

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

JAMES THOMAS, et al.,

*Plaintiffs,*

vs.

JOHN H. MERRILL, in his official  
capacity as Secretary of State of  
Alabama, et al.,

*Defendants.*

Case No.: 2:21-cv-1531-AMM

**PLAINTIFFS' OPPOSED MOTION FOR RECUSAL**

Plaintiffs respectfully seek the recusal of Judge Maze from this action under 28 U.S.C. §§ 455(a) and (b)(1). They do so based on his prior knowledge of material evidentiary facts likely at issue here and the impairment of the appearance of impartiality. Both arise from the fact that until 2019, while working in the Alabama Attorney General's Office, Judge Maze represented Defendant Secretary of State John Merrill in a voting rights action brought by two of the plaintiffs here, Greater Birmingham Ministries ("GBM") and the Alabama State Conference of the NAACP ("Alabama NAACP"). That action was resolved by this Court in 2018, and by the Eleventh Circuit in June 2021, with Judge Maze still listed as a counsel of record.

*Greater Birmingham Ministries v. Merrill* ("GBM") challenged Alabama's photo identification ("Photo ID") requirement to vote under the U.S. Constitution

and Section 2 of the Voting Rights Act (“VRA”) and, like this action, Secretary Merrill was named as a defendant in his official capacity. As counsel for Secretary Merrill, Judge Maze defended Secretary Merrill’s deposition and deposed the Alabama NAACP under Rule 30(b)(6) and its President, Benard Simelton, individually under Rule 30(b)(1). During these depositions, Judge Maze gained knowledge of evidentiary facts about the membership of the Alabama NAACP, which is relevant to potentially dispositive issues like standing. GBM’s and the Alabama NAACP’s standing were actively litigated in *GBM* and will likely be disputed in this case. Indeed, Secretary Merrill has repeatedly contested the standing of GBM, the Alabama NAACP, and other civil rights organizations in recent voting-related cases. Judge Maze also deposed experts and attended depositions regarding voter turnout by race, analysis of racial polarization in voting, and how Alabama’s historical pattern of discrimination manifests in its voting policies today. All of these inform legal issues the Court will be called upon to decide in this case.

Judge Maze’s deposition of Mr. Simelton also involved tense exchanges about Mr. Simelton’s and the Alabama NAACP’s views of whether Secretary Merrill and those defending him harbored racial animus. Judge Maze also deposed Plaintiffs’ expert, asking him about Alabama’s racial history and its effect on current voting policies. These sensitive issues of race and discrimination in Alabama’s recent voting-related policies are also present in the instant case involving the same parties.

Dr. M.V. “Trey” Hood III is a material witness in this case given his role in analyzing racial polarization in voting in certain areas of Alabama for state legislative redistricting purposes. Dr. Hood worked directly with Judge Maze as one of Secretary Merrill’s experts in *GBM*, and his work there may overlap with issues on which he will be questioned in this action. Plaintiffs’ counsel has also been informed that Dr. Hood will serve as an expert on behalf of Secretary Merrill in the related action of *Milligan v. Merrill*, No. 2:21-cv-01530 (N.D. Ala.), and, therefore, Plaintiffs reasonably suspect that Dr. Hood may also serve as an expert in this case. Because Dr. Hood will serve as a fact and/or expert witness here, Judge Maze will be called upon to make judgements about the credibility, expertise, and analysis of an expert whom he and his colleagues recently worked closely with on similar issues.

Judge Maze also authored an amicus brief on behalf of the State’s then-Governor in a Supreme Court case concerning Sections 4 and 5 of the VRA, in which he argued that “Alabama’s modern governments have shown a great commitment to minority voting rights.” Amicus Curiae Br. of the Hon. Bob Riley at 11, *Nw. Austin Municipal Utility Dist. No. 1 v. Holder*, No. 08-322 (U.S. Feb. 26, 2009). That proposition will be vigorously contested here. His urging of these positions, along with his role in *GBM*, could cause the reasonable observer to doubt whether Judge Maze can impartially adjudicate a case involving these parties about the role of Alabama’s recent history of racial discrimination on its present voting-related laws.

Recusal is warranted here because of Judge Maze's actual conflict based on his extrajudicial knowledge of evidentiary facts likely to be disputed in this action and serious issues concerning the appearance of partiality.

### STATEMENT OF THE FACTS

In 2016, GBM and the Alabama NAACP challenged Alabama's photo ID law. Secretary of State Merrill was a defendant in that action, as he is here. *See generally Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253 (N.D. Ala. 2018), *aff'd sub nom. Greater Birmingham Ministries v. Sec'y of State for State of Ala.*, 992 F.3d 1299 (11th Cir. 2021), *reh'g en banc denied* 997 F.3d 1363 (11th Cir. 2021). The Alabama Attorney General's office represented Secretary Merrill. Judge Maze, then with the office, was a counsel of record in the case both at the district court level and on appeal. *See* Notices of Appearance, *GBM*, No. 2:15-cv-02193-LSC, ECF No. 138 (N.D. Ala. Jan. 13, 2017); No. 18-10151 (11th Cir. Feb. 5, 2018).

The *GBM* litigation lasted approximately five years and involved preliminary injunction proceedings, extensive discovery, and summary judgment briefing. Beyond the Alabama Photo ID law's constitutionality and compliance with the VRA, the parties contested a number of other issues in the case. The issues contested by Defendant Merrill included the standing of the Alabama NAACP and GBM, *see GBM*, 250 F. Supp. 3d 1238, 1242–43 (N.D. Ala. 2017), whether the plaintiffs could depose Secretary Merrill, *see generally GBM*, 321 F.R.D. 406 (N.D. Ala. 2017), and

discovery issues including work-product and legislative privilege, *see generally* *GBM*, No. 2:15-CV-02193-LSC, 2017 WL 2903197 (N.D. Ala. July 7, 2017).

In defending Secretary Merrill, Judge Maze and co-counsel resisted the plaintiffs' attempts to depose him, with the court allowing the deposition but limiting the time and scope. *GBM*, 321 F.R.D. 406 (N.D. Ala. 2017). Judge Maze defended the deposition, interposing objections to topics he asserted to be beyond the limits set by the Court. Merrill Dep. at 31–34, 38–39, 46–47, 51–52, 62, 100, 112, 117–18, 153, 168–70, 252–58 (Ex. A to Rosborough Decl.) Judge Maze also questioned Secretary Merrill at the deposition, *id.* at 265–86, including about disputes between Secretary Merrill and the Alabama NAACP President, *id.* at 281–83.

Judge Maze deposed the Alabama NAACP as well as its President, Benard Simelton, in *GBM*. In both depositions, he solicited answers concerning the organization's financials and membership. Alabama NAACP Dep. at 10–25, 30–32, 44–47; Simelton Dep. at 94–101, 127–28 (Exs. B and C to Rosborough Decl.). In Mr. Simelton's deposition, Judge Maze pressed him on a number of topics relating to racism in Alabama state government and its voting policies, including whether Attorney General Jeff Sessions harbored racist and white supremacist views, Simelton Dep. at 17–24, 32–33, and whether Defendant Merrill harbors such views, *id.* at 33–35. He also asked Mr. Simelton about whether Alabama's last redistricting process informed or affected his views about discriminatory intent regarding the

Photo ID law. *Id.* at 167–70. The defendants also deposed GBM President Scott Douglas, and although Judge Maze did not attend, that deposition included testimony about GBM’s membership and Mr. Douglas’s views on Alabama’s redistricting. Douglas Dep. at 49–50, 70–77, 153–55 (Ex. D to Rosborough Decl.). As Secretary Merrill’s counsel, Judge Maze likely read that deposition testimony.

Plaintiffs in *GBM* also presented experts, including historian Dr. Morgan Kousser, who Judge Maze deposed, and political scientist Dr. Zoltan Hajnal, whose deposition Judge Maze attended. Dr. Hanjal’s deposition involved questions about county-level voting turnout as linked to racial demographics, Hanjal Dep. at 21–25, 37–39 (Ex. E to Rosborough Decl.), and direct criticisms of defense expert Dr. Hood’s opinions, *id.* at 126–48. Dr. Hood testified on rates of photo ID possession, among other things. *See GBM*, 284 F. Supp. 3d at 1269. Defendants’ counsel in this case has indicated that Dr. Hood performed racial polarization analysis with respect to certain state legislative districts to advise Defendants Pringle and McClendon, making him an important witness in this litigation as well.

In Dr. Kousser’s deposition, Judge Maze questioned him about whether Secretary Merrill harbored discriminatory intent in enforcing the law and whether Dr. Kousser believed that the lawyers who were defending Secretary Merrill, including Judge Maze, harbored such intent as well. Kousser Dep. at 24–27 (Ex. F to Rosborough Decl.). He further questioned Dr. Kousser as to whether “it’s

appropriate or possible to set your view of Alabama in 1901 and 1965 aside when you are judging Alabama in 2011 and 2017,” *id.* at 45, and what Alabama must do “to escape that history to the point where you can set aside 1901, 1965 when you’re judging the intent of present day Alabama,” *id.* at 46–47.

Judge Maze was also counsel of record to former Alabama Governor Riley as an amicus concerning the constitutionality of Sections 5 of the VRA. In that brief, he contended that Congress had “wrongly equated Alabama’s modern government, and its people, with their Jim Crow ancestors,” that Alabama’s governments had shed their “abysmal voting rights record of the 1960’s” and instead “have shown a great commitment to minority voting rights.” Br. Amicus Curiae of the Hon. Bob Riley at 1, 3, 4, 11, *Nw. Austin Municipal Util. Dist. No. 1 v. Holder*, No. 08-322 (U.S. Feb. 26, 2009) (attached as Ex. G to Rosborough Decl.).

## ARGUMENT

Judges must recuse themselves if their “impartiality *might reasonably* be questioned,” 28 U.S.C. § 455(a) (emphasis added), or if they have “personal knowledge of disputed evidentiary facts concerning the proceeding,” 28 U.S.C. § 455(b)(1). A judge must consider the conflict “with regard to the overall case, not just his potential conflict for each separate issue or each stage of the litigation.” *Murray v. Scott*, 253 F.3d 1308, 1310–11 (11th Cir. 2001). “[T]he benefit of the

doubt must be resolved in favor of recusal.” *Id.* at 1310. Because either standard is sufficient to require recusal and both are met, Judge Maze’s recusal is required.

**I. Judge Maze Gained Personal Knowledge of Evidentiary Facts Likely to be Disputed in this Case as Counsel in Prior Litigation that Involved Many of the Same Parties and Overlapping Issues.**

Judges must recuse when they have “personal knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(b)(1). This standard “vitiates the carefully constructed rules of procedure and evidence that ensure deliberate, unbiased fact finding.” *United States v. State of Alabama*, 828 F.2d 1532, 1546 (11th Cir. 1987). When this standard is met, “partiality is conclusively presumed, making recusal mandatory.” *United States v. Scrushy*, 721 F.3d 1288, 1303 (11th Cir. 2013). Based on this standard, a “judge who previously served as counsel of record for a related case may be disqualified.” *Murray*, 253 F.3d at 1312.

In *State of Alabama*, 828 F.2d 1532, the Eleventh Circuit considered whether Judge U.W. Clemon should have disqualified himself in a desegregation case involving Alabama colleges when he participated as a counsel in earlier school desegregation litigation in Alabama but took no part in the portion of the case involving colleges. Judge Clemon’s representation in the prior case was “restricted to the representation of black high school principals in a race discrimination suit.” *Id.* at 1545. Because the claims against higher education institutions took place during a time period relevant to the claims in the case he heard, however, the



Eleventh Circuit held that his “limited involvement . . . left Judge Clemon with knowledge of facts that were in dispute in the instant case,” requiring recusal. *Id.*

Similarly, in *Murray*, the Eleventh Circuit held that Judge De Ment erred by not recusing himself from a case involving issues and parties he had been involved with years before taking the bench. 253 F.3d at 1312. Judge De Ment had been U.S. Attorney during litigation thirty-years prior involving the same company, and the plaintiffs argued that assertions made during that litigation about the nature of the company might become relevant in their case. *Id.* at 1313. Even though Judge De Ment could not “recall the specific facts about his involvement” in the 1970 litigation, the Eleventh Circuit held it was proper to presume knowledge of disputed evidentiary facts that “may potentially become an issue in the present litigation,” requiring recusal even though three decades had passed. *Id.*

The likelihood that Judge Maze has knowledge of disputed evidentiary facts based on his prior role as counsel for a defendant here—on similar legal issues and until earlier this year—is even greater than in those cases. As in *Murray* and *State of Alabama, GBM* involved several factual and legal issues likely to recur in this litigation: (a) facts concerning the membership of the Alabama NAACP and GBM material to whether the organizations have associational standing; (b) the role of race in enacting voting-related policies in the last decade in Alabama; and (c) information about turnout and registration rates by race and county that affect analyses of

whether a district drawn using race as the predominant factor was narrowly tailored to comply with the VRA. Unlike in *Murray* and *State of Alabama*, where mere involvement in the prior case without proclaimed knowledge of the disputed issues was sufficient to require recusal, Judge Maze's active participation in *GBM* gives him direct knowledge of all three of these areas of likely disputed evidentiary facts.

As to standing for the organizations, deposition testimony from the Alabama NAACP and GBM about their memberships will be relevant if Defendants challenge the associational standing of these plaintiffs. Judge Maze took the depositions of the Alabama NAACP and its President himself, giving him direct knowledge of those material evidentiary facts. Alabama and Secretary Merrill have repeatedly challenged the standing of organizational plaintiffs in voting actions and courts have assessed that standing *sua sponte* in others, making it likely that standing may emerge as an issue here as well. *See, e.g., GBM*, 250 F. Supp. 3d 1238, 1242–43 (N.D. Ala. 2017) (ruling on challenge to associational and organizational standing); *Ala. State Conf. of NAACP v. State*, 264 F. Supp. 3d 1280, 1290 (M.D. Ala. 2017) (rejecting Alabama's argument against the Alabama NAACP's associational standing); *see also Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 268–69 (2015) (reversing panel's *sua sponte* rejection of an organization's associational standing in racial gerrymandering action).

As to the role of race and information about turnout and registration rates by race and county, Judge Maze solicited testimony from one of the plaintiffs' experts in *GBM* on this issue and attended a deposition where the latter facts were discussed. His knowledge of likely disputed evidentiary facts significantly exceeds the level of knowledge that required recusal in *Murray* and *State of Alabama*.

## **II. Judge Maze's Impartiality Might Reasonably be Questioned Given his Extensive Role as Counsel to Defendant Merrill and Opposing Plaintiffs in a Recent Voting Case.**

Section 455(a) provides that any federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The purpose of this section "is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 865 (1988). Just the "appearance of impropriety," see *United States v. Davis*, 789 F. App'x 105, 111 (11th Cir. 2019), compels recusal even in the "total absence of any showing of actual bias," *In re Faulkner*, 856 F.2d 716, 721 (5th Cir. 1988).

Recusal is required under this standard whenever "an objective, disinterested, lay observer fully informed about the facts would entertain a significant doubt about the judge's impartiality." *Parker v. Connors Steel Co.*, 855 F.2d 1510, 1524 (11th Cir. 1988). This calls for an objective evaluation, "so that what matters is not the reality of bias or prejudice but its appearance." *Liteky v. United States*, 510 U.S. 540,

548 (1994). The standard focuses on “what is revealed to the parties and the public, as opposed to the existence in fact of any bias or prejudice.” *Hall v. Small Bus. Admin.*, 695 F.2d 175, 178–79 (5th Cir. 1983). If the judge “has any question about the propriety of his sitting in a particular case,” the judge “should exercise his discretion in favor of disqualification.” *Id.*

In *Parker*, the district court judge added a footnote to a summary judgment opinion crediting his law clerk for the clerk’s review of discovery materials and assistance in determining whether issues of material fact existed. 855 F.2d at 1523. The judge also allowed the law clerk to hold a hearing with counsel without the judge present and report the hearing results back to the judge. *Id.* The law clerk was the son of a law firm partner whose firm represented one of the parties in the case, although the father was not himself involved. *Id.* The Eleventh Circuit held that the combination of the law clerk’s father’s membership in the firm representing a party and the judge publicly crediting the clerk with his work on the case and allowing him to hold a hearing “might cast doubt in the public’s mind” on the judge’s impartiality “and at a minimum these facts raise the appearance of impropriety.” *Id.* at 1524. Thus, although the Eleventh Circuit found no actual bias, the possibility that the public could reasonably believe that the judge was not impartial required recusal.

Similarly, in *Preston v. United States*, 923 F.2d 731 (9th Cir. 1991), the district court judge’s former law firm had represented an interested non-party to the

wrongful death action. There, the judge’s prior law firm represented an individual in objecting to a subpoena, during a deposition, and regarding another discovery motion. *Id.* at 734. The Ninth Circuit held that even though the judge himself had never worked on either of the cases and that his prior law firm’s client “was not a named party to the suit,” the focus must be on “whether the relationship between the judge and an interested party was such as to present a risk that the judge’s impartiality in the case at bar might reasonably be questioned by the public.” *Id.* at 734–35. The Ninth Circuit held that this “case generates such a risk” because of a contractual clause that could make the judge’s former firm’s client subject to an indemnification claim if the court had ruled against the government. *Id.* at 735.

Here, Judge Maze’s role in the *GBM* litigation creates a greater risk of the public reasonably carrying significant doubts as to his impartiality than in the *Parker* and *Preston* cases, where courts found recusal to be required. In *Parker* and *Preston*, courts deemed reasonable a perception of partiality despite multiple degrees of separation between the judge and the source of the potential conflict—in the former, his law clerk’s father’s law firm was involved with the case, and in the latter, the judge’s former law firm represented a non-party. In neither case was the judge directly involved. By contrast, Judge Maze played a direct, personal, and pivotal role in a lawsuit representing the lead defendant in the present case and against two of

the plaintiffs in the present case; issues in that lawsuit concerned the role of race in the voting-related policies of the State of Alabama—as this case does.

In *GBM*, Judge Maze participated in aspects of the case that would cause a lay observer to reasonably question whether his impartiality would be compromised by preconceived opinions concerning the parties and facts in this case. As an advocate, Judge Maze pressed NAACP President Simelton about whether he or the Alabama NAACP believed Secretary Merrill harbored racist and white supremacist views, and expressed skepticism that he had a basis for that conclusion. Simelton Dep. at 33–35. Judge Maze was acting as counsel to Secretary Merrill and not necessarily expressing his own views, but these exchanges raise the reasonable perception that he may approach these parties litigating adjacent issues with preconceived notions. Indeed, Judge Maze also questioned Mr. Simelton about Alabama’s last redistricting cycle and his views about the legislature’s intent in that effort as well. *Id.* at 167–70.

While his interactions in litigation-related proceedings in support of Secretary Merrill and against the Alabama NAACP may prove most significant, other aspects of the case are relevant too. One of Secretary Merrill’s experts in *GBM*, Dr. Trey Hood, appears to be a significant witness for Defendants in this case given his analysis of racial polarization in voting in different state legislative districts. Assessing Dr. Hood’s expertise, the validity of his analysis, and his credibility will be relevant in assessing whether race-predominant efforts to comply with the VRA

in drawing districts were narrowly tailored. Having retained Dr. Hood as an expert on related issues involving some of the same parties raises the question of whether observers will believe that Judge Maze can judge his testimony impartially.

Judge Maze also pressed one of Plaintiffs' experts, Dr. Kousser, on whether Alabama's racial discrimination in the political process still bears any relevance to the present intent of state officials. Kousser Dep. at 45–47. Compounding this involvement, Judge Maze authored an amicus brief touting Alabama's "great commitment to minority voting rights" and castigating Congress for "wrongly equat[ing] Alabama's modern government . . . with their Jim Crow ancestors." Br. Amicus Curiae of the Hon. Bob Riley at 11, 1, *Nw. Austin Municipal Util. Dist. No. 1*. Judge Maze's position in that case as well as his persistent questioning of Dr. Kousser adds to a reasonable perception that he may have already formed a view of key facts related to Plaintiffs' claims here.

Judge Maze's direct and significant involvement representing one of the Defendants here and opposing two of the Plaintiffs alone raises significant doubts as to whether the public might reasonably doubt his impartiality.

### CONCLUSION

Because Judge Maze has knowledge of facts likely to be disputed in this case from an extrajudicial source, and because his involvement in *GBM* as counsel creates the appearance of partiality to a reasonable observer, his recusal is required here.

DATED this 8th day of December  
2021.

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\* Admitted *pro hac vice*  
\*\* Motion for admission *pro hac vice*  
pending or to be filed  
^Request for admission to the Northern  
District of Alabama forthcoming

**CERTIFICATE OF SERVICE**

I hereby certify that I have electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record.

This the 8th day of December, 2021.

/s/ Davin Rosborough

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

JAMES THOMAS, et al.,

*Plaintiffs,*

vs.

JOHN H. MERRILL, in his official capacity  
as Secretary of State of Alabama, et al.,

*Defendants.*

Case No.: 2:21-cv-1531-AMM

**DECLARATION OF DAVIN ROSBOROUGH**

My name is Davin Rosborough. I am over the age of 21 and fully competent to make this declaration. Under penalty of perjury, I declare the following based upon my personal knowledge:

1. I am an attorney with the American Civil Liberties Union Foundation and represent Plaintiffs in this action.

2. Attached as Exhibit A is a true and current copy of the Deposition of Secretary of State John Merrill in *Greater Birmingham Ministries v. Merrill*, No. 2:15-cv-02193-LSC (N.D. Ala.) (hereinafter “*GBM*”), dated May 25, 2017.

3. Attached as Exhibit B is a true and correct copy of Deposition Benard Simelton in his capacity as representative of the State Conference of the Alabama NAACP under Federal Rule of Civil Procedure 30(b)(6) in *GBM*, dated May 24, 2017.

4. Attached as Exhibit C is a true and correct copy of Deposition of Benard Simelton in *GBM*, dated March 28, 2016.

5. Attached as Exhibit D is a true and current copy of Deposition of Scott Douglas in *GBM*, dated March 31, 2016.

6. Attached as Exhibit E is a true and correct copy of Deposition of Zoltan Hajnal in *GBM*, dated June 12, 2017.

7. Attached as Exhibit F is a true and correct copy of Deposition of Morgan Kousser in *GBM*, dated June 13, 2017.

8. Attached as Exhibit G is a true and current copy of the Brief Amicus Curiae of the Hon. Bob Riley, filed in *Northwest Austin Municipal Utility District No. 1 v. Holder*, No. 08-322 (U.S. Feb. 26, 2009).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on December 8, 2021

A handwritten signature in black ink, appearing to read "Davin Rosborough", written in a cursive style.

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Davin Rosborough

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

4   C. A. No. 2:15-cv-02193-LSC

5   GREATER BIRMINGHAM MINISTRIES, INC.,  
6   et al.,

7                           Plaintiffs,

8           vs.

9   JOHN MERRILL, in his official  
10 capacity as the Alabama Secretary  
11 of State,

12                           Defendant.

13                           DEPOSITION OF JOHN H. MERRILL

14                           \* \* \* \* \*

15           The Deposition of John H. Merrill  
16 was taken down and reported by Virginia  
17 Denese Barrett, Court Reporter and  
18 Commissioner for the State of Alabama at  
19 Large, on the 25th day of May, 2017,  
20 commencing at approximately 8:30 a.m., at  
21 the Office of the Attorney General, 501  
22 Washington Avenue, Montgomery, Alabama.

23                           \* \* \* \* \*

1                   S T I P U L A T I O N

2                   IT IS STIPULATED AND AGREED by and  
3           between the parties through their  
4           respective counsel, that the deposition of  
5           JOHN MERRILL may be taken before Virginia  
6           Denese Barrett, Commissioner, at the  
7           offices of Attorney General, State of  
8           Alabama, 501 Washington Avenue, Montgomery,  
9           Alabama, on the 25th day of May, 2017.

10                  IT IS FURTHER STIPULATED AND AGREED  
11           that the signature to and the reading of  
12           the deposition by the witness is waived,  
13           the deposition to have the same force and  
14           effect as if full compliance had been had  
15           with all laws and rules of Court relating  
16           to the taking of depositions.

17                  IT IS FURTHER STIPULATED AND AGREED  
18           that it shall not be necessary for any  
19           objections except as to form or leading  
20           questions, and that counsel for the parties  
21           may make objections and assign grounds at  
22           the time of the trial, or at the time said  
23           deposition is offered in evidence, or prior

1     thereto.

2                   IT IS FURTHER STIPULATED AND AGREED  
3     that the notice of filing of the deposition  
4     by the Commissioner is waived.

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5 Ms. Merle 287

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9 Concerned Citizen Who Votes

10 2 - E-Mail from Clay Helms to Ed 43

11 Packard

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13 in Clay County office Friday,

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1 APPEARANCES

2

3 FOR THE PLAINTIFF:

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1                   VIDEOGRAPHER: This begins disc  
2 one in the deposition of John Merrill in  
3 the matter of Greater Birmingham Ministries  
4 versus Alabama Secretary of State John  
5 Merrill. Case number 2:15-cv-02193-LSC.  
6 We're on the record at eight thirty-one on  
7 the 25th day of May, 2017. This deposition  
8 is taking place in Montgomery, Alabama. My  
9 name is John Badgley representing Freedom  
10 Court Reporting. Would counsel identify  
11 yourselves and state whom you represent.

12                   MS. MERLE: Natasha Merle for  
13 Plaintiffs.

14                   MR. ROSS: Deuel Ross for the  
15 Plaintiffs.

16                   MR. MAZE: Corey Maze for the  
17 Secretary of State.

18                   MR. SINCLAIR: Winfield Sinclair  
19 for the Secretary of State.

20                   VIDEOGRAPHER: Would the -- would  
21 the court reporter please swear in the  
22 witness.

23                   JOHN H. MERRILL

1           The Witness, having been first duly  
2       sworn or affirmed to speak the truth, the  
3       whole truth, and nothing but the truth,  
4       testified as follows:

5           COURT REPORTER: Will we have the  
6       usual stipulations?

7           MS. MERLE: Yes.

8           MR. MAZE: Yes, with one caveat.  
9       The Court has entered an order in this case  
10      that limits the topics for the deposition  
11      today. And I know that both sides have it.  
12      If the secretary feels or secretary's  
13      counsel feels that a question goes outside  
14      the scope of those, I'll object to scope  
15      and then we can have a discussion with  
16      counsel as to which of the topics counsel  
17      feels that the question is within. We'll  
18      work it out that way. But otherwise,  
19      normal stipulations all around.

20          MS. MERLE: Okay.

21          MR. ROSS: For clarity, you will  
22      go off the record and have a discussion.

23          MR. MAZE: If that's what you want

1 to do, yeah. That's fine.

2 MR. SINCLAIR: It should be on the  
3 record.

4 MR. MAZE: Well, we're not going  
5 to run the time against you.

6 MR. ROSS: Okay. Okay. We'll see  
7 what happens.

8 MR. MAZE: It may not come up at  
9 all.

10 MR. ROSS: Sure. Try and not make  
11 it come up.

12 EXAMINATION

13 BY MS. MERLE:

14 Q. Good morning, Secretary Merrill.  
15 As I just stated, my name is Natasha Merle,  
16 and I'm an attorney for the Plaintiffs in  
17 this action. And so I just want to ask you  
18 a few questions this morning.

19 A. Certainly.

20 Q. First, could we just start with  
21 the basics? Could you state and spell your  
22 full name for the record?

23 A. It's John Merrill, J-O-H-N

1 M-E-R-R-I-L-L.

2 Q. And what is your work address  
3 currently?

4 A. The work address is 600 Dexter  
5 Avenue, Suite S105, Montgomery, Alabama,  
6 36130.

7 Q. And, Secretary Merrill, have you  
8 ever been deposed before?

9 A. I have.

10 Q. How many times?

11 A. Once.

12 Q. Okay. And when was that?

13 A. Oh, Lord. It was several years  
14 ago. It was in the lawsuit when Daniel  
15 Moore sued the University of Alabama for  
16 his artwork which the University was not  
17 allowing him to promote the way that he  
18 wanted to.

19 Q. Okay. And so it had nothing to  
20 do with voting or elections?

21 A. No.

22 Q. Okay. And have you ever  
23 testified in court before?

1           A.       Not that I can recall under any  
2       circumstance.

3           Q.       Okay. So even though you've had  
4       I guess one experience of being deposed,  
5       I'm going to just go through some basic  
6       instructions. So my job here today is to  
7       go through and ask you questions clearly as  
8       I can and -- but if at any point you don't  
9       understand my question or if you would like  
10      me to rephrase it, you know, please feel  
11      free to ask me and I will do that.

12          A.       Thank you.

13          Q.       One thing to note is that we have  
14      a court reporter. We should avoid speaking  
15      over each other just so that she can have a  
16      full record.

17          A.       Capture everything.

18          Q.       Capture everything. Also, if,  
19      you know, you answer a question and then we  
20      change topics or change questions and you  
21      later remember, you know, a more full  
22      answer or you want to clarify your answer,  
23      please feel free to go back and say you



1 want to clarify or expand upon that, the  
2 answer you gave previously. And we're  
3 going to make this a pretty efficient  
4 deposition today. And so, you know, I  
5 won't take too many breaks. But if you  
6 ever need a break and if there's not a  
7 question pending on the table, feel free to  
8 ask and we will --

9 A. Thank you.

10 Q. -- take breaks. Is there any  
11 reason why you can't give your best  
12 testimony today, Secretary Merrill?

13 A. No, ma'am.

14 Q. Okay. What did you do in order  
15 to prepare for this deposition?

16 A. The only thing that I did was  
17 read the orders that came from the Court  
18 and to interact with counsel on one  
19 occasion that I can recall where we  
20 discussed the --

21 MR. MAZE: I'll -- the secretary  
22 knows that he's not going to discuss the  
23 exact words we talked about.

1 THE WITNESS: No. No. No.

2 MR. MAZE: He's just giving you a  
3 general.

4 A. We discussed my preparation for  
5 this interview slash conversation.

6 Q. And what orders did you refer to?  
7 Are you referring to the orders for this  
8 deposition specifically or --

9 A. Correct.

10 Q. Okay. Did you look at any other  
11 documents to prepare for the deposition?

12 A. Not that I can recall.

13 Q. Okay. And you didn't bring any  
14 documents with you today?

15 A. No, ma'am.

16 Q. Okay. So your current title is  
17 Alabama Secretary of State, correct?

18 A. Yes, ma'am.

19 Q. How long have you been the  
20 Secretary of State?

21 A. Since January the 19th, 2015. So  
22 approximately twenty-seven months and six  
23 days.

1           Q.     You've been counting. Have you  
2 held any other office in the Secretary of  
3 State's office?

4           A.     Not in the office of the  
5 Secretary of State.

6           Q.     Okay. And so what are your  
7 responsibilities currently as the Secretary  
8 of State?

9           A.     Well, the office of the Secretary  
10 of State of Alabama is the oldest office in  
11 the history of Alabama. Alabama had a  
12 Secretary of State before we were a state.  
13 In 1818 Henry Hitchcock was appointed to be  
14 Alabama's first Secretary of State, and he  
15 served ably in this role in 1818 and 1819.  
16 Alabama has had forty-eight individuals who  
17 have served as Alabama's fifty-three  
18 Secretaries of State. I'm the fifty-third  
19 Secretary of State. We became the  
20 twenty-second state admitted to the union  
21 December 14th, 1819. And the Code in the  
22 Constitution of Alabama that were  
23 established to govern our state give more

1     than a thousand assigned duties and  
2     responsibilities that are documented and  
3     recorded in the Code in the Constitution.  
4     And we have chosen to concentrate on three  
5     areas when I was a candidate and since I've  
6     been Secretary. Now, those include but  
7     they're not limited to elections, election  
8     administration which include voter  
9     registration, campaign finance reform.

10         Q.     So what do your -- what does your  
11     day-to-day responsibilities include? What  
12     does your day-to-day responsibilities look  
13     like?

14         A.     Well, my job as the Secretary is  
15     to manage all of the activities of the  
16     office.

17         Q.     Okay.

18         A.     The other two areas were  
19     international adoptions and business  
20     incorporations, license and trademark.

21         Q.     And so I think we're going to --  
22     today is probably going to be on the first  
23     area that you mentioned. I want to ask who

1 reports directly to you. I know you have a  
2 number of staff, but who reports directly  
3 to you?

4 A. We do -- my chief of staff  
5 reports directly to me.

6 Q. And who is that currently?

7 A. His name is David Brewer.

8 Q. Okay.

9 A. And my legal counsel reports  
10 directly to me. His name is Brent Beal?

11 Q. Okay.

12 A. B-E-A-L.

13 Q. Okay. And as Secretary of State,  
14 is part of your responsibilities or does  
15 your job include determining the policies  
16 of your office?

17 A. We establish the policies of the  
18 office.

19 Q. Who is -- who is we?

20 A. Well, that's the royal we.

21 Q. Oh, okay. And so do you have  
22 final decision on these policies?

23 A. Where it's appropriate and where

1     it's necessary, I set the policies based on  
2     what the law allows me to do.

3           Q.     Are any decisions made in your  
4     office without your approval? And if so,  
5     which?

6           A.     I'm sure that there's some  
7     decisions that are made that I'm not aware  
8     of because we have thirty-seven people that  
9     are working in the office. But I'm not  
10    aware of any policy decisions that would be  
11    made without a consultation with me, the  
12    chief of staff and the legal counsel.

