note here  2 that president -- Senator Hickey President Pro Tem  3 was -- and several other people, talked about the  4 need to extract the bill and to push these bills  5 through because they wanted to foreclose discussion  6 and debate.  7           <b>Q. Okay. So you're saying that this motion is</b>  8 <b>a sign of discussion and debate being cut off in</b>  9 <b>relation to this bill?</b>  10           MR. WONG: Objection to form.  11           THE DEPONENT: So what I'm referencing here  12 is my discussion on Pages 23 and 24, both -- which  13 is that, yes, I believe that discussion and debate,  14 they were trying to cut off discussion and debate by  15 pushing the maps through in order -- they said in  16 order to cut -- avoid further discussion of the  17 problem areas in the map.  18 BY MR. BRASCHER:  19           <b>Q. And what were the problem areas?</b>  20           A. Senator Hickey described them as -- on the  21 bottom of Page 23: If we don't pass this out of  22 here, whenever you go do that, then I know for a  23 fact with all of this stuff going on, we're going to  24 be talking about Pulaski, we're going to be talking  25 about Cleburne, we're going to be talking about</p>
<p style="text-align: right;">Page 43</p> <p>1 and government affairs committee. And typically the  2 committee would do its work and then make a  3 recommendation to the wider general assembly: Do  4 pass, do not pass. And then it's taken up by the  5 wider senate -- excuse me. And then -- but in this  6 particular case, the process that I'm talking about,  7 first, Senator Hickey tried to pressure the  8 committee to pass SB743 out of committee. And then  9 when that didn't work, went to the senate floor to  10 move to have the full senate vote to take the bill  11 out of the consideration of the committee so they  12 could work on it there and vote on it there.  13           <b>Q. Okay. And my understanding, correct me if</b>  14 <b>I'm wrong, is that that motion ultimately failed; is</b>  15 <b>that right?</b>  16           A. It did.  17           <b>Q. Okay. So if it ultimately failed, then</b>  18 <b>what is that motion to extract a sign of?</b>  19           A. So there's a couple of things I want to  20 note about that. So the first is that it failed in  21 the senate, but the house -- again, the pressure to  22 push it through the house was successful. And I  23 think the second reason it's informative is, as I  24 say in my report, that it -- the pressure and the  25 discussion of the pressure provides insight into the</p>	<p style="text-align: right;">Page 45</p> <p>1 Sebastian. All of those conversations are going to  2 resume immediately again.  3           <b>Q. What do you think he means by that?</b>  4           MR. WONG: Objection, objection to form.  5           THE DEPONENT: So my sentence above, again,  6 he's responding to Senator Ballinger, why the  7 committee could not take some time to amend those  8 obvious problems with the map, city splits, and  9 other errors. He said that amending the map would  10 then require that the legislator -- legislature  11 spend time hearing from dissatisfied people in  12 Sebastian, Cleburne, and Pulaski Counties. So that's  13 my interpretation.  14 BY MR. BRASCHER:  15           <b>Q. Okay. And you call this a departure from</b>  16 <b>the normal procedural sequence; is that correct?</b>  17           A. Yes. I discussed it in that section.  18           <b>Q. Okay. So then if this is a departure, then</b>  19 <b>what is the normal procedural sequence?</b>  20           A. So based on my listening to that debate,  21 and I've put a couple of the emblematic comments  22 here in the report, my understanding is that the  23 normal -- what would be normal in that case is to  24 let the committee process play out. So, for  25 instance, on Page 21 with Senator Davis: Thank you,</p>

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<p style="text-align: right;">Page 46</p> <p>1 Mr. Chair. In looking at this map, it does split 2 Sherwood and Jacksonville. And if we could just take 3 a short amount of time and correct the map here in 4 committee -- I'm not sure why we would pass 5 something out that's not fixed and correct. 6 And if I remember correctly, she went on 7 to talk about the fact that why we -- our normal 8 process isn't to pass things out that we know have 9 errors. Senator Ballinger said the same thing about 10 making those -- correcting those errors and making 11 those changes also on Page 21. And he says if -- 12 otherwise, if they can't do that work, I would just 13 feel -- otherwise -- and otherwise I will feel like 14 it's just a matter of the committee process getting 15 rolled over and pushed over and frankly things not 16 being deliberated the way it's supposed to be. 17 Senator Bledsoe: I don't usually go 18 against the president pro tem of the senate, but I 19 do have concerns about passing something out that 20 several of us don't want. And I would ask that you 21 allot 30 minutes an hour after session for us to 22 come back and work on this a little bit more. So 23 again, my understanding is that the committee would 24 be allowed to do its work and pass out something 25 that they felt didn't have errors.</p>	<p style="text-align: right;">Page 48</p> <p>1 <b>you relied upon contained within your report?</b> 2 A. So, for instance, I just gave an -- in 3 your last question, I just gave an example of -- 4 these are -- so my comments from Senator Davis, 5 Ballinger, and Bledsoe are excerpts from what 6 happened in that hearing. And so those are examples 7 of, again, the statement that I begin with here, 8 which is: Senators on the state agencies and 9 governmental affairs committee chafed at the 10 pressure to vote out legislation that they felt had 11 problems. And so I've provided examples here, but I 12 don't provide every statement that supports that 13 claim. So there may be others in the record as well, 14 and there are others in the record as well that may 15 support that. 16 <b>Q. And when you say in the record, what</b> 17 <b>record are you referring to?</b> 18 A. In this instance that were made in the 19 hearing. 20 <b>Q. Okay. I guess what I'm trying to drill in</b> 21 <b>on is -- so are there -- sounds like -- is there</b> 22 <b>information that you relied upon in coming to your</b> 23 <b>opinion that is not contained in this report?</b> 24 A. So, again, I think that my report 25 accurately reflects my information and my</p>
<p style="text-align: right;">Page 47</p> <p>1 <b>Q. And all of that is based on the comments</b> 2 <b>and quotes that you have read from legislators?</b> 3 MR. WONG: Objection to form. 4 THE DEPONENT: Yes. From watching the 5 hearings. 6 BY MR. BRASCHER: 7 <b>Q. Okay. None of that's related on your own</b> 8 <b>independent understanding of what a normal</b> 9 <b>procedural sequence for congressional redistricting</b> 10 <b>is; is that right?</b> 11 MR. WONG: Objection to form. 12 THE DEPONENT: Again, that's based on my 13 analysis of what the Arkansas legislature said with 14 respect to what their normal -- what they felt was 15 normal as far as their procedural sequence. So my 16 analysis is of -- again, it's vital information to 17 me when, again, a bipartisan group of people, 18 including those who support a bill, are saying this 19 is abnormal. 20 BY MR. BRASCHER: 21 <b>Q. At one point you say you relied on</b> 22 <b>contemporaneous statements of legislators; is that</b> 23 <b>correct?</b> 24 A. Yes. 25 <b>Q. Is every contemporaneous statement that</b></p>	<p style="text-align: right;">Page 49</p> <p>1 conclusions by, for instance, telling you that I -- 2 again, I'm characterizing that hearing. So do I 3 provide every comment or statement? No. But I also 4 do, I think, at the end, reference that I listened 5 to and relied on this hearing. 6 <b>Q. So next you talked about what the</b> 7 <b>districting goals were; is that right?</b> 8 A. Yes. 9 <b>Q. Okay. And are you an expert on</b> 10 <b>redistricting in general?</b> 11 MR. WONG: Objection, calls for a legal 12 conclusion. 13 THE DEPONENT: I have opined on the goals 14 of legislatures in redistricting before and have 15 been accepted as an expert. 16 BY MR. BRASCHER: 17 <b>Q. Okay. So outside of what you saw in</b> 18 <b>Arkansas, what are generally the goals of</b> 19 <b>redistricting?</b> 20 MR. WONG: Objection to form. 21 THE DEPONENT: I think that there are 22 factors that legislators can consider when 23 redistricting. Those are general factors like having 24 to balance population, having to account for 25 communities of interest. They may want -- they may</p>