13          Q.     Okay. And I believe you just  
14    touched upon this a bit. But does part of  
15    your job entail interpreting state election  
16    laws?

17          A.     My job -- I don't see my job as  
18    interpreting the law. It's to enforce the  
19    law and implement the law as it's been  
20    written by the legislature and as it may  
21    have been interpreted by the Courts.

22          Q.     Okay. So if a law is yet to be  
23    interpreted by the Court and it's going to

1     affect the administration of elections in  
2     Alabama, how do you go about implementing  
3     it?

4           A.     Would you give me a specific  
5     example of what you're talking about?

6           Q.     Yes.    So -- so if the law says  
7     government issued ID's are -- can be used  
8     to vote, how do you determine -- how do you  
9     interpret to determine what is a government  
10    issued ID?

11          A.     Oh, that's easy.   It's clearly  
12    delineated in the Code what's acceptable.

13          Q.     Okay.

14          A.     And so we don't go above or  
15    beyond that, and we don't restrict what's  
16    listed.

17          Q.     Okay.   Okay.   Do you issue  
18    administrative regulations?

19          A.     We have the ability to do that.

20          Q.     Okay.   And in the course of  
21    implementing a law, do you -- who do you  
22    consult with or who is at your disposal to  
23    consult with?

1           A.       Well, that's as broad as it can  
2 possibly be. I --

3           Q.       Do you consult with legal staff?

4           A.       Well, in our office as well as  
5 the attorney general's office or other  
6 counsel, if necessary, in the office of the  
7 governor or in the legislature depending on  
8 what the issue is or what has happened.  
9 And yet, I can't think of any instances  
10 where that has occurred. But I know that  
11 all of those people are available to me  
12 because we would be available to them.

13          Q.       Okay. And so do you -- so do you  
14 work with other agencies in your  
15 role?

16          A.       Yes. Yes, ma'am.

17          Q.       Does that --

18          A.       As often as we can.

19          Q.       Does that include like ALEA?

20          A.       Yes.

21          Q.       Okay. Okay. And so in what ways  
22 do you -- would you work with another  
23 agency?



1           A.       Well, it depends on exactly what  
2       the situation might be. Do you have a  
3       specific example you'd like to introduce to  
4       me to consider?

5           Q.       No. I just want to know what  
6       you've come across in the last twenty-seven  
7       months and maybe six days in office?

8                   MR. MAZE: Object to form. You  
9       can answer.

10          A.       The -- one of the things that we  
11       have done was to establish a relationship  
12       with the Alabama Law Enforcement Agency and  
13       the Office of the Attorney General in the  
14       creation of the Alabama Election Fairness  
15       Project. And that is to help fight voter  
16       fraud. We entered into that agreement in  
17       March of 2015.

18          Q.       March 2015?

19          A.       Uh-huh.

20          Q.       Okay. Do you ever lobby state  
21       legislators?

22                   MR. MAZE: Object to form.

23          A.       We consistently and continually

1 interact with members of the Alabama  
2 Legislature.

3 Q. Okay. How so? How do you  
4 interact with them?

5 A. Telephone calls, personal visits,  
6 conversations. Whatever is necessary to  
7 answer questions that they might have that  
8 are relevant to issues that are before them  
9 that are in relation to our office or other  
10 things that they might contact me about  
11 which are not necessarily related to my  
12 office.

13 Q. Okay. And do you ever contact  
14 them about laws that they're considering?

15 A. Absolutely.

16 Q. Okay.

17 A. When they affect the line and  
18 scope of our office.

19 Q. Okay. As Secretary of State, do  
20 you oversee the -- the work of the Board of  
21 Registrars?

22 A. That's an interesting question.  
23 Because the Code in the constitution give a

1 way that that work is done. Our office,  
2 according to the Code, has been assigned  
3 the responsibility through a position that  
4 has been created in our office, the  
5 supervisor of voter registration, to  
6 provide training for registrars. And that  
7 is a direct interaction that we have with  
8 them.

9 Q. I'm sorry. Did you say -- so the  
10 super -- the voter registration -- the  
11 supervisor of voter registration within  
12 your office provides training to Board of  
13 Registrars?

14 A. That individual is assigned that  
15 task.

16 Q. Who is that?

17 A. That's one of their many tasks.  
18 That individual today is Clay Helms.

19 Q. Okay. So do you or does your  
20 office ever get questions from the Board of  
21 Registrars?

22 A. Yes.

23 Q. And what type of questions would

1     you get from the Board of Registrars?

2           A.     Well, I don't interact with the  
3     registrars on a daily basis, but members of  
4     our elections team do. And that would  
5     include all the members of the elections  
6     team from the person who is the  
7     administrator of the elections, the  
8     supervisor of voter registration and then  
9     all the elections analysts or election  
10    individuals that are currently working in  
11    the office.

12          Q.     And when a question comes into  
13    the office, are those questions ever  
14    elevated to you to answer?

15          A.     From time to time I'm sure that  
16    has happened. I know that we have had  
17    communication with individual registrars as  
18    well as members of our team about questions  
19    that have been raised.

20          Q.     What type of questions have been  
21    elevated to you?

22          A.     The questions that I can recall,  
23    one of those questions has to do with how

1 frequently should we distribute photo ID  
2 cards if they're requested. If they're  
3 requested by multiple -- multiple times by  
4 the same individual, should we give it to  
5 them again if they say they lost it, and  
6 without equivocation we've said yes. I  
7 distinctly remember that question being  
8 asked, and it came from Etowah County.

9 Q. Do you know when that came?

10 A. No.

11 Q. And so it was elevated to you by  
12 your team to answer the question?

13 A. That question may have come  
14 directly to me from --

15 Q. From Etowah?

16 A. -- that individual.

17 Q. Okay.

18 A. Right.

19 Q. And it was an employee in the  
20 registrar's office?

21 A. One of the registrars.

22 Q. Okay.

23 A. I don't -- that office doesn't

1 have employees. They only have three  
2 registrars.

3 Q. Okay. Has any other questions  
4 been elevated to you?

5 A. I'm sure there have been some  
6 questions that have been introduced to me.  
7 I can't think of any of them at the top --  
8 off the top of my head. But I distinctly  
9 remember that one.

10 Q. Okay. Why would a question be  
11 elevated to you?

12 A. I can also tell you that there  
13 have been some questions raised about work  
14 schedules for registrars. That primarily  
15 has come out of Russell County, and -- the  
16 inability of those three registrars to work  
17 together as a team to establish a  
18 consistent work schedule to make sure that  
19 their office is always properly manned and  
20 that they are able to meet the needs of the  
21 constituents there in Russell County. And  
22 so we have had visits to their office to  
23 ensure that they are working the proper

1 schedule when the courthouse is open and  
2 doing those different things.

3 Q. So when are questions elevated to  
4 you if they don't come to you directly?

5 A. The only response that I can  
6 think that would be appropriate would just  
7 say as necessary.

8 Q. Okay.

9 A. But if you had a specific  
10 incidence you wanted to ask me about, I'd  
11 be happy to entertain it. Those are the  
12 things that have been -- I can recall those  
13 easily just because they were so out of the  
14 ordinary.

15 Q. I just wanted to ask a quick  
16 follow-up regarding --

17 A. Sure.

18 Q. -- Russell County. You said  
19 their inability to come up with a work  
20 schedule. How many people? How many  
21 registrars did you say was in the office?

22 A. Three.

23 Q. Three. The three registrars were

1     unable. And what was the difficulty in  
2     them coming up with a schedule?

3           A.     They don't play well together.

4           Q.     Okay. So were there hours when  
5     perhaps the office was not manned? Was  
6     that the problem?

7           A.     Not that I'm aware of.

8           Q.     Okay. So what was the problem?

9           A.     The problem is they do not like  
10    each other and they don't work well  
11    together. So if somebody is supposed to be  
12    fulfilling a certain time line as far as  
13    working on a particular day, then that  
14    individual may be late or may choose to  
15    leave early because for whatever reason,  
16    they think it's a way to interact with  
17    another one to cause that one to have to  
18    stay late or to arrive early. And that's  
19    disappointing, but it's something that we  
20    have met with them about a couple of times.

21          Q.     And so if one of the registrars  
22    came in late or left early, did that impact  
23    the office's ability to do -- to do their



1 responsibilities?

2 A. It should not. Because they -- a  
3 lot of the things that they do are not  
4 timed. So it might cause them to be a  
5 little bit later in completing some of  
6 their tasks, but it should not restrict  
7 them from being able to complete their  
8 tasks.

9 Q. Okay. So if one of the  
10 registrars was supposed to open the office  
11 at eight a.m. but didn't show up until  
12 eight thirty, what would happen?

13 MR. MAZE: Object to form.

14 A. In -- and I assume what would  
15 happen is what would happen in any  
16 incidence. If someone visited an office  
17 that was not open in the courthouse,  
18 because that's where their office is --

19 Q. Okay.

20 A. -- is that individual would go to  
21 another office. And then that information  
22 would be shared with those people once they  
23 arrived.

1           Q.     Okay. Have you ever heard any  
2     complaints about registrar's offices from  
3     voters?

4           A.     Voters.

5                   MR. MAZE: Go ahead.

6           A.     Voters can include elected  
7     officials because those individuals are  
8     voters as well as serving in elective or  
9     appointed capacities. So I can  
10    unequivocally tell you I have heard  
11    complaints about registrars from voters.

12          Q.     All right. That makes sense.  
13    What types of complaints have you heard?

14          A.     They're not as attentive as they  
15    need to be. They're not as professional as  
16    they need to be. They are not given the  
17    kind of direction that they need to  
18    receive. So what --

19          Q.     As in training? I'm sorry. What  
20    do you mean by direction?

21          A.     Well, I -- I don't -- well, what  
22    we -- we are responsible for the  
23    training --

1 Q. Okay.

2 A. -- that's necessary for  
3 registrars.

4 Q. Okay.

5 A. And that's one of the reasons  
6 that in 2016, in February 2016 we began to  
7 move legislation by creating a task force  
8 that would address some of the needs and  
9 some of the holes where we felt there were  
10 concerns about the registrar's office. And  
11 so we met for a year and we advanced  
12 legislation to the Alabama House and Senate  
13 for them to consider on modifying the  
14 relationship between the registrar's office  
15 and the rest of the State of Alabama.

16 Q. And from what registrars did you  
17 -- do you hear complaints from about --  
18 about the -- it not being attentive,  
19 professional?

20 MR. MAZE: Object to scope. I'm  
21 going to ask counsel to identify which of  
22 the particular topics the Court has  
23 allowed this line of questioning about

1 complaints from registrars or complaints  
2 about registrars is coming from, because  
3 I'm not sure that this fits within the  
4 scope of any of the topics.

5 MS. MERLE: Yeah. This goes to  
6 the scope of the Secretary of State  
7 receives complaints from registrars and his  
8 interpretation of the law and what  
9 direction he gives the registrars.

10 MR. MAZE: Okay. That -- those  
11 are two different things. Getting  
12 complaints about them is one thing. Giving  
13 them answers on the laws is another. The  
14 second one I agree.

15 MS. MERLE: Well, I need to set  
16 the foundation for if he's receiving  
17 complaints in order for him to respond to  
18 them.

19 MR. MAZE: My understanding is  
20 whether or not he gives them  
21 interpretations of the law. That's a very  
22 different thing than whether he's getting  
23 complaints about how they do their job.

1 MS. MERLE: Well, I want to know  
2 what -- we're going to take this off the  
3 record in a minute not to burn time. But I  
4 want to know whatever complaints he's  
5 having or that he's hearing from the  
6 registrars. It may not just be about their  
7 professional. I'm asking him what  
8 complaints he received, and then I will  
9 move on to his response, his answers, what  
10 he directs.

11 MR. MAZE: All right. What is  
12 your question to him?

13 MS. MERLE: Actually, could you  
14 read back my last question.

15 (Whereupon, the court  
16 reporter read the requested  
17 portion of the record.)

18 MR. MAZE: And my objection is  
19 that the order says it's the county  
20 registrars routinely direct questions about  
21 the proper interpretation of the photo ID  
22 and associated regulations to the Secretary  
23 of State's office. Your question about

1 just general complaints go well beyond  
2 questions about the proper interpretation  
3 of the law which is the limited scope the  
4 Court said you could get into.

5 MS. MERLE: Okay.

6 MR. MAZE: So if you'll direct the  
7 questions about questions he gets about the  
8 law, then that's fine. I'll withdraw the  
9 objection if you'll limit it that way.

10 MS. MERLE: No. Your objection  
11 can stand and I'll continue. I'm asking  
12 the Secretary what type of -- what type of  
13 -- what he hears. And if he tells me he  
14 hears complaints about the law, then we'll  
15 go down that path.

16 MR. MAZE: Then ask him if he's  
17 heard complaints about the law.

18 Q. Secretary, what type of  
19 complaints have you heard from the  
20 registrars?

21 A. Okay. I do want to share  
22 something with you that I think is  
23 important for you to know. Before I became

1 Secretary of State -- complaints about  
2 registrars have come along probably as long  
3 as we've had registrars in the state. But  
4 one of the things that was brought to my  
5 attention is that no disciplinary action  
6 can be taken with the exception of removal  
7 of the registrar. And the only person that  
8 can remove the registrar is the Secretary  
9 of State. And then there's a due process  
10 for that removal to occur if it's  
11 necessary.

12 Q. In what instance would you remove  
13 a registrar?

14 A. Would you like me to continue?  
15 I'll be happy to answer that because that's  
16 what I was about to do.

17 Q. Thank you.

18 A. Okay. One of the things that was  
19 brought to our attention was that certain  
20 registrars were not doing their job. And  
21 the thing that was so disappointing about  
22 it is because we addressed that with them  
23 by contacting them, but the action

1 continued. Now, as far as we could tell,  
2 in at least nineteen years before I got  
3 there, no registrar had been removed for  
4 cause or any other purpose. One of the  
5 incidences that was reported to us was that  
6 there was an individual in Wilcox County  
7 who was a registrar who was not actually  
8 working but claiming time. So he was  
9 turning in his hours to work, but he was  
10 cutting hair during the day because he was  
11 a barber.

12 Q. When was this?

13 A. This was in 2015.

14 Q. Okay.

15 A. And so we began to build the file  
16 and to interview people and to talk to  
17 people. And we went to see him, and he  
18 resigned. And so he was -- he removed  
19 himself. We didn't have to continue the  
20 investigation or to advance it through the  
21 procedures that are prescribed in the Code.  
22 The other incidence that we had was in  
23 Lawrence County where it was reported to us



1     that one of the people that was acting as a  
2     registrar was actually using State property  
3     to do other things, work with civic clubs  
4     or other groups and organizations on Board  
5     of Registrar time when they were getting  
6     paid but they weren't doing Board of  
7     Registrar work. So those are some of the  
8     complaints that we've received that we  
9     addressed, that we dealt with that those  
10    individuals were removed. She said she was  
11    going to resign. She did not. So we  
12    started procedure, and then she was removed  
13    for cause before the -- the hearing  
14    officer.

15           Q.     Okay. I actually wanted to ask  
16    you a question about I believe an incidence  
17    you just spoke about in Wilcox --

18           A.     Okay.

19           Q.     -- and how it was handled in your  
20    office or how you handled it in your  
21    office. This is my copy. I'm handing  
22    Secretary Merrill Plaintiffs' Exhibit 1,  
23    Bates DEF 00016978.

1 (Whereupon, Plaintiffs'  
2 Exhibit Number 1 was marked  
3 for identification and  
4 attached to the Original  
5 transcript.)

6 MS. MERLE: No. That's my copy.  
7 Sorry.

8 Q. Could you take a minute and  
9 review that letter that was addressed to  
10 you?

11 A. Okay.

12 MR. MAZE: I'm going to object to  
13 scope and ask counsel to point to anywhere  
14 in the order that a complaint from a voter  
15 from Wilcox County is allowed as a topic in  
16 this deposition.

17 MS. MERLE: I hear your objection.  
18 Your objection is for the Court.

19 MR. MAZE: No.

20 MS. MERLE: I'm asking him about  
21 he received this complaint about a  
22 registrar, and I want to know based on his  
23 policies in the office how it was responded

1     -- how he responded to it and how he  
2     interpreted the law and the proper way to  
3     respond to it having to do with the photo  
4     ID card.

5                   MR. MAZE:  And I'm asking counsel  
6     to point to where in the order that this  
7     topic is allowed, because if you can't,  
8     then by Court order you cannot ask  
9     questions about it.  So I need you to point  
10    specifically to where in the order it says  
11    that you can ask the Secretary questions  
12    about a complaint that he received from a  
13    citizen in Wilcox County.  It is not  
14    something that is in the order and, thus,  
15    not something that we have prepared for.

16                   MS. MERLE:  Can we go off the  
17    record?

18                   MR. MAZE:  Yes.

19                   VIDEOGRAPHER:  Going off the  
20    record at nine o'clock.

21                               (Brief recess)

22                   VIDEOGRAPHER:  Back on the record  
23    at nine 0 three.

1           Q.       Secretary Merrill, I believe  
2       you've reviewed the letter that was  
3       addressed to you. Do you recall this  
4       letter was ever -- do you recall if you  
5       ever received this letter?

6           A.       I remember this.

7           Q.       How did you receive this letter?

8           A.       I don't remember that.

9           Q.       Okay. Did you receive it  
10       directly or somebody from your office  
11       brought it to you?

12          A.       I don't remember.

13          Q.       Okay. When you received this  
14       letter, what steps did you take?

15                 MR. MAZE: Object to scope and  
16       object to form. You can answer.

17          A.       That's when I told you that we  
18       started making sure that we had what we  
19       needed to ensure that this person that was  
20       referred to, the barber, who was the  
21       chairman of the Board of Registrars, would  
22       not be able to continue in this role  
23       because he was claiming that he was

1     working. The young lady that's referred to  
2     here is what I was alluding to earlier.  
3     That was his granddaughter who was in the  
4     -- in the position. And it was my  
5     understanding that he was actually paying  
6     her to be in the office. There were a  
7     couple of problems with that. First of  
8     all, even though she was not able to  
9     register voters, she shouldn't even have  
10    had access to the equipment or been behind  
11    the desk because she's not a registrar and  
12    only registrars can do that or be in that  
13    position.

14           Q. Did you or -- did you direct your  
15    office to gather information about why --  
16    you know, what were the basis for them not  
17    issuing this ID to her? Were you able to  
18    gather that information?

19           A. No. Because I viewed that as an  
20    inconvenience for the voter.

21           Q. Okay.

22           A. And I don't know. You know,  
23    there's -- this -- this individual referred

1 to -- and I'll tell you, too. I don't  
2 remember whether or not this was signed or  
3 not or if the name has been redacted. I  
4 don't know. I can tell you that most of  
5 the time when I receive anonymous  
6 communication, then it's in the round file  
7 or file thirteen.

8 Q. Okay.

9 A. And for the unannointed, that  
10 means it goes in the trash.

11 Q. Okay.

12 A. Because if you won't sign your  
13 name to something, that's a problem. Now,  
14 if you give us a way to communicate with  
15 you and you would request that your name  
16 not be introduced, then we wouldn't  
17 introduce your name whether it was for  
18 personal protection or whatever is  
19 necessary. But I don't remember about  
20 this, if that was part of it. But I can  
21 tell you this would be something that would  
22 encourage us to ask another question about  
23 are there other issues. Are there

1 situations there that need attention? And  
2 what we discovered was -- and we had a file  
3 that was that thick on this particular  
4 situation. And that's why that individual  
5 decided that he needed to resign.

6 Q. Okay. I want to hand you what I  
7 believe may be a follow-up from this  
8 document.

9 A. Okay.

10 (Whereupon, Plaintiffs'  
11 Exhibit Number 2 was marked  
12 for identification and  
13 attached to the Original  
14 transcript.)

15 Q. And it's Bates number  
16 DEF 00116025. And you can review the  
17 E-mail. You're not on it. I want to see  
18 if you have seen it. I'm sorry. Can I  
19 just ask you one follow-up question from --  
20 is the -- is the individual who resigned --  
21 do you remember -- do you remember that  
22 individual's name?

23 A. Vann Warren. Vann Warren.

1 Q. Okay.

2 A. Vann Warren.

3 Q. I'm sorry.

4 A. And it was -- that's like the  
5 first name and the last name.

6 Q. Have you -- this is an E-mail  
7 from Clay Helms to Ed Packard. Have you  
8 seen this E-mail?

9 A. No, not that I can recall.

10 Q. Okay. Do you know if you had any  
11 conversations with Clay and Ed about the  
12 registrar's office?

13 A. Absolutely.

14 Q. And from your --

15 A. And when we went over there, we  
16 all went together.

17 Q. To the registrar's office?

18 A. Yes. To meet with the  
19 registrars.

20 Q. And from meeting with them, did  
21 you learn the reason why the ID's were not  
22 being issued?

23 MR. MAZE: Object to form. Object



1 to scope. You can answer.

2 A. We didn't even talk about that.

3 Q. Okay.

4 A. That wasn't relevant to me.

5 Q. Okay.

6 A. What was relevant to me was that  
7 he wasn't doing his job and he was getting  
8 paid for it.

9 Q. Okay.

10 A. That was a problem. He was  
11 stealing from the people of Alabama.

12 Q. Okay. I want to ask -- I'll show  
13 you another document. I'm going to show  
14 you another document, and you are on this  
15 one.

16 (Whereupon, Plaintiffs'  
17 Exhibit Number 3 was marked  
18 for identification and  
19 attached to the Original  
20 transcript.)

21 Q. Sorry.

22 A. No problem.

23 Q. I'm sorry. This -- I've given to

1 Secretary Merrill Defendant's 005759 --  
2 595, Exhibit -- Plaintiffs' Exhibit 3. Do  
3 you remember if you -- do you remember  
4 receiving this E-mail?

5 MR. MAZE: Object to form. Object  
6 to scope. And I'm going to ask counselor  
7 to explain how this fits within the topics  
8 allowed by the Court because there does not  
9 seem to be a question asked by a registrar  
10 to the Secretary of State. So what is the  
11 legal question that is being asked?

12 MS. MERLE: So similar to the last  
13 document, it was brought to the Secretary's  
14 attention that there may have been issues  
15 with the photo ID being issued or not  
16 issued. And I want to inquire into whether  
17 he found out what the basis for those ID's  
18 not being issued and if so, he provided  
19 legal direction or if the registrar was  
20 misinterpreting why he could not issue the  
21 ID's. So I'm going to set the foundation  
22 once again, if he has seen it, if he  
23 remembers what action he took, if he

1 remembers if he took that action because  
2 the registrar was misinterpreting the legal  
3 basis for not issuing ID's.

4 MR. MAZE: And as I said earlier,  
5 if the Secretary has seen it and it relates  
6 to the interpretation of a law, then we'll  
7 allow it. If it does not fit both of  
8 those, then we're going to object and we  
9 will not get into this particular line of  
10 questions. So with that, you can proceed.

11 A. I'd like to share something with  
12 you that I think will help you. And you  
13 may want to continue with your line of  
14 questioning or you may interrupt it based  
15 on what I tell you. But I think it's  
16 something you need to know. I do remember  
17 this. I don't remember the specific  
18 E-mail. I remember having a conversation  
19 about him because he was a good man who was  
20 one of those individuals who probably had  
21 outlived his effectiveness as a registrar  
22 because he was in his mid eighties.

23 Q. Conversation with who?

1 Mr. Sichler?

2 A. Yes. And he's no longer serving  
3 in that role because he retired. Actually,  
4 he was replaced by another appointee. So  
5 he's not serving in that role. But in each  
6 incidence that you've introduced so far --  
7 and this is why I said I want to make sure  
8 that you knew this. I'm not aware of  
9 anybody anywhere in the state that was  
10 denied access to an ID card when they  
11 wanted one that interrupted their ability  
12 to be able to participate in an election or  
13 a referendum or any individual voting  
14 opportunity that they had. Because the  
15 commitment that I made when I became the  
16 Secretary of State of Alabama and the  
17 commitment I hold to today -- and it's one  
18 of the most foundational commitments that I  
19 have made -- is that my goal when I was  
20 campaigning and since I've been the  
21 Secretary is to ensure that each and every  
22 eligible U.S. citizen that's a resident of  
23 our state that's registered to vote has a

1 photo ID, period. And with all of the  
2 things we've done to ensure that, we have  
3 gone to every county every year that I've  
4 been the Secretary with our mobile units.  
5 I've been to all sixty-seven counties  
6 multiple times in the last five years.  
7 This will be the fifth year in a row that  
8 I've done that. The registrar's office is  
9 open each and every day. But we've even  
10 been to people's homes to give them ID's  
11 and we'll continue to do that wherever it's  
12 necessary. I'm not ever going to find out  
13 that someone wants an ID and then not make  
14 sure that they have one. If someone does  
15 not have an ID, I'm going to make sure they  
16 get one as soon as possible.

17 Q. I appreciate that.

18 A. Period.

19 Q. Did you -- you said you  
20 remembered Exhibit 3. You said you  
21 remembered the situation. Do you remember  
22 learning or inquiring into why Mr. Sichler  
23 did not feel comfortable issuing the ID's?

1           A.       No.

2           Q.       Do you know --

3           A.       But I can imagine what would have  
4 happened in this incidence is that Clay,  
5 who is the supervisor of voter  
6 registration, would have contacted him.  
7 And if he didn't feel like he had the  
8 ability to give an ID, then Clay would have  
9 gone to Ashland and made sure that the  
10 training that he had received before was  
11 given again to make sure that he could  
12 produce the ID.

13          Q.       Okay. But you -- so you don't  
14 know the -- I guess --

15          A.       No.

16          Q.       You don't know the basis of why  
17 he didn't feel comfortable?

18          A.       No.

19          Q.       Okay. Who is Will Sutton?

20          A.       He used to be an attorney in our  
21 office.

22          Q.       Okay.

23          A.       But he's in private practice now.

1           Q.       Okay. What is your understanding  
2 of what the positively identify provisions  
3 the photo ID law requires? I'm sorry.  
4 What is your understanding of the  
5 positively identify provision?

6                   MR. MAZE: Object to scope. Just  
7 remind me where in the order that  
8 positively identify provision fits into the  
9 topics for today.

10                  MS. MERLE: I'm going to ask  
11 Secretary Merrill what his understanding is  
12 so that I can see if he has received any  
13 questions and provides any answers  
14 assisting registrars or election officials  
15 interpreting that.

16                  MR. MAZE: Then I think the  
17 question first needs to be have you  
18 received any questions from the Board of  
19 Registrars on how to interpret the  
20 positively identify provision, because if  
21 the answer to that is not yes, then this is  
22 outside the scope. You need to lay that  
23 foundation first to make it relevant to the

1 topics.

2 MS. MERLE: I think I need -- I  
3 need to understand if the Secretary knows  
4 what it is first, and then you can object  
5 to that. But once I know if he knows what  
6 we're talking about and he knows we're  
7 talking about the same thing, then I will  
8 continue down that line of questioning.

9 MR. MAZE: I'll allow that  
10 question.

11 A. If you're talking about someone's  
12 ability to gain an ID and what's necessary  
13 for them to provide the registrar in order  
14 to make sure the registrar knows who that  
15 individual is so they can give them an ID  
16 and then they can vote, then those things  
17 are clearly delineated in the Code as to  
18 what needs to be presented in order for  
19 that individual to be granted an ID.

20 Q. I'm sorry. What is your  
21 understanding of what positively identify  
22 means?

23 A. I don't know any more than what I



1     just shared with you. Are you saying --  
2     are you asking if someone wants an ID and  
3     they go to the office or they go to the  
4     mobile unit or some other location, the  
5     capitol, and they say I'd like to have an  
6     ID card and we say in order for you to  
7     receive the ID card, you need to let us  
8     know who you are. This is what's required  
9     in order for you to be given a card. Is  
10    that what you're asking?

11           Q.     Well, I guess two parts. Has it  
12    come up in that way?

13           A.     Well, I mean, I'm usually  
14    physically not there whenever the questions  
15    are asked. But there are certain  
16    requirements that have to be met in order  
17    for you to receive an ID card. And they're  
18    clearly delineated in the Code.

19           Q.     And the way you described it has  
20    not been raised or you don't remember  
21    answering questions in the way that you  
22    described?

23           A.     No.

1           Q.     Has positively identify been  
2     raised to you in regards to like election  
3     day?

4           A.     Are you talking about when an  
5     individual -- we put provisions in the law  
6     when we passed this law in 2011 that would  
7     allow for an individual who did not have an  
8     ID card or any other kind of positive  
9     identification that is delineated in the  
10    Code to go to a polling site and to be able  
11    to vote without an ID card by being able  
12    to be identified by two election officials.  
13    And those election officials can be elected  
14    officials or poll workers that work in the  
15    polling site that can identify who that  
16    individual is. And then those individuals  
17    at that point are able to vote without  
18    producing the ID.

19          Q.     And so have you received any  
20    questions in that -- regarding that  
21    scenario?

22          A.     Not that I can recall.

23          Q.     Okay.

1           A.       Because people know where we  
2       stand which is follow the law. If you  
3       follow the law, we'll back you a hundred  
4       percent.

5           Q.       And so --

6           A.       If you don't follow the law,  
7       you're on your own.

8           Q.       And so you're unaware of any --  
9       if any election officials have raised  
10      questions about what it means to be -- to  
11      positively identify somebody, to identify  
12      someone?

13          A.       I can't recall any time I -- I'm  
14      not aware of anybody since I've been the  
15      Secretary of State that's been denied the  
16      opportunity to exercise their right to vote  
17      because they didn't have an ID when they  
18      went to the polls on election day.

19          Q.       You've never been contacted by a  
20      voter who said that they were turned away  
21      because they didn't have an ID?

22                   MR. MAZE: Object to scope.

23                   MS. MERLE: I'm following up on

1 the Secretary's answer.

2 MR. MAZE: I didn't instruct him  
3 not to answer. I'm just objecting. You  
4 can answer.

5 A. I'm not aware of any person.  
6 Because, look, this is the bottom line,  
7 counselor. We'll produce an ID for  
8 somebody on election day. We'll produce an  
9 ID for someone on election day, period.

10 Q. How does that work?

11 A. Well, you've got to go get it.

12 Q. Okay.

13 A. Or -- we don't have mobile units  
14 set up at all locations --

15 Q. That's what I --

16 A. -- where the polling sites are.

17 But, you know, you could go to the Board of  
18 Registrar's office.

19 Q. Has anybody ever expressed to you  
20 that they may have a religious objection to  
21 an ID?

22 MR. MAZE: Object to scope and ask  
23 counselor to show me where religious

1 objections to ID's fits within the topics  
2 that the Court has allowed.

3 MS. MERLE: I'm following up on  
4 Secretary Merrill's statement that he has  
5 never met a voter who was denied the  
6 opportunity to vote because they don't have  
7 an ID. And I think counsel knows who I'm  
8 referring to when I'm asking the Secretary  
9 to clarify that statement.

10 MR. MAZE: Okay. If you want to  
11 ask him about that particular individual,  
12 I'll allow it.

13 A. I had a call in -- I think it was  
14 in October of 2016.

15 Q. Okay.

16 A. And I was asked if I could help  
17 with a situation in Limestone County where  
18 an individual wanted to vote but they were  
19 not in possession of a photo ID because  
20 they're Anabaptists and they don't believe  
21 in having their picture taken. So they  
22 didn't have a photo ID. And so I asked,  
23 well, how many folk are in this family that

1 are eligible to vote. And there was a  
2 limited number of people and -- just a  
3 handful. And so the question was do all  
4 these people always vote. Have they voted  
5 before? And it was the understanding of  
6 the individual that called me that yes,  
7 they did. And I said, Well, will they be  
8 able to be identified by the poll worker  
9 since they always vote at the same location  
10 every year and was told that the people who  
11 were contacted who would be in a position  
12 to identify them who would be working at  
13 the poll site that day said, Well -- I'll  
14 make these names up because I don't recall  
15 their names.

16 Q. That's fine.

17 A. But if Johnny comes and brings  
18 his son and daughter and the other two  
19 people in the family, then I will know them  
20 all because they're all together. If they  
21 come individually, I may not know them.  
22 And I said, Okay. Well, let me ask you  
23 this. Would they be amenable to trying to

1 meet these folks prior to the election day.  
2 And they said, Well, we tried to talk to  
3 probate judge and we don't know that this  
4 will work out. And so what we did was I  
5 called the probate judge, Judge Woodruff. I  
6 talked to him. And we set aside a time  
7 when they had their poll worker training  
8 where that family went to the poll worker  
9 training early, met with all the people who  
10 would be working the polls at that location  
11 where they're registered to vote,  
12 introduced themselves, made sure they all  
13 knew who they were. And they all were able  
14 to go and participate on election day  
15 without interruption.

16 Q. The family met with the --

17 A. They did.

18 Q. -- the poll workers at that  
19 meeting?

20 A. They did.

21 Q. Okay. Do you -- and so it's your  
22 understanding that that family or the voter  
23 who contacted you was able to vote in the

1 next election?

2 A. That was what was reported to me.

3 Q. Okay.

4 A. That nobody that was questioning  
5 whether or not they would have a chance to  
6 participate was denied the ability to  
7 participate.

8 Q. And so did you arrange -- I'm  
9 sorry. You said that the poll worker said  
10 if they come as a family I would recognize  
11 them. If they come individually, I may  
12 not?