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<p style="text-align: right;">Page 50</p> <p>1 be considering factors such as compactness, 2 incumbents, where they live, and not pairing 3 incumbents. There are several of those kinds of 4 factors that legislatures might be con 5 sidering. It's traditional redistricting principles. 6 BY MR. BRASCHER: 7 <b>Q. Okay. So you would agree that compactness</b> 8 <b>is a traditional redistricting principle?</b> 9 MR. WONG: Objection, outside the scope. 10 THE DEPONENT: Yes. It can be discussed as 11 one. 12 BY MR. BRASCHER: 13 <b>Q. Okay. What about core retention, would</b> 14 <b>that be a traditional redistricting principle?</b> 15 MR. WONG: Objection, scope. 16 THE DEPONENT: It can be. 17 BY MR. BRASCHER: 18 <b>Q. But you did not analyze those</b> 19 <b>redistricting criteria in your report; is that</b> 20 <b>right?</b> 21 MR. WONG: Objection to form. 22 THE DEPONENT: I did. 23 BY MR. BRASCHER: 24 <b>Q. Core retention and compactness?</b> 25 A. What I analyzed was the extent to which</p>	<p style="text-align: right;">Page 52</p> <p>1 <b>there about keeping cities or municipalities full?</b> 2 MR. WONG: Objection to form. 3 THE DEPONENT: I believe I have some 4 discussion here. So on Page 32, one example is 5 Senator Davis said that she was against SB743 in 6 committee because, quote: It splits cities, and 7 that's one thing that, throughout this process, I've 8 been committed to. And I think we can do better 9 because we've seen a lot of maps that do that -- do 10 this -- sorry, that do that. There's another couple 11 of them here that are in the report. Hang on a 12 second. 13 Okay. So on Page 10, I also note that 14 there was some discussion about splitting cities. So 15 -- and then here at the bottom, I have this -- I 16 also make a little bit of discussion where 17 Representative Dotson is talking about the fact that 18 the -- that a map splits, I think, 1980 -- HB1982 19 split cities. And, again, that was generally 20 discussed as part of some of the errors with respect 21 to the splits -- the city splits. 22 BY MR. BRASCHER: 23 <b>Q. Okay. So you're talking about Page 10 with</b> 24 <b>Representative Dotson?</b> 25 A. Yes. So that was part of a wider</p>
<p style="text-align: right;">Page 51</p> <p>1 those were discussed. But I didn't do any 2 calculations of those if that's what your asking 3 with -- for -- with respect to any particular maps. 4 <b>Q. Okay. So is it your opinion then that</b> 5 <b>because it wasn't discussed much, it wasn't a</b> 6 <b>guiding principle?</b> 7 MR. WONG: Objection to form. 8 THE DEPONENT: So I think there are a 9 couple of other ways that I would discuss that. For 10 instance, A, it wasn't -- not only were those 11 principles not discussed much, I think they also -- 12 for instance, there wasn't much discussion of people 13 comparing maps based on those principles. There 14 wasn't much presentation of data on those factors, 15 for instance. So this is -- so it's not just about 16 whether they were quote/unquote discussed, it also 17 is just -- again, were these the -- when people made 18 statements about what it is that they considered 19 important, these were also not what they discussed. 20 BY MR. BRASCHER: 21 <b>Q. So then you also talked about keeping</b> 22 <b>counties and cities whole; is that correct?</b> 23 A. Yes. 24 <b>Q. Okay. So there was a lot of discussion</b> 25 <b>about keeping counties whole. What discussion was</b></p>	<p style="text-align: right;">Page 53</p> <p>1 discussion in general about errors in the map. And 2 some of the errors and changes in -- when people 3 were trying to understand what was going on in 4 HB1982. In the house state agencies committee, they 5 were talking about splitting cities. So at first, 6 Representative Speaks said she believed the map 7 didn't split cities. And then several people said, 8 well, it looks like it's splitting cities, and then 9 they had to resolve that debate. So there was a 10 discussion of city splits in the map. 11 And so when Representative Speaks 12 presented it at first, she was saying that it 13 doesn't split cities and that's a positive thing. 14 <b>Q. And where's the quote from Representative</b> 15 <b>Speaks that says that?</b> 16 A. So it's just referenced here on Page 10: 17 Later, Representative Dotson, who was not the bill 18 sponsor, notified the rest of the committee that the 19 map did split cities even though Representative 20 Speaks said it did not. 21 <b>Q. Okay. And where in your report, other than</b> 22 <b>Senator Davis's comment that we had just previously</b> 23 <b>talked about, is -- do we have a representative or a</b> 24 <b>senator talking negatively about splitting cities?</b> 25 Dr. Burch, it's been a couple minutes. If</p>