13 A. Correct.

14 Q. Was that a misunderstanding of  
15 positively identify?

16 MR. MAZE: Object to the form.

17 A. Knowledge. They didn't know who  
18 they were.

19 Q. Okay.

20 A. But they knew who they were after  
21 we had the meeting, and that's the reason  
22 we had the meeting.

23 Q. Okay. And so that was to assist



1     them in positively identifying the voter or  
2     the family?

3           A.     That's correct. That was the  
4     sole purpose for it was to ensure that they  
5     had no questions about who those  
6     individuals were because they had a chance  
7     to meet them and it was less than two weeks  
8     or so before the election occurred on  
9     November the 8th.

10          Q.     Okay. Do you -- do you know if  
11     legislation has been proposed that would  
12     assist individuals with religious  
13     exemptions or religious exceptions to ID?

14          A.     Absolutely. We asked the  
15     Legislature to consider legislation this  
16     year about that, and it did not pass. It  
17     was not advanced through the chambers.

18          Q.     What was the -- what was the  
19     legislation or what would the legislation  
20     have provided?

21          A.     To grant a religious exemption.  
22     And we modeled it after other states that  
23     we knew had these provisions in place

1 including Indiana, Tennessee. I can't  
2 remember the others off the top of my head.  
3 But I know those two because I talked to  
4 Connie Hudson who is the Secretary in  
5 Indiana, Tre Hargett who is Secretary in  
6 Tennessee about the legislation.

7 Q. Okay. Who introduced the  
8 legislation; do you know?

9 MR. MAZE: Object to scope. I  
10 don't think we need to go any further into  
11 the Secretary's proposed legislations.  
12 Those are certainly way outside the topics  
13 that the Court has allowed.

14 MS. MERLE: I just want to know  
15 what legislation he's referring to when he  
16 brought it up.

17 MR. MAZE: Okay. He can answer to  
18 what he's referring to, but beyond that  
19 we're not going any farther into proposed  
20 legislation.

21 A. Kerry Rich was the House member  
22 that we talked to about it. Kerry Rich  
23 carried the legislation in 2011 on voter

1 ID.

2 Q. And he's the --

3 A. And he's the member we went to in  
4 2015 -- 2015 -- 2017 about --

5 Q. 2016?

6 A. No. Right now.

7 Q. Oh, okay.

8 A. This year.

9 Q. Okay. So -- but you said that it  
10 hasn't -- it failed?

11 A. It didn't pass.

12 Q. Okay.

13 A. It didn't even -- I don't even  
14 think it ever got out of committee, to be  
15 honest with you. I can't remember.

16 Q. Okay.

17 A. I mean, we can check it, but --  
18 you can check it with Allison. Look at his  
19 bills and you'll see.

20 Q. I want to turn next to --

21 A. And the Senate sponsor would have  
22 been Greg Albritton. We usually try to  
23 move bills through both chambers at the

1 same time.

2 Q. I want to turn next to the  
3 closure of ALEA offices --

4 A. Uh-huh.

5 Q. -- that issue the driver's  
6 license and the non-driver ID. Do you  
7 remember when you learned of the closures,  
8 that the closures were going to occur? Did  
9 you learn about them before they happened?

10 A. When it was introduced in the  
11 media.

12 Q. In the media you said?

13 A. M-E-D-I-A. I'm sorry. I may not  
14 be enunciating well, articulating my words  
15 for you. But it was in the media when I  
16 learned about it.

17 Q. Okay. Okay. And so when you  
18 learned about it, it was already  
19 established that it was going to happen?

20 A. Correct.

21 Q. Okay. And what was your opinion  
22 regarding the potential effect of those  
23 closures?

1           A.     My opinion really didn't matter  
2     because I couldn't influence the decision  
3     that was going to be made by the governor's  
4     office or the Alabama Law Enforcement  
5     Agency.

6           Q.     Did you have an opinion?

7           A.     I usually form an opinion about a  
8     number of things, but my opinion in that  
9     topic was not important and it's still not  
10    relevant. Would you like to ask a more  
11    specific question?

12          Q.     Did you think that the closures  
13    would have an impact on voters?

14          A.     No.

15          Q.     Why not?

16          A.     Because this is what I knew. The  
17    driver's license office was being closed.  
18    That's an inconvenience for a number of  
19    people in a number of counties in the  
20    state. If my memory serves, there were  
21    thirty-one closures that were going to  
22    occur. The reason I didn't think it would  
23    be a negative impact on the elections

1 process or voters who sought to have an ID  
2 is because every day in every county in the  
3 state of Alabama, all sixty-seven counties,  
4 the Board of Registrar's office is open.  
5 Every day the courthouse is open. Every  
6 day. So an individual that's interested in  
7 obtaining an ID for voting can go to those  
8 offices and have one issued to them for  
9 free. No cost. And we have the mobile  
10 unit that goes to every county in the state  
11 at least one time every year. Well  
12 publicized and promoted so people can go to  
13 a remote location where we have the mobile  
14 unit and receive a photo ID. And if that's  
15 not convenient for them and they're  
16 incapacitated, they cannot leave their  
17 home, we will go to their home and we will  
18 give them an ID in their home. Now, the  
19 inconvenience of not being able to have a  
20 driver's license and the fact that some  
21 individuals would like to use the driver's  
22 licenses or ID component is unfortunate.  
23 But it's not preventing anybody from being

1     able to vote because there's another way to  
2     receive an ID which I just described. But  
3     if the driver's license is the only thing  
4     they want to use, that's a choice they  
5     made. I will also tell you that in the  
6     probate judge offices, in every county in  
7     the state you can get your license renewed  
8     and you can get your license renewed  
9     through the mail without going to one of  
10    those DMV locations that was closed. So  
11    this really only affected first-time  
12    drivers, and first-time drivers are not  
13    eligible to vote if they're getting it for  
14    the very first time at the first age they  
15    can receive it which is sixteen years of  
16    age. You have to be eighteen to vote.

17           Q.     But if it's -- if it's a driver  
18    that's eighteen, then --

19           A.     If it what, now?

20           Q.     But if the driver was eighteen,  
21    they would be eligible to vote?

22           A.     Well, certainly.

23           Q.     Okay.

1           A.       But I doubt very seriously that  
2       they're waiting until they're eighteen to  
3       get their license for the first time.  
4       Another thing that we learned at that time  
5       was that there were three point six million  
6       people in the state that had an Alabama  
7       driver's license. And we got that  
8       information from the Alabama Law  
9       Enforcement Agency driver's license  
10      division.

11                               (Whereupon, Plaintiffs'  
12                               Exhibit Number 4 was marked  
13                               for identification and  
14                               attached to the Original  
15                               transcript.)

16           Q.       Let's talk about that. I'm  
17       showing you Exhibit -- sorry -- Plaintiffs'  
18       Exhibit 4, Bates number DEF 00058365. Do  
19       you recognize this, please?

20           A.       Oh, yeah.

21           Q.       What -- what -- what was the  
22       process for getting this press release out?  
23       Did you write it yourself?



1           A.       No.    Kayla wrote it.

2           Q.       Okay.  And then did you give  
3   final approval on this press release?

4           A.       I did.

5           Q.       Okay.  And I believe this press  
6   release includes the numbers that maybe you  
7   were just referring to?

8           A.       That is correct.

9           Q.       The three point six million?

10          A.       Uh-huh.

11          Q.       Okay.  And you said -- so I'm  
12   going to read to clarify.  It says,  
13   According to the Alabama Law Enforcement  
14   Agency, as of October 1st, 2015, Alabama  
15   has three million five hundred and  
16   fifty-nine thousand two hundred thirty-five  
17   million citizens with a driver's license.  
18   Is that the number you were referring to?

19          A.       That is correct.  And seven  
20   hundred and fifty thousand with a  
21   non-driver ID, which that card has to be  
22   issued by ALEA as well or an ALEA surrogate  
23   like probate office.

1           Q.     Did -- when you included these  
2     numbers -- I'm sorry. Did you -- during  
3     the meeting that you had regard -- with  
4     Governor Bentley, Reverend Jesse Jackson,  
5     State lawmakers, did you --

6           A.     I arranged that meeting.

7           Q.     You arranged that meeting?

8           A.     I did.

9           Q.     Why did you do that?

10          A.     Because -- would you like me to  
11     tell you what happened?

12          Q.     Yes.

13          A.     Okay. Let's see. The meeting  
14     happened on October the 8th. Let's see.  
15     That's correct. Whatever the date was. I  
16     think it was a Tuesday night. It was right  
17     before that. I was in Birmingham for a  
18     dinner, and I was waiting on my wife. And  
19     I was early, which is not common. And I'm  
20     sitting there, and the -- it's the -- I  
21     don't -- I think it's the Sheraton now.  
22     But right there at the BJCC in that hotel  
23     complex. I'm answering text messages. I'm

1     responding to E-mails. I'm on Facebook,  
2     Twitter, LinkedIn. And as I'm sitting  
3     there, I see -- it just caught my  
4     attention. I looked up and I said that  
5     looks likes Jesse Jackson. And he walked  
6     by, and in a minute he walked back by. And  
7     in another minute he walked back by. He  
8     walked back by again. Well, when he went  
9     back by the last time, I got up and I  
10    walked over to see where he went. And he  
11    went over to the check-in. And so I got up  
12    and I walked over there to him. And I  
13    said, Reverend Jackson, I said, I'm John  
14    Merrill. I said, I'm Alabama Secretary of  
15    State. I gave him my card. And I said, I  
16    noticed that you were over here walking  
17    around in the lobby area and then I noticed  
18    that you came to check in. And I assume  
19    that you didn't come here for vacation. I  
20    said, I thought that you might have some  
21    questions about some of the recent events  
22    and activities that have been in the media  
23    as far as our state is concerned, and I

1     thought I would address them to the best of  
2     my ability if you'd like me to. And he  
3     said, Well, this is most fortuitous. He  
4     said, It's almost providential that I would  
5     see you today. And I said, Well, I hope  
6     that you would feel that way. I said, But  
7     I wanted to make sure that your questions  
8     were answered. And so he said, Well, let  
9     me finish checking in and I'll get back  
10    with you in a few minutes if that's okay.  
11    And I said, Yes, sir. That will be fine.  
12    So that was the first of three meeting  
13    engagements that I had with him over the  
14    next two hours that day.

15           Q.     And during your meeting engage --  
16    that's when you organized the -- this  
17    meeting to have with Governor Bentley and  
18    State lawmakers?

19           A.     Well, what I was about to say was  
20    at the second meeting when he called me on  
21    my cell phone and I went to see him, we  
22    were visiting and he -- he asked me some  
23    questions about things as they related to

1     voting. But I -- he was also asking me  
2     questions about Medicaid and us not funding  
3     Medicaid and other things like that. And I  
4     said, Reverend Jackson, I think it would  
5     probably be better for you if you talked to  
6     the governor. I said, Would you like to  
7     meet with the governor. And he said, Well,  
8     I'd love to. Do you think we could make  
9     that happen? And I said, Yes, sir. I  
10    think so. I said, Just let me make a phone  
11    call. So I made a phone call, scheduled  
12    the meeting. I think it was at two o'clock  
13    that next day. And I was asked by the  
14    governor's office how many people would  
15    Reverend Jackson have with him. He told me  
16    that he would have six. If my memory  
17    serves -- because we took I think four or  
18    five people from our office to the meeting,  
19    and I think Reverend Jackson had  
20    twenty-four people that came with him to  
21    the capitol for that meeting.

22           Q.     Who invited the State lawmakers?

23           A.     That must have been Reverend

1 Jackson because it wasn't me.

2 Q. Okay. And where --

3 A. And the ones that were there that  
4 I can recall are Representative John Knight  
5 from Montgomery, Representative Thad  
6 McClammy from Montgomery. There were a  
7 couple of female lawmakers that were from  
8 the Birmingham area. Those are the only  
9 ones that I can remember that were the  
10 lawmakers that were there.

11 Q. Were any of them from the Black  
12 Caucus?

13 A. All of those are from the Black  
14 Caucus.

15 Q. Okay. And so --

16 A. And I served with all of those  
17 folks in the Legislature, too.

18 Q. Okay. So these numbers that are  
19 in the press release, did you share these  
20 numbers during the meeting?

21 A. Oh, yes.

22 Q. Okay. And so these numbers were  
23 discussed during the meeting?

1           A.       Oh, yes.

2           Q.       And was there any discussion or  
3 did --

4           A.       And let me share this with you.  
5 Since that time Reverend Jackson,  
6 neither -- and the conversation that I had  
7 here in this -- I just want you to know  
8 this because it's not that it's exactly  
9 pertinent to what we're talking about here  
10 but just so you will know. I've had this  
11 same conversation, presented these same  
12 figures to Congressman John Lewis in  
13 Washington in his office in February of  
14 last year, Secretary Hillary Clinton in  
15 Birmingham when she was campaigning for the  
16 presidency, Senator Bernie Sanders in  
17 Birmingham when he was here campaigning for  
18 the presidency, obviously Reverend Jackson  
19 and told each and every one of them if they  
20 were ever aware of any incident that ever  
21 was introduced to them formally or  
22 informally that had allegedly occurred in  
23 our state that had to do with someone

1     having a difficult time or not being able  
2     to participate in the electoral process at  
3     the level that they wanted to participate,  
4     I wanted them to call me personally. And I  
5     gave all of them my cell phone number and  
6     made that available to them.

7           Q.     So I guess -- so going to the  
8     press release, it says that --

9           A.     What I was going to say, though,  
10    the last thing about that was since those  
11    meetings with those individuals, Reverend  
12    Jackson, Congressman Lewis, Secretary  
13    Clinton, Senator Sanders and Congresswoman  
14    Terri Sewell, too, at a different time, you  
15    have not heard one of those people say one  
16    thing at any time about Alabama not giving  
17    appropriate and proper attention to our  
18    citizens when it comes to helping them have  
19    an ID to be able to participate in the  
20    electoral process at the level that they  
21    want to. Because if they had said it, then  
22    I would have introduced the data that we  
23    had the conversation and the empirical data



1     that I presented to them to show them that  
2     we don't have an ID problem in Alabama.

3           Q.     Okay. Let's talk about this  
4     empirical data.

5           A.     Okay.

6           Q.     The two point nine million active  
7     and inactive voters and then you also list  
8     the three point five million voters with  
9     driver's license and seven hundred and  
10    fifty thousand with non-driver ID. And, of  
11    course, I'm not saying the exact numbers.

12                  MR. MAZE: That's fine.

13          Q.     When you talked about these  
14    numbers, was it ever discussed that it may  
15    include individuals with an ALEA driver's  
16    -- or with a driver's license who were  
17    under the age of eighteen?

18          A.     Sure.

19          Q.     Okay.

20          A.     I introduced that.

21          Q.     Okay. Was it ever discussed that  
22    it may include people --

23          A.     But you need to know this. And

1     this is not in the press release. I mean,  
2     we have four point eight million people in  
3     Alabama. Okay. And let me say this, too.  
4     You know, the number you referred to as far  
5     as the number of voters active and inactive  
6     in Alabama now has been increased  
7     dramatically since that time. We have been  
8     as high as three point four five million  
9     voters before we exercised the purge which  
10    happened this year. Now we're at three  
11    point two five million voters. But we have  
12    four point eight million people. We have  
13    one point one million of those people who  
14    are between the ages of zero and eighteen  
15    years. So that only leaves a pool if you  
16    subtract that number of three point six  
17    million people, three point seven million  
18    people who are even eligible to vote. And  
19    that's assuming that all of them are  
20    eligible to vote, which they're not.

21           Q.     Yeah.

22           A.     Because some of them are  
23    incarcerated and have been convicted of

1 crimes of moral turpitude. So they're  
2 ineligible. Some of them are not --

3 Q. So did you --

4 A. -- mentally able.

5 Q. -- discuss that when you gave  
6 them these numbers --

7 A. Absolutely.

8 Q. -- that -- is that it may include  
9 people with convictions for moral  
10 turpitude --

11 A. Absolutely.

12 Q. -- but who still has an ID?

13 A. Absolutely.

14 Q. And did you -- did that -- that  
15 it could include non-citizens who would not  
16 be able to vote but could still have ALEA  
17 ID?

18 A. Absolutely.

19 Q. Okay. Did this -- does this  
20 number include people who have both a  
21 driver's license and a non-driver ID?

22 A. You'd have to ask ALEA that.

23 MS. MERLE: Okay. Can we take a

1 break?

2 MR. MAZE: Yes.

3 VIDEOGRAPHER: This ends disc one.

4 Going off the record at nine forty-three.

5 (Brief recess)

6 VIDEOGRAPHER: This begins disc

7 two. Going back on the record at nine

8 fifty-three.

9 Q. Secretary Merrill, continuing  
10 with the ALEA closures and your thoughts on  
11 that. Did you have any conversations with  
12 the governor's office about the closures?

13 A. Obviously we did when we had the  
14 meeting.

15 Q. Uh-huh.

16 A. I can't recall any other  
17 conversations about the closures because  
18 basically what happened was most of the  
19 media inquiries began to come to our office  
20 because the national media seemed to think  
21 that this was directly related to voter  
22 participation. And so we got a lot of the  
23 calls and we did a lot of the interviews

1 about what was going on even though it  
2 didn't affect our office and it was not  
3 related to the functions of our office.

4 Q. Okay. So you did not speak to  
5 the governor's office about the closures?

6 A. Not that I can recall.

7 Q. Do you --

8 A. Especially in the area of why you  
9 did it, because it's not my place to ask  
10 them why they did it. I'm -- I'm not in  
11 the Legislature.

12 Q. Did you --

13 A. And I'm an executive officer like  
14 the governor.

15 Q. Do you know who Spencer Collier  
16 is?

17 A. Oh, yes.

18 Q. Did you have any conversation --  
19 I'm sorry. Who is he?

20 A. Well, at the time --

21 Q. Yes.

22 A. -- he was secretary of law  
23 enforcement. Today he's the chief of

1 police in Selma.

2 Q. Did you have any conversations  
3 about -- with Spencer Collier about the  
4 closures?

5 A. Not that I can recall. Because  
6 the only conversation that I remember  
7 having with anybody was people on our team  
8 when I asked them to get some data for me  
9 which is -- that data has been reflected  
10 here.

11 Q. And --

12 A. And I think Kayla --

13 Q. -- when you say here, you're  
14 referring to Exhibit 4 --

15 A. The press release that you --  
16 yes. I'm sorry.

17 Q. -- for the record.

18 A. Exhibit 4, the press release that  
19 Kayla prepared. And she had relationships  
20 with some of those people because she had  
21 worked with the governor's office before.  
22 So she was able to get that data.

23 Q. Did you have any conversations

1 with the U.S. Department of Transportation  
2 about the closures?

3 A. Not that I can recall.

4 Q. At the end of the press release,  
5 it quotes you in the very last paragraph,  
6 Governor Bentley assured. Do you see that?

7 A. Yes.

8 Q. What concerns were raised  
9 about -- at this meeting?

10 A. Well, as I indicated to you  
11 earlier, the abruptness in which the  
12 decision was made and the way that it was  
13 introduced to the people of the state was a  
14 concern to a number of people. And there  
15 was also --

16 Q. What do you mean by abruptness?

17 A. Well, like you asked me when I  
18 learned of it. I learned of it in the  
19 media. And that's when most  
20 everybody else that I know learned of it  
21 was when it was introduced in the media.

22 Q. You also stated in the second  
23 paragraph that upon presenting the

1 following information to them, all in  
2 attendance agree that Alabama does not have  
3 a photo ID concern. Who is -- who was  
4 all --

5 A. That was everybody that was in  
6 the meeting.

7 Q. Okay.

8 A. And let me share, too, that there  
9 were -- and I don't know why this happened.  
10 I guess because it was not presented very  
11 well. But it seemed to be a natural  
12 dialogue for people to assume and to  
13 continue that this was an issue that  
14 disproportionately affected African  
15 American voters primarily in the Black Belt  
16 of Alabama because of where the closures  
17 occurred. We only have thirteen in some  
18 instances, depending on who's giving the  
19 information, fourteen counties that are  
20 part of the Black Belt which means they're  
21 majority minority counties. And there were  
22 thirty-one counties that were affected. So  
23 obviously that means there were either



1     seventeen or eighteen counties that are  
2     majority white counties that in most  
3     instances are very rural counties that were  
4     disproportionately affected because of the  
5     closures that were announced as well.

6           Q.     Did you think the closures of the  
7     ALEA offices in the Black Belt counties  
8     would impact those voters?

9           A.     I do not for the very reason I  
10    already stated to you earlier which is  
11    because every day in every courthouse in  
12    every county in the state the Board of  
13    Registrar's office is open and will give a  
14    free ID to anyone that requests one.

15          Q.     Were you ever consulted or --  
16    yes. Were you ever consulted about the  
17    locations of the closures?

18                   MR. MAZE: Object to form.

19          A.     Was I consulted by?

20          Q.     Were you consulted before about  
21    where the closures would occur?

22                   MR. MAZE: Object to form and  
23    scope, but I'll let you answer.

1           A.       No.

2           Q.       Okay.

3           A.       As I mentioned to you earlier --  
4       because I didn't know anything about this  
5       until it happened.

6           Q.       Okay. Were there -- did you ever  
7       internal to your office have any  
8       discussions about the impact of the  
9       closures?

10          A.       Not that I can recall.

11          Q.       Okay.

12          A.       Because it wasn't relevant to us  
13       because our goal is to ensure that each and  
14       every eligible U.S. citizen that's a  
15       resident of Alabama that's registered to  
16       vote and has a photo ID. We can give the  
17       photo ID's anytime to anybody that needs  
18       one, and we will. We have and we will.

19          Q.       So you never had a conversation  
20       with people in your office about the impact  
21       of the closures?

22          A.       Not that I can recall.

23          Q.       Or the potential impact of the

1 closures? Okay.

2 A. Because it was not -- it didn't  
3 matter.

4 Q. What do you mean it didn't  
5 matter?

6 A. It doesn't matter because anybody  
7 in the state that wants a photo ID so they  
8 can be registered to vote, I mean, eligible  
9 to vote and participate in the electoral  
10 process can get one simply by requesting  
11 it, and we'll provide it for free. And you  
12 can't get an Alabama driver's license for  
13 free unless you are indigent.

14 (Whereupon, Plaintiffs'  
15 Exhibit Number 5 was marked  
16 for identification and  
17 attached to the Original  
18 transcript.)

19 Q. I'm going to show you an E-mail.  
20 I'm going to show you an E-mail,  
21 Plaintiffs' Exhibit 5. And I want to know  
22 if you've ever seen this E-mail. For the  
23 record, this is Bates DEF 00024477. Have

1     you ever seen this E-mail?

2           A.     Not that I can recall.

3           Q.     Did you ever have any  
4     conversations about David Brewer about your  
5     opinion on the impact of the closures?

6                   MR. MAZE:   Object to form.

7           Q.     You can answer.

8           A.     David and I have conversations  
9     about things all the time, but I'll remind  
10    you again and I'll remind you as often as  
11    you want me to this morning that there's  
12    not going -- and did not then, will not now  
13    and won't ever.   If they closed every  
14    driver's license office in the state today  
15    and you couldn't -- you could never have  
16    another driver's license office in the  
17    state of Alabama, it wouldn't affect  
18    anybody's ability to vote because if they  
19    don't have an ID, they can go to the Board  
20    of Registrar's office in every one of the  
21    sixty-seven counties any day the courthouse  
22    is open and get one for free.   And if they  
23    can't go there, they can go to where the

1 mobile units will be in their local county.  
2 Or if they can't get to the mobile unit  
3 because they don't have transportation or  
4 they don't have the ability to go, we'll go  
5 to their house and we'll give them an ID at  
6 their house.

7 Q. And the voter ID card is used --  
8 is it -- the voter ID card used only for  
9 voting?

10 A. Only for voting --

11 Q. Okay.

12 A. -- period. And it's free.

13 Q. It's free as in the cost of --  
14 there's no cost?

15 A. No cost to the voter. We have to  
16 pay for it, the State does. And we absorb  
17 that cost whenever we issue them.

18 Q. And the voter has to get to the  
19 registrar's office?

20 A. Well, no. We'll go to their  
21 house if we have to.

22 Q. Do you -- who makes the decision  
23 about home visits?

1           A.       Well --

2           Q.       I'm sorry. Is that what you're  
3 referring to? You're referring to home  
4 visits?

5           A.       That's correct.

6           Q.       And who makes the final decision  
7 about when to send a mobile unit to  
8 someone's home?

9           A.       Well, there's a protocol now that  
10 was established about three weeks ago  
11 because we had some people that were trying  
12 to take advantage of the situation because  
13 they've heard me promoting it just like I'm  
14 promoting it to you.

15          Q.       Well, what was the protocol  
16 before three weeks ago and what's the  
17 protocol now?

18          A.       Protocol three weeks ago was you  
19 call the office and they'll come see you.

20          Q.       And what's the protocol now?

21          A.       There's a check list to determine  
22 if you actually need it.

23          Q.       And how do you determine that?

1           A.       May I tell you why we established  
2       the protocol?

3           Q.       Can we find out why -- what does  
4       it mean to -- you said part of the check  
5       was to determine if you need it. What is  
6       -- what is --

7           A.       What does that mean?

8           Q.       Yeah.

9           A.       That means that if you've got  
10       transportation or access to transportation,  
11       then you can probably get somebody to take  
12       you or you can ride public transportation  
13       to get to the Board of Registrar's office to  
14       get a photo ID card.

15          Q.       And who makes that determination?

16          A.       Well, the voter would make that  
17       determination if they've got transportation  
18       or not. Now, if they choose not to be  
19       honest, then we'll accept it. They're --

20          Q.       So is it just the person --

21          A.       They're not able.

22          Q.       -- calls and you take their word  
23       for whether they have transportation or

1 not?

2 A. That's what we were doing before  
3 is you just called and then we would go to  
4 your home and we would do that. But the  
5 reason that we're -- we've got a protocol  
6 established now is because two people from  
7 our office went to Mobile to give somebody  
8 an ID card because they called and said  
9 they didn't have transportation and they  
10 could not go to the Board of Registrar's  
11 office. They could not go to the mobile  
12 unit when it came to their community. And  
13 so we sat a time aside and we went down  
14 there to give them an ID.

15 Q. You said there were two people in  
16 Mobile?

17 A. Well, there were two people in  
18 Mobile --

19 Q. I'm sorry. You said --

20 A. -- that day. But two people from  
21 our office went down there --

22 Q. Do you know --

23 A. -- is what I said.



1           Q.       -- who the person was that needed  
2 the ID?

3           A.       I don't.

4           Q.       Okay.

5           A.       I don't. But I know this. They  
6 went to her house to give her an ID, and  
7 when they get to her house, she had an  
8 NAACP attorney present when they went to  
9 her house. I've got a problem with that.

10          Q.       What's your problem with that?

11          A.       My problem with that is if the  
12 NAACP attorney is at your house, they could  
13 take you to get the ID, period. You didn't  
14 have a transportation problem.

15          Q.       Okay.

16          A.       You had an irritation problem.  
17 That's a problem.

18          Q.       Okay.

19          A.       So we won't be taken advantage of  
20 like that anymore. So there's a protocol  
21 which involves a number of questions that  
22 have to be answered. And then we'll go to  
23 your home if you can't go somewhere.

1           Q.     Do you know -- so that person had  
2     an NAACP attorney present at their house.  
3     Do you know if that person is involved in  
4     litigation?

5           A.     That individual that was there  
6     representing them, the NAACP attorney that  
7     was there that day was there telling them  
8     what questions to answer and not to answer  
9     when they were trying to get the ID.

10          Q.     So you think the attorney should  
11     have been the person to take her to go get  
12     an ID?

13                   MR. MAZE: Object to form.

14                   MS. MERLE: I'm asking -- I'm  
15     sorry.

16          Q.     Is that your --

17          A.     Let me say this.

18          Q.     Yeah.

19          A.     They could have gotten anybody.  
20     They could have got their next door  
21     neighbor. They could have gotten some  
22     kinfolk.

23          Q.     You mean the voter or the --

1           A.       The voter.

2           Q.       Okay.

3           A.       They could have gotten anybody in  
4   the world. But if the NAACP lawyer came to  
5   their house to be present at the time the  
6   photo ID was going to be given, what was  
7   preventing the NAACP lawyer from taking  
8   them to the Board of Registrar's office to  
9   get the ID made that day?

10          Q.       So you -- so you think the  
11   attorney should have taken the voter?

12                   MR. MAZE: Object to form.

13          A.       I don't have to think it. It's a  
14   fact.

15          Q.       Okay.

16          A.       If they could go there and  
17   represent them, they could go there to give  
18   them an ID. You disagree with that?

19          Q.       So you think --

20          A.       Do you disagree with that, or you  
21   choose not to answer the question?

22          Q.       I'm going to continue with my  
23   questioning of you.

1           A.       Okay. Because that's obvious to  
2       anybody that would see that situation.  
3       Anybody, any thinking person.

4           Q.       Uh-huh. Do you know if this  
5       voter had any other -- before this  
6       attorney, if this voter had anybody else  
7       that could have assisted them?

8           A.       I don't because we didn't ask  
9       that question.

10          Q.       Okay.

11          A.       We just went because they called  
12       and said they had a need, which they  
13       obviously did not.

14          Q.       Okay.

15          A.       But we still gave them one --

16          Q.       Okay.

17          A.       -- when we got down there. And  
18       when our team got ready to leave their home  
19       that day, that individual, the voter, the  
20       constituent got in the vehicle with the  
21       NAACP lawyer and left with them.

22          Q.       Who reported all of this to you?

23          A.       The people from the office that

1     went down there.

2           Q.     Okay. And they reported it  
3     directly to you?

4           A.     No. I found out about it by  
5     accident later.

6           Q.     Okay.

7           A.     That's when I set the protocol.

8           Q.     Okay. And so what's the --

9           A.     Because, look, let's be serious.  
10    I've already told you this, and I'll tell  
11    you this until you get tired of me telling  
12    you. Okay. I'm going to do everything  
13    within my power to ensure that each and  
14    every eligible U.S. citizen that's a  
15    resident of Alabama is registered to vote  
16    and has a photo ID.

17          Q.     And you felt this person was  
18    taking advantage of the situation?

19                  MR. MAZE: Counsel, let him --

20          A.     If that means I will go to --

21                  MR. MAZE: -- let him finish his  
22    answer.

23          A.     -- that means I will go to their

1 house to give them an ID, I'll go to their  
2 house to give them an ID. But I'm not  
3 going to let you make fun of me and  
4 embarrass me and take advantage of the  
5 State when you don't need it. We want to  
6 make sure that your needs are met. We're  
7 going to meet your needs, but we're not  
8 going to let anybody take advantage of the  
9 State of Alabama because that's not right.  
10 But we're not going to -- nobody is ever  
11 going to be denied a voter ID.

12 Q. Okay.

13 A. Ever. Not as long as I'm  
14 Secretary of State.

15 Q. Did you do anything in response  
16 to the closures specifically? Did you do  
17 anything specifically in response to the  
18 closures?

19 MR. MAZE: Object to form and  
20 scope. The scope is simply his opinion on  
21 the effect which he's already given. His  
22 actions towards it are outside the scope.

23 A. No, but one of the things that I

1 think you need to know that you may not be  
2 aware of because I don't know when this  
3 information was introduced to you is that  
4 we started the mobile unit visits early in  
5 2015. I can't remember the first one when  
6 it was conducted, but it probably wasn't  
7 any earlier than April of 2015. But well  
8 before any conversation was ever introduced  
9 to us about the closing of the -- of the  
10 DMV units which was in October, we had --

11 Q. The mobile --

12 A. -- we had made multiple visits  
13 with our mobile units prior to that time.

14 Q. Before the closures?

15 A. Yeah. Before it was even  
16 discussed because that was something that I  
17 introduced that I wanted to make sure that  
18 we were doing as a convenience to the  
19 people of Alabama.

20 Q. Did you know or did you have an  
21 opinion about Senator Sanders' bill to  
22 reopen the ALEA offices to the original  
23 hours?

1 MR. MAZE: Can you repeat that?

2 MS. MERLE: Did you have an  
3 opinion -- did Secretary Merrill have an  
4 opinion about Senator Sanders' introduction  
5 of a bill to reopen the ALEA offices to the  
6 original hours in 2016?

7 MR. MAZE: Object to scope.  
8 That's not his opinion on the closures.  
9 That's an opinion on somebody else's  
10 efforts which is outside the scope of what  
11 the Court has allowed.

12 MS. MERLE: Opinion on somebody  
13 else's efforts to reopen their offices that  
14 were closed and if he had an opinion about  
15 it that would reflect his opinion on the  
16 closures in the first place.

17 Q. So did you have an opinion about  
18 Senator Sanders' bill?

19 A. No. Because, like I said, it  
20 didn't affect us or our responsibilities  
21 what we were doing.

22 Q. Okay. I want to turn to your  
23 efforts to contact individual eligible



1 voters regarding the photo ID law.

2 A. Sure.

3 Q. I'm sorry. And I wanted to  
4 follow up. You told -- I'm sorry. Going  
5 back to the ALEA closures. You told me  
6 what the original protocol was. What is  
7 the current protocol?