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<p style="text-align: right;">Page 54</p> <p>1 <b>you want, we can take a quick break and come back.</b></p> <p>2 A. If you want. I'm just trying to make sure</p> <p>3 that I'm being thorough in answering your question</p> <p>4 because I think there are another couple of places</p> <p>5 that split city -- that talk about city splits. If</p> <p>6 you want to go off the record, that's fine with me.</p> <p>7 MR. BRASCHER: Okay. Let's do that. We'll</p> <p>8 come back in five.</p> <p>9 THE REPORTER We are off the record, 11:38</p> <p>10 a.m.</p> <p>11 (WHEREUPON, a recess was taken.)</p> <p>12 THE REPORTER One moment, please. We are</p> <p>13 back on the record, 11:44 a.m.</p> <p>14 BY MR. BRASCHER:</p> <p>15 <b>Q. Okay, Dr. Burch. So we took a few minutes</b></p> <p>16 <b>so that you could take a look in your report and</b></p> <p>17 <b>find other examples of negative comments about</b></p> <p>18 <b>splitting cities. Were you able to find any?</b></p> <p>19 A. Yes. So in addition, on Page 15, a public</p> <p>20 comment from Dr. Anika Whitfield discussed splitting</p> <p>21 Little Rock. So she says: What I don't understand is</p> <p>22 why Little Rock would be carved out as one of the</p> <p>23 districts that would not be made whole, why there</p> <p>24 are specific cities in the City of Little Rock that</p> <p>25 would be pulled away that are more concentrated on</p>	<p style="text-align: right;">Page 56</p> <p>1 confused.</p> <p>2 <b>Q. Okay. So is it your opinion that based on</b></p> <p>3 <b>those comments, that not splitting cities was a</b></p> <p>4 <b>priority for the legislature?</b></p> <p>5 MR. WONG: Objection to form.</p> <p>6 THE DEPONENT: Yes. So I think that -- I</p> <p>7 kind of refer to that interchangeably as the</p> <p>8 preservation of political subdivisions. And then, so</p> <p>9 counties and cities whole.</p> <p>10 BY MR. BRASCHER:</p> <p>11 <b>Q. Right. So what I'm making sure is -- and</b></p> <p>12 <b>also one thing I want to clarify, Dr. Whitaker is</b></p> <p>13 <b>not a legislator, right? That was a public comment?</b></p> <p>14 A. Yes. But I think you asked me if there</p> <p>15 were any references to cities being split in my --</p> <p>16 being that in my report. So I just wanted to --</p> <p>17 <b>Q. Right. Yes, absolutely. Okay. So those --</b></p> <p>18 <b>the three comments that we've identified from</b></p> <p>19 <b>legislators, those three are sufficient for you to</b></p> <p>20 <b>believe that not splitting cities or municipalities</b></p> <p>21 <b>was a priority of the legislature?</b></p> <p>22 MR. WONG: Objection to form.</p> <p>23 THE DEPONENT: So, again, those weren't the</p> <p>24 -- so Senator Davis made those comments multiple</p> <p>25 times. And those aren't the only comments in the</p>
<p style="text-align: right;">Page 55</p> <p>1 African-Americans. So she's specifically talking</p> <p>2 about Little Rock.</p> <p>3 Also on Page 31 -- there's a couple of</p> <p>4 mentions on Page 31. So first, Representative Fite,</p> <p>5 in talking about splitting Crawford County on Page</p> <p>6 31, he described having the City of Alma split in</p> <p>7 two as an indignity and --</p> <p>8 <b>Q. I'm sorry, I did not mean to interrupt</b></p> <p>9 <b>you. 31?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. I've got Ladyman, Whitaker -- there's</b></p> <p>12 <b>Fite, okay. I see him. Sorry.</b></p> <p>13 A. I'm sorry, yes. So Senator Pitsch said</p> <p>14 dividing counties was a very detrimental thing.</p> <p>15 Representative Fite argued against splitting</p> <p>16 Crawford County. He said: Splitting Crawford County,</p> <p>17 we went through that for the last 10 years being</p> <p>18 split, even the indignity of having the City of Alma</p> <p>19 split in two. And then Senator Johnson in the next</p> <p>20 comment also is talking about keeping counties</p> <p>21 whole. But within that block he says: For example,</p> <p>22 Van Buren County has three senators; Senator Davis,</p> <p>23 Senator Irvin, and me. The City of Maumelle has</p> <p>24 three state senators. It has Senator English and</p> <p>25 Senator Chesterfield and me. And their people are</p>	<p style="text-align: right;">Page 57</p> <p>1 record that were related to splitting cities. Again,</p> <p>2 it's emblematic of counties and municipalities in</p> <p>3 general. Again, there was -- again, on Page 10, I'm</p> <p>4 talking about a whole extended discussion that took</p> <p>5 place in which they were asking back -- trying to</p> <p>6 figure out back and forth whether cities were split.</p> <p>7 BY MR. BRASCHER:</p> <p>8 <b>Q. Okay. So there are -- you're saying that</b></p> <p>9 <b>there are other comments about municipalities and</b></p> <p>10 <b>splitting municipalities that aren't specifically</b></p> <p>11 <b>quoted in your report?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Okay. Could you, for me, define</b></p> <p>14 <b>communities of interest?</b></p> <p>15 A. So communities of interest can be a broad</p> <p>16 term. But basically my working definition is groups</p> <p>17 of people who are motivated by or share some common</p> <p>18 characteristic or thing that matters to them where</p> <p>19 it would make sense for them to be in a group voting</p> <p>20 together.</p> <p>21 <b>Q. What are some of those shared</b></p> <p>22 <b>characteristics?</b></p> <p>23 A. Communities of interest, I think, for</p> <p>24 instance, an important subgroup of them might be --</p> <p>25 a political subdivision is just a basic one. So I</p>

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<p style="text-align: right;">Page 58</p> <p>1 think that that's a subset of a community of 2 interest. But also a metropolitan statistical area 3 where there are a cluster of cities together or a 4 group of cities who have some kind of economic 5 interest. Racial and ethnic groups can be discussed 6 as communities of interest. If there are groups that 7 face -- for instance, in this context, different 8 kinds of farming were discussed in the record as 9 communities of interest.</p> <p>10 <b>Q. Yes. I remember reading that. Okay. So</b> 11 <b>what was your opinion -- what is your opinion about</b> 12 <b>whether communities of interest mattered to</b> 13 <b>legislators when making the districting maps?</b></p> <p>14 <b>A.</b> I think that there were a -- certain kinds 15 of communities of interest that were discussed 16 repeatedly on the record, and that legislators also 17 seemed to discuss. And that was the row crop 18 farmers, which typically got discussed as Chicot and 19 Desha Counties, but sometimes also Lincoln County 20 together. Other people from the community and 21 community leaders would come to talk about their 22 communities of interest like, again, the 23 metropolitan region came up. Delta counties came up 24 once, I -- once or twice, I think. You know, some of 25 these communities of interest were mentioned less.</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. WONG: Objection to form.</p> <p>2 THE DEPONENT: So I haven't evaluated 3 multiple maps in this way. But, for instance, I do 4 cite HB1966 as an example of a map that keeps all 5 counties and cities whole, puts Desha, Chicot, and 6 Lincoln Counties in the first congressional 7 district. And then it's one of the lower deviation 8 maps as well. There may be other possible maps, so I 9 haven't tried to draw any maps myself. I just looked 10 at the available information about the maps that 11 were considered on the record.</p> <p>12 BY MR. BRASCHER:</p> <p>13 <b>Q. So let's talk about that map specifically</b> 14 <b>then. Did you evaluate its core retention?</b></p> <p>15 MR. WONG: Objection, outside the scope.</p> <p>16 THE DEPONENT: No. That wasn't discussed on 17 the record.</p> <p>18 BY MR. BRASCHER:</p> <p>19 <b>Q. Okay. Did you evaluate its compactness?</b></p> <p>20 MR. WONG: Objection, outside the scope.</p> <p>21 THE DEPONENT: Again, I don't believe that 22 was discussed on the record.</p> <p>23 BY MR. BRASCHER:</p> <p>24 <b>Q. Okay. Next you talk about prior knowledge</b> 25 <b>that these bills targeted and diluted minority</b></p>
<p style="text-align: right;">Page 59</p> <p>1 But I would say the ones that were mentioned over 2 and over again, I think Madison County came up quite 3 a bit as well as the row crop farmers.</p> <p>4 <b>Q. And how does that discussion about</b> 5 <b>respecting communities of interest, particularly the</b> 6 <b>row crop farmers, relate to whether the map was</b> 7 <b>racially motivated?</b></p> <p>8 MR. WONG: Objection to form.</p> <p>9 THE DEPONENT: So I believe my main 10 discussion about these considerations that arose in 11 the legislatures is to think about whether it is -- 12 it -- the pursuit of any of those goals, including 13 the main goals about respecting communities of 14 interest, would prove as a barrier that that method 15 was necessarily -- whether you could accomplish 16 those goals without splitting Pulaski County in the 17 way that it was. So I think that it's relevant to 18 the extent that we think about what can -- what are 19 the things that the legislature -- the 20 considerations that came up on the record as being 21 interesting, and would those bar -- and could those 22 be accomplished without splitting Pulaski County.</p> <p>23 BY MR. BRASCHER:</p> <p>24 <b>Q. Okay. And it's your opinion that they</b> 25 <b>could have been?</b></p>	<p style="text-align: right;">Page 61</p> <p>1 <b>voting strength; is that right?</b></p> <p>2 <b>A.</b> Yes.</p> <p>3 <b>Q. What prior knowledge are you referring to?</b></p> <p>4 <b>A.</b> So, in particular, I am -- in this section 5 I talk about some discussions and training sessions 6 and discussions before HB1982 and SB743 were 7 introduced with respect to how race could figure in 8 discussions of the process. But, in particular, I 9 think, I am talking about warnings about the 10 disparate racial impact section that begins on Page 11 42.</p> <p>12 <b>Q. So you have a section that starts at the</b> 13 <b>bottom of Page 41 that says: Early refusal to</b> 14 <b>consider detrimental effects on racial minorities;</b> 15 <b>is that right?</b></p> <p>16 <b>A.</b> Yes.</p> <p>17 <b>Q. Okay. So you're saying that early on,</b> 18 <b>legislators didn't take into account what you</b> 19 <b>considered to be the detrimental effects on racial</b> 20 <b>minorities?</b></p> <p>21 MR. WONG: Objection to form.</p> <p>22 THE DEPONENT: No. So what I'm saying is 23 early in the process when they were considering 24 other redistricting bills, there were a couple of 25 comments about -- in response to legislators who</p>