8 A. Well, there's a system of  
9 questions that have to be asked and  
10 answered before a home visit is made. And  
11 those -- and I don't have them in front of  
12 me. But remembering off the top of my  
13 head, that -- do you have access to a  
14 vehicle. Do you have a relative or a  
15 neighbor that has access to a vehicle? Do  
16 you have access to public transportation?  
17 Have you contacted the local community  
18 group that would be like a church or  
19 service organization like Rotary or  
20 Exchange or Lions Club or NAACP or SCLC or  
21 any group that would be in a position --  
22 RSVP, any group that --

23 Q. SVP?

1           A.       No.    RSVP.   It's like Retired  
2   Senior Service Volunteer Program.   Any  
3   group that would provide transportation for  
4   any purpose that could physically pick you  
5   up and take you to that location at an  
6   appointed time.   Because we will follow up  
7   with that if they say that they have not.  
8   But we will make them show us that they've  
9   attempted to do so because --

10          Q.       How do they show you?

11          A.       Well, I mean, you can lie, but,  
12   you know, you've got to say yes, I did  
13   attempt to do it or I did not.   We have to  
14   take your word for it because we have no  
15   proof.

16          Q.       Okay.   Okay.   So if they said I  
17   don't have access to a vehicle, no public  
18   transportation, you take their word to  
19   that?

20          A.       Sure.   We take their word for it.

21          Q.       And so what if -- what if they're  
22   -- they have a family member that does have  
23   a vehicle but that family member works to

1     -- you know, from let's say seven a.m. to  
2     eight p.m. Would you consider that access  
3     to a vehicle?

4           A.     Do they work seven a.m. to  
5     seven p.m. or eight p.m. or whatever it was  
6     you said seven days a week?

7           Q.     Let's say they work Monday  
8     through Saturday.

9           A.     Depending on where you were  
10    because our mobile units are out on  
11    Sundays, too. So we may have a mobile unit  
12    in your area on a Sunday.

13          Q.     So if they could get to a mobile  
14    unit -- so even -- so these questions  
15    aren't particular to the registrar. If the  
16    person can get to the mobile unit as well?

17          A.     That's correct.

18          Q.     And would you --

19          A.     Because they produce the same  
20    material, the photo ID.

21          Q.     And so the person has to know  
22    whether -- what Sunday the mobile unit is  
23    going to be in their --

1           A.       No. We let them know. I mean,  
2 we promote it. And, you know, there's  
3 another thing that I think you need to make  
4 sure that you're thinking about as we talk  
5 about the ID. We're not ever going to deny  
6 access to any voter any time for an ID.  
7 But if you need an ID -- like the next  
8 election in Alabama is August the 15th, and  
9 it's for the U.S. Senate seat that Senator  
10 Strange is currently in. But it's a  
11 special election. You don't need an ID  
12 today but you need one at least on August  
13 15, if not before. So it's okay that the  
14 mobile unit is not coming to your community  
15 until July if you call us today. It's  
16 okay. You don't need it today. You just  
17 need it for the next election. The next  
18 election is August 15th. So we're going to  
19 make sure you have it by the next election.

20           Q.       And under -- under your  
21 understanding of the law, is it up to local  
22 community groups to provide transportation  
23 so people can get a photo ID?

1           A.       No.

2                   MR. MAZE: Object to the form and  
3 scope.

4           Q.       So now let's move to efforts to  
5 get individual voters, to contact  
6 individual voters.

7                               (Whereupon, Plaintiffs'  
8 Exhibit Number 6 was marked  
9 for identification and  
10 attached to the Original  
11 transcript.)

12          Q.       I'm handing Secretary Merrill  
13 Exhibit 6. If you could review this press  
14 release, please. And for the -- it's  
15 DEF 00000254. Do you recognize this press  
16 release?

17          A.       I do.

18          Q.       Did you write it?

19          A.       No.

20          Q.       Did you give final approval for  
21 it?

22          A.       Of course.

23          Q.       So in the third full paragraph,

1     it states what you stated earlier about  
2     working in the partnership, but then it  
3     states as well the office of the Secretary  
4     of State will contact each eligible voter  
5     of voting age --

6           A.     Correct.

7           Q.     -- in the State to ensure they  
8     are registered to vote as well as see that  
9     they have obtained their government issued  
10    voter -- voter ID. This will occur twice a  
11    year. Did I read that correctly?

12          A.     You read it the way it's printed.

13          Q.     Did -- why did you include this  
14    in the press release?

15          A.     Because that's what we do.

16          Q.     Okay. And so what do you do?

17          A.     Well, let me just tell you  
18    starting how we do what we do.

19          Q.     I'm sorry. Let me make my  
20    question more specific.

21          A.     Okay.

22          Q.     In regards to this paragraph, it  
23    says that you're going to contact each

1 eligible voter of voting age about  
2 registering to vote and obtaining their  
3 government issued ID and that this will  
4 occur twice a year. Have you reached out  
5 to each eligible voter regarding their  
6 government issued photo ID at least -- or  
7 twice a year?

8 A. That's what we've attempted to  
9 do.

10 Q. In what ways have you attempted  
11 to do that?

12 A. Well, we do it a couple ways.  
13 One is that we use a multi-media  
14 presentation that includes advertising and  
15 distribution of resources all across the  
16 state to make sure that people are aware,  
17 that there's an awareness campaign that we  
18 want everyone to be registered to vote and  
19 have an ID.

20 Q. Is that -- that -- is that  
21 ongoing?

22 A. Oh, yeah.

23 Q. So that --

1           A.       Yeah. We started that in '15.

2           Q.       Okay.

3           A.       We did it in '15, '16. We'll do  
4       it again this year. And another way that  
5       we're doing it is through direct contact  
6       with voters through postcards which we  
7       utilize the databases that we have  
8       available to us for that purpose.

9           Q.       And the postcard, is that part of  
10       the Electronic Registration Information  
11       Center, that program that was set up?

12          A.       That's correct.

13          Q.       And does that postcard include  
14       information about -- about the photo ID  
15       requirement?

16          A.       It says if you don't have an ID,  
17       where to contact or who to contact.

18          Q.       That's on the postcard?

19          A.       That's -- that's a part of the  
20       information included on the postcard.

21          Q.       And where does it tell -- I'm  
22       sorry. Where --

23          A.       I can't remember if it's got like



1     our website, a phone number --

2           Q.     Okay.

3           A.     -- like that.

4           Q.     And how often does that postcard  
5     go out?

6           A.     To my knowledge, it would go out  
7     twice a year.

8           Q.     Twice a year?

9           A.     Right.

10          Q.     And who does it go out to?

11          A.     If necessary, because if some --  
12     if -- if there's not a response, then it  
13     might not go out to the second -- to the  
14     same person twice. But I can't -- I can't  
15     really recall what the exact protocol is  
16     for the mailing of that card, but it's done  
17     in a systematic method that's prescribed  
18     and determined by the office in cooperation  
19     with the Electronic Registration  
20     Information Center.

21          Q.     And so does this system identify  
22     voters who do not have an ID?

23          A.     No.

1           Q.     Or registered voters who do not  
2     have an ID?

3           A.     No.   That -- that decision and  
4     that determination is made by the voter.

5           Q.     I'm sorry.   Maybe I --

6           A.     Yeah, because I may not  
7     understand the question.

8           Q.     That's my fault.

9           A.     What I'm saying is if a voter  
10    doesn't have an ID, they know it.

11          Q.     Uh-huh.

12          A.     I may not know it.

13          Q.     Uh-huh.

14          A.     They know it.

15          Q.     Uh-huh.   Is there a way you could  
16    find out?

17          A.     I don't know how I can find that  
18    out without them telling me or showing me.  
19    But I do believe this, that if an  
20    individual wants an ID, they know where to  
21    get one and how to get one.   And part of  
22    that is because of our campaign.   And we  
23    will continue the campaign.

1 Q. I guess my --

2 A. As long as I'm secretary, we're  
3 going to continue the campaign.

4 Q. I guess my question is in this  
5 third paragraph it says, As well as see  
6 that they have obtained their government  
7 issued voter photo ID. But you do not  
8 target people who you believe do not have  
9 an ID?

10 A. I don't know what you mean by  
11 that question. If you mean that we --  
12 well, what do you mean?

13 Q. When you send your postcards out,  
14 do you intend to send them to people who do  
15 not have an ID?

16 A. Well, we use the driver's license  
17 database for the contact. So that way  
18 we're reaching people. If we just used the  
19 voter registration database, you wouldn't  
20 reach people that aren't registered. But  
21 if you use the driver's license database,  
22 those people have an ID. We already know  
23 they have an ID. There may be some people

1     that have an ID that don't have a driver's  
2     license, but I don't know. We're  
3     attempting to reach them through our  
4     multi-media campaign, our marketing  
5     campaign.

6           Q.     Okay. So are you aware that  
7     -- so are you aware that in 2014 the  
8     Secretary of State's office created a no  
9     match list?

10           MR. MAZE: Object to scope. Just  
11     explain to me how the no match list falls  
12     within these topics.

13           MS. MERLE: Because he is speaking  
14     on he does not know how to identify people  
15     who do not have an ID in order to contact  
16     them twice a year specifically. And so I'm  
17     asking if he knows that this may be a  
18     resource or this may have not -- sorry.  
19     There may be a way to go about contacting  
20     people without an ID twice a year. And so  
21     I'm asking him if he's aware of this or --  
22     well, I'll ask a follow-up question.

23           MR. MAZE: All right. He'll -- he

1     can answer.

2           A.     I don't know what you're talking  
3     about with the no match list, but I do know  
4     this. I know that any individual in the  
5     state of Alabama that wants to have an ID  
6     that doesn't have one can receive one at no  
7     cost just by asking for it. And I know  
8     this. Nobody -- it was -- it has not been  
9     reported to me that any individual in the  
10    state of Alabama has attempted to vote in  
11    any election cycle or for any purpose for  
12    referendum or any other initiative since  
13    I've been Secretary of State that has been  
14    denied the ability to participate. Not  
15    one.

16          Q.     I'm sorry.

17          A.     And if there is one that has  
18    been -- that is out there, I just want to  
19    know who they are because if they can't go  
20    to the registrar's office or go to the  
21    mobile unit, then we'll go to their house  
22    to give them an ID.

23          Q.     And so when you say you don't

1 know -- know anybody, you're not including  
2 the people identified in litigation?

3 MR. MAZE: Object to form.

4 A. The people identified in  
5 litigation, are you talking about the  
6 groups that you're representing? Because  
7 that's a group. I didn't know that was an  
8 individual.

9 Q. Oh.

10 A. Is that not -- is that an  
11 individual or is it a group? I thought you  
12 were representing the Birmingham  
13 Ministries.

14 Q. Do you know the Plaintiffs in  
15 this lawsuit?

16 A. I don't know that I've been  
17 introduced to the Plaintiffs in the  
18 lawsuit. It's my understanding you  
19 represent a group.

20 Q. Okay.

21 A. Is that correct?

22 Q. That's fine.

23 A. Can you not tell me who you

1 represent?

2 Q. The Plaintiffs in this lawsuit  
3 include organizations as well as individual  
4 voters who have -- well, I'll leave it at  
5 that, as well as individual voters.

6 A. Well, let me say this about an  
7 individual voter in the state of Alabama.  
8 If there's an individual voter in the state  
9 of Alabama that doesn't have an ID, we'll  
10 go to their house and give them one. So  
11 there's nobody in the state of Alabama  
12 that's going to be denied access to an ID  
13 upon request. No person.

14 Q. I guess to clarify, you said if  
15 there's an individual who has -- in the  
16 state of Alabama who as a registered voter  
17 doesn't have ID, then you will go to their  
18 house and give them ID's. But that doesn't  
19 include if they have an attorney who can  
20 take them to get an ID; is that --

21 A. Oh, well, let's be serious.

22 MR. MAZE: Object to the form.

23 A. I mean, you need to be serious.

1       We're not trying to be funny.

2           Q.       I want to clarify --

3           A.       If you want an ID, you can get  
4       one in Alabama, period.

5           Q.       Okay.

6           A.       Period. And if you want to have  
7       fun and play games, then we'll do whatever  
8       we have to do to make sure you have an ID.  
9       But we're not interested in having fun and  
10      playing games because we're talking about  
11      people's lives and we're talking about  
12      making sure that people can participate in  
13      the electoral process at the level that  
14      they choose to. But what I have discovered  
15      is that there are a number of people who  
16      are more interested in playing games when  
17      they talk about abstract numbers or they  
18      talk about other things unrelated to what  
19      we're talking about, which is making sure  
20      that every U.S. citizen that's a resident  
21      of this state is registered to vote and has  
22      a photo ID, period.

23          Q.       We got a little -- I wanted to go



1 back to the 2014 no match list, and I think  
2 you stated that you weren't sure what I was  
3 referring to. And so I wanted to -- is  
4 that correct?

5 A. I was not Secretary of State at  
6 that time.

7 Q. Okay. Did you -- have you ever  
8 heard that there was a comparison done  
9 between the ALEA databases and the voter  
10 registration system? Have you heard of  
11 that process?

12 MR. MAZE: Object to form and  
13 scope, particularly anything that was done  
14 before he was secretary.

15 MS. MERLE: I'm asking him if he's  
16 aware. And as -- I mean, in regards to  
17 scope, I'm just simply describing what the  
18 2014 no match list is to see if he  
19 understands it in a different way.

20 MR. MAZE: How is that going to  
21 get within the scope of any of these  
22 particular topics? This press release is  
23 about the ERIC --

1 MS. MERLE: We just discussed  
2 this. This goes to whether he could have  
3 -- whether he knows that there's something  
4 in place that would have assisted him in  
5 contacting voters two times a year. That's  
6 all I'm attempting to discuss.

7 MR. MAZE: He can answer if he has  
8 knowledge of it.

9 Q. I'm sorry. So did you -- have  
10 you heard or were you aware that there was  
11 a process by which the ALEA databases were  
12 compared with the voter registration  
13 system?

14 A. Yes. And we have done that.

15 Q. When did you do that?

16 A. In -- in the efforts that we have  
17 communicated to you through these  
18 processes. That's not reflected in this.

19 Q. Okay.

20 A. There's other things that you're  
21 aware of that we have reached out to  
22 registered voters, all the registered  
23 voters in the state. Did that through the

1     purge and direct communication to all the  
2     people with driver's license through the  
3     ERIC mailing. So those -- that's a couple  
4     of the ways that we've done this.

5             Q.     Okay.

6             A.     Whether we're comparing it or  
7     doing it the same way that they did it  
8     before, I can't speak to that.

9             Q.     No. No. And so did you -- okay.  
10     I'm sorry. Can we take a five second --  
11     No. I'm sorry. I want to ask you about  
12     the electronic registration information  
13     system current -- current -- I think you  
14     already may have already answered these  
15     questions. But it's through that program  
16     that you sent out mailings to voters?

17            A.     That's correct.

18            Q.     And how many times have you done  
19     that?

20            A.     A couple that I'm aware of.

21            Q.     Okay.

22            A.     And also through the purge.

23            Q.     Okay. What do you mean through

1 the purge? I'm sorry.

2 A. Where you contact every voter in  
3 the state to determine if they're still  
4 supposed to be an active voter or not  
5 because they haven't chosen to exercise  
6 their right to vote. And we don't want to  
7 eliminate anybody from the voter rolls  
8 unless they passed away or some other thing  
9 has occurred that -- where they shouldn't  
10 be on the rolls anymore.

11 Q. When you send this postcard out  
12 for the purge, the person or the voter has  
13 to respond in some way?

14 A. That's correct. And the  
15 instructions are given.

16 Q. Okay. And then is there any  
17 other information on there about the photo  
18 ID --

19 A. That's --

20 Q. -- requirement?

21 A. To the best of my knowledge, I  
22 remember having a line there that tells  
23 people how to get an ID and the phone

1     number. So it may just have information  
2     about the website or about the phone number  
3     they can call.

4                   MS. MERLE: Okay. Can we take a  
5     five-minute break?

6                   MR. MAZE: Yes.

7                   VIDEOGRAPHER: Going off the  
8     record at ten twenty-nine.

9                                 (Brief recess)

10                   VIDEOGRAPHER: Going back on the  
11    record at ten thirty-eight.

12           Q.     Secretary Merrill, I just wanted  
13    to clarify a couple of things you just  
14    talked about before we move on. Could you  
15    tell me again, the mailing for the purge,  
16    who does that go to?

17           A.     That goes to registered voters

18           Q.     Okay.

19           A.     The purge mailing.

20           Q.     The purge mailing?

21           A.     Yeah. Because we're not going to  
22    eliminate somebody that's not on the voter  
23    list. And so it only goes to people who

1 are on the voter list.

2 Q. So it goes to all registered  
3 voters?

4 A. That's correct.

5 Q. Okay. Because, I mean, correct  
6 me if my -- I'm wrong. I thought my  
7 understanding was that you sent the purge  
8 mailings to individuals who were identified  
9 by ERIC as having moved out of the state.  
10 Is that incorrect?

11 A. No. That's not the purge, now.

12 Q. Okay.

13 A. That -- but you have to  
14 understand there's several different types  
15 of mailings. And one of the mailings that  
16 we do for ERIC is to help identify people  
17 that have moved or people that for whatever  
18 situation their circumstances have changed  
19 and they should not be on the voter rolls  
20 in Alabama. And we have that communication  
21 through ERIC, and there's obviously a cost  
22 involved --

23 Q. Okay.

1           A.       -- with that as well.

2           Q.       And the ERIC system itself as far  
3 as you are aware, that includes people who  
4 have driver's license?

5           A.       The ERIC system does include  
6 people that have driver's license, to my  
7 knowledge.

8           Q.       Does it include people who do not  
9 have driver's license or non-driver ID?

10          A.       People that are -- the primary  
11 tool to use in the ERIC mailing are with  
12 people who have driver's license. That's  
13 the primary tool that's used --

14          Q.       Okay.

15          A.       -- in the states that are member  
16 states.

17          Q.       Okay. And so a mailing --

18          A.       What I'm not sure of is if the  
19 non-driver ID is also used in that.

20          Q.       Okay.

21          A.       It may be. I don't know.

22          Q.       Okay. Okay. So it's driver's  
23 license and maybe non-driver ID, but you're

1 not sure?

2 A. Sure.

3 Q. And so mailings based on the ERIC  
4 system would be going to individuals who  
5 have driver's license?

6 A. We know that. We know that.

7 Q. Okay. Okay. And earlier you  
8 mentioned that your -- correct me if I'm  
9 wrong. I think you mentioned that your  
10 office had conducted an analysis of the  
11 ALEA database and the voter registration  
12 roll. Is that -- did I understand you to  
13 say that correctly?

14 A. I know you mentioned that --

15 Q. Okay.

16 A. -- to me.

17 Q. Okay.

18 A. And that you called it the match  
19 system is what you said. And I know that  
20 we have continued to use that type of  
21 information to ensure that we're doing all  
22 we can to reach people that we need to  
23 reach. But that's why we've gone above and



1     beyond that, too. And I think it's  
2     important to know that, because there's  
3     always the potential to miss somebody when  
4     you're just using one form or the other of  
5     communicating with individuals. And that's  
6     why we've tried to identify multiple  
7     methods of communication in addition to the  
8     postcard mailings or the relationship with  
9     ERIC or the purge. Whatever is involved  
10    we've used multiple methods besides those.

11           Q.     Okay. And so --

12           A.     I'd be happy to talk about that  
13    if you'd like me to.

14           Q.     I have a clarifying question.  
15    You said you used the information in that.  
16    What is that?

17           A.     Well, what -- you said it.

18           Q.     Okay. Okay.

19           A.     So I just repeated.

20           Q.     So you're referring to the  
21    comparison of the ALEA database to the  
22    voter registration roll. And you -- is it  
23    -- am I understanding you to say that you

1       used that information in that?

2           A.       It's not --

3                   MR. MAZE:   Object to form.

4           A.       Yeah.   And it's my understanding  
5       that that's a part of what we do as well as  
6       the other things that we have done.

7           Q.       Okay.   Okay.   I want to move on  
8       now to talk about your knowledge or your  
9       understanding of the possession of photo  
10      ID's by registered voters.   And I'm going  
11      to hand you a pretty lengthy document that  
12      I have tabbed the relevant pages, but feel  
13      free to look at more than what I have  
14      tabbed for you.

15          A.       Okay.

16                               (Whereupon, Plaintiffs'  
17                               Exhibit Number 7 was marked  
18                               for identification and  
19                               attached to the Original  
20                               transcript.)

21          Q.       I'm sorry.   Was -- to ask you  
22      about ERIC one more time.   Was ERIC -- was  
23      Alabama's participation in ERIC done in

1 response to -- as far as you're aware, was  
2 that done in response to --

3 A. That was not done in response to  
4 anything. It was introduced to me in  
5 December of 2014 right after I was elected  
6 to become Alabama's Secretary of State at a  
7 meeting I was at in Santa Monica,  
8 California. And there was some  
9 conversation about ERIC while we were  
10 there, but then President Obama had put  
11 together a team of election experts, and  
12 they issued a report, the Presidential  
13 Election Commission, that -- it was a book  
14 which I read. And I brought home several  
15 copies that I gave to members of our team  
16 to study and to review. And the ERIC  
17 system, the Kansas Interstate Cross Check  
18 system, those things we introduced because  
19 of what was introduced to me at that  
20 meeting and in that publication. And the  
21 mobile app that we've created for the phone  
22 for people to be able to register and the  
23 electronic poll books that we've introduced

1 at polling sites now, all of that came out  
2 of those meetings.

3 Q. And so --

4 A. None of it came because of  
5 anything that occurred in Alabama good or  
6 bad.

7 Q. So it's not your understanding  
8 that it was part of a settlement to  
9 litigation with the DOJ, Department of  
10 Justice?

11 MR. MAZE: Object to the form.

12 A. ERIC -- are you talking about  
13 ERIC?

14 Q. Yes.

15 A. No.

16 Q. So I want to ask you --

17 A. Now, let me tell you this. If it  
18 helped accomplish that goal, that's a good  
19 day. But it wasn't done because it was  
20 introduced. And I -- I didn't have any  
21 knowledge about information that was  
22 contained in lawsuits or any litigation  
23 that was pending and how we might respond

1 to that.

2 Q. Okay.

3 A. And the same thing with the  
4 mobile unit visits. It wasn't done for  
5 that purpose. I mean, we just did it  
6 because I thought it was the right thing to  
7 do and the best way to do it.

8 Q. Okay. I'm handing you Exhibit --  
9 Plaintiffs' Exhibit 7. Like I said, it's a  
10 lengthy document.

11 MS. MERLE: But I've tabbed that  
12 one, Corey.

13 Q. And the -- it's a series of press  
14 clips, and the one we're going to look at  
15 is called John Merrill, no problem making  
16 photo ID's available for voters.

17 MS. MERLE: I'm sorry, Corey, if  
18 you want to -- and I flagged it for  
19 Secretary Merrill. And for the court  
20 reporter, it begins with DEF 00095425. And  
21 the specific article begins on  
22 DEF 00095435. Did I do it?

23 Q. Do you recognize this -- is it an

1 op ed or press release?

2 A. No. This was an op ed that was  
3 distributed to the Birmingham Business  
4 Journal, but I think it was distributed to  
5 other folks as well.

6 Q. Okay.

7 MR. MAZE: And just for the  
8 record, I want to note that this is not the  
9 entirety of the op ed. This -- this  
10 is missing at least the first three  
11 paragraphs.

12 MS. MERLE: Well, I'm sorry. Can  
13 we go off the record for a second?

14 VIDEOGRAPHER: Going off the  
15 record at ten forty-seven.

16 (Brief recess)

17 VIDEOGRAPHER: Going back on the  
18 record at ten fifty.

19 MS. MERLE: I just want to clarify  
20 for the record that off the record defense  
21 -- defense counsel explained that this is  
22 not the op ed in its entirety, that it may  
23 be missing the first three paragraphs. We

1 are going to continue asking questions with  
2 the portions of the op ed that we contain  
3 -- we have which begins with Bates  
4 DEF 95435.

5 Q. Secretary Merrill, do you  
6 recognize this op ed?

7 A. Yes.

8 Q. And did you write this op ed  
9 yourself?

10 A. I'm sure I did not.

11 Q. Okay.

12 A. I'm sure I told Kayla what I  
13 wanted it to have in it, and then she  
14 produced it. And then, again, I would have  
15 read it and then we modified it and then  
16 submitted it.

17 Q. Okay. So you approved it?

18 A. Sure.

19 Q. Okay. Okay. And in the op ed in  
20 the first paragraph of this version, the  
21 second sentence that says this total  
22 indicates that thirty-three percent more  
23 Alabamians have some form of qualified

1 government issued photo ID than are  
2 eligible to register to vote. What was  
3 your basis for this thirty-three percent  
4 more Alabamians?

5 A. The facts that are missing from  
6 your document in paragraphs one, two and  
7 three which show the numbers. And you can  
8 refer to if you'd like your Exhibit 4.

9 Q. Okay.

10 A. And that includes some of the  
11 information that's missing. And it's  
12 clear. You can just do the math at that  
13 point. Paragraph three, Exhibit 4. And it  
14 tells you how many citizens are in Alabama,  
15 how many have driver's license, how many  
16 are registered to vote and then you can  
17 figure that out. The math speaks for  
18 itself.

19 Q. And so what is --

20 A. So that's not an opinion, and  
21 it's not an abstract number.

22 Q. What is the math? I'm sorry.

23 MR. MAZE: Counsel, if I can



1 interject. If you don't mind me handing  
2 this to him and he can read the numbers off  
3 to you, and that way in the record you can  
4 see where the thirty-three percent comes  
5 from.

6 MS. MERLE: Is this --

7 MR. MAZE: Or he can just read the  
8 sentences. This is the full copy that  
9 they're printing for you.

10 MS. MERLE: Are the numbers going  
11 to read different than the numbers in  
12 Exhibit 4?

13 MR. MAZE: No.

14 THE WITNESS: They're the same.

15 MR. MAZE: It's -- it's just that  
16 there's two paragraphs full of numbers, and  
17 Exhibit 4 only has one of the two.

18 MS. MERLE: So maybe we should go  
19 off the record and wait for the full copy.

20 MR. MAZE: That would be -- the  
21 better thing to do is just go to a  
22 different topic and come back to this one.

23 MS. MERLE: Okay. Let's go off

1 the record for a second.

2 VIDEOGRAPHER: Going off the  
3 record at ten fifty-three.

4 (Brief recess)

5 VIDEOGRAPHER: Going back on the  
6 record at eleven o'clock.

7 (Whereupon, Plaintiffs'  
8 Exhibit Number 8 was marked  
9 for identification and  
10 attached to the Original  
11 transcript.)

12 Q. Secretary Merrill, I want to move  
13 briefly to efforts to provide photo ID's to  
14 voters which we've already spoken about,  
15 but I have some more specific questions. I  
16 want to hand you Plaintiffs' Exhibit 8.  
17 And if you could please review that press  
18 release. And for the court reporter, it is  
19 DEF 00000270. Do you recognize this press  
20 release?

21 A. Not this one specifically, but  
22 this resembles dozens that we have  
23 distributed that contain the same

1 information except for different locations  
2 and different dates.

3 Q. Okay. Okay. Would you have  
4 approved this press release before it went  
5 out?

6 A. Sure.

7 Q. Okay. And in the first paragraph  
8 I believe -- yes. In the first paragraph  
9 it says that Secretary of State John H.  
10 Merrill has asked members -- asked the  
11 members of the Legislature to provide three  
12 separate and specific days of the week,  
13 times and venues in their area for you to  
14 have voter registration and photo ID  
15 issuance.

16 A. Right.

17 Q. Why did you reach out to the  
18 legislators?

19 A. Because they represent the people  
20 of Alabama, and there's no group that's  
21 better to start with when you're doing this  
22 than the people that represent the people  
23 of the state of Alabama. And it has been

1     extraordinarily successful in the way that  
2     we've done it. But what I did was I  
3     reached out to all one hundred and forty  
4     members of the Legislature and I asked them  
5     to give us three locations in their  
6     district where they'd like us to go to  
7     conduct a voter registration photo ID  
8     drive. And we gave them examples. We said  
9     we'll go to the Walmart in Pelham on a  
10    Saturday between ten and four. And the  
11    reason we'd go to the Walmart in Pelham on  
12    Saturday between ten to four is because  
13    everybody is there. And we said, We'll go  
14    to Brown Chapel Church in Selma on Sunday  
15    between ten and two for the same reason.  
16    And we've been to Brown Chapel Church in  
17    Selma on Sunday at least two, maybe three  
18    times to do the same thing, to make sure  
19    that we have touched as many people as we  
20    can touch.

21           Q.     Was the -- was you -- when you  
22    reached out to the Alabama legislators, was  
23    it like a one-time thing or was this --

1           A.       We do it annually.

2           Q.       Annually?

3           A.       Uh-huh.

4           Q.       Okay.

5           A.       And the first time we did it was  
6 in '15. We did it again '16. And we did  
7 it again this year.

8           Q.       So once a year you reach out to  
9 them?

10          A.       Right. And then we reach out to  
11 all the probate judges.

12          Q.       Okay. Is that --

13          A.       And we ask them --

14          Q.       -- annually?

15          A.       -- annually to give us a can't  
16 miss festival or event or activity in their  
17 community where we need to go to conduct a  
18 drive.

19          Q.       And how do you reach out to them?  
20 Is it via E-mail --

21          A.       Through E-mail, phone calls,  
22 different -- different ways. We also use  
23 the tourism listing of festivals, events

1 and activities that take place all across  
2 the state and make sure that we match those  
3 up. So that's why we've been to Chilton  
4 County Peach Festival in Clanton. We've  
5 been to the Peanut Butter Festival in  
6 Brundidge in Pike County, the Peanut  
7 Festival in Dothan in Houston County, Magic  
8 City Classic in Birmingham where Alabama  
9 State and Alabama A&M play every year, the  
10 Tomato Festival in Slocomb in Geneva County  
11 and the Rattlesnake Rodeo in Opp in  
12 Covington County. So those are just a few  
13 examples off the top of my head.

14 Q. And I'm sorry. Just to clarify.  
15 You said you reach out to them via E-mail  
16 and phone?

17 A. Well, it depends. The goal is to  
18 ensure that we're in every county at least  
19 one time every year. So sometimes we might  
20 just get a report from them at the probate  
21 judge's conference. So that didn't require  
22 a phone call or an E-mail. It's just them  
23 telling us you need to come to the Sock

1 Festival in Fort Payne in Dekalb County.

2 Q. Did you hear from all one hundred  
3 and forty legislators?

4 A. Oh, no.

5 Q. How many did you hear back from?

6 A. I think the first year we heard  
7 from less than ten.

8 Q. That was in 2015?

9 A. '15. Uh-huh. And '16 a few  
10 more. This year probably a few more. But  
11 no. It hasn't been overwhelming at all.  
12 But every time I go to their counties and  
13 every time we talk about what we're doing,  
14 I always brag on them. And we always  
15 invite them to come so they can have a  
16 photo op if they want one. They can work  
17 the event if they'd like to. So they know  
18 when we're in their communities. They  
19 don't always come, but we want them to  
20 know.

21 Q. So let's talk specifically about  
22 2016 since you said you do it annually. Do  
23 you yourself speak to the legislators, or

1 does somebody in your office actually speak  
2 to them?

3 A. No. No. No. No. No. We have  
4 a sheet that we distribute to them, and we  
5 tell them what we're doing and then we give  
6 them a blank. And we don't want them to  
7 set it up. Like we don't want them to call  
8 the Walmart in Pelham and get a Saturday  
9 between ten and four for us to go. We say  
10 where do you want us to go, and then we  
11 give them those examples. So then we call  
12 and set it up.

13 Q. And so they give you like a  
14 written response about --

15 A. Sure.

16 Q. -- to go to those locations?

17 A. Sure. Or they may say verbally,  
18 you know, you need to make sure you go to  
19 the Poke Salat Festival in Arab in Marshall  
20 County. And so that's -- we went there  
21 last weekend.

22 Q. And so I know you said, you know,  
23 in 2015 less than ten, 2016 a few more and



1     2017 a few more. When you say a few more,  
2     approximately --

3           A.     I can't tell you. I'm sure --

4           Q.     Less than fifty?

5           A.     Well, I'd say this. In all three  
6     years combined it would be less than fifty.

7           Q.     Okay.

8           A.     I'm sure of that.

9           Q.     Okay. Would it be less than  
10    thirty?

11          A.     I don't know because I don't ever  
12    see those forms.

13          Q.     Okay.

14          A.     There's no need for me to see  
15    them.

16          Q.     Okay.

17          A.     Because the people in elections,  
18    they set them up and they -- they determine  
19    where we go. We might talk about specific  
20    locations that a member has mentioned to me  
21    or a judge has mentioned to me.

22          Q.     Okay.

23          A.     But I don't see those forms as

1     they come back. I just remember that first  
2     year we had less than ten. It might have  
3     been three or four that we came.

4           Q.     And when you -- the -- the  
5     legislators that you do reach out to via  
6     E-mail, are you using like their --

7           A.     No. No. No. No. No. No. No. No.  
8     No. Don't misunderstand me. We have a  
9     sheet like this that's printed on our  
10    letterhead that goes to every member that's  
11    placed in their box so they physically get  
12    it --

13          Q.     So it's not --

14          A.     -- at the Statehouse.

15          Q.     So not via E-mail.

16          A.     They fill it out and they are  
17    told where to turn it in. Now, the  
18    senators, we have been to their office  
19    because they all have clerks in every one  
20    of their offices. House members don't.  
21    They share clerks. So we had those turned  
22    in to the clerk of the House, Jeff Woodard.

23          Q.     Okay.

1           A.       And that's how we collected them.  
2       That's just a way to reach out. That's not  
3       what determines everywhere we go.

4           Q.       So is it once a year that you may  
5       put it in their box, this sheet for them to  
6       fill out?

7           A.       That's correct. We do that at  
8       the first of the legislative session.

9           Q.       Okay. Okay. And so when you do  
10      get -- and so you did that in 2015 and 2016  
11      as well?

12          A.       And '17.

13          Q.       Okay. And so when you do get  
14      recommendations from legislators, do you  
15      send the mobile unit? Do you always send  
16      the mobile units to the place where they  
17      recommend?

18          A.       No.

19          Q.       How do you determine --

20          A.       Because we try --

21          Q.       -- which recommendations to take?

22          A.       Sure. We try to make sure that  
23      we go to a location in the county that's

1     been recommended but we also believe will  
2     be a high traffic area to try to attract  
3     people to go. And we try not to go to the  
4     same places every year because that's not  
5     productive. For example, if a legislator  
6     that represented Coosa County, then we  
7     might not go to -- we might go to the  
8     Rockford City Hall in 2015. In 2016 we  
9     might go to another location on up the  
10    highway a little bit. We won't -- we don't  
11    want to go back to Rockford. We might go  
12    to Goodwater to their town hall the next  
13    year or we might go to the community center  
14    out in another part of the county.

15           Q.     Is the decision where -- or the  
16    decision when you get these  
17    recommendations, is that your decision?

18           A.     No. I mean, it might be my  
19    decision, but it's not one that I always  
20    validate and authorize.

21           Q.     Okay.

22           A.     Because I -- we have a team.

23           Q.     Okay.

1           A.       And the team works to come up  
2       with a list.   And then they -- they work  
3       the list.

4           Q.       Okay.   And then -- so you are --  
5       you have communicated to your team --  
6       correct me if I'm wrong.   You've  
7       communicated to your team what the criteria  
8       is for where you would like to see the  
9       mobile van -- mobile unit dispatched?

10          A.       Through conversation.

11          Q.       Through conversation.   And it's  
12       high traffic area.   Is there any other --

13          A.       No.

14          Q.       -- consideration?

15          A.       No.   We just want to make sure  
16       we're reaching folks.   And we'll go --  
17       sometimes we go multiple locations in a  
18       county at different times.   I spoke at a  
19       church in Birmingham last year.   And the  
20       pastor said, Will you bring your mobile  
21       unit, and I said, Sure.   So we took the  
22       mobile unit that day as well.   I think that  
23       was in September of last year.   Because he

1     wanted it there. We'd already been to  
2     other places in Jefferson County, but we  
3     went there, too, because it was important  
4     to me.

5           Q.     Did you -- was there -- if you  
6     know, was there a mobile van unit taken to  
7     Selma at the beginning of this year?

8           A.     There was a mobile unit that was  
9     in Selma on Sunday, March the 5th, which  
10    was Bloody Sunday which was the  
11    fifty-second anniversary of the celebration  
12    of Bloody Sunday.

13          Q.     Was that on some -- like on a  
14    legislator's recommendation, or how did  
15    that come about?

16          A.     No. It's because we knew there  
17    were going to be thousands of people there.  
18    And that's an obvious place to go, and  
19    that's why we went there. And I spoke at  
20    the service that day. I was invited  
21    by the pastor to speak, and I did. And we  
22    had our team members. We had two units  
23    there that day --

1 Q. Okay.

2 A. -- out there prepared to  
3 accept applications and to process them and  
4 give the credentials photo --

5 Q. Do you know how many ID's were  
6 given out that day?

7 A. I have no idea.

8 Q. And do you -- when you -- when --  
9 when you make -- when the decision is --

10 A. Let me make sure you understand  
11 this, too. I think this is very important.  
12 It's very important to us that we go to  
13 every county. But we want to make sure the  
14 availability is made. We don't consider it  
15 successful because we had a certain number  
16 of people come. We consider it successful  
17 that we were able to go and we increased  
18 awareness and then we were able to meet the  
19 needs of the people that wanted the need  
20 met that day. Because you can't always  
21 determine success by that number.

22 Q. Uh-huh.

23 A. That's not -- that's not the end

1 all, the be all to end all for us on  
2 whether or not it was successful.

3 Q. I understand. So when you --  
4 when the mobile van unit was sent to Selma,  
5 was there a consideration about -- I'm  
6 sorry. You said there was going to be a  
7 lot of traffic because it was Bloody  
8 Sunday. There was going to be thousands of  
9 people.

10 A. Correct.

11 Q. Was there any consideration about  
12 if these people would be -- perhaps the  
13 constituents who would not have any form of  
14 identification?

15 A. Again, we knew it was a high  
16 traffic area. We knew that it would be a  
17 large number of people there. We knew that  
18 it would be a great spot to meet the needs  
19 of the people that would be interested, and  
20 they would know it was there. So I can't  
21 say that that spot was going to yield a  
22 greater number than a spot in another part  
23 of Dallas County at another time. But we



1 knew that there were going to be a lot of  
2 folks there, and that's why we needed to  
3 go.

4 Q. Was there any information about  
5 whether a lot of those folks coming to  
6 Bloody Sunday would be from out of state?

7 A. Well, we know there's going to be  
8 a lot of people from out of state that come  
9 there every year.

10 Q. For Bloody Sunday?

11 A. Absolutely.

12 Q. When you're setting up the mobile  
13 van units -- I just want to clarify. Is  
14 the poverty rate of the area taken into  
15 consideration when you decide where to send  
16 it?

17 A. That may be a factor. It's not a  
18 written factor. It's not -- it's  
19 understood that we'll go to every county  
20 every year to make sure that we meet the  
21 needs of the folks there. We've been to --  
22 as -- in answer to your question, sometimes  
23 we go to housing projects if that's a place

1     that's been recommended by a member. If  
2     the probate judge has recommended that we  
3     go to a housing project in a certain part  
4     of the county, we'll go there. But that's  
5     not a standard stop in each county every  
6     year. That's not. That's not.

7           Q.     Understood. Is public housing ID  
8     a voter -- can you use a public housing ID  
9     to vote?

10          A.     Well, as you can see, right here  
11     it says --

12          Q.     I'm sorry. What are you  
13     referring to?

14          A.     I'm referring to your Exhibit 8.

15          Q.     Okay.

16          A.     And I'm referring to paragraph  
17     three.

18          Q.     Uh-huh.

19          A.     And it says, The following valid  
20     documents. That's the end of line two.

21          Q.     Uh-huh.

22          A.     Line three says driver's license.  
23     It doesn't even have to be an Alabama

1 driver's license. Alabama voter ID card,  
2 State issued ID from any state in the  
3 union, federal issued ID, U.S. passport,  
4 employee ID from the federal government,  
5 State of Alabama, that's an employee ID  
6 from the State of Alabama, employee ID from  
7 the county, employee ID from a  
8 municipality, employee ID from a board or  
9 other entity of this state, student or  
10 employee ID from a public or private  
11 college or university in the state of  
12 Alabama including a military ID or a travel  
13 ID. I don't see anywhere in there where it  
14 says what you asked me for. So I can  
15 assure you we would not promote the  
16 acceptance of any unit that was presented  
17 that was not delineated in the Code. And  
18 this is copied from the Code.

19 Q. Why -- why is public housing ID  
20 not a form of federal issued ID?

21 A. You'd have to ask the Legislature  
22 that. When -- when I was in the  
23 Legislature, we approved this legislation

1 and it could be amended at any time by any  
2 member of the body.

3 Q. So --

4 A. Of course, it has to go through  
5 the regular legislative process.

6 Q. Okay. And so public housing also  
7 would not be considered a state issued ID?

8 MR. MAZE: Object to form.

9 A. This is the list. The list is  
10 not to be deviated from.

11 Q. But there --

12 A. Now, let me say this. Don't  
13 forget that any individual can be  
14 identified as long as two election workers  
15 identify that individual. When they get  
16 ready to vote, they don't even have to have  
17 an ID to vote. If two people can  
18 positively identify them, they don't have  
19 to have an ID.

20 Q. If a person comes with a public  
21 housing ID, would -- can the poll workers  
22 positively identify them because they have  
23 a -- can the poll workers positively

1 identify them because they have a public  
2 housing ID?

3 MR. MAZE: Object to form and  
4 scope for two reasons. Number one, he's  
5 not an attorney. I understand he enforces  
6 the law and for that reason he can answer.  
7 But number two, there is no topic about  
8 what is or isn't an acceptable form of  
9 identification. That was part of the  
10 30(b)(6). And unless you can point to me  
11 somewhere in the order that says he can be  
12 asked what are and are not particular  
13 acceptable forms, then I think we need to  
14 move to the next topic.

15 MS. MERLE: I'm following up on a  
16 line of questioning. I'm going to ask him  
17 to clarify, and then we're going to move  
18 on.

19 MR. MAZE: Okay. But you can't --  
20 you can't create a new topic by questioning  
21 on something.

22 MS. MERLE: I can follow up.

23 A. And the law only says that the

1 two individuals can positively identify the  
2 voter. That's what the law says. Those  
3 two individuals positively identify the  
4 voter. If they do, then they sign that  
5 they've done that and then the individual  
6 can participate just like they show a  
7 credentialed ID that's specified in  
8 paragraph three.

9 Q. Okay. I guess I just want to  
10 clarify because you -- we were talking  
11 about positively identify earlier and then  
12 we were talking about the type of ID's that  
13 are available now. And then you mentioned  
14 that -- sorry for the compound. But you  
15 mentioned that if the voter doesn't even  
16 need an ID, they can be positively  
17 identified. So my question is can you be  
18 positively identified if you have a public  
19 housing ID?

20 MR. MAZE: Object to form and  
21 scope.

22 A. That -- what method they use to  
23 identify that person is -- if you're asking

1 me if they could use that card, if I say  
2 that they could use it, that's going beyond  
3 the scope here. What I'm saying is they  
4 can identify that person. They can do it  
5 by sight. I know you. Because I know you,  
6 then I -- I know who you are. I say I know  
7 who you are.

8 Q. So positive identification --

9 A. If you're asking me if they can  
10 use the card, then I'm saying the card  
11 cannot be used as an identifying mechanism  
12 because it's not delineated here.

13 Q. Okay.

14 A. It's not on this list. The list  
15 is right here.

16 Q. Going back to the mobile van  
17 unit. You said poverty rate may be taken  
18 into consideration. Do you -- when you're  
19 deciding where to send the mobile van  
20 units, do you look to see their distance  
21 from the registrar offices?

22 A. No.

23 Q. Okay.

1           A.       And it's not a mobile van.

2           Q.       I'm sorry.

3           A.       It's a computer and it's a  
4 camera.

5           Q.       Okay.

6           A.       It's --

7           Q.       So the mobile unit?

8           A.       It goes in any kind of vehicle.  
9 I mean, because that's all you're  
10 transporting is the table, the computer,  
11 the camera, the chairs you sit in in case  
12 you need them, your power supply if  
13 necessary.

14                               (Whereupon, Plaintiffs'  
15                               Exhibit Number 9 was marked  
16                               for identification and  
17                               attached to the Original  
18                               transcript.)

19           Q.       Okay. Sorry. I want to show you  
20 a document that I got off the Secretary of  
21 State website, Exhibit 9. And there's no  
22 Bates number. Do you -- do you recognize  
23 this as being from the Secretary of State



1 website?

2 A. It looks like it's from our  
3 website.

4 Q. And do you have reason to doubt  
5 so?

6 A. No. It's just that usually every  
7 time I see it it's got my face on it, and  
8 it doesn't on this one. It's got the  
9 driver's license -- I mean, the photo ID  
10 card up there.

11 Q. I will represent that I got it  
12 from the Secretary of State website.

13 A. And I'll accept that.

14 Q. And so this is identifying mobile  
15 ID -- I'm sorry. What is this identifying?

16 A. This will tell the individual  
17 reader where the mobile unit will be in  
18 that particular county on that particular  
19 day at that particular time.

20 Q. And then did you approve?

21 A. No.

22 Q. So you don't approve these?

23 A. They -- that's done by our

1 elections team.

2 Q. Okay. Okay. And so do you know  
3 if any of these are located near a  
4 registrar's office? Would you have  
5 knowledge of that?

6 MR. MAZE: Object to form.

7 A. Let's see. I would say the one  
8 on June 1.

9 Q. Yes.

10 A. Let's see.

11 Q. Oh, because it's near the  
12 courthouse. Is that what you're saying?

13 A. Yes.

14 Q. Okay.

15 A. It's in Marion. That's the  
16 biggest thing. Because there could be a  
17 courthouse annex in another municipality  
18 that's not the county seat.

19 Q. Okay.

20 A. But that one is.

21 Q. Okay.

22 A. The one on the 7th I'm not sure  
23 where that senior center is. It seems like

1     that's where they had the elections last  
2     time, municipal elections. But the  
3     courthouse is -- it's a little piece from  
4     there, but it's not -- I mean, it's in the  
5     same municipality.

6           Q.     Okay.

7           A.     It's not in another part of  
8     Coffee County.

9           Q.     But -- but I think you already --  
10    you already testified that when the  
11    elections team is determining where to send  
12    mobile units, occasionally they will send  
13    them to places at the courthouse or near  
14    the courthouse?

15          A.     Sure they do.

16          Q.     Okay. Okay.

17          A.     Those are the only ones that I  
18    can see, the only two.

19          Q.     Were the -- the home visits, was  
20    that something that you implemented?

21          A.     I did.

22          Q.     Okay. And why -- what was the  
23    reasoning or what was your reasoning behind

1     it?

2           A.       Why did we do it the first time?

3           Q.       Yes.

4           A.       October of 2015 I'm sitting in my  
5     office at the capitol and I get a call from  
6     a State legislator who I served with. Her  
7     name is Patricia Todd. She's State  
8     Representative. She represents Birmingham.  
9     She said, John, I have a constituent that  
10    lives in downtown Birmingham near Legion  
11    Field and he would like to have a photo ID  
12    and I was wondering if you'd talk to him.  
13    I said, Sure. We'll talk to him. So I  
14    didn't talk to him. One of our election  
15    team members talked to him and answered his  
16    questions and wrote him a letter and sent  
17    him a copy of the Code section. Because  
18    after they answered all of his questions,  
19    they realized he didn't even need an ID  
20    because there's a provision in the law that  
21    if you're over sixty-five, you're disabled,  
22    you don't need to have an ID to vote  
23    absentee. And so they sent him the

1 communication. Well, about ten days later  
2 I got another call from Patricia, and she  
3 said, John, Mr. Stayer got your  
4 communication and he'd like to talk to you.  
5 Will you call him? I said, Sure. I'll  
6 call him. So I called him. I said,  
7 Mr. Stayer, it's John Merrill. I'm your  
8 Secretary of State. He said, I know who  
9 you are. And I said, Well, look. The  
10 reason I'm calling you is because I know  
11 you got the letter that we sent you. And  
12 he said, I did. And I said, I know you've  
13 got a copy of the Code section that we  
14 included which showed you that you don't  
15 even need an ID. You can still vote. And  
16 he said, I got that, too. I said, But you  
17 want the ID, don't you? You still want it,  
18 don't you? He said, I do. I said, Well,  
19 let me ask you something. I said, Are you  
20 going to be at your house on Saturday,  
21 October the 31st. He said, I will. I  
22 said, Well, there's a young man in our  
23 office. He's my deputy chief of staff.

1 His name is John Bennett. He's going to  
2 call you, and he's going to set up a time  
3 to come to your house that's convenient for  
4 you and he and our intern Trevon Fluker  
5 will come to your home and they will make a  
6 photo ID for you while you're laying there  
7 in your bed. Are you okay with that? And  
8 he said, That's fine.

9 Q. And so why did you decide to send  
10 the mobile unit to him?

11 A. He had no other way to get it.

12 Q. No. I'm sorry. Why did you  
13 decide to provide him with an ID though it  
14 wasn't required?

15 A. He still wanted it.

16 Q. And so that was the -- he  
17 wanted --

18 A. He wanted it.

19 Q. And so you were going to provide  
20 it for him?

21 A. And I did.

22 Q. Okay.

23 A. John and Trevon went to his house

1 and they gave him an ID at his house that  
2 day.

3 Q. Okay.

4 A. And let me tell you something.  
5 The law doesn't make me do that. The law  
6 doesn't require me to do that.

7 Q. Yeah. I think that was my  
8 question. So why did you decide to do it?

9 A. Because he wanted it.

10 Q. Okay.

11 A. And the law doesn't prevent me  
12 from doing it.

13 Q. Is the option or the availability  
14 of a home visit, where is that advertised,  
15 or is it advertised?

16 A. It's communicated. I mean, it's  
17 not advertised in paid mediums. I tell it  
18 everywhere I go all over the state. And we  
19 have legislators that communicate it to  
20 anybody that is interested.

21 Q. Okay.

22 A. It's been shared hundreds and  
23 thousands of times.

1           Q.       So it's communicated -- tell me  
2     if I have this correct -- when you -- when  
3     you go out and you're giving a speech,  
4     perhaps you communicate it. And then is it  
5     also communicated like in press releases?

6           A.       I can't tell you that it's been  
7     in press releases. I don't know if it has  
8     or not.

9           Q.       Okay.

10          A.       It probably has. I know it's  
11     been in articles.

12          Q.       Okay.

13          A.       I know it's been in news  
14     articles. I know it's been in television  
15     reports or radio reports. I know it's been  
16     widely distributed and communicated.

17          Q.       Do you -- do you know if it's  
18     ever communicated in Spanish?

19          A.       I -- I -- I'm confident it has  
20     not been communicated in Spanish by me  
21     because I don't speak Spanish. I don't  
22     speak English well, but I don't speak  
23     Spanish at all.



1           Q.     Do you know if it was ever  
2 translated in order to be communicated into  
3 Spanish?

4           A.     If someone called the office and  
5 wanted to have the question answered, we  
6 have multiple individuals in the office who  
7 have the ability to speak Spanish. And  
8 they would have interacted with that  
9 individual.

10          Q.     Do you know if that's occurred?

11          A.     I do not know that it has --  
12 whether or not it has occurred.

13          Q.     Of -- who in your office do you  
14 know that speaks Spanish?

15          A.     Off the top of my head I know  
16 David Brewer, my chief of staff, does.  
17 He's Hispanic. And I know that Brittany  
18 Hamilton does, and she -- I don't know what  
19 her title is, but she just takes care of a  
20 lot of things for us. She's in the main  
21 office. She is one of the people that  
22 answers the phone a lot. That's not her  
23 primary responsibility. She does all of

1     our publications, all of our proclamations,  
2     resolutions and a lot of correspondence as  
3     well.

4           Q.     Understood. Do you know how many  
5     to date, how many home visits have  
6     occurred?

7           A.     I do not.

8           Q.     Okay. And I just want to clarify  
9     because we've been talking about mobile  
10    units and home visits. We've been talking  
11    about mobile units and home visits. Do you  
12    approve home -- every home visit?

13          A.     No. You asked me that earlier --

14          Q.     Okay.

15          A.     -- and I still don't.

16          Q.     Okay. And you do not approve  
17    every mobile -- where the mobile unit goes  
18    either?

19          A.     I do not.

20          Q.     Okay. Okay. I just want to  
21    clarify.

22                   MS. MERLE: Let's take a break.

23                   VIDEOGRAPHER: This ends disc two.

1     Going off the record at eleven  
2     twenty-eight.

3                             (Brief recess)

4                     VIDEOGRAPHER:   This begins disc  
5     three.   Going back on the record at eleven  
6     forty-three.

7                             (Whereupon, Plaintiffs'  
8                     Exhibit Number 10 was marked  
9                     for identification and  
10                    attached to the Original  
11                    transcript.)

12             Q.     Secretary Merrill, I want to ask  
13     you some questions -- follow up on the  
14     questions about the mobile unit and home  
15     visits.   If you could review that document  
16     for me.

17             A.     Okay.

18             Q.     And just for the record, this is  
19     an article titled Alabama's Republican  
20     Secretary of State Calls Voting a  
21     Privilege.   I just want to ask you two  
22     quick questions about this.   In the third  
23     paragraph where it quotes you, could you

1 tell me if that is accurate?

2 MR. MAZE: Object to form. Object  
3 to scope. This is far outside the scope of  
4 any of the particular topics. You have not  
5 shown me which one this comes from. So --

6 Q. Is that an accurate quote?

7 MR. MAZE: That -- you have to  
8 deal with my objection first, because if  
9 you can't show me what topic, I'm going to  
10 instruct him not to answer because it's  
11 outside the scope. What -- which topic  
12 that the Court has ordered does your  
13 question fall under?

14 MS. MERLE: This goes under his  
15 efforts to send out mobile units and that  
16 do home visits. I'm going to ask him if  
17 this quote is accurate and if so, if that  
18 goes into his consideration when  
19 determining when to do a home visit, when  
20 to send out or where to send mobile units.  
21 So that is how it fits into this.

22 MR. MAZE: Let me look at the  
23 question or the quote, then. One other

1 point. What does this quote have to do  
2 with photo ID? This is all about  
3 registration.

4 MS. MERLE: Exactly what I'm going  
5 to ask him.

6 MR. MAZE: What -- you -- how is a  
7 registration --

8 MS. MERLE: Can we go off the  
9 record? I don't want to burn my time with  
10 Corey's objections.

11 VIDEOGRAPHER: One moment, please.  
12 Going off the record at ten forty-six.

13 (Brief recess)

14 VIDEOGRAPHER: Back on the record  
15 at eleven fifty.

16 Q. Secretary Merrill, do you --  
17 I'm sorry. Have you reviewed this --  
18 this --

19 A. Yes.

20 Q. -- article? And in the  
21 third paragraph it quotes you. Is that an  
22 accurate quote?

23 MR. MAZE: I'm going to object to

1 scope. Understanding Plaintiffs' point, I  
2 will allow him to answer to the extent that  
3 the question is whether or not this  
4 sentiment applies to how he implements the  
5 Voter ID law. Is that sort of our  
6 understanding of what you said the scope of  
7 that question is?

8 MS. MERLE: That's the -- that is  
9 the -- that is why it's relevant, yes,  
10 under the Court's order.

11 MR. MAZE: Okay. So to the extent  
12 that the question is that -- does this  
13 sentiment influence or show your intent on  
14 how you implement the photo voter ID law,  
15 then I will allow you to answer.

16 Q. So in the third paragraph it  
17 states, If you're -- it's quoting you. If  
18 you're too sorry or lazy to get up off of  
19 your rear and to go register to vote or to  
20 register electronically and then to go  
21 vote, then you don't deserve that privilege  
22 Merrill said. Is this an accurate quote of  
23 what you said?

1           A.       It is.

2           Q.       And that was your -- your  
3       feeling or your sentiment toward voter  
4       registration?

5           A.       In that there needed to be some  
6       initiative shown by the individual.  
7       Correct.

8           Q.       And does that -- your opinion is  
9       that some initiative that needs to be shown  
10      by the individual, does that apply or do  
11      you have that same sentiment when it comes  
12      to the photo ID requirement?

13          A.       Obviously not because of what  
14      we've done to ensure that everybody in the  
15      state is registered and has a photo ID.  
16      Because there are some people that cannot  
17      get up and go get a photo ID. For those  
18      people, we've gone to their homes, and  
19      we'll continue to do that.

20          Q.       And so this sentiment doesn't  
21      apply to people who are physically unable  
22      to get up and get out of their home. Does  
23      it apply to other people who maybe don't --

1     can physically get up but cannot get or  
2     don't have an ID?

3           A.     Well, you know, I think it's  
4     important for you to recognize a fact that  
5     has yet to be introduced in the deposition  
6     today, and this is probably an appropriate  
7     time to introduce it. Are you aware of the  
8     fact that since I've been the Secretary of  
9     State since January the 19th, 2015, we've  
10    registered more than seven hundred and two  
11    thousand new voters in Alabama which is  
12    unprecedented and unparalleled in the  
13    history of the state which has yielded more  
14    than three point four million new voters,  
15    total voters in Alabama, which after the  
16    purge has been reduced to three point two  
17    five million voters. And when it comes to  
18    the elections, that on March the 1st, 2016  
19    we voted more than one point two five  
20    million voters which is unprecedented and  
21    unparalleled in the history of the state  
22    for a primary for governor or president.  
23    And on November the 8th, 2016 we broke



1 every record for participation in the  
2 general election for governor or president  
3 with more than two point one million voters  
4 participating. So obviously what we have  
5 done to ensure that each and every eligible  
6 U.S. citizen that's a resident of Alabama  
7 is registered to vote and has a photo ID  
8 has paid dividends for the people of  
9 Alabama.

10 Q. Understood. The numbers  
11 regarding the increase in registration, is  
12 that not due to a settlement regarding --

13 A. Absolutely not.

14 Q. Okay. Can we just -- can we go  
15 back to the sentiment that you expressed  
16 here? I think you said it does not apply  
17 to the photo ID law for people who were  
18 unable to get out of their home. Does it  
19 -- does that sentiment apply to people who  
20 may not have a physical disability  
21 preventing them from getting out of  
22 their home?

23 A. We've been to people's homes that

1     had a need that could not get out like the  
2     example in Mobile we talked about earlier.  
3     That individual said she didn't have a way  
4     to the mobile unit or a way to the  
5     registrar's office. So we went to her  
6     home.

7           Q.     But you --

8           A.     Obviously after we got there we  
9     realized she had no disability and she did  
10    have transportation to get there. She just  
11    elected not to use it.

12          Q.     So would that -- would that,  
13    then, go with the sentiment of if you're  
14    too sorry or too lazy to get out?

15          A.     I've already answered that  
16    question. We're going to do whatever it  
17    takes. I mean, we've introduced the  
18    electronic app and a way for you to  
19    register on your computer to register  
20    people to vote. We have the ability for  
21    any citizen in the state that wants to be  
22    registered to vote to do so in -- at a  
23    registrar's office or by picking up a form

1 and mailing it in when it's convenient for  
2 them. Or if they receive social services  
3 from Medicaid or the Department of Human  
4 Resources, they're also able to register to  
5 vote or change their voter registration  
6 record then.

7 Q. I understand. But since you  
8 brought up the example of -- of the person  
9 in Mobile -- and I believe you stated  
10 earlier that, you know, she could have  
11 gotten a ride to the -- to get a photo ID.

12 A. She could have.

13 Q. I'm asking does she fall into the  
14 category of too sorry or lazy to get up --

15 A. No. She falls in the category of  
16 people that like to play games.

17 Q. Okay.

18 A. And I'll give you another  
19 example. If you have a -- if you have a  
20 client that you're representing that says  
21 that they can't get a photo ID in the  
22 state, if -- if they were here with you  
23 today, I'd have them bring the mobile unit

1 down here and give them an ID today. And  
2 if they choose not to come today or any  
3 other time they'd be with you or somewhere  
4 we could get with them, if they go with you  
5 to court on the day of the trial, we'll  
6 bring the mobile unit to the courthouse and  
7 we'll give them one that day. Now, people  
8 that don't want to take one when we go to  
9 that effort -- and that's not an  
10 extraordinary effort. It's a simple effort  
11 -- they don't want one.

12 Q. I guess I had a quick question  
13 following up on that. So it seems that if  
14 you know about the individual, if the  
15 individual becomes known to you that they  
16 don't have an ID but are registered to  
17 vote, you're willing to assist them in  
18 getting the ID; is that correct?

19 A. Obviously it's correct.

20 Q. Is it also correct that you're  
21 willing or that you make effort to identify  
22 those people affirmatively?

23 A. What do you mean affirmatively?

1 If we -- if they identify themselves to us  
2 that they're in need of an ID, we'll  
3 provide one upon request for free.

4 Q. If they identify themselves to  
5 you. But does it ever happen that you seek  
6 to identify them?

7 A. Do we identify -- do we attempt  
8 to identify people that need ID's?

9 Q. Yes.

10 A. Well, certainly we do. That's  
11 the reason that we have reached out all  
12 across the state of Alabama by taking the  
13 mobile units to all sixty-seven counties,  
14 by me going to all sixty-seven counties and  
15 by using our campaign effort to reach as  
16 many people as we possibly can with the  
17 efforts of Coach Nick Saban, Coach Gus  
18 Malzahn, Charles Barkley, and Deontay  
19 Wilder and the ones that we'll use this  
20 year.

21 Q. Is it possible that you may not  
22 reach everybody through those efforts?

23 A. Of course it's possible. Is it

1     likely? Not likely. Is it possible? It's  
2     possible.

3           Q.     Okay. Let's go back.

4           A.     It's possible that there's  
5     somebody in this state that's never heard  
6     of Nick Saban. Not likely, but possible.

7           Q.     Let's go back to -- we were  
8     looking at an op ed that we had marked as  
9     Exhibit 7 and we're going to now substitute  
10    the complete op ed which is titled still  
11    John Merrill, No Problem Making Photo ID's  
12    Available for Voters. But it is now the  
13    complete version. And I'm going -- passing  
14    Secretary Merrill the complete version to  
15    be substituted for Exhibit 7. And I  
16    believe y'all already have it.

17           MR. MAZE: I do.

18           Q.     I'll give it to counsel as well.  
19    And I believe when we had -- and I believe  
20    you had read the op ed earlier, but,  
21    please, if you need a moment to review it  
22    again.

23           A.     I'm good.

1           Q.       And you said already that you  
2       probably did not write it but you certainly  
3       approved it. I want to go back and talk  
4       about the numbers again. Okay. So now  
5       it's on the second page, the third full  
6       paragraph on the second page where you  
7       note, This total indicates that  
8       thirty-three percent more Alabamians have  
9       some form of qualified government issued  
10      photo ID than we are -- than are eligible  
11      to register to vote. And you were  
12      testifying earlier for me to look at the  
13      numbers, and I wanted you to walk me  
14      through the math of where you get the  
15      thirty-three percent.

16           A.       Okay. If you will turn to page  
17      two.

18           Q.       Yes.

19           A.       First paragraph on page two.

20           Q.       Yes.

21           A.       According to the July 2014 United  
22      States Census, Alabama has four million  
23      eight hundred and forty-nine thousand three

1     hundred and seventy-seven citizens. Of  
2     those four point eight million, at the time  
3     this was written two million nine hundred  
4     and ninety-eight thousand nine hundred and  
5     sixty-nine of those folks are either active  
6     voters or inactive voters. And then it  
7     tells you what the total active was on that  
8     date. Of that four point eight million,  
9     one point one million of those are between  
10    the ages of zero and eighteen years. Are  
11    you still with me?

12           Q.     Yeah. So would that one point  
13    one million -- okay. Sorry. Continue.

14           A.     So that reduces your number  
15    eligible, total eligible -- and that's  
16    assuming that they're all eligible -- to  
17    three point seven million. Okay.  
18    That's -- I get that number by subtracting  
19    four point eight minus one point one.  
20    That's three point seven.

21           Q.     Okay.

22           A.     According to Alabama Law  
23    Enforcement Agency, as of October 1st,



1     2015, Alabama has three million five  
2     hundred and fifty-nine thousand two hundred  
3     and thirty-five citizens with an Alabama  
4     driver's license and seven hundred fifty  
5     thousand and sixty-three folks with a  
6     non-driver ID. So when you add those  
7     totals up, that's about four point three  
8     million people. So if you add four point  
9     three and you take the three point seven  
10    and you divide it by that number, then you  
11    would see -- well, no. The two point nine.  
12    So if you take the two point nine million  
13    and you divide it by that four point three,  
14    thirty-three percent more people have ID's  
15    than are capable of using them because  
16    that's the total number of registered  
17    voters you had at that time.

18           Q.     Okay. And --

19           A.     That's the math.

20           Q.     And does the three -- so when  
21    we're looking at the ALEA number, the three  
22    point five into the hundred and fifty  
23    thousand, that number -- those numbers --

1 to your understanding, do those numbers  
2 include people who are -- have convictions  
3 for felonies but still have an ID?

4 A. That number -- I don't know the  
5 answer to that question. That number is  
6 the number that came from the Alabama Law  
7 Enforcement Agency.

8 Q. Do you know if that number  
9 includes --

10 A. And then, you know --

11 Q. -- non-citizens?

12 A. -- the -- does it include some  
13 non-citizens?

14 Q. Yeah. That --

15 A. I'm sure it does.

16 Q. That number from ALEA.

17 A. We have the ability to issue, and  
18 there are people who are in receipt of  
19 Alabama driver's license who are not United  
20 States citizens --

21 Q. And does that --

22 A. -- which means they're not  
23 registered to vote.

1 Q. Yeah.

2 A. They shouldn't be.

3 Q. And so -- and that number, do you  
4 know if it includes -- does it double count  
5 people who have a driver's license and  
6 non-driver ID?

7 A. Who have both a --

8 Q. Yes.

9 A. -- non-driver ID and a driver's  
10 license?

11 Q. Yes. Does it count them twice?

12 A. I wouldn't know -- I wouldn't  
13 know that they would issue it to somebody  
14 that had a -- requested a non-driver ID  
15 that had a driver's license because I don't  
16 know what their protocol is.

17 Q. Okay. Let's move on from this  
18 document.

19 (Whereupon, Plaintiffs'  
20 Exhibit Number 11 was marked  
21 for identification and  
22 attached to the Original  
23 transcript.)

1           Q.     I show you Plaintiffs' Exhibit 11  
2     and ask you to review this E-mail, please.  
3     And for -- it's DEF 00057905. Do you  
4     recognize this E-mail?

5           A.     I don't, but I can see that it  
6     was sent to me from Brent, and I'm sure  
7     that we talked about this.