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<p style="text-align: right;">Page 62</p> <p>1 wanted to think -- to discuss and talk about the</p> <p>2 effects of minority representation of earlier bills.</p> <p>3 And they said that -- basically responded in a way</p> <p>4 that kind of contradicted the guidance that they had</p> <p>5 been given by BLR with -- the Bureau of Legislative</p> <p>6 Research with respect to how and whether the</p> <p>7 legislature could discuss race in these maps.</p> <p>8 BY MR. BRASCHER:</p> <p>9 <b>Q. And how did it contradict?</b></p> <p>10 A. So the discussion -- so on Page 40 -- wait</p> <p>11 a minute. Let me -- sorry.</p> <p>12 <b>Q. That's okay.</b></p> <p>13 A. So on Page 39, Ms. Davenport, in her</p> <p>14 training on the 19th of August 2021 said that it is</p> <p>15 permissible to consider race, quote, for drawing or</p> <p>16 adjusting a district based on racial considerations</p> <p>17 in order to avoid a violation of the Voting Rights</p> <p>18 Act. And she then further went on to say in that</p> <p>19 session: In addition to those Fourth Amendment equal</p> <p>20 population requirements, you have to look -- the</p> <p>21 Voting Rights Act prohibits any practice or</p> <p>22 procedure that has a discriminatory effect on racial</p> <p>23 or language minorities.</p> <p>24 And then she presented slides that talked</p> <p>25 about that there are exceptions -- on the next page,</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. WONG: Objection to form.</p> <p>2 THE DEPONENT: So the reason this is -- the</p> <p>3 reason that the section about refusal to consider</p> <p>4 detrimental effects is important here is once</p> <p>5 presented with information about impact. So I'm</p> <p>6 going to draw -- I'm going to take Action X. It'll</p> <p>7 affect racial and ethnic minorities in this way. I</p> <p>8 also have information on the table that there are</p> <p>9 ways that I could do -- draw this map and accomplish</p> <p>10 my goals in ways that don't have this effect on</p> <p>11 racial minorities.</p> <p>12 And so in -- so then on the record saying</p> <p>13 I can't consider race is a refusal to fix -- is one</p> <p>14 way that they're thinking about is a refusal to fix</p> <p>15 the problem, and so -- even though it is possible to</p> <p>16 fix the problem. And that refusal contradicts,</p> <p>17 again, advice and information that they had been</p> <p>18 given.</p> <p>19 BY MR. BRASCHER:</p> <p>20 <b>Q. Do you have a section titled: Claims by</b></p> <p>21 <b>Map Drawers that they were unaware of Racial Effects</b></p> <p>22 <b>of the Map; is that correct?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. So I guess my first question is: What</b></p> <p>25 <b>indication do we have that the legislators</b></p>
<p style="text-align: right;">Page 63</p> <p>1 on Page 40: The Supreme Court has held that</p> <p>2 districts should not be defined exclusively by race,</p> <p>3 although it's permissible -- it is permissible to</p> <p>4 take race into account while drawing district</p> <p>5 boundaries, there are exceptions for drawing or</p> <p>6 adjusting a district based on racial considerations</p> <p>7 in order to avoid a violation of the Voting Rights</p> <p>8 Act.</p> <p>9 <b>Q. Okay. So what you're saying is they were</b></p> <p>10 <b>told by BLR they could take race into account, but</b></p> <p>11 <b>then they didn't take race into account; is that</b></p> <p>12 <b>what you're saying?</b></p> <p>13 MR. WONG: Objection to form.</p> <p>14 THE DEPONENT: So what I'm saying is they</p> <p>15 were told by BLR and others that they could take</p> <p>16 race into account. And then these two comments are</p> <p>17 arguing that they -- it was too difficult or that</p> <p>18 they couldn't take race into account.</p> <p>19 BY MR. BRASCHER:</p> <p>20 <b>Q. Okay. So it's my understanding that you're</b></p> <p>21 <b>saying this is a -- an example, as you make your</b></p> <p>22 <b>Arlington Heights analysis, that the evidence</b></p> <p>23 <b>indicates there was -- that race did play a factor.</b></p> <p>24 <b>So how was it -- I'm trying to figure out how a</b></p> <p>25 <b>refusal to look at race means race was a factor.</b></p>	<p style="text-align: right;">Page 65</p> <p>1 <b>considered the racial -- as you had said, the racial</b></p> <p>2 <b>makeups would be a problem?</b></p> <p>3 MR. WONG: Objection to form.</p> <p>4 THE DEPONENT: So there were several</p> <p>5 representatives who did say that they considered the</p> <p>6 racial impact to be a problem that I start on Page</p> <p>7 42. And that they -- and, again, none of the</p> <p>8 information presented on Page 43 by Senator Tucker</p> <p>9 that this is the effect of the map was disputed on</p> <p>10 the record. And so they had the information in front</p> <p>11 of them that this is what is happening -- that this</p> <p>12 is what the map does.</p> <p>13 Even though, for instance, you do have</p> <p>14 some people, such as Senator Ballinger on Page 44,</p> <p>15 who was talking about several relatively easy fixes</p> <p>16 that could be made to the map. He noted that the</p> <p>17 map, quote: Still has some racial issues that can be</p> <p>18 fixed. And even the Governor weighed in and talked</p> <p>19 about the need to fix some of those issues. So it</p> <p>20 was discussed on the record by several people that</p> <p>21 this is a -- that the map has an effect -- a</p> <p>22 detrimental -- a disparate racial effect.</p> <p>23 BY MR. BRASCHER:</p> <p>24 <b>Q. Okay. So from what I'm seeing, in terms of</b></p> <p>25 <b>Republican legislators, we've got Representative</b></p>

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<p style="text-align: right;">Page 66</p> <p>1 <b>Ballinger. Are there any other Republican</b>  2 <b>legislators who you saw speak out about the racial</b>  3 <b>impact of the map?</b>  4 A. No. Again, the people who spoke just said  5 that -- or just made statements about, again, not  6 disputing racial impact of the map, just that it was  7 -- they didn't consider -- they want -- they didn't  8 want to consider the racial impact of the map.  9 Q. So then when we go to the section that  10 says claims by map drawers that they were unaware of  11 the racial effects of map, is it -- are you -- is it  12 your opinion that the map drawers were aware of the  13 racial effects of the map?  14 MR. WONG: Objection to form.  15 THE DEPONENT: It's my opinion that the  16 racial makeup of the maps and changes to the racial  17 makeup were available to map drawer -- to map makers  18 while they were drawing those maps.  19 BY MR. BRASCHER:  20 Q. Okay. So they were available to them. Does  21 that mean that -- that it impacted their map  22 drawing?  23 MR. WONG: Objection to form.  24 THE DEPONENT: Again, my statement is just  25 that they've -- again, they came up -- as Senator</p>	<p style="text-align: right;">Page 68</p> <p>1 do without them present in the room.  2 BY MR. BRASCHER:  3 Q. So I just want to make sure we're clear.  4 So racial information was potentially available. Do  5 you know for sure that racial demographics were  6 factored into the maps as they were drawn?  7 MR. WONG: Objection to form.  8 THE DEPONENT: Again, I am just presenting  9 information about what was available and what was  10 visible on the screen when the maps were drawn,  11 information that legislators were present in the  12 room when those maps were drawn, and those -- that  13 information was on the screen based on Ms. Bowen's  14 deposition, as well as some other qualitative  15 evidence of personal knowledge by legislators of who  16 lives in those areas that were being moved.  17 BY MR. BRASCHER:  18 Q. Okay. No legislator, from what you saw,  19 specifically brought up racial motivations for the  20 map, did they?  21 MR. WONG: Objection to form.  22 BY MR. BRASCHER:  23 Q. I'll restate the question. Let me --  24 sorry, sorry. I'll restate the question. Did any  25 legislator state that they had -- that the map was</p>
<p style="text-align: right;">Page 67</p> <p>1 Rapert says: They came up on maps that were redrawn.  2 They were -- as Ms. Bowen said, they were visible on  3 the screen. I don't have any statements from  4 legislators about how they took that information to  5 account, just that it was available to them.  6 BY MR. BRASCHER:  7 Q. Okay. And you said you looked at Lori  8 Bowen's deposition?  9 A. Yes.  10 Q. Okay. So you would agree with me that in  11 Lori Bowen's deposition, she said that she made no  12 independent decisions about drawing the map, she  13 only did what legislators asked her to do. Would you  14 agree with that?  15 MR. WONG: Objection to form.  16 THE DEPONENT: I would say that she said  17 she was -- they would direct her sometimes or they  18 might present a map to her and then she had to  19 figure out what that meant. So, for instance, with  20 the map plan. So she wasn't -- so sometimes she was  21 there and they would say -- they were all -- it  22 seemed like sometimes she would be in a room with  23 people who would say: Move this line this way. Other  24 times, she would be trying to approximate something  25 that they gave her, which I guess she would have to</p>	<p style="text-align: right;">Page 69</p> <p>1 drawn with intentional racial motivations?  2 A. So there are a couple of statements on  3 Page 42, Representative Hodges said: We all know  4 what's going on here. It's no secret. Southeast  5 Pulaski County is being split into three different  6 congressional districts. Before we came down here to  7 draw these maps, we all knew who lived in the  8 southeast corner of Pulaski County. We all knew who  9 lived in South Little Rock, Rose City, Wrightsville,  10 and College Station. It's people who look like me.  11 Representative Love, the last line on Page  12 43, starts: You cannot ignore what's going on here.  13 And so if we would just take a step back and look at  14 the community that this map is impacting, you would  15 see the disparate impact and you would know that  16 race cannot be ignored when we look at this. There  17 are also some, I think, in -- I have to look through  18 the rest of my report. But there may also be -- I --  19 it could be Representative Love who calls -- he  20 refers to disenfranchising a community. I just have  21 to find it.  22 Q. That's okay. So were there any comments  23 from legislators who either supported or voted for  24 the map that indicated there was a racial intent in  25 the drawing of the map?</p>

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70 to 73

<p style="text-align: right;">Page 70</p> <p>1 A. Again, there were just acknowledgments of</p> <p>2 the racial issues in the map by senator -- I think</p> <p>3 it's by Senator Ballinger. So I think he might have</p> <p>4 supported the map if I remember correctly.</p> <p>5 <b>Q. Okay. But no explicit statements about a</b></p> <p>6 <b>racial motivation from any of those individuals?</b></p> <p>7 MR. WONG: Objection to form.</p> <p>8 THE DEPONENT: Sorry. There's one more</p> <p>9 statement that I'm looking for. Nothing specifically</p> <p>10 mentioning race.</p> <p>11 BY MR. BRASCHER:</p> <p>12 <b>Q. All right. Then kind of at the end here,</b></p> <p>13 <b>you talk about that political motivations do not</b></p> <p>14 <b>properly explain the map; is that correct?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Okay. Why does political motivations not</b></p> <p>17 <b>properly explain the map?</b></p> <p>18 A. So, in general, when politics was</p> <p>19 discussed, it was discussed in a very limited -- to</p> <p>20 a very limited extent and generally only in response</p> <p>21 to discussions as a defense against the racial --</p> <p>22 about -- defending against the racial intent. But it</p> <p>23 doesn't come up as something where people are saying</p> <p>24 I'm drawing this map because it's -- you know, it's</p> <p>25 a Republican map. The other thing that is</p>	<p style="text-align: right;">Page 72</p> <p>1 splitting counties. Senator Hester says -- is one of</p> <p>2 the senators, for instance, who supports the map,</p> <p>3 but says: No matter how the maps look, there's no</p> <p>4 way to draw a map that we're not going to have four</p> <p>5 Republican congressman. To say that you're</p> <p>6 gerrymandering is a joke. And so then he goes on to</p> <p>7 say that he -- that splitting -- in his map,</p> <p>8 splitting Pulaski County wasn't the intent, but it's</p> <p>9 just the icing on the cake.</p> <p>10 Senator Clark said that he did not use</p> <p>11 partisan data, so it was a thing when -- he was</p> <p>12 trying not to use partisan data for drawing his</p> <p>13 proposal. Senator Rapert disagreed that the maps</p> <p>14 were motivated by partisanship in his deposition.</p> <p>15 So, again, there were indications that people were</p> <p>16 saying. Representative Pilkington: We actually could</p> <p>17 have made this -- these districts redder, but</p> <p>18 didn't. So, again, they are pushing back against</p> <p>19 that idea on the record as well.</p> <p>20 MR. BRASCHER: All right. I'm going to take</p> <p>21 one more break to see if I've got anything else and</p> <p>22 then we'll come back in a few minutes. Thank you,</p> <p>23 Dr. Burch.</p> <p>24 THE REPORTER We are off the record, 12:19</p> <p>25 p.m.</p>
<p style="text-align: right;">Page 71</p> <p>1 interesting about -- that people generally seem to</p> <p>2 accept and agree is that it's not hard to draw for</p> <p>3 Republican districts in Arkansas. And so that in and</p> <p>4 of itself doesn't explain the need to split</p> <p>5 counties.</p> <p>6 <b>Q. So just because legislator -- sorry, I'm</b></p> <p>7 <b>going to restate the question. If legislators aren't</b></p> <p>8 <b>necessarily mentioning political party as a reason,</b></p> <p>9 <b>is it still possible that it could be a reason even</b></p> <p>10 <b>if they don't talk about it on the record?</b></p> <p>11 MR. WONG: Objection to form.</p> <p>12 THE DEPONENT: There are also some</p> <p>13 indications on the map that people were -- who</p> <p>14 supported the map said they weren't supporting the</p> <p>15 map for partisan reasons. So on Page 52, I have some</p> <p>16 of these examples. Senator Mark Johnson first</p> <p>17 speculates that this is about politics. But then --</p> <p>18 and he talks about redistricting is a political</p> <p>19 thing, but he also is one of the people who says</p> <p>20 that you can basically draw four congressional</p> <p>21 districts and still draw a Republican map.</p> <p>22 So those -- so his -- even his contradict</p> <p>23 -- even his statement that this is about politics is</p> <p>24 contradicted by his belief that you can actually</p> <p>25 accomplish the goals of the legislature without</p>	<p style="text-align: right;">Page 73</p> <p>1 (WHEREUPON, a recess was taken.)</p> <p>2 THE REPORTER We are on the record, 12:25</p> <p>3 p.m.</p> <p>4 MR. BRASCHER: Dr. Burch, thank you very</p> <p>5 much for your time today. That is all the questions</p> <p>6 that I have.</p> <p>7 MR. WONG: Okay. Justin, I do have a few</p> <p>8 questions for Dr. Burch. Can we take just like 15,</p> <p>9 20 minutes just so I can pare these things down and</p> <p>10 we can get out of here sooner?</p> <p>11 MR. BRASCHER: Not a problem.</p> <p>12 THE REPORTER We are going off the record,</p> <p>13 12:25 p.m.</p> <p>14 (WHEREUPON, a recess was taken.)</p> <p>15 THE REPORTER We're back on the record,</p> <p>16 12:43 p.m.</p> <p>17 MR. WONG: Thank you.</p> <p>18 EXAMINATION</p> <p>19 BY MR. WONG:</p> <p>20 <b>Q. So, Dr. Burch, I have a few questions for</b></p> <p>21 <b>you. So in the work that you did in writing your</b></p> <p>22 <b>report, that wasn't focused on you serving as a</b></p> <p>23 <b>legal expert about how the court should use the</b></p> <p>24 <b>Arlington Heights factors; is that correct?</b></p> <p>25 A. That's right.</p>