8           Q.     Okay. And who is Brent, please?

9           A.     He is a member of our legal team.

10          Q.     Okay. Is he your attorney?

11          A.     Now he is the attorney.

12          Q.     Was this E-mail -- I'm sorry.  
13     Was this information, is that part of how  
14     you got the numbers for your op ed?

15          A.     No.

16          Q.     Okay. So what are the --

17          A.     Except that when you look at --  
18     I'm sure somewhere on here -- I don't think  
19     that's related to anything to do with the  
20     op ed. If it says on here -- and I didn't  
21     have a chance to look at all these numbers  
22     here. But the numbers that came from the  
23     op ed were supplied by Alabama Law

1 Enforcement Agency with the exception of  
2 the total number of voters that were  
3 registered or active. And we got that in  
4 our office. And that came from voter  
5 rolls, our voter rolls.

6 Q. So -- well, do you know why  
7 Mr. Beal created this?

8 MR. MAZE: I'm going to object at  
9 this point. This is communication between  
10 the secretary and his counsel. And to the  
11 extent that this requires you to divulge  
12 conversations between yourself and counsel,  
13 then you should not answer.

14 Q. Definitely don't want to know  
15 anything, any advice you got from your  
16 counsel or advice you requested from your  
17 counsel. If you can answer, why was this  
18 chart created?

19 MR. MAZE: Same objection.

20 Q. Can you answer without  
21 breaking attorney/client privilege about  
22 why this chart was created?

23 MR. MAZE: If this requires you to

1 discuss conversations between yourself and  
2 counsel, then you just need to instruct  
3 that you can't answer.

4 A. The only thing that I would say  
5 about information that's referred to in the  
6 E-mail is that I want to make sure that we  
7 don't have more registered voters in a  
8 county than the population of that county  
9 or than the number of people who are  
10 actually eligible to vote by their age who  
11 live in that county. That's the sole  
12 purpose for this. I'm confident of that.

13 Q. And so -- so when we're taking  
14 that into consideration, you -- you know,  
15 you don't want more people registered to  
16 vote than are eligible to vote?

17 A. That's right.

18 Q. When you're looking at the number  
19 that you're getting, are you taking out,  
20 like I said before, non-citizens who may  
21 have an ID?

22 MR. MAZE: I'm going to object to  
23 privilege and scope at this point. He's

1 clearly now answered that this played no  
2 part in coming up with the percentages that  
3 the Court said you could ask about and  
4 we're delving into now his conversations  
5 between himself and counsel on a topic that  
6 is outside of the scope that the Court has  
7 allowed us. So because we're outside the  
8 scope of the topics and getting into  
9 privileged conversations, I think we need  
10 to stop here.

11 MS. MERLE: Okay.

12 Q. Secretary Merrill, I'm going to  
13 change now to media advertisement and kind  
14 of the goals, your goals --

15 A. Sure.

16 Q. -- in outreach. Can you describe  
17 to me the advertising campaigns that you  
18 put in place that you run in order to  
19 educate voters about the photo ID law?

20 A. Absolutely. In keeping in line  
21 with ensuring that each and every eligible  
22 U.S. citizen that's a resident of Alabama  
23 that's registered to vote and has a photo

1 ID, we want to try to introduce that to as  
2 many people as possible so we can raise  
3 awareness and we can get as many registered  
4 voters as we can possibly get and make sure  
5 that all of those people have photo ID's.  
6 So I thought how can we best accomplish  
7 that? I can talk about it. I can get the  
8 governor to talk about it. I can get a lot  
9 of people to talk about it. But who can I  
10 get to talk about it that people will  
11 listen to? And the obvious answer is the  
12 person that's the most recognizable person  
13 in the state of Alabama, and that's Alabama  
14 head football coach Nick Saban. So I  
15 called Coach Saban in 2015, and then we got  
16 a commitment. So then we reached out to  
17 Auburn University head football coach Gus  
18 Malzahn because he's the second most  
19 recognizable person in the state. And in  
20 doing that, they both committed to make  
21 commercials for me that we would air on  
22 television, that we would air on the radio  
23 with the voiceover part and that we would



1 reproduce their likeness on posters which  
2 we would distribute all over the state of  
3 Alabama. We had twenty thousand of Coach  
4 Saban and twenty thousand of Coach Gus  
5 Malzahn.

6 Q. When you say posters, is that  
7 separate and apart from billboards?

8 A. Poster.

9 Q. Okay. So they're posters.

10 A. Poster. Yes. And, you know, we  
11 have some posters, too, that we're required  
12 to produce by law that have certain  
13 information on them. And this was not in  
14 lieu of those. This was in addition to  
15 those.

16 Q. Okay.

17 A. And those are all over the state  
18 as well. And then we aired those  
19 commercials in every area of the state from  
20 the Shoals to Mobile, from Huntsville to  
21 the Wiregrass and Birmingham and  
22 Montgomery, in Anniston, Tuscaloosa. So  
23 all over the state of Alabama. And --

1           Q.       What kind of message? What was  
2       in those TV and radio -- what information  
3       was included in those --

4           A.       Sure.

5           Q.       -- TV and radio advertisements?

6           A.       They both said that -- they  
7       identified who they were and they talked  
8       about how they wanted everybody to be  
9       registered to vote and have a photo ID so  
10      they could participate in the electoral  
11      process. And then in 2016 I asked NBA Hall  
12      of Famer Charles Barkley who played in the  
13      league for sixteen years -- he played at  
14      Auburn University and he was on the dream  
15      team, first two dream teams -- if he would  
16      help me. And he did. And then I asked  
17      Deontay Wilder who is the heavyweight  
18      boxing champion for the World Boxing  
19      Council. And he's from Tuscaloosa, and he  
20      helped me. And so we re-produced their  
21      likeness on posters, too, and they made  
22      commercials which we aired all over the  
23      state. And then we'll use two more people

1     this year to do the same thing.

2           Q.     So how many -- so let's focus on  
3     2016. How many commercials were there?  
4     Was there one for each of these individuals  
5     that you --

6           A.     Yes. One commercial by Charles  
7     and one commercial by Deontay, one  
8     commercial by Coach Saban, one commercial  
9     by Coach Malzahn.

10          Q.     So there's four commercials you  
11     believe?

12          A.     No. There's more than four  
13     commercials. There was just one commercial  
14     each with each one of those --

15          Q.     Okay.

16          A.     -- personalities. And then I  
17     made commercials.

18          Q.     Okay.

19          A.     And it was funny because my  
20     intent was not to be a part of the campaign  
21     because a number of people who would not be  
22     supportive of me or what we were attempting  
23     to do would say that I'm trying to promote

1 John instead of promoting voter  
2 registration and photo ID. But the reason  
3 that we did it is because we had to change  
4 the message in 2016 because we reached the  
5 point where we were beyond the time for  
6 people to be registered to vote but we  
7 still had some air time left. And so we  
8 said it's too late to register to vote, but  
9 you can get an ID. You can still get an  
10 ID. And then we also had to change it  
11 because we had some times where a thirty  
12 second commercial would not be appropriate.  
13 So we did a fifteen second spot and a ten  
14 second spot. So I did all of those.

15 Q. Okay. Did you -- sorry. First,  
16 were any of these commercials that you know  
17 of in Spanish?

18 A. Oh, no.

19 Q. And did you target any particular  
20 community when determining where to place a  
21 commercial or where to -- or the radio ads  
22 were? Did you target any particular  
23 community?

1           A.       What we tried to do was to place  
2     the ad buys -- in TV it's difficult to do  
3     that because we're just going with the most  
4     significant market share in that part of  
5     the state --

6           Q.       Okay.

7           A.       -- wherever it happens to be. In  
8     radio we were able to target a little bit  
9     more because when you go to certain parts  
10    of the Black Belt, predominantly Selma, for  
11    example, they have one of the largest radio  
12    stations in that part of the state that is  
13    in the southwest part of the state. And so  
14    we place buys there because we know that  
15    they are -- they've got a good market.

16          Q.       So which communities did you  
17    target with the radio?

18          A.       Well, I wouldn't say that we  
19    targeted markets. We targeted regions of  
20    the state. And so we're just trying to hit  
21    the biggest market. So it would -- it  
22    ended up that obviously in some instances  
23    we had country stations that we placed buys

1 with, some contemporary, some urban. It  
2 wasn't necessarily anything other than just  
3 trying to reach the constituencies in the  
4 parts of the state where the air -- the  
5 commercials would be aired. And so we  
6 would end up hitting certain constituencies  
7 just because of where people live and what  
8 they listen to, because we're placing buys  
9 with the stations that are going to get the  
10 most exposure. In some places that's a  
11 different type station than it is others.

12 Q. Okay. I want to show you an  
13 E-mail -- show you an E-mail, Plaintiffs'  
14 Exhibit 12.

15 (Whereupon, Plaintiffs'  
16 Exhibit Number 12 was marked  
17 for identification and  
18 attached to the Original  
19 transcript.)

20 Q. Could you take a second to review  
21 that E-mail? And for the court reporter,  
22 DEF 00078300.

23 A. Okay.

1 Q. Do you recognize this E-mail?

2 A. Oh, yeah. I sent it to Jimmy  
3 because he is one of the top advertising  
4 professionals in the state, and I asked his  
5 opinion.

6 Q. So in the second to --

7 A. And I'd also note that this is  
8 only for television.

9 Q. Okay. In the second to most  
10 recent -- so the E-mail on the bottom of  
11 78300 from Jimmy to you, in his first  
12 paragraph he notes, I assume you are using  
13 radio to reach the ethnic market. What is  
14 your understanding of what he meant by  
15 that?

16 MR. MAZE: Object to form.

17 A. Where did you say that was?

18 Q. Sorry. Page -- the first page of  
19 the document, the bottom E-mail.

20 MR. MAZE: Do you mind me just  
21 pointing it to him so he'll see where it  
22 is.

23 MS. MERLE: Oh, yeah.

1           A.       Yeah. I see it now. And I  
2       didn't even know that was in there. I  
3       didn't even remember reading it the first  
4       time. I didn't know it was in there now.  
5       I didn't know it was there. And -- but --

6           Q.       So do you have an  
7       understanding --

8           A.       As you can see, I did not respond  
9       to that because that was not what I asked  
10      him about. I was only asking him about  
11      television.

12          Q.       So do you not have an  
13      understanding of what he meant by I assume  
14      you're using radio to reach the ethnic  
15      market?

16                   MR. MAZE: Object to form.

17          A.       Yeah. I mean, I know what that  
18      means. If you're asking me if I know what  
19      the question means, yes, I know what it  
20      means. And I know what Jimmy meant here.  
21      But that was not the intent. And as I  
22      mentioned to you, when we placed the radio  
23      buys, we placed the buys based on



1 populations of the state where we needed to  
2 make sure that we were reaching all  
3 populations of the state. And I've already  
4 described to you how we did that, whether  
5 it was country, urban, contemporary,  
6 whatever it happens to be. The most  
7 popular radio stations in those parts of  
8 the state, that's how we chose the -- the  
9 individuals.

10 Q. So you think you know what he  
11 meant. So -- so what did he mean?

12 MR. MAZE: Object to form. You  
13 can answer if you know.

14 A. I'm sure that he's saying to make  
15 sure that you're reaching the African  
16 American markets throughout the state. I'm  
17 sure that's what that statement means --

18 Q. Was that a --

19 A. -- to him.

20 Q. Was there a goal of your office  
21 of reaching the African American market?

22 A. My goal is to reach all people in  
23 the state. Don't exclude anybody. Include

1 everybody. Make sure we've met every  
2 opportunity to ensure that each and every  
3 eligible U.S. citizen that's a resident of  
4 Alabama is registered to vote and has a  
5 photo ID. I don't care where you're from,  
6 race, creed, color. It does not matter to  
7 me. When it comes to voter registration,  
8 not even the content of your character  
9 matters to me.

10 Q. So do you -- did you disagree  
11 with his -- with what he was saying here?

12 A. There was no agreement or  
13 disagreement to -- to have. I mean, I  
14 asked him to -- to tell me what the top  
15 stations were in the state based on what  
16 we -- and TV stations, and then when he did  
17 it, I said thank you.

18 Q. Okay.

19 A. That was it.

20 Q. So was there any discussion in  
21 your office about targeting --

22 A. Targeting --

23 Q. -- besides the regional

1 communities?

2 A. Yeah. Marketing. Just the  
3 markets in the state where people live. We  
4 want to make sure we're reaching everybody.  
5 And so that's what we did and that's what  
6 our buys reflected.

7 Q. Were there any -- did you have  
8 any -- besides the posters, was there any  
9 print advertising, or was the posters the  
10 print advertising?

11 A. We had no print advertising.  
12 Like if you're talking about newspapers or  
13 direct mail pieces, no.

14 Q. Okay.

15 A. No.

16 Q. And was --

17 A. Because with what we're doing,  
18 that wasn't efficient.

19 Q. And were -- why wasn't it  
20 efficient?

21 A. Because I -- when you're  
22 utilizing print media, newspaper, for  
23 example, or direct mail, there's certain

1 reasons to utilize those. And for what we  
2 were doing is a general process of  
3 contacting as many people as possible with  
4 as little investment as we can possibly  
5 make. And that's why we chose to use  
6 television and radio as the mediums, as the  
7 premiere mediums. Obviously they were very  
8 successful because of the records that we  
9 broke for voter registration and later for  
10 election participation.

11 Q. Were any of the posters in  
12 Spanish?

13 A. No.

14 Q. Did you --

15 A. Nor were they in Arabic or any  
16 other language that might be spoken by a  
17 resident of Alabama.

18 Q. Did you attempt to reach  
19 specifically Latino voters?

20 A. We attempted to reach every voter  
21 in the state or every potential voter in  
22 the state through the mechanisms that I've  
23 already identified for you.

1           Q.     Are you aware if there's any  
2 registered -- or if there are any Latino  
3 voters in Alabama who don't speak English?

4           A.     I'm sure that there are some  
5 Latino voters in Alabama that don't speak  
6 English.

7                               (Whereupon, Plaintiffs'  
8                               Exhibit Number 13 was marked  
9                               for identification and  
10                              attached to the Original  
11                              transcript.)

12          Q.     I'm going to show you another  
13 document, Plaintiffs' Exhibit 13. Feel  
14 free to review the entire document. But my  
15 question is going to be about paragraph  
16 three. For you, it's DEF 00076098.

17          A.     Okay.

18          Q.     Did you write this letter to  
19 Mr. Jones?

20          A.     I did not.

21          Q.     Who wrote this letter?

22          A.     David.

23          Q.     Did you approve this letter?

1           A.       I don't know that I approved it  
2       before he sent it, but I'm confident that  
3       we would have talked about it and that I  
4       would have agreed with content -- content  
5       of it.

6           Q.       Do you recognize this letter?

7           A.       I don't know that I've seen it  
8       before, but it does not -- that -- that's  
9       not important because he has my full  
10      confidence. And I know why he did this,  
11      because we needed this to be expedited.

12          Q.       I wanted to point you to  
13      paragraph three --

14          A.       Uh-huh.

15          Q.       -- about half way down. And I'll  
16      read it to you. It's at the last five  
17      lines approximately. And you're saying  
18      that you want educational and informational  
19      advertisement -- advertisements to have the  
20      largest impact to educate Alabama voters on  
21      the Alabama photo -- photo ID law. And  
22      furthermore, certain demographics were  
23      selected to ensure that the educational and

1 informational advertisements reflected an  
2 emphasis. I'm just going to stop there for  
3 a second. What did you mean by certain  
4 demographics were selected?

5 A. I didn't --

6 MR. MAZE: Object to the form.

7 A. I didn't write the letter.

8 Q. Okay. Do you understand what  
9 David would have meant?

10 MR. MAZE: Object to form.

11 A. That would call for speculation  
12 or conjecture on my part to determine what  
13 he meant.

14 Q. Did you have a conversation with  
15 David about this letter?

16 A. I don't recall having a  
17 conversation with David about this letter.  
18 But I will remind you as I already have a  
19 couple times that our goal was to reach  
20 every person in the state. And we're going  
21 to do that by concentrating on those market  
22 areas where we can reach the most people.  
23 And that's what we've done, which is why we

1 enlisted Jimmy's support to identify those  
2 market areas for the market share.

3 Q. I'm just going to finish reading  
4 the sentence. Educational informational  
5 advertisements reflected an emphasis which  
6 includes certain rural and potentially  
7 under served areas whereby the Alabama  
8 voter -- photo voter ID law will be  
9 eliminated. Is your answer the same? Do  
10 you not understand what that meant?

11 MR. MAZE: Object to form.

12 A. No. I understood what all of  
13 this meant. That wasn't your question  
14 before. The question before was what did  
15 he mean.

16 Q. So what is -- okay. What does  
17 this mean?

18 A. So it means just what it says.

19 Q. So it means that certain --

20 A. It needs no interpretation. It's  
21 pretty clear.

22 Q. So --

23 A. We're going to reach everybody we



1 can reach, and we're going to place the  
2 buys based on what would give us the most  
3 exposure to reach the highest number of  
4 folks we can reach.

5 Q. It is clear -- it states that  
6 certain demographics were selected. So it  
7 seems to be saying it's clear that certain  
8 communities were targeted. Is that  
9 accurate?

10 MR. MAZE: Object to form.

11 A. Based on purchases that were  
12 made.

13 Q. What are these? Are these TV or  
14 radio purchases?

15 A. They're combination.

16 Q. Okay.

17 A. That's TV. I can tell you if you  
18 want to know.

19 Q. I'm referring to page three of  
20 the exhibit.

21 A. First one is television. Second  
22 one is television. Third one is radio.  
23 Fourth one is radio. Fifth and sixth, you

1 can tell what those are. Sixth is radio.  
2 All of those stations combined where it  
3 says St. Clair. Next one is TV. Then TV,  
4 TV, TV, TV, TV, and then AL.com is digital  
5 media.

6 Q. Was there -- I'm sorry?

7 A. Digital media. AL.com is digital  
8 media. The nine was digital media and the  
9 booster purchase was in community colleges  
10 around the state and on their jumbotrons in  
11 their gyms and outside locations where they  
12 had like jumbotron type things.

13 Q. Was it a policy in your office or  
14 a direction to -- that advertisements  
15 should be emphasizing rural and potentially  
16 under served areas?

17 A. Our goal was to reach every  
18 person in the state, period.

19 Q. So there was not an emphasis on  
20 rural and potentially under served areas?

21 A. We're going to make sure that  
22 we're reaching every person in the state.  
23 And you can see what David said here, that

1     there was an emphasis which included  
2     certain rural and potentially under served  
3     areas. So that occurred and it occurred  
4     by the purchases that were made.

5           Q.     Did your -- were any of these  
6     purchases and your media buys, were any of  
7     them to radio stations or TV stations that  
8     would reach the Latino community?

9           A.     I'm not aware of any of those  
10    stations that I identified for you being  
11    dedicated to Latino. I would -- I would  
12    think -- and I may --

13          Q.     Were they in Spanish?

14          A.     I may be wrong because I'm not in  
15    advertising and marketing. But it's my  
16    understanding about the advertising and  
17    marketing community that their goal was to  
18    reach the consumer at the greatest level  
19    they can. And when they reach that  
20    consumer, then that makes their profit  
21    margin go up. That's -- that's their goal.  
22    And so I would think that if, as you put  
23    it, a Latino station had people that were

1     Caucasian or African American that listened  
2     to it, they would not tell them to quit  
3     listening. I wouldn't -- I wouldn't think  
4     they would.

5           Q.     But did your media buy plan  
6     include any Spanish stations?

7           A.     I'm not aware of any of these  
8     stations being Spanish stations as you put  
9     it.

10          Q.     Okay.

11          A.     I think you could get that  
12     information if you reached out to Arbitron.

13                     (Whereupon, Plaintiffs'  
14                     Exhibit Number 14 was marked  
15                     for identification and  
16                     attached to the Original  
17                     transcript.)

18          Q.     I'm going to show you another  
19     exhibit, Plaintiffs' Exhibit 14. And it's  
20     titled Voting Rights Highlighted During  
21     NAACP Convention in Mobile. And no Bates  
22     number. I'm going to ask you about in this  
23     article, it purports to quote you. And I

1     wanted to ask you if it's accurate and if  
2     that sentiment impacts -- impacted you?

3           A.     What --

4           Q.     So on page --

5           A.     What would you like to know  
6     specifically?

7           Q.     If you would turn to page three  
8     of the -- page three of the exhibit. In  
9     the first full paragraph it states quoting  
10    you, The official language of the United  
11    States is English. When you come to the  
12    United States, you are coming here to  
13    improve your life. I'm not saying that  
14    learning English will improve your life but  
15    will help you become an better citizen when  
16    you get here. Did you say that?

17          A.     I did.

18          Q.     Is that -- I asked you about  
19    whether advertisements or commercials or  
20    posters were in Spanish, and you said they  
21    were not. Is this sentiment why there  
22    hasn't been an effort to put them into  
23    Spanish?

1           A.       No.

2           Q.       Okay. So what is the reason why  
3 the advertisements are not in Spanish?

4           A.       Well, I'm not aware of any  
5 Spanish speaking individual that wants to  
6 be registered to vote that's not registered  
7 to vote. If there are, then they would  
8 contact someone and that information would  
9 be introduced to us. It's not part of our  
10 campaign to specifically target people that  
11 don't speak English as their primary  
12 language in the state.

13          Q.       I think you said earlier that  
14 you're aware that there are voters who do  
15 not -- who are registered voters who speak  
16 Spanish but may not speak English?

17          A.       No. I didn't say that. You  
18 asked me if people had driver's license.

19          Q.       Okay. So I'll ask you now.

20          A.       Okay.

21          Q.       Are there registered voters in  
22 Alabama who maybe -- who are registered  
23 voters and maybe they speak Spanish but

1       they do not speak English?

2           A.       There may be.

3           Q.       Okay. Do you know, is the voter  
4       ID application provided in Spanish?

5                   MR. MAZE: Object to form.

6           A.       I don't -- I'm not aware of a  
7       voter ID application that's in Spanish.

8           Q.       Has your office ever analyzed the  
9       effectiveness of your advertising efforts?

10          A.       Through what means would you  
11       mean?

12          Q.       Have --

13          A.       Do I think it's successful?

14          Q.       Or has there been discussions?

15          A.       Oh, I know it's been successful.

16          Q.       And how do you know that?

17          A.       How do I know it?

18          Q.       Uh-huh.

19          A.       Because we went from two point  
20       nine million voters to three point four  
21       five million voters.

22          Q.       So the increase in the number of  
23       people who voted in the November 2016

1 election?

2 A. We know that we broke every --  
3 no. That's just the total number of  
4 registered voters.

5 Q. Okay.

6 A. And then we know that we broke  
7 every record for participation in the  
8 primary and in the general election. And I  
9 know it, too, because when I'm in  
10 Russellville walking around or if I'm in  
11 Heflin walking around or if I'm in Ozark or  
12 if I'm in Butler, Alabama and people see me  
13 going in the courthouse or going into a  
14 civic club or going into a ball game, and  
15 they say, We'll see you at the polls.  
16 Well, you know why they say that? Because  
17 that's what I said when I was on the  
18 commercial. It's not like they could see  
19 me doing that anywhere else. That means  
20 they've seen it all over the state and I've  
21 heard it all over the state, everywhere I  
22 go. And it's very clear to me that it's  
23 made a dramatic impression.



1 Q. And so --

2 A. And the empirical data speaks for  
3 itself.

4 Q. And so the empirical data you're  
5 talking about is the increase in the number  
6 of registered voters?

7 A. That's correct.

8 Q. That's --

9 A. And -- and the increase in  
10 turnout.

11 Q. And the increase in turnout. So  
12 that's -- that -- but based on that, it is  
13 your opinion that the -- it has been  
14 successful? The --

15 A. No doubt about it.

16 Q. The advertising efforts have been  
17 successful?

18 A. No doubt about it. And any  
19 reasonable person that looked at the  
20 empirical data would agree with that.

21 MS. MERLE: Let's take a break.

22 MR. MAZE: Sure.

23 VIDEOGRAPHER: Going off the

1 record at ten thirty-three.

2 MR. MAZE: Did you say ten  
3 thirty-three?

4 VIDEOGRAPHER: Oh, I'm sorry.  
5 Twelve thirty-three.

6 (Brief recess)

7 VIDEOGRAPHER: This begins disc  
8 four. Going back on the record at twelve  
9 forty-seven.

10 Q. Secretary Merrill, I want to  
11 change now to talking about the Election  
12 Fairness Project and voter fraud. Before I  
13 start asking about that, the project, I  
14 want to kind of understand some terms. How  
15 -- how would you define voter -- or what do  
16 you mean when you say voter impersonation  
17 fraud?

18 A. Well, voter fraud -- did you see  
19 something where I said voter impersonation  
20 fraud?

21 Q. Well, we're just going to be --  
22 I'm just going to be asking you some  
23 questions about Election Fairness

1 Project --

2 A. Okay.

3 Q. -- and, you know, the Stop  
4 Election Fraud Now. So I just want to --

5 A. Would you like me to tell you why  
6 -- how we started that and what happened?

7 Q. We're going to get into that in a  
8 second, but I just want to understand.  
9 Because we may use those different terms,  
10 and I --

11 A. Okay.

12 Q. -- just want to understand what  
13 we mean by voter impersonation fraud and  
14 absentee voter fraud and then we'll get  
15 into the specifics of the Election Fairness  
16 Project.

17 A. Okay. So in-person voter fraud?

18 Q. Yes.

19 A. That would mean someone came to a  
20 polling site and attempted to identify  
21 themselves as someone other than who they  
22 actually were for the purpose of casting a  
23 ballot on behalf of that individual who --

1     that was not them.

2           Q.     Okay. And then what is -- how do  
3     you use the term absentee voter fraud?

4           A.     Absentee voter fraud would be  
5     someone casting an absentee application  
6     and/or ballot on behalf of someone that was  
7     not the individual that submitted it for  
8     the purpose of casting a ballot to allow  
9     that individual's vote to count more than  
10    one time.

11          Q.     Okay. So like -- as I said, I  
12    want to talk about the Election Fairness  
13    Project.

14          A.     Uh-huh.

15          Q.     Were you -- you put that project  
16    in place?

17          A.     I did. It was an  
18    agreement between two other entities and  
19    the office of the Secretary of State.

20          Q.     So just to go briefly, is there  
21    -- besides the two that I noted -- I don't  
22    -- I don't want to cut you off -- besides  
23    the two I noted about in-person and

1 absentee, are there any other actions that  
2 you would consider some sort of voter  
3 fraud? I don't -- I didn't want to pin you  
4 down --

5 A. Well --

6 Q. -- limit you to what voter fraud  
7 means.

8 A. -- the thing I want you to  
9 understand is it's bigger than just voter  
10 fraud for the purpose of the Alabama  
11 Election Fairness Project and for Stop  
12 Voter Fraud Now where people can report it  
13 on stopvoterfraudnow.com. And the reason  
14 it's bigger than that is because it  
15 consists of any irregularity, impropriety,  
16 inconsistency or other form or method of  
17 trying to circumvent the laws that are a  
18 part of the elections process. So it -- it  
19 might have to do with not actually having  
20 your disclaimer on your sign. That's a  
21 problem, and that would be -- it may not be  
22 fraud that somebody was attempting to  
23 commit, but it would be a concern. And so

1     that's the way that they report it. So  
2     it's more than just voter fraud with this  
3     and the complaints that we receive and the  
4     complaints that we've adjudicated.

5           Q.     Okay. When did you put this  
6     project in place?

7           A.     Well, we started working on it in  
8     January of 2015, maybe early February of  
9     2015. And my goal was to encourage the  
10    members of the Legislature to allow our  
11    office to ask for subpoenas and issue  
12    subpoenas, ask for court orders, have them  
13    granted by judges and to give us limited  
14    prosecutorial authority. And that effort  
15    and request were -- they were completely  
16    rebuffed by the members of the Legislature  
17    that we met with. And so instead of just  
18    forgetting about it, I went back to the  
19    office and talked to our folks, and we  
20    decided that what we would do is we would  
21    actually try to enter into an agreement and  
22    a relationship with people that could help  
23    us. So I spoke to Spencer Collier who at

1 the time was secretary of law enforcement,  
2 and I spoke to General Strange who at the  
3 time was the attorney general for Alabama.  
4 And I told them that I needed their help in  
5 putting together a program that would allow  
6 people to be able to report voter fraud or  
7 election irregularities or anything to do  
8 with inconsistencies of fully adjudicating  
9 the elections process. And so in March of  
10 2015 in this very room we announced the  
11 introduction of the Alabama Election  
12 Fairness Project. And General Strange  
13 spoke and I spoke, and another gentleman  
14 from ALEA spoke because Secretary Collier  
15 was not able to be here. And we  
16 established it. What has it established?  
17 Since we established --

18 Q. I'm sorry. Could we --

19 A. Sure.

20 Q. -- back up a bit?

21 A. Sure.

22 Q. I believe you said the original  
23 goal was to encourage members of the

1     Legislature to allow you limited  
2     prosecutorial powers?

3           A.     An additional investigative  
4     authority.

5           Q.     What is the current -- why did  
6     you put -- so then they rebuffed you. So  
7     what was the goal going forward?

8           A.     To make sure that we could  
9     accomplish the original goal which was to  
10    identify problems that we needed to  
11    identify and then to have prosecutorial  
12    authority when it was necessary. But we  
13    could only do that by involving other  
14    agencies. So ALEA was one of those  
15    agencies for additional investigatorial  
16    authority. And then the attorney general's  
17    office was the other one for prosecutorial  
18    authority.

19          Q.     I see.

20          A.     That's why we entered into the  
21    agreement with the MOU.

22          Q.     Was there -- before the Fairness  
23    -- the Election Fairness Project, did the



1 Secretary of State have any other voter  
2 fraud unit or any other unit --

3 A. No.

4 Q. -- where a person could --

5 A. No.

6 Q. -- report voter fraud?

7 A. No. They didn't even have any  
8 records of voter fraud ever having occurred  
9 in that office.

10 Q. So understand Secretary State  
11 Chapman, you don't believe that there was  
12 anything done --

13 A. I didn't say that.

14 Q. Okay. So --

15 A. I just said they didn't have any  
16 records. Because one of the things that we  
17 asked to see was what records can you show  
18 me where voter fraud has occurred. Because  
19 you hear it talked about all over the  
20 state, but --

21 Q. By who?

22 A. Everybody. You hear -- you hear  
23 it in the Black Belt. You hear it in

1     Birmingham. You hear it in Mobile. You  
2     hear it in --

3           Q.     Who was talking about it?

4           A.     Just everyday citizens. People  
5     that are concerned that people are  
6     violating the trust and confidence of the  
7     process. And that's the reason that I  
8     wanted to make sure that that confidence is  
9     restored.

10          Q.     Okay.

11          A.     And that's why I started to do  
12     it.

13          Q.     But I believe I cut you off. I  
14     think you were saying you don't know if  
15     Chapman -- Secretary of State Chapman did  
16     anything, but you -- they did not have any  
17     records for you to review --

18          A.     They didn't have any records.

19          Q.     -- regarding --

20          A.     So what we did was establish this  
21     process so we would have records in the  
22     future. So if we had consistent violators  
23     or reintroduction of individuals who had

1 allegedly committed fraudulent activity,  
2 then we could go back and say, Well, in  
3 2014 in that election, Susie Smith was  
4 involved in this incident in Dale County.  
5 And -- and it gave us a record to look at,  
6 that it happened again in 2018.

7 Q. Okay. So can you walk me through  
8 how the Election Fairness Project works? I  
9 guess let's start with how does it receive  
10 complaints?

11 A. Sure. If individuals believe  
12 they have an alleged voter fraud activity  
13 or anything related to the irregularity of  
14 the elections process, then they can report  
15 it to our office. How do they report it?  
16 They can go to the website at  
17 alabamavotes.gov, or they can go to  
18 stopvoterfraudnow.com. And then they  
19 complete a form online that will allow us  
20 to know what their complaint is. It gives  
21 them a place to talk about their complaint,  
22 fill in the spaces, give us the information  
23 we need from them. And then we can start

1 the investigation. Now, we've had a few  
2 incidences where people have said they  
3 don't have access to the Internet. And if  
4 they indicate that to us when they've  
5 contacted us, then we mail that information  
6 to them and they can complete it and then  
7 they can return it to us at their  
8 convenience. But since we started this  
9 project in March of 2015, we've had three  
10 hundred and eighteen individual cases of  
11 voting or election irregularities that have  
12 been reported to us.

13 Q. Through the Election Fairness  
14 Project specifically?

15 A. Uh-huh. And through last Friday  
16 we had had a hundred and seventy-seven of  
17 those that had been adjudicated. So we had  
18 a hundred and forty-one of them that had  
19 not been adjudicated. There's --

20 Q. How many? I'm sorry.

21 A. A hundred and forty-one --

22 Q. Okay.

23 A. -- that had not. Those are still

1 under investigation or they are involving  
2 other agencies that are helping us make  
3 sure we get to the end of those.

4 Q. I had a--

5 A. Because the goal, of course, is  
6 to get from three hundred and eighteen to  
7 zero. And, of course, three hundred and  
8 eighteen will increase because -- I mean, I  
9 said that number was as of last Friday  
10 because I think it was Monday or Thursday  
11 of this week I noticed several more that  
12 came through. Because when they're  
13 submitted, certain people are notified.  
14 I'm one of those people. I get an E-mail  
15 that says stopvoterfraudnow.com. It's a  
16 complaint when it comes in, and I can read  
17 it. But I don't adjudicate them. I don't  
18 assign them. I just am notified that  
19 they've come in, and then we have a  
20 procedure in the office to start.