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74 to 77

<p style="text-align: right;">Page 74</p> <p>1 Q. And you were asked some questions by Mr. 2 Brascher about your expertise and how you would 3 define it; is that right? 4 A. Yes. I believe that's how he asked it. 5 Q. And is it your understanding that it's up 6 to the court to determine how you're qualified as an 7 expert? 8 A. Yes. 9 Q. Was the focus of your report to analyze 10 the legislative process and legislative record in 11 this case? 12 A. Yes. In this -- in the process in the 13 record by which the bills were enacted. 14 Q. And in doing that analysis of the 15 legislative process and legislative record, were you 16 using the Arlington Heights factors that you cite on 17 Page 4 of your report as a framework for categories 18 of evidence that the court might be interested in? 19 A. Yes. 20 Q. Now, in terms of your expertise, you -- so 21 just really briefly summarize your academic 22 expertise. 23 A. Yes. So my academic expertise is in, like 24 I said at the very beginning, in the field of 25 political behavior and with a focus on political</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. WONG: Sure. 2 BY MR. WONG: 3 Q. Is it fair to say you weren't asked to 4 filter your analysis of the legislative process in 5 this case through a reading of the Alexander Supreme 6 Court case and how it affects the legal framework 7 for redistricting challenges? 8 A. That's right. 9 Q. You were asked some questions by Mr. 10 Brascher of your conclusions regarding the 11 legislative process -- your analysis of the 12 legislative process in this case. Do you remember 13 that? 14 A. Yes. 15 Q. And is it fair to say you detail your 16 conclusions on both Pages 4 to 5 and Page 55 of your 17 report? 18 A. Yes. I think there's a summary on Pages 4 19 to 5. I have some conclusions, again, summarizing on 20 Pages 55 -- yes, there may also be a few summary 21 points as well that I tried to catch up in -- on -- 22 in that summary -- in that conclusion on Page 55. 23 Q. Okay. I want to point you towards Page 55, 24 the first sentence under conclusion. So in your 25 report at Page 55, first sentence, it says: In</p>
<p style="text-align: right;">Page 75</p> <p>1 participation, race and ethnic politics, and race 2 and public policy. And so here I think that the -- 3 my work, especially in race and ethnic politics and 4 race and public policy, are where I most -- well, 5 I'm -- the expertise I'm most relying on. 6 Q. And does -- did that expertise inform your 7 analysis of the legislative process in this case? 8 A. Yes. To the extent that I was thinking 9 about, again, how race was used in this process and 10 how it might come about as well as my evaluations 11 of, again, looking for certain kinds of statements. 12 So, yes. 13 Q. You were asked about some questions about 14 the Alexander Supreme Court case. Do you remember 15 that? 16 A. Yes. 17 Q. And you've read Alexander, right? 18 A. I skimmed it. 19 Q. Okay. It's fair to say you weren't asked 20 to filter your analysis in this case through the 21 lens of what the Alexander Supreme Court case says 22 about challenges to redistricting? 23 A. That's right. 24 THE REPORTER Mr. Wong, it cut out. Will 25 you please repeat your question?</p>	<p style="text-align: right;">Page 77</p> <p>1 conclusion, my analysis of the legislative record 2 supports the importance of racial motivations to the 3 legislature's adoption of HB1982, SB743; is that 4 correct? 5 A. Yes. That's what I wrote. 6 Q. Now, to clarify your conclusion, your 7 conclusion is not that the court need conclude in 8 this case if the legislature was motivated by racial 9 considerations; is that right? 10 A. That's right. 11 Q. You're not trying to make the ultimate 12 legal determination for the court; is that fair? 13 A. That's right. I'm not. 14 Q. Is it fair to say that your conclusion is 15 a conclusion about what the evidence in your 16 analysis of the record would support in terms of an 17 inference regarding motivations of the legislature? 18 A. Yes. That's fair. 19 Q. Mr. Brascher asked you some questions 20 about the general definition of tradition -- certain 21 traditional redistricting principles. You remember 22 that? 23 A. Yes. 24 Q. He asked you some questions about core 25 retention and compactness.</p>

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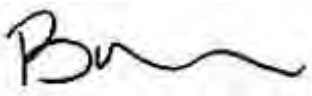
78 to 81