21 Q. I want to clarify a couple of  
22 terms. When you say adjudicated, do you  
23 mean it's adjudicated like in court or

1 adjudicated within your office?

2 A. Could be. Could be. It just  
3 means that they've gone from our office to  
4 somewhere else. It could be --

5 Q. So that hundred and seventy-seven  
6 that are adjudicated, they're no longer  
7 with you -- your office?

8 A. They're out of our office.

9 Q. You've done whatever  
10 investigation and you have sent it on  
11 elsewhere?

12 A. Exactly.

13 Q. Have you sent it to the AG's  
14 office or ALEA --

15 A. Yes.

16 Q. -- or is it --

17 A. And yes.

18 Q. Okay. And when you say voter  
19 irregularities, could you give me some more  
20 information? What does that mean? Or what  
21 do you usually see? What is voter  
22 irregularity?

23 A. Well, let me tell you. Like

1 we'll -- we can get a complaint where it  
2 says Jim stole my sign out of my yard and  
3 they'll report that. Well, that's not a  
4 voter fraud case. Okay. It's not an  
5 irregularity in voting, but it is an  
6 elections issue that's a concern for  
7 somebody.

8 Q. Okay.

9 A. And so that's one of the  
10 examples. Other examples are like I told  
11 you with the disclaimer that's not on the  
12 sign or on advertisement material.

13 Q. You said that you are one of the  
14 people that get a notice of when a  
15 complaint comes in through Stop Voter Fraud  
16 Now. Who else receives a notice?

17 A. David Brewer, my chief. Brent  
18 Beal, member of our legal team, Ed Packard  
19 who is the administrator of elections, and  
20 I think Clay Helms who is the supervisor of  
21 voter registration.

22 Q. And so when that complaint comes  
23 in, what happens next? I know you said you

1     just --

2           A.     Yeah.

3           Q.     -- you just get notice of it?

4           A.     An assignment is made.  An  
5     assignment is made.  And I don't remember  
6     who is doing the assignments now.

7           Q.     An assignment to who?

8           A.     Different members of the team.

9           Q.     Okay.

10          A.     The elections team where  
11     investigations will begin.  And  
12     conversations can occur with those folks,  
13     and then you start the process.  And we  
14     have a full blown method for making sure  
15     that after it's reported it's recorded.  
16     It's documented.  And there's a system  
17     where that information is properly  
18     introduced and we know what all has  
19     occurred and who is involved in it.  And we  
20     give anonymity to the complainant  
21     because -- and we don't talk about what's  
22     going on because we don't want to  
23     jeopardize the individual situation that



1     could have been introduced by making it  
2     public. That would be a very unfortunate  
3     incident.

4           Q.     And so when a complaint comes in,  
5     is it assigned to an attorney?

6           A.     Well, we only have one  
7     attorney --

8           Q.     Is that --

9           A.     -- in the office.

10          Q.     And that's Beal?

11          A.     That's Brent Beal.

12          Q.     And so --

13          A.     And I'm confident that he does  
14     all the assigning now.

15          Q.     Okay.

16          A.     I think he and Ed may do it  
17     together.

18          Q.     And so it's not only -- if I'm  
19     understanding you correctly, it's not only  
20     an attorney that reviews these complaints.

21          A.     No.

22          Q.     Okay.

23          A.     Because it involves more than

1 just legal.

2 Q. And so it would also be Ed  
3 Packard and Clay Helms who may be reviewing  
4 these complaints in --

5 A. Well, and it could be some other  
6 people. It could be other members of the  
7 election staff --

8 Q. Okay.

9 A. -- that are up there.

10 Q. Has --

11 A. Rachel Jarrett, Daniel Dean,  
12 Denine Richie, Eugenia Stone, all of those  
13 members of the elections team. We have six  
14 people in elections.

15 Q. Has the Election Fairness Project  
16 when it started in I believe you said  
17 February of 2015 --

18 A. March.

19 Q. March of 2015. Has it been  
20 restructured since that time at all?

21 A. Restructured. What do you mean  
22 by that?

23 Q. Has perhaps how a complaint is

1 assigned, who -- who reviews the  
2 complaints, who investigates the  
3 complaints, has that been changed at all?

4 A. Well, I know that some of the  
5 assignments have changed because we've had  
6 team members leave. Joel Laird who was a  
7 member of our legal team and Judge Jean  
8 Brown who was a member of our legal team --

9 Q. So Joel Laird --

10 A. -- they both left.

11 Q. -- and Jean -- Judge Brown were  
12 both attorneys?

13 A. They were.

14 Q. And they no longer participate?

15 A. They don't work in the office  
16 anymore.

17 Q. Okay. When did they leave?

18 A. Well, let's see. Judge Laird  
19 left it might have been the first part of  
20 this year, but it might have been -- no, it  
21 wasn't. It was in the fall.

22 Q. Fall of 2016?

23 A. Yes. It was around -- I want to

1 say around October, September or October of  
2 last year. And Judge Brown left this year.

3 Q. Okay.

4 A. She retired. Judge Laird is no  
5 longer practicing. He's no longer a  
6 practicing attorney. And Judge Brown,  
7 she's just fully retired now.

8 Q. So the -- the Fairness Project  
9 doesn't rely on attorneys only, then, is  
10 what I'm --

11 A. No. Because investigations have  
12 to be conducted.

13 Q. Okay.

14 A. A lot of times other people can  
15 do that work instead of just attorneys.

16 Q. Have you seen any change in  
17 the -- have you noticed any differences in  
18 the project since Mr. Laird and Judge Brown  
19 have left?

20 A. Not that I can recall.

21 Q. Okay. What type -- sorry. Can  
22 any other issues between voter fraud be  
23 reported to the election --

1           A.     Oh, yes, just like I mentioned.

2           Q.     -- besides voter fraud or  
3     irregularity? Can any other type of issue  
4     be reported to the Election Fairness  
5     Project?

6           A.     Anything that anybody wants to  
7     report about election administration can be  
8     reported to the Election Fairness Project.

9           Q.     So if somebody wanted to report  
10    voter intimidation, would they also go to  
11    the --

12          A.     Oh, they could. Absolutely.

13          Q.     -- Report Election Fraud Now?

14          A.     Absolutely they could.

15          Q.     Okay. And if they wanted to like  
16    report racial discrimination, they would go  
17    to the --

18          A.     They could.

19          Q.     -- Stop Election Fraud Now?

20          A.     They could. It's Stop Voter  
21    Fraud Now.

22          Q.     Stop Voter Fraud Now?

23          A.     Uh-huh.

1           Q.       So when you go to the website, it  
2       says report suspected election fraud now.  
3       How do -- how do you inform people that  
4       they can report things, issues besides  
5       election fraud?

6           A.       Well, they just touch on it, and  
7       then when it pulls down the screen, they  
8       type in there whatever they want to type  
9       in.

10          Q.       Okay.

11          A.       And then if we are unclear, then  
12       we will call them or communicate through  
13       E-mail with them. But usually it's a  
14       telephone call.

15          Q.       Okay. Does --

16          A.       And a lot of times people will  
17       call before they try to go online and fill  
18       out the form.

19          Q.       Who do they speak to when they  
20       call?

21          A.       Whoever they reach.

22          Q.       Okay.

23          A.       If it's a general switchboard

1 operator, then they'll refer them to the  
2 elections team.

3 Q. Okay. Is there -- within the  
4 Election Fairness Project, is there any  
5 hotline or similar web page that encourages  
6 people to report issues other than voter  
7 fraud?

8 A. Not that's clearly delineated --

9 Q. Okay.

10 A. -- because we don't have anything  
11 that says stop all war and grant all peace  
12 at this E-mail address or website or this  
13 phone number.

14 Q. Is that --

15 A. People think they can do it  
16 anyway by calling that. So that's how we  
17 act.

18 Q. So if a -- if a voter calls in  
19 and says that they've encountered voter  
20 intimidation at the polls, the person that  
21 answers the phone, they would know that  
22 they --

23 A. Sure.

1           Q.       -- can report it at Stop Voter  
2       Fraud Now?

3           A.       Yeah.   Because what happened  
4       before we got there is that they never made  
5       a record of any of those calls or anything  
6       like that.   There's no history of any of  
7       that.

8           Q.       Why --

9           A.       Now we have a history of it.

10          Q.       Why don't -- why doesn't your  
11       office clearly communicate that you accept  
12       all complaints besides just voter fraud?

13          A.       Because I can't think of any kind  
14       of website that we could create that would  
15       be -- grant world peace and stop all war  
16       .com now and let that be who we are.   If  
17       people don't understand, then they'll reach  
18       out.   And then we'll try to communicate  
19       that with them.   I mean, if you've got a  
20       suggestion about what we could do to  
21       communicate it more effectively, I'd be  
22       open to it and I'd be happy to come up with  
23       a mechanism that might be --



1 Q. I guess my --

2 A. -- more suitable.

3 Q. I guess my question is because on  
4 the website it says specifically report  
5 suspected election fraud now, I'm just  
6 wondering if there was a way to communicate  
7 -- or if y'all thought of a way to  
8 communicate that it's not just election  
9 fraud that you want to hear about but any  
10 voter issue or complaint?

11 A. Well, I would say this. As many  
12 complaints and reports as we receive, I  
13 think people have figured that out. They  
14 can report whatever they want, and we'll  
15 investigate it.

16 Q. And I believe you stated that  
17 every time a complaint comes in, you get an  
18 E-mail, correct?

19 A. I do.

20 Q. Okay. And do you discuss with  
21 your elections team, do you discuss every  
22 complaint that comes in with your elections  
23 team?

1           A.       I do not.

2           Q.       Okay. And so --

3           A.       Most of the time I don't even  
4 address them. I don't even -- there are  
5 very few E-mails I even respond to  
6 personally, period.

7           Q.       And so when do you -- or have you  
8 ever addressed a complaint that came in or  
9 have you ever gotten involved in a  
10 complaint that has come in?

11          A.       I have. Actually I was in Dale  
12 County in March, and we had a complaint  
13 from someone who said that a candidate for  
14 municipal office did not actually live in  
15 the municipality and that there had been  
16 some people who voted in the municipal  
17 contest that didn't actually live in the  
18 municipality. And they provided addresses  
19 and contact information in both incidences.

20          Q.       These were two separate  
21 complaints?

22          A.       Uh-huh.

23          Q.       Okay.

1           A.       And I was down there speaking to  
2   a group.   It seems like I spoke that day in  
3   Dothan.   And so I left there and went to  
4   that particular location in a rural  
5   municipality in Dale County and made home  
6   visits to those places and interviewed  
7   those people myself.

8           Q.       The people who had made  
9   complaints?

10          A.       No.   I met with the people who  
11   made the complaints.   I went to the alleged  
12   perpetrator's --

13          Q.       Okay.

14          A.       -- house and interacted with them  
15   personally, interviewed them personally,  
16   did a survey myself.   And we were able to  
17   get everything cleared up.

18          Q.       So what happened after your  
19   interview of them?

20          A.       Well, all of that -- at that  
21   point that became one of the one hundred  
22   and seventy-seven that had been taken care  
23   of.

1           Q.       So -- so how is it adjudicated in  
2       your -- so did you -- you interviewed them  
3       and then you passed your notes off to some  
4       -- to another agency?

5           A.       Yeah, because they're -- well,  
6       no. It ended in the office --

7           Q.       Okay.

8           A.       -- because there was no basis for  
9       the complaint.

10          Q.       I see. I see. Okay.

11          A.       Because in the incidence that I  
12       gave you, it became very clear what was  
13       going on. There was a white guy who made  
14       the complaints who was irritated. They had  
15       a black mayor who just had got elected.  
16       That's who one of the complaints was on.

17          Q.       That was the complaint regarding  
18       he didn't live in the municipality?

19          A.       Well, it's a lady.

20          Q.       A she?

21          A.       And then her children. And so I  
22       interviewed her children. I interviewed  
23       her. I went to their homes and did home

1 visits. And they were all clear. The  
2 mayor and the -- her children were all  
3 clear.

4 Q. So it turned out the mayor did  
5 live in the municipality?

6 A. Oh, yes, she did.

7 Q. And so is this --

8 A. And she was a -- she's a very  
9 upstanding citizen and a very well  
10 respected citizen. She was elected mayor.  
11 The one that had the issue was the one who  
12 turned in the complaint who was exhibiting  
13 some behavior that I would say was leaning  
14 on the side of maybe some racial behavior  
15 which was negative. And I'm sure he  
16 probably thought he was going to get a  
17 listening ear that might be supportive of  
18 his position because I am also a white guy,  
19 but that wasn't the case because that  
20 wasn't what the facts said.

21 Q. So -- I'm sorry. So this -- can  
22 you just explain to me more what you mean  
23 what happened here? So a white male

1       complained about people outside the  
2       municipality voting, and the people he was  
3       complaining against were black?

4           A.       That is correct.

5           Q.       And so -- and then so you went  
6       and interviewed him and then what?

7           A.       And then investigated it myself.

8           Q.       Okay.

9           A.       And then we cleared it up  
10      because --

11          Q.       And so that --

12          A.       -- they did live in the  
13      municipality. They were eligible to vote.  
14      They did participate, and they are  
15      upstanding citizens.

16          Q.       So at -- so at times the  
17      complaints -- and you received those two  
18      complaints through the Election Fairness  
19      Project?

20          A.       We did.

21          Q.       And so --

22          A.       And he even went above and beyond  
23      that. He sent some supporting

1 documentation to the office physically that  
2 he mailed there.

3 Q. And so some of the complaints  
4 that you receive at the Election Fairness  
5 Project are rumors that --

6 A. Oh, of course.

7 Q. Okay.

8 A. I know that shocks you.

9 Q. Are there any areas of Alabama  
10 from which the Election Fairness Project  
11 receives the most complaints?

12 A. Not that I can recall, because --

13 Q. And so -- I'm sorry.

14 A. I was just going to say that kind  
15 of behavior is exhibited by all people. It  
16 doesn't matter what -- where they're from.  
17 It doesn't matter how much money they have.  
18 It doesn't matter what color they are.

19 Q. And so the -- the incidences of  
20 alleged voter fraud that you've heard of,  
21 have they all come through the Election  
22 Fairness Project?

23 A. Not all of them. But in order

1     for us to have a record, we have encouraged  
2     people that have not started it at that  
3     point to go back and to complete that  
4     information and then share it with us so  
5     we've got a record of it that we don't have  
6     to hand write or receive in the mail and  
7     start a new file for.

8           Q.     So do you not -- do you not  
9     investigate the allegation of voter fraud  
10    irregularity until it has come through the  
11    Election Fairness Project so that you can  
12    have a record?

13          A.     No. But do you have a specific  
14    example you're asking me about?

15          Q.     No. I'm just -- since you said,  
16    you know, you encouraged people to -- you  
17    know, as they've called, you encourage them  
18    to go to the website. Do you wait until --

19          A.     Let me tell you what we don't do.  
20    Okay?

21          Q.     Uh-huh.

22          A.     You pick up the phone. You call  
23    me and you say, We've got a problem down in



1     Satsuma in Mobile County. And because  
2     we've got the problem, they're stealing  
3     votes down here. You need to come check  
4     this out. My name is John Smith. I live  
5     at such-and-such. That's not going to work  
6     out for John Smith. Okay. John Smith is  
7     going to have to make a formal complaint so  
8     we'll be able to document, record it. And  
9     then we'll be able to monitor it as we go  
10    through the entire process.

11           Q.     Okay.

12           A.     And if John Smith is serious,  
13    then John Smith will -- he'll do that.

14                               (Whereupon, Plaintiffs'  
15                               Exhibit Number 15 was marked  
16                               for identification and  
17                               attached to the Original  
18                               transcript.)

19           Q.     I'm going to show you a document,  
20    an article. And it's an article titled,  
21    Bill would eliminate requirements to give  
22    reason for voting absentee dated April  
23    25th, 2017. Do you recognize this article?

1 Have you seen it?

2 A. I don't even think I saw this  
3 article, but I know all about this bill.

4 Q. Okay.

5 A. It's Senate Bill 77 which we were  
6 highly supportive of. It was one of our  
7 key pieces of legislation this session, and  
8 it did not pass. It passed the Senate,  
9 passed the House Committee but did not get  
10 full approval out of the committee and it  
11 died.

12 Q. And that was this year you say?

13 A. It was. '17. Passed the Senate  
14 twenty-nine to three.

15 Q. I'm sorry. Say that one more  
16 time.

17 A. Twenty-nine to three.

18 Q. Okay. In this article it states  
19 that Secretary of State John Merrill's  
20 office suggested to Smitherman that he  
21 propose the changes in the absentee ballot  
22 law. And I think you just testified. Was  
23 that accurate?

1           A.     Oh, there's no doubt about it.

2           Q.     And so why did you make that  
3 suggestion?

4           A.     Well, what happened, Senator  
5 Smitherman had a bill that would allow for  
6 early voting in Alabama. And I had some  
7 members of the Republican leadership that  
8 came to me and asked me if we would sit  
9 with Senator Smitherman and we would help  
10 him find something that he could move  
11 because that bill wasn't going to move.  
12 And --

13          Q.     The bill with early voting?

14          A.     Early voting bill --

15          Q.     Okay.

16          A.     -- was not going to move.

17          Q.     Okay.

18          A.     Okay. No interest and no support  
19 of that.

20          Q.     Okay.

21          A.     And so I went to see Senator  
22 Smitherman who I worked with for the four  
23 years that I was in the legislature and

1 we've worked with for the last two that  
2 I've been the secretary. And I said,  
3 Senator, would you explain to me what you  
4 hope to get out of this bill. What do you  
5 want to accomplish? And he said, Well, I  
6 want to make it easier for people to be  
7 able to vote early. And I said, Well, I've  
8 got something I'd like to suggest to you.  
9 And he said, Okay. What is it? And I  
10 said, Well, Alabama is one of two states in  
11 the union that require an affirmation  
12 signature when somebody returns their  
13 absentee ballot. You have to have two  
14 witnesses. And Alabama is one of two  
15 states in the union that requires an excuse  
16 provision when you are voting absentee.  
17 And I'd like to eliminate both of those.  
18 And he said, That sounds like a good idea.  
19 And I said, But I want you to give me  
20 something on the other end. And he said,  
21 What is it. I said, I'd like you to give  
22 me the opportunity to request the ID, voter  
23 ID, photo ID when somebody returns the

1 application instead of just when they  
2 return the ballot.

3 Q. Why did you want that?

4 A. Because that adds a security  
5 component that is necessary to ensure that  
6 the voter is who they say they are.

7 Q. How does it add to the security  
8 component?

9 A. Because you have to provide your  
10 ID on the front end as well as the back  
11 end. Right now you don't have to do  
12 anything. And, see, this is what we've  
13 discovered.

14 Q. Can I ask a quick follow-up?  
15 When somebody returns their application,  
16 are they required to return it in person?

17 A. No.

18 Q. So they're -- they are mailing in  
19 their application with their -- or I guess  
20 with this proposed legislation, they would  
21 be mailing in the application including a  
22 copy of their photo ID?

23 A. Not when they returned the

1 application. If the legislation passed,  
2 they would be --

3 Q. Yeah.

4 A. -- required to do that. That is  
5 correct.

6 Q. And so how --

7 A. Because what happens now --

8 Q. Yes.

9 A. -- is we have an incidence in a  
10 particular county where an applicant has  
11 sent in John Brown, Sue Smith, Bill Jones,  
12 Jake Davis, whoever, all at 117 Main  
13 Street, Anytime, Alabama 36264. And the  
14 people in the registrar's office or really  
15 the absentee election manager sends them  
16 the ballots. They send them all the  
17 ballots. You won't be able to do that if  
18 you have to send in your photo ID on the  
19 front end. You'll only be able to send it  
20 to -- one to that address. And it's easy  
21 to understand if you've got irregularities  
22 that have the potential to be introduced if  
23 they choose to try to circumvent the

1 process. So that's --

2 Q. But the ballots that they would  
3 return would have to have their ID  
4 currently, correct?

5 A. Well, the ballot does. It's  
6 supposed to.

7 Q. Yeah.

8 A. It's supposed to.

9 Q. Yes. So the ballot --

10 A. And so now they would have to do  
11 it with the application as well.

12 Q. But if they have to return the  
13 ballot with an ID, why does including an ID  
14 just to get the application, how does that  
15 prevent the voter --

16 A. Your ID doesn't have to have the  
17 same address on it that you live at or that  
18 you say you live at.

19 Q. I guess let me be -- maybe I'm  
20 not being clear.

21 MR. MAZE: Let me -- first, I'm  
22 trying to understand how this is fitting  
23 within the scope of what we're talking

1     about because this is an article and a bill  
2     both that came out after the judge's order.  
3     We're talking about proposed legislation  
4     that was not passed and is thus not the  
5     law. So I'm struggling to understand how  
6     this fits into one of the eight enumerated  
7     topics that we can even be discussing.

8                 MS. MERLE: Yes. So I was going  
9     to ask about a specific quote in this  
10    article. Secretary Merrill brought up the  
11    legislation, and so I'm following up on  
12    what his thoughts are on the legislation  
13    that's made the basis for asking him more  
14    specifically about the original quote I  
15    wanted to ask him about.

16                MR. MAZE: And the quote that you  
17    want to ask him about particularly goes to  
18    the question about the specifics of the  
19    three hundred and four, the three hundred  
20    and seventeen potential cases of voter  
21    fraud that have been given to the Secretary  
22    of State's office through the Fairness  
23    Project. And the Court specifically ruled



1 in its order that Plaintiffs will not be  
2 permitted to depose Secretary Merrill on  
3 the particular issue of his statement  
4 concerning three hundred and four potential  
5 cases of voter fraud. So --

6 MS. MERLE: Well, Secretary  
7 Merrill brought up the three hundred number  
8 before I brought it up. I -- I  
9 specifically did not bring it up. But,  
10 also, the quote I want to ask him about,  
11 I'm asking if he's learned of those through  
12 the Election Fairness Project, if it was  
13 through the policy of his project or the  
14 rationale for his project was to accept  
15 these types of complaints or this fraud  
16 which he is talking about in this article.

17 MR. MAZE: You'll have to repeat  
18 that. My point is is the Court has said  
19 you can ask him about the project and how  
20 it is run. You cannot take the next step  
21 and ask him about statements about how many  
22 cases or the particulars about the cases.

23 MS. MERLE: I don't want to know

1 about the particulars of the cases or the  
2 number of cases. Secretary Merrill brought  
3 up the number. I did not harp on the  
4 number. I did not delve into the number.  
5 I want to know about what the Election  
6 Fairness Project hears, how it's received  
7 and how it is run.

8 MR. MAZE: Okay. So the extent  
9 that you don't cross into the types of  
10 cases and the particulars of the cases, we  
11 can continue.

12 A. Well, and the last thing I was  
13 going to say was that when we got through  
14 telling Senator Smitherman what we were  
15 trying to do, we didn't know how he'd  
16 receive it or not. But the next thing he  
17 said was, How quickly can you have the sub  
18 to me, which means how quickly can you have  
19 a substitute bill to me that will allow me  
20 to change my legislation to make it be your  
21 legislation.

22 Q. Okay.

23 A. And that's what he did, and

1     that's what he carried for us. And he  
2     passed it.

3           Q.     Okay. I just want to ask you  
4     about this specific quote, then. It's on  
5     the back page. It says, The only -- it's  
6     quoting. The only instances of voter fraud  
7     that we've identified in the state have to  
8     do with absentee ballots. Is that quoting  
9     you correctly?

10           MR. MAZE: Object to scope. And  
11     I'm going to ask the same question I did.  
12     How is that not crossing the line into  
13     deposing Secretary Merrill on his  
14     statements concerning the cases of voter  
15     fraud that have been given to the Fairness  
16     Project? That's exactly what the question  
17     is.

18           MS. MERLE: I want to know if he  
19     learns about it through the Fairness  
20     Project.

21           MR. MAZE: If he learned what?

22           MS. MERLE: The only instances of  
23     voter fraud that we've identified in the

1 state have to do with the absentee ballots.

2 MR. MAZE: I mean, this is  
3 specifically what the Court said we were  
4 not to get into.

5 MS. MERLE: Well, you can make  
6 your objection on scope, and he can still  
7 answer.

8 MR. SINCLAIR: You could direct  
9 him not to answer.

10 MR. MAZE: I could direct him not  
11 to answer it if it's --

12 MS. MERLE: On what basis?

13 MR. MAZE: On the basis that it is  
14 outside the specific bounds --

15 MS. MERLE: That is a question for  
16 the judge. You cannot -- you can't do it.  
17 You cannot --

18 MR. MAZE: I could do it. The  
19 question would be --

20 MS. MERLE: Yes. And you can also  
21 call the judge.

22 MR. MAZE: You could. I've  
23 actually got his clerk's number here in

1 case we need it. I mean --

2 MS. MERLE: All I want to know is  
3 was it said or was it -- did it accurately  
4 reflect what was said, and are those  
5 incidences found out through the Election  
6 Fairness Project that Secretary Merrill has  
7 set up? And was it set up for that reason  
8 to collect these types of complaints?

9 MR. MAZE: I'll let him answer the  
10 question of whether it is an accurate  
11 statement. And I believe he's already  
12 answered the question of how the process is  
13 that he determines types of -- or instances  
14 of voter fraud. So that would already be  
15 asked and answered to begin with. But you  
16 can certainly ask him whether or not it's  
17 an accurate statement.

18 Q. Is it an accurate statement?

19 A. It is, which means we have not  
20 identified any incidences of in person  
21 voter fraud since I've been secretary.

22 Q. Okay. Does --

23 MS. MERLE: Do you want to go off

1 the record?

2 MR. MAZE: No. No. No.

3 Q. Okay. Does the Election Fairness  
4 Project receive any complaints about  
5 absentee ballots being denied?

6 MR. MAZE: Object to scope.  
7 Again, you are crossing into the line of  
8 the types of cases that are representative  
9 of the three hundred and seventeen.

10 MS. MERLE: I don't know that it's  
11 representative. That's why I'm asking

12 MR. MAZE: Well, that's -- that's  
13 the whole point. You can't get into it.  
14 That's what the Court ruled.

15 MS. MERLE: Can we go off the  
16 record?

17 VIDEOGRAPHER: Going off the  
18 record at one twenty-five.

19 (Brief recess)

20 VIDEOGRAPHER: Back on record at  
21 one thirty-eight.

22 Q. Secretary Merrill, for the  
23 Election Fairness Project and where people

1 can go to report voting irregularities or  
2 voter fraud, is that a place where somebody  
3 can also report if their absentee ballot is  
4 rejected for lack of photo ID?

5 A. Again, anybody could report  
6 anything that they think is wrong to that  
7 website. It may not be the appropriate  
8 place to report it, but if it's not, then  
9 we'll contact them and we'll let them know  
10 what the appropriate remedy is.

11 Q. So does the -- is the Election  
12 Fairness Project, is it structured in a way  
13 that it would investigate that type of  
14 reporting?

15 A. Well, almost all of those  
16 complaints will begin with a phone call or  
17 an E-mail communication to the individual  
18 that submitted it. And so it might be  
19 cleared up then. It might be referred to  
20 somebody else there. It just depends on  
21 what the situation is.

22 Q. All right. Actually, I just have  
23 one last thing I wanted to follow up on. I

1 know the Election Fairness Project, you  
2 said it worked in conjunction with ALEA and  
3 the AG's office?

4 A. Correct.

5 Q. I don't think we've gotten into  
6 yet how does it work. How does that  
7 structure work?

8 A. Well, how it's supposed to work  
9 is -- and let me tell you why we did it  
10 this way and why all of these people were  
11 involved. It was brought to my attention  
12 when I was campaigning that a lot of people  
13 have a lack of confidence in the elections  
14 process. They feel like there are voting  
15 irregularities, voter fraud that were  
16 occurring all over the state. I'd hear it  
17 in the Black Belt. I'd hear it in the  
18 Wiregrass. I'd hear it in the Shoals,  
19 Tennessee Valley, Mobile. All over the  
20 state no matter where I'd go people would  
21 be talking about it. And so I requested  
22 the records. No records. So there's  
23 really no incidences. No cases of voter



1 fraud with one exception had been reported  
2 or qualified, investigated or had any work  
3 done in the last decade before I became  
4 Secretary of State. What I discovered was  
5 when people would call the office of  
6 Secretary of State, they'd start talking to  
7 somebody in the office and they'd say,  
8 We're calling about voter fraud. This is  
9 what we believe is happening. This is  
10 what's going on. And they'd talk to them  
11 for three or four or five minutes. And  
12 then the person would say, Did you say this  
13 dealt with voter fraud. And they'd say,  
14 Yes. And they'd say, Well, you need to  
15 call the Attorney General's Office because  
16 it's fraudulent activity. So then the  
17 constituent would hang up the phone.  
18 They'd call the Attorney General's Office.  
19 They'd hopefully get somebody in a position  
20 that could help them. They'd start  
21 explaining it to them, talking about voter  
22 fraud. This is what happened. They'd talk  
23 to them three or four minutes, and then the

1 person would say, Did you say this dealt  
2 with elections. And they'd say, Yes. And  
3 then they'd say, Well, you need to call  
4 Secretary of State's office because it  
5 deals with elections. So then typically  
6 what would happen is the person would just  
7 hang up and then that would be the end of  
8 it. But in some instances, they would  
9 still try to pursue it at some level.  
10 Well, when we discovered all of that,  
11 that's when we started having the  
12 conversation with the legislators about  
13 letting us be a one-stop shop repository  
14 for all of this. When that didn't work out  
15 and I got the commitment from Spencer  
16 Collier and I got the commitment from  
17 General Strange, we moved forward. So  
18 we're the intake crew, Secretary of State  
19 intake. We take the information. And then  
20 after we look at it, if we see we can't  
21 solve the problem or address the question,  
22 then most of the time we'll be able to send  
23 it straight on to the Attorney General's

1 office or a local district attorney. But  
2 if not, in some instances where additional  
3 investigation is required, then we'll  
4 contact the Alabama Law Enforcement Agency  
5 and we would move the information to them,  
6 to ALEA. When they're finished with it,  
7 they would give it to a local district  
8 attorney or the Attorney General's office  
9 to continue the process. That's the way  
10 that it's set up to work.

11 Q. Okay. So am I understanding it  
12 correctly your office, the Election  
13 Fairness Project, they would investigate.  
14 If they need more investigation, they can't  
15 sufficiently investigate, it goes to ALEA  
16 if they -- or if they investigate it --

17 A. It could also go to the Ethics  
18 Commission which is not a part of the  
19 agreement, but it could go there if  
20 necessary.

21 Q. Okay. But if you investigate it,  
22 you think you have sufficiently  
23 investigated it and you think there's

1 something there that may be fraudulent,  
2 then it goes to the AG's office?

3 A. Correct.

4 Q. And then if it --

5 A. If we can see enough that we know  
6 that it needs to have some prosecutorial  
7 authority examine it, then we get it there  
8 because then we want to go to grand jury  
9 for an indictment.

10 Q. And then it stops at the Election  
11 Fairness Project, it stops in that unit if  
12 you find that there's nothing?

13 A. Uh-huh.

14 Q. There's no -- it's not  
15 substantiated?

16 A. We would send a letter to  
17 somebody and say, you know, we've reviewed  
18 the case. That's the end of the show.

19 Q. You would send a letter to the  
20 person who --

21 A. Submitted the --

22 Q. -- called?

23 A. Correct.

1           Q.       The complaint. Okay. That's --

2                   MS. MERLE: Thank you very much,

3       Secretary. That is all the questions I

4       have at this time. I would like a time

5       check, though, before we -- before Corey

6       asks questions.

7                   VIDEOGRAPHER: Do you want me to

8       go off the record and do this?

9                   MR. MAZE: That's fine.

10                  MS. MERLE: Sure.

11                               (Brief recess)

12                  VIDEOGRAPHER: Going back on the

13       record at one forty-seven.

14                               EXAMINATION

15       BY MR. MAZE:

16           Q.       Secretary Merrill, my name is

17       Corey Maze. I'm obviously your counsel in

18       this case, and I just want to ask a few

19       follow-up questions starting with the

20       Elections Fairness Project. You mentioned

21       during your testimony that there were no

22       records of voter fraud when you took

23       office, correct?

1           A.       Correct.

2           Q.       Does that convince you one way or  
3       the other whether voter fraud had been  
4       occurring before you took office?

5           A.       No. I mean, I'm confident that  
6       there had been some level of voter fraud or  
7       there wouldn't have been as many people  
8       talking about it no matter where I went  
9       around the state. And I think it's  
10      important to make sure that people  
11      understand that we wanted to give it the  
12      attention that folks felt like it had been  
13      lacking. And the fact that we didn't have  
14      any records was very disturbing. Now,  
15      since we took office, we've had four  
16      convictions in voter fraud. We've had  
17      another indictment that was almost two  
18      months ago. And we believe that because of  
19      the cases that are ongoing, that we have  
20      additional opportunities for additional  
21      indictments and potential convictions that  
22      will happen soon.

23          Q.       I want to get into that. And

1     this is a touchy or a hard question to ask  
2     for privilege reasons. And this was part  
3     of our objection earlier. You made  
4     statements or a statement has been  
5     attributed to you that all of the  
6     incidences that have been reported so far  
7     are absentee. Is it possible that there  
8     are investigations or reports of in-person  
9     voter fraud that you cannot discuss on the  
10    record today?