<p style="text-align: right;">Page 78</p> <p>1 A. I remember that.</p> <p>2 Q. Now, you're not a demographer or a</p> <p>3 cartographer, correct?</p> <p>4 A. No.</p> <p>5 Q. And you weren't asked to opine any general</p> <p>6 consensus around what is considered a traditional</p> <p>7 redistricting principle or not nationwide, right?</p> <p>8 A. That's right.</p> <p>9 Q. You weren't asked to define traditional</p> <p>10 redistricting principles; is that correct?</p> <p>11 A. That's right.</p> <p>12 Q. And you weren't asked to determine whether</p> <p>13 core retention is a generally accepted redistricting</p> <p>14 principle; is that right?</p> <p>15 A. That's right.</p> <p>16 Q. And you also weren't asked to determine</p> <p>17 whether compactness is a generally accepted</p> <p>18 redistricting principle; is that right?</p> <p>19 A. That's right.</p> <p>20 Q. Is it fair to say that your analysis and</p> <p>21 your report was focused on examining the principles</p> <p>22 that were discussed in the Arkansas General Assembly</p> <p>23 during the 2021 redistricting process?</p> <p>24 A. Yes. That's fair to say.</p> <p>25 Q. And is it also fair to say that core</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I don't recall any statements like that.</p> <p>2 Q. And so certainly then -- does that also</p> <p>3 mean that you didn't hear any legislator say</p> <p>4 publicly that partisan data was being used to draw</p> <p>5 HB1982 and SB743?</p> <p>6 A. I don't recall them saying anything like</p> <p>7 that.</p> <p>8 Q. Did you -- is it fair to say you did not</p> <p>9 come across any public statements by legislators</p> <p>10 that said we are trying to draw congressional</p> <p>11 redistricting maps with a specific form of political</p> <p>12 data?</p> <p>13 A. No. I didn't come across that.</p> <p>14 Q. You didn't come -- did you come across any</p> <p>15 indication in the public record that supporters of</p> <p>16 HB1982 or SB743 were proposing -- let me, actually</p> <p>17 withdraw that question.</p> <p>18 Is it fair to say you did not come across</p> <p>19 any public statements of legislators that said that</p> <p>20 they were trying to achieve a certain political tilt</p> <p>21 with the maps that they were proposing during the</p> <p>22 redistricting process?</p> <p>23 A. I don't recall any statements like that.</p> <p>24 Q. And so does that also include that you did</p> <p>25 not come across any public statements of legislators</p>
<p style="text-align: right;">Page 79</p> <p>1 retention was not a principle that was discussed</p> <p>2 with any frequency in that process?</p> <p>3 A. That's fair to say.</p> <p>4 Q. You were also asked some questions about</p> <p>5 Lori Bowen's deposition and your review of the</p> <p>6 transcripts of that deposition. Do you remember</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. And specifically you were asked some</p> <p>10 questions about the availability of racial data</p> <p>11 during the redistricting process?</p> <p>12 A. That's right, yes.</p> <p>13 Q. Now, did you also review Michelle</p> <p>14 Davenport, her deposition?</p> <p>15 A. Yes.</p> <p>16 Q. And did Michelle Davenport's deposition --</p> <p>17 from your review, did it generally corroborate what</p> <p>18 Ms. Bowen said about the availability of racial data</p> <p>19 during the redistricting process?</p> <p>20 A. Yes.</p> <p>21 Q. Dr. Burch, is it fair to say that you did</p> <p>22 not come across any statements from legislators in</p> <p>23 the public record where they said that they were</p> <p>24 using partisan data to draw the maps that were</p> <p>25 proposed during the 2021 redistricting process?</p>	<p style="text-align: right;">Page 81</p> <p>1 claiming that they were trying to achieve a specific</p> <p>2 political tilt in favor of one party or the other</p> <p>3 with regard to advancing HB1982 and SB743?</p> <p>4 A. I don't recall any specific statements</p> <p>5 like that, no.</p> <p>6 MR. WONG: I don't have any further</p> <p>7 questions. Thank you so much.</p> <p>8 MR. BRASCHER: Nothing from me.</p> <p>9 THE REPORTER Okay. Mr. Brascher, would you</p> <p>10 like to order the original?</p> <p>11 MR. BRASCHER: Just the e-tran.</p> <p>12 THE REPORTER E-tran, okay. Mr. Wong, would</p> <p>13 you like to order a copy?</p> <p>14 MR. WONG: Yes, please.</p> <p>15 THE REPORTER Thank you. Ms. --</p> <p>16 MR. BRASCHER: And -- I'm sorry. Really</p> <p>17 quick, Ms. Douglas, do -- by -- sorry. When would we</p> <p>18 have that copy? I'm trying to figure if I need to</p> <p>19 order a rough draft or not.</p> <p>20 THE REPORTER When do you need it by?</p> <p>21 MR. BRASCHER: Probably next week.</p> <p>22 THE REPORTER Next week. Let's see, today's</p> <p>23 Tuesday. So next Tuesday at 5:00 p.m.?</p> <p>24 MR. BRASCHER: Yeah.</p> <p>25 THE REPORTER Okay. Thank you. I'll make a</p>

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82 to 85

<p style="text-align: right;">Page 82</p> <p>1 note. And --</p> <p>2 MR. BRASCHER: Thank you very much. I did</p> <p>3 not mean to interrupt.</p> <p>4 THE REPORTER No problem. Ms. Silverstein,</p> <p>5 did you want to order a copy?</p> <p>6 MS. SILVERSTEIN: No, I think it's fine. I</p> <p>7 can just get the one from Joe.</p> <p>8 THE REPORTER Perfect, thank you. And am I</p> <p>9 missing anyone else that needs a copy? Ms. Aden? All</p> <p>10 right. So we are off the record 12:54 p.m.</p> <p>11 (WHEREUPON, the deposition of TRACI BURCH,</p> <p>12 PH.D. concluded at 12:54 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 84</p> <p style="text-align: center;">CORRECTION SHEET</p> <p>1 Deposition of: Traci Burch, PhD Date: 10/01/24</p> <p>2 Regarding: Christian Ministerial vs Thurston et al</p> <p>3 Reporter: Douglas / Atiga</p> <p>4</p> <p>5</p> <p>6 Please make all corrections, changes or</p> <p>7 clarifications to your testimony on this sheet,</p> <p>8 showing page and line number. If there are no</p> <p>9 changes, write "none" across the page. Sign this</p> <p>10 sheet and the line provided.</p> <p>11 Page Line Reason for Change</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Signature: _____</p> <p>25 Traci Burch, PhD</p>
<p style="text-align: right;">Page 83</p> <p style="text-align: center;">CERTIFICATE</p> <p>1</p> <p>2</p> <p>3 I, Brittany Douglas, do hereby certify that I</p> <p>4 reported all proceedings adduced in the foregoing</p> <p>5 matter and that the foregoing transcript pages</p> <p>6 constitutes a full, true and accurate record of said</p> <p>7 proceedings to the best of my ability.</p> <p>8</p> <p>9 I further certify that I am neither related to</p> <p>10 counsel or any party to the proceedings nor have any</p> <p>11 interest in the outcome of the proceedings.</p> <p>12</p> <p>13 IN WITNESS HEREOF, I have hereunto set my hand</p> <p>14 this 8th day of October, 2024.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 </p> <p>21</p> <p>22</p> <p>23 Brittany Douglas</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 85</p> <p style="text-align: center;">DECLARATION</p> <p>1</p> <p>2 Deposition of: Traci Burch PhD Date: 10/01/2024</p> <p>3 Regarding: THE CHRISTIAN MINISTERIAL ALLIANCE vs JOHN THURSTON</p> <p>4 Reporter: Brittany Douglas</p> <p>5</p> <p>6</p> <p>7 I declare under penalty of perjury the following to be</p> <p>8 true:</p> <p>9</p> <p>10 I have read my deposition and the same is true and</p> <p>11 accurate save and except for any corrections as made</p> <p>12 by me on the Correction Sheet herein.</p> <p>13</p> <p>14 Signed at _____,</p> <p>15 on the _____ day of _____, 20____.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Signature: _____</p> <p>25 Traci Burch PhD</p>

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