11           A.     Well, certainly.

12                   MS. MERLE: Objection.

13           A.     I mean, there's a number of  
14     incidences that could have occurred or that  
15     may have even been reported through the  
16     Alabama Election Fairness Project that I'm  
17     not in a position to discuss publicly  
18     because of the ongoing investigation or  
19     because of the prosecutorial nature of the  
20     event that it might jeopardize a potential  
21     conviction if I did comment on it.

22           Q.     Have you gotten a sense,  
23     Mr. Secretary, whether people feel more

1     confident now in the voting process and the  
2     integrity of the voting process because of  
3     the work you've done in the Elections  
4     Fairness Project?

5                     MS. MERLE:  Objection.

6             Q.     You can answer.

7             A.     I think they do feel more  
8     confident about it, because any time you  
9     add a layer of credibility or integrity  
10    that lets people know that somebody is  
11    looking and somebody is watching and  
12    somebody will investigate if there's a  
13    concern, they are encouraged and they're  
14    supportive and they want to know what it  
15    means.  And so we're -- we're excited to be  
16    able to continue this effort.

17            Q.     Are you hearing statements from  
18    voters telling you that they feel more  
19    confident because of this program?

20            A.     We hear that when I speak to  
21    civic groups, when I speak to party  
22    organizations, when I speak to associations  
23    and different entities that I'm invited to



1 visit with or to commiserate with from time  
2 to time.

3 Q. Has these comments come from both  
4 black and white voters?

5 A. Oh, absolutely. One of the  
6 things that's been the most disturbing is  
7 just how interesting it is as you move  
8 around the state to see where those reports  
9 occurred of alleged voter fraud or  
10 fraudulent activity and then to watch an  
11 investigation be advanced. And we have  
12 situations right now that are continuing to  
13 be under investigation that are working  
14 with the office of the Attorney General as  
15 we move toward an indictment and hopefully  
16 prosecution that will lead to a conviction  
17 in some areas that have just been  
18 overwhelmingly introduced to us in the  
19 recent past and that had occurred even  
20 before we got here.

21 Q. Again, ensuring not to talk about  
22 any particular investigations that could be  
23 going on currently, I think it is fair to

1 say that the incidences of in-person voter  
2 fraud has been very minimal in the time  
3 that you've been Secretary of State; is  
4 that correct?

5 MS. MERLE: Objection to form.

6 A. Well, they've been reduced  
7 dramatically. And that's one of the  
8 reasons why I said I'm not aware of  
9 in-person voter fraud activities that are  
10 occurring because when you have established  
11 one of the most secure, one of the most  
12 outstanding laws to present a photo --  
13 photo ID whenever somebody participates in  
14 the electoral process, that's a natural  
15 deterrent to somebody walking up and trying  
16 to introduce in-person voter fraud.

17 (Whereupon, Defendant's  
18 Exhibit 1 was marked for  
19 identification and attached  
20 to the Original transcript.)

21 Q. Okay. I'm going to hand you what  
22 I have marked as Defendant's Exhibit Number  
23 1. And I've already given a copy to -- to

1     counsel. I just want you to explain what  
2     this exhibit is.

3           A.     Well, this is the NVRA card that  
4     we use through the Voter Registration Act  
5     to contact voters in the state of Alabama  
6     to make sure that they know that we're  
7     reaching out to them and to remove people  
8     from the voter rolls that are not supposed  
9     to be on voter rolls because they've passed  
10    away or they've moved out of state or  
11    perhaps they've committed a crime of moral  
12    turpitude since the last time that it was  
13    checked. And so this is one of the forms  
14    of communication that we have used to reach  
15    out to voters.

16          Q.     Now, I notice at the bottom of  
17    the card that this card also talks about  
18    the photo ID law, correct?

19          A.     That's correct.

20          Q.     Why is it that you include a  
21    reminder to persons that they need a valid  
22    photo ID in this NVRA card?

23          A.     Well, we think that it's

1 important to make sure that each and every  
2 voter or eligible voter in the state of  
3 Alabama is reminded that in order for them  
4 to participate, they need a photo ID to  
5 exercise their right to vote. So any time  
6 we have a chance to remind them, we want to  
7 do so in a way that encourages them to get  
8 an ID if they don't already have one.

9 (Whereupon, Defendant's  
10 Exhibit 2 was marked for  
11 identification and attached  
12 to the Original transcript.)

13 Q. I'm going to hand you now the  
14 next exhibit which we've marked Defendant's  
15 Exhibit 2 which we have also given to  
16 counsel. Can you briefly describe what  
17 these two pictures depict?

18 A. Sure. This is the card that we  
19 use for the ERIC mailing, the Electronic  
20 Registration Information Center. And it  
21 will allow us to contact voters and remind  
22 them to register to vote and just to tell  
23 them how easy it is. You can use a

1 computer. You can do it electronically or  
2 you can do it in person. And we also want  
3 to remind them that in order to vote, you  
4 need a photo ID. So we put that note on  
5 the back side. This is the back side of  
6 the card and this is the -- obviously the  
7 front side, the mailing side. But that's  
8 the purpose of it. And we use the Alabama  
9 driver's license database to contact each  
10 voter with this card.

11 Q. Now, I heard you say that this  
12 will inform voters. This is actually the  
13 current draft of what goes out this year --

14 A. Correct.

15 Q. -- correct?

16 A. Correct.

17 Q. So this has not been put in the  
18 mail yet but will in the -- in the future?

19 A. Correct.

20 Q. And as you noted at the bottom,  
21 not only does it contain a website for  
22 persons to register to vote but also a  
23 separate website to get a voter ID card,

1 correct?

2 A. Correct.

3 (Whereupon, Defendant's  
4 Exhibit 3 was marked for  
5 identification and attached  
6 to the Original transcript.)

7 Q. I want you to take a look at  
8 Exhibit Number 3 which is -- if you can  
9 describe to me what that is.

10 A. This is our website, and it's  
11 what it looks like if you pull it up on the  
12 home screen for the office of the Secretary  
13 of State.

14 Q. Now, can you tell me on this  
15 front page if there is somewhere that  
16 allows a person to request a home visit  
17 from your mobile unit?

18 A. Absolutely. One of the questions  
19 you asked me earlier was how do you notify  
20 people. And, of course, I told you about  
21 going around all across the state and  
22 speaking to folks and making sure that it  
23 was publicized. It's also been in

1 newspaper articles and it's been in radio  
2 reports and TV reports. But people that  
3 visit our website can also see at the top  
4 of the page underneath the banner you see  
5 it says -- not the first line. It says  
6 Alabama voter ID, final voter ID rules,  
7 tells you what they are, voter ID card,  
8 mobile ID location schedule which is where  
9 you printed the report you shared with me  
10 earlier, counselor. That right here you  
11 may also request a home visit or a group  
12 event by our photo -- photo ID mobile unit.

13 Q. Now, Mr. Secretary, while it  
14 doesn't reflect it on the printed copy, is  
15 it true that that particular square is  
16 actually highlighted in yellow when you  
17 look at it on the Internet?

18 A. It is. So it stands out. It's  
19 designed to stand out, but it doesn't show  
20 it on yours. I'm sorry.

21 Q. So if you click that button for a  
22 home visit, describe what it shows on page  
23 two.

1           A.       Yes. This is your form. And  
2       it's available for any individual to  
3       complete. It says, Do you want a home  
4       visit or do you want a group event to be  
5       conducted. And you just fill out the data,  
6       and then we'll contact you. And then we'll  
7       go from there.

8           Q.       I want to do some follow-up  
9       questions on some topics that came up  
10      during Plaintiffs' questioning. The first  
11      is an E-mail or a notice that you received  
12      from Wilcox County from a voter who claimed  
13      that he or she was unable to get an  
14      identification card. Do you remember that?

15           A.       I do.

16           Q.       You made a statement, and I don't  
17      have the exact quote. But when you started  
18      investigating that matter, you made a  
19      statement along the lines of her particular  
20      complaint about the photo ID card or the  
21      lack or her inability to get one was not  
22      relevant or important to what you were  
23      doing?



1           A.       Correct.

2           Q.       I just want to give you the  
3           opportunity to explain what you meant by  
4           that.

5           A.       Well, one of the things the  
6           counselor asked me was how did that relate  
7           to what was going on as far as operations  
8           of the office, and I said it was  
9           irrelevant. And the reason it was  
10          irrelevant is because it's not irrelevant  
11          that the person received the photo ID. I  
12          mean, we're going to do whatever it takes  
13          to ensure that each and every eligible U.S.  
14          citizen that's a resident of our state is  
15          registered to vote and has a photo ID.  
16          We're going to make sure that happens. It  
17          was irrelevant in that gentleman's  
18          continued performance and employment as a  
19          member of the Board of Registrars because  
20          we just wanted to make sure that he was  
21          doing the job that he was hired to do, and  
22          he was not. And because of that, we were  
23          able to use that information to help

1     present a case to him that resulted in his  
2     resignation and then the governor fill in  
3     that vacancy.

4           Q.     On a different topic, you  
5     mentioned earlier that persons in public  
6     have come up to you and sort of given you  
7     your catch phrase, See you at the polls?

8           A.     Right.

9           Q.     Do you remember that?

10          A.     Right.

11          Q.     Just remind us again exactly what  
12     you were talking about there?

13          A.     Well, because one of the  
14     questions that I've been asked and I was  
15     asked by counsel earlier is, well, do you  
16     think it's working. Do you think that  
17     you've had any success because of your  
18     experience with the campaign that you put  
19     together recognizing that these celebrities  
20     may be generating additional interest? And  
21     absolutely yes is the answer to that  
22     question. She said, Well, how do you know  
23     that. And one of the reasons that I know

1     it is because people that I don't even know  
2     that have never seen me before that know  
3     nothing about me whether I be in the Black  
4     Belt, in Selma or Camden or whether I be in  
5     Butler down in Choctaw County or whether I  
6     be in the Wiregrass in Enterprise or Ozark,  
7     or whether I be in Mobile or Tennessee  
8     Valley or the Shoals, it doesn't matter.  
9     People come up to you and they see you and  
10    they say, We'll see you at the polls. And  
11    they have no other way of knowing that  
12    except by the advertisement that they've  
13    seen with me on the TV.

14           Q.     Is it fair to say that you are  
15    getting that reaction from both black and  
16    white voters?

17           A.     Oh, I get that reaction from  
18    students, from adults, senior adults,  
19    black, white. It doesn't matter what color  
20    they are. I've heard it from everybody all  
21    over the state as I've moved around. And  
22    it's just interesting to me, but it proves  
23    to me that it's working.

1           Q.     On a similar topic, have you  
2     received positive comments from both white  
3     and minority voters on your posters  
4     featuring Coach Nick Saban, Coach Gus  
5     Malzahn, Deontay Wilder and Charles  
6     Barkley?

7           A.     Absolutely. People have been  
8     very pleased that we have promoted not just  
9     voter registration photo ID but Alabama and  
10    Alabama trying to lead the nation in this  
11    regard. Because no other state in the  
12    nation is doing what we're doing. They're  
13    not doing what we're doing with the voter  
14    ID drive. They're not doing what we're  
15    doing with the voter registration drive.  
16    And, look, I'm not above stealing the idea  
17    from somebody. When I first saw the  
18    campaign that the people in Tennessee were  
19    running that was similar to what we're  
20    doing, they were using the Nashville  
21    Predators. They were using the Memphis  
22    Grizzlies. They were using the Tennessee  
23    Titans. But the thing that became very

1 clear to me very quickly was I can do  
2 better than all of these folks because I've  
3 got Nick Saban. And so I can get more  
4 attention than they're getting any time  
5 just because of him. And so we have used  
6 Coach Saban and Coach Malzahn. Now we've  
7 used Deontay and Charles. And we have a  
8 couple other people we'll use this year,  
9 and we will continue to use the campaign as  
10 long as -- as I'm the Secretary of State.

11 Q. Now, clearly Gus Malzahn and Nick  
12 Saban are white, correct?

13 A. Correct.

14 Q. Have you had a positive response  
15 to persons taking those posters who are  
16 African American or other minorities?

17 MS. MERLE: Objection. Form.

18 Q. You can answer.

19 A. Yes, I have. As a matter of  
20 fact, one of the things that was very  
21 interesting -- and counselor introduced to  
22 me an article earlier that I thought she  
23 was going to ask about -- but it was about

1 a speech that I gave to the NAACP in  
2 Mobile. And she didn't touch on this  
3 topic. But what happened, when I got  
4 through giving my talk and I was giving out  
5 all of my materials and information and I  
6 was ready to give out the posters and I  
7 pulled out the poster of Coach Saban and  
8 Coach Malzahn and I was about to hold them  
9 up, and the president of the NAACP jumped  
10 up and said, No. No. No. This is not --  
11 this is not acceptable. He said, You're  
12 not coming down here promoting Alabama and  
13 Auburn in front of our group. And I said,  
14 Well, now, I'm not promoting Alabama and  
15 Auburn. I'm promoting voter ID and voter  
16 registration. And he said, Well, where's  
17 your HBCU posters and where's your posters  
18 featuring African Americans. And I said,  
19 Well, you know, this is just the first year  
20 of the campaign, and I just selected these  
21 two people because they're the two most  
22 prominent people in the state. Everybody  
23 knows them. And I said, We have other

1 posters that will be coming that will  
2 feature other people in the future, and I  
3 think you'll be pleased. And, I mean, he  
4 railed for a little bit. And, of course,  
5 that was what received all the media  
6 attention. But the thing that was so  
7 funny, when that was over, I had several  
8 dozen, and there were only forty, fifty  
9 people that were there. But I had several  
10 dozen. So between twenty, twenty-five  
11 people come up to me and want the posters  
12 even though he had railed like he did. And  
13 they took the posters and went off. And  
14 another thing that's very interesting is  
15 when we were in Selma for the celebration  
16 of Bloody Sunday when I spoke just in  
17 March, March 5th of this year, we had some  
18 people that came up outside our mobile  
19 units and they were saying that we were  
20 discriminating against people and we were  
21 trying to keep people from voting and we  
22 were not being good citizens. And they  
23 took one of the Charles Barkley posters and

1     just tore it up to shreds and threw it  
2     there in the street. But the one that tore  
3     the poster up to shreds and threw it in the  
4     street had one of the Charles Barkley  
5     posters rolled up underneath his arm. When  
6     he got through, he still had one. I think  
7     he just did that to make a scene. But it's  
8     just funny. But they've been very well  
9     received. And especially by high school  
10    students and elementary students that come  
11    to the capitol or when I go out to the  
12    schools to speak because we distribute  
13    those at that time, too.

14           Q.     Another topic that you discussed  
15    in your examination was the ability of the  
16    Anabaptists, I believe the Wall family, to  
17    get photo ID cards. Do you remember  
18    discussing that?

19           A.     I do.

20           Q.     When you first learned about this  
21    particular problem or issue, did you know  
22    the race of the persons who were seeking  
23    the ID card?



1           A.       I did not.

2           Q.       Would you have acted any  
3       differently had you known that those voters  
4       were white or black?

5           A.       Absolutely not. Just like I  
6       didn't know that Sam Stare who is the very  
7       first person that we made an in-home visit  
8       to for voter ID, I didn't know that he was  
9       white. Because that doesn't matter to me.  
10      Once you become an elected official,  
11      whether you're campaigning or whether  
12      you're elected, you represent everybody in  
13      the whole state. It doesn't matter if  
14      they're white, black, cream colored, polka  
15      dotted. It doesn't matter. You represent  
16      everybody and you need to treat everybody  
17      the same way. And you need to be  
18      respectful of everybody because whether  
19      you're a Democrat or Republican, whether  
20      they're Democrats or Republicans or another  
21      party or just independent, everybody's  
22      voice should count the same. Everybody  
23      should be treated with the same level of

1     respect and everybody should be given the  
2     same opportunity to participate at the  
3     level they want to participate, period.

4           Q.     Mr. Secretary, has it ever been  
5     your intent or purpose to implement the  
6     photo ID law to discriminate against any  
7     race in the state of Alabama?

8                   MS. MERLE:   Objection.

9           A.     Absolutely not.

10          Q.     Mr. Secretary, have you ever  
11     instructed someone on your staff to  
12     implement the photo ID law in a way that  
13     would discriminate based on race?

14                   MS. MERLE:   Object to form.

15          A.     Absolutely not.   And if I found  
16     out that someone was doing that, I would do  
17     everything within my power to remove that  
18     person from employment with the state of  
19     Alabama as soon as possible.

20                   MR. MAZE:   We pass the witness.

21                   MS. MERLE:   Can we go off the  
22     record for five seconds?

23                   VIDEOGRAPHER:   Going off the

1 record at two 0 six.

2 (Brief recess)

3 VIDEOGRAPHER: Going back on the  
4 record -- going back on the record at two 0  
5 seven.

6 EXAMINATION

7 BY MS. MERLE:

8 Q. Secretary Merrill, I want to ask  
9 you a question about Defense Exhibit 1.  
10 The -- I think you referred to it as the  
11 NVRA card. Who is this card sent to?

12 A. This card was sent to all Alabama  
13 voters as we're directed to do by the  
14 federal government. And that's to make us  
15 in compliance with the NVRA Act of 1993.

16 Q. And so where do you get the list?  
17 Is it just off the -- the voter  
18 registration list?

19 A. This list came from the voter  
20 registration list, and I believe this list  
21 also -- this list may not have used the  
22 driver's license list. It may just be that  
23 the ERIC mailing just used the driver's

1 license list. I can't remember.

2 Q. Okay. So Defense Exhibit 1 for  
3 sure goes to the voter registration list  
4 and maybe the ALEA list. But you're not  
5 sure about that?

6 A. That's correct.

7 Q. Okay. And then Exhibit --  
8 Defense Exhibit 2, does this card go to the  
9 ALEA list?

10 A. This will go to the Alabama Law  
11 Enforcement Agency's driver's license list.

12 Q. Does it go to any other -- is it  
13 sent to any other voter?

14 A. I can't remember.

15 Q. Okay.

16 A. I can't remember.

17 Q. And I believe you said this  
18 hadn't been sent -- or maybe your counsel  
19 led you. But this has not been sent out  
20 yet; is that correct?

21 MR. MAZE: Object to form.

22 A. That's -- I'm not sure when it's  
23 supposed to be mailed out.

1 Q. Has it been mailed out already?

2 A. I know we've already mailed this  
3 one out in February. And it seems like  
4 this one was supposed to follow, but I  
5 don't remember exactly when.

6 Q. Do you know -- is it sent out one  
7 a year, or how often is it sent out?

8 A. The ERIC mailing I know was  
9 supposed to be sent out once, and that  
10 would be part of the two contacts that  
11 we've talked about when we said we were  
12 reaching out twice a year. But I think  
13 that we're required by law to send it out  
14 once -- not law but by the ERIC agreement  
15 at least one time a year. I don't think  
16 we're required to send it twice.

17 Q. Okay. Just going back to Exhibit  
18 1. You said this was sent out in February  
19 of 2017?

20 A. Yes.

21 Q. Did -- before the February 2017  
22 mailing, did this card also --

23 A. It probably started in January,

1 late January 2017, because the purge began  
2 after this was mailed out which continued  
3 all through the month of February.

4 Q. When this was -- the -- this --  
5 this card that was sent out before January  
6 or February 2017, did that prior version  
7 also have the language at the bottom? P.S.  
8 Remember you need a valid photo ID to vote?

9 A. Yeah. This is the -- this is the  
10 one that was mailed out.

11 Q. Was that mailed out this year?

12 A. Yes.

13 Q. Did the version mailed out last  
14 year have the P.S. Remember you need a  
15 valid ID?

16 A. I don't know that we mailed this  
17 out last year. I don't recall whether or  
18 not it was mailed out or not.

19 Q. Okay.

20 A. I know that part of the purge  
21 occurs in a cycle, like a four-year  
22 election cycle. And that's part of the  
23 cycle that we're on now.

1 Q. Okay. And going back to -- I'm  
2 sorry. Going back to Exhibit 2, Defense --

3 A. I can tell you this, though,  
4 counselor, just so you'll know. Anything  
5 that we produce where we can, we try to  
6 make sure that we include reference to  
7 voter ID, photo ID component as well as  
8 voter registration as a dual component. We  
9 always talk about them together. We  
10 promote them together. We always try to do  
11 it at the same time.

12 Q. But you're not sure whether the  
13 2016 version had this P.S.?

14 A. I don't even recall that one was  
15 sent out in 2016.

16 Q. Okay. And the ERIC or the card,  
17 the Exhibit 2, do you know if it looked  
18 similar when it was sent out last year?

19 A. I don't. I know the first time  
20 we would have done it would have been in  
21 '16 because we weren't able to join until  
22 '15.

23 Q. Okay.

1           A.       Because we had to get legislation  
2       passed in order for us to be a part of ERIC  
3       and to exchange mailing lists with other  
4       states which is part of this effort, too.  
5       And when I say mailing lists, I'm talking  
6       about like our voter list.

7           Q.       So just to clarify, are you  
8       testifying you don't know if this was sent  
9       out last year?

10          A.       It wasn't sent out in the same  
11       form. We've tried to modify it. If it was  
12       sent out, it could not have been sent out  
13       prior to 2016.

14          Q.       And so the -- the version that  
15       was sent out in 2016, do you know if it had  
16       information about you need a valid photo ID  
17       to vote?

18          A.       I don't recall. But like I just  
19       stated to you, if we sent it out, we try to  
20       make sure that a dual component each and  
21       every time that it's introduced with  
22       register to vote, have a photo ID no matter  
23       what we're doing or where we're doing it.



1           Q.     I want to ask you about Defense  
2     Exhibit 3.

3           A.     Okay.

4           Q.     And you noted at the top that it  
5     says request a home visit or group event.

6           A.     Right.

7           Q.     When was that link added?

8           A.     I can't remember exactly when it  
9     was done.

10          Q.     Was it added this year?

11          A.     I don't know.

12          Q.     Do you know if it was present  
13     last year?

14          A.     I don't know.

15          Q.     Okay. Is your --

16          A.     I know as soon as they would have  
17     been able to have it ready it would have  
18     been done. Because we want to make sure  
19     that we're reaching everybody as quickly as  
20     we could. And so that's why we would have  
21     added it. And, you know, sometimes there's  
22     costs involved and there may have been a  
23     cost incurred with the vendor for changing

1     -- I know there was some cost incurred to  
2     create this thing right here because you  
3     know how it is when you're dealing with  
4     websites. You have to pay to change the  
5     program.

6           Q.     So you don't know if this link  
7     was present?

8           A.     I don't know exactly when it was  
9     done.

10          Q.     Okay.

11          A.     I mean, we could find that out,  
12     but I don't know it.

13          Q.     Can we go to page two of Exhibit  
14     3.

15          A.     Sure.

16          Q.     And this is the form a voter  
17     would fill out if they want a mobile unit  
18     to come to their home?

19          A.     That's correct.

20          Q.     And I believe you said earlier or  
21     you testified earlier that now the process  
22     is they have to show a need to -- that they  
23     need the unit to come to their home. So

1       where do they -- how do they --

2           A.       Oh, no. That's done with  
3       interaction with the voter.

4           Q.       So --

5           A.       So you give me your contact  
6       information, E-mail and phone, and then I'm  
7       able to determine what I need to determine  
8       about whether or not we need to come to  
9       your home or if we're going to do something  
10      else to help you out. But we're going to  
11      help you out. We just need to know what it  
12      is we need to do to make sure you're taken  
13      care of.

14          Q.       So the person submits this form  
15      and then somebody from your office calls  
16      them?

17          A.       Correct. Or they may E-mail  
18      them. They may get the questions answered  
19      through E-mail.

20          Q.       And then so they contact them  
21      either through phone or E-mail and then  
22      they ask the questions about need?

23          A.       Sure. And make sure you

1 understand when you use the word need, it  
2 doesn't mean need an ID. It means need to  
3 have transportation, need to have a home  
4 visit, need to have somebody come get you,  
5 whatever it happens to be. It's not a  
6 question of whether or not you need the ID.  
7 It's a question of how the ID will be  
8 provided to you.

9 Q. How many --

10 A. We're not going to deny anybody.

11 Q. How many mobile units are there?

12 A. Well, like I mentioned to you  
13 before, it's a computer and a camera and  
14 the other equipment that accompanies it.  
15 So we have two setups for that purpose.  
16 But the unit is available any time there's  
17 a vehicle available. It could be a private  
18 vehicle, could be a State vehicle, could be  
19 one of the vehicles that's owned by the  
20 office of the Secretary of State.

21 Q. So there's two -- two  
22 different --

23 A. Yeah. You can refer to it as a

1 mobile unit because that's what it is.

2 Absolutely.

3 Q. And --

4 A. But we also have the ability to  
5 utilize a unit that may already be in  
6 operation in a local county. So that's  
7 part of the protocol. Maybe the Board of  
8 Registrars in your county can go to your  
9 home if that's necessary. Because they can  
10 take their unit and go produce the ID, too.

11 Q. If the unit -- if the two units  
12 are unavailable, has your office ever  
13 sent -- given somebody a ride to the Board  
14 of Registrars?

15 A. That would be highly irregular  
16 and a waste of time to do something like  
17 you just described. I can't imagine that  
18 that would ever occur, because if you can't  
19 get -- if the person -- if we couldn't go,  
20 okay -- and the likelihood of that  
21 happening would be slim and none. Because  
22 as I mentioned to you earlier, we don't  
23 have another election in Alabama before

1 August the 15th. Okay. So we've got  
2 between -- let's say the call came in  
3 today, May 25th. We've got between May  
4 25th depending on where they are and May  
5 26th to go produce the ID and get it to the  
6 voter before August the 15th. Now, the  
7 likelihood of the unit not being available  
8 between May 26th and August 15th is  
9 impossible. It will be available at some  
10 point in time during that particular time.  
11 But you asked me about sending somebody  
12 from 600 Dexter Avenue to somebody's house  
13 to physically pick them up and take them to  
14 the Board of Registrars office in that  
15 county, no. I've got friends in all  
16 sixty-seven counties in the whole state,  
17 and I can call somebody to go get that  
18 person and take them from that location  
19 wherever they are to the Board of  
20 Registrars office. It may be an elected  
21 official. It may be a party official for  
22 the Democrat or Republican party. It may  
23 be a church person that I'm -- I have a

1 good relationship with. It may just be a  
2 friend. But I can get somebody.

3 Q. Has that happened?

4 A. Not to my knowledge.

5 Q. Okay. I just --

6 A. But if it did, I'd do whatever it  
7 took to make sure their needs were met.  
8 But let me tell you this. If somebody  
9 says, Well, I appreciate that, but, you  
10 know, I don't really want to ride with  
11 them. I don't want to ride with them. I  
12 don't know them. They don't want an ID.  
13 That's what I meant earlier about playing  
14 games. Because if they want an ID, we're  
15 going to provide an ID. And they're going  
16 to do whatever is necessary to get the ID.  
17 If it's a place where they work, we'll go  
18 to their place of work. If it's a church  
19 where they worship, we'll go to their place  
20 of worship. If it's at their home, we'll  
21 go to their home. But don't -- don't tell  
22 me that you want the ID and then we provide  
23 a way for you to get it and then you say,

1 Well, I'm not comfortable with that because  
2 you don't want the ID.

3 Q. You stated that I believe -- and  
4 correct me if I'm wrong -- that other  
5 states aren't doing what Alabama is doing.  
6 And I believe you're referring to in  
7 regards to advertising; is that correct?

8 A. Advertising mobile unit visits to  
9 all counties in the state and personal  
10 in-home visits. Nobody --

11 Q. How do you know what other states  
12 are doing?

13 A. Oh, because I'm a member of the  
14 National Association of Secretaries of  
15 State. So I know what other states are  
16 doing. I know how they're doing it, and I  
17 know what they're doing. And I know that  
18 we're setting the standard for excellence  
19 on ensuring that each and every eligible  
20 U.S. citizen that's a resident of Alabama  
21 is registered to vote and has a photo ID.

22 Q. Were you referring to any states  
23 in particular when you made that statement?



1           A.       No. I'm just saying that's the  
2 way it is.

3           Q.       Okay. And I have one other  
4 question. Is this the Alabama vote --

5           A.       And let me make sure you know  
6 this, too. Okay. I want every state in  
7 the union to do what they want to do to  
8 take care of their people the way they  
9 see fit. But what I'm going to do is I'm  
10 going to take care of all the people in  
11 Alabama to the best of my ability. And  
12 if somebody needs a photo ID, we're going  
13 to provide them with one regardless of  
14 their station in life, regardless if they  
15 are white, black, Hispanic. It doesn't  
16 matter. Any other ethnic persuasion.  
17 Regardless if they're rich or poor, it  
18 does not matter. And anybody that leads  
19 anybody to believe otherwise is  
20 misleading folks.

21          Q.       Is any -- is the  
22 alabamavotes.gov website, is any part of  
23 it in Spanish?

1           A.       I don't think so.

2                   MS. MERLE:   I don't have any  
3 further questions.

4                   MR. MAZE:   Thank you,  
5 Mr. Secretary.   We're done.

6                   VIDEOGRAPHER:   This concludes  
7 the deposition.   Going off the record at  
8 two twenty.

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CERTIFICATE

STATE OF ALABAMA  
ELMORE COUNTY

I hereby certify that the above  
and foregoing deposition was taken down  
by me in stenotype and the questions and  
answers thereto were transcribed by means  
of computer-aided transcription, and that  
the foregoing represents a true and  
correct transcript of the testimony given  
by said witness upon said hearing.

I further certify that I am  
neither of counsel, nor of kin to the  
parties to the action, nor am I in  
anywise interested in the result of said  
cause.

/s/Virginia Denese Barrett  
CCR #458, Expires 9/30/17  
Commissioner for the  
State of Alabama at Large  
My Commission Expires 9/14/19

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

4                   CIVIL ACTION NO. 2:15-CV-2193-LSC

5

6   GREATER BIRMINGHAM

7   MINISTRIES, et al.,

8                   Plaintiffs,

9                   vs.

10   JOHN MERRILL, in his official

11   capacity as the Alabama Secretary of State,

12                   Defendant.

13

14                   DEPOSITION OF BENARD SIMELTON

15                   WIGGINS, CHILDS, PANTAZIS, FISHER & GOLDFARB

16                   301 19th Street North

17                   Birmingham, AL 35203

18                   May 24, 2017

19                   10:00 a.m.

20

21   REPORTED BY:                   Chanetta L. Sinkfield, CCR

22                   Registered Merit Reporter

23                   Notary Public

1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFFS:

4 DEUEL ROSS, ESQ.

5 NAACP LEGAL DEFENSE FUND

6 AND EDUCATIONAL FUND, INC.

7 40 Rector Street, 5th floor

8 New York, NY 10006, LLP

9

10

11

12 FOR THE DEFENDANT:

13 COREY L. MAZE, ESQ.

14 WINFIELD J. SINCLAIR, ESQ.

15 OFFICE OF THE ATTORNEY GENERAL

16 STATE OF ALABAMA

17 501 Washington Avenue

18 Montgomery, AL 36130

19

20

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23

1                                   S T I P U L A T I O N

2

3                                   IT IS STIPULATED AND AGREED,

4    by and between the parties, through their

5    respective counsel, that the video deposition of

6    Benard Simelton, may be taken before Chanetta L.

7    Sinkfield, Certified Court Reporter, Registered

8    Merit Reporter, and Notary Public;

9                                   That the signature to and reading of  
10   the deposition by the witness is waived, the

11   deposition to have the same force and effect as if

12   full compliance had been had with all laws and

13   rules of Court relating to the taking of

14   depositions;

15                                   That it shall not be necessary for

16   any objections to be made by counsel to any

17   questions, except as to form or leading questions,

18   and that counsel for the parties may make

19   objections and assign grounds at the time of trial,

20   or at the time said deposition is offered in

21   evidence, or prior thereto.

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1 P R O C E E D I N G S

2 \* \* \*

3 BENARD SIMELTON,

4 after having been first duly sworn, was

5 examined and testified as follows:

6 \* \* \*

7 EXAMINATION BY MR. MAZE:

8 Q. Mr. Simelton?

9 A. Yes, sir.

10 Q. Welcome back.

11 A. Thank you.

12 Q. We have met before in deposition;  
13 correct?

14 A. That's correct.

15 Q. And you remember the rules from that  
16 deposition?

17 A. Yes.

18 Q. So we won't go over all of that  
19 again.

20 A. Okay.

21 Q. The first thing I am going to do is  
22 show you what I have marked Defendant's Exhibit 1  
23 and this is a notice of Rule 30(b)(6) deposition to



1 the Alabama NAACP. Have you seen this document  
2 before?

3 (Defendant's Exhibit No. 1 was marked  
4 for identification.)

5 A. Yes, sir.

6 Q. (BY MR. MAZE:) And have you reviewed  
7 the 31 topics that are within it?

8 A. Yes.

9 Q. And you understand that your function  
10 here today is to testify on behalf of the Alabama  
11 State Conference of the NAACP on these 31 topics;  
12 correct?

13 A. Well, it's my understanding that we  
14 are only going to testify on -- I mean, what is  
15 it -- 8 or so of them.

16 Q. Right. I think you are -- you're  
17 anticipating what I am going to say next.

18 A. Okay.

19 Q. So let me just re-ask it this way.  
20 Your understanding is is you are the representative  
21 who will testify on behalf of the Alabama State  
22 Conference of the NAACP?

23 A. Yes.

1           Q.       And you understand that the parties  
2     have come to an agreement that -- and I am going to  
3     hand you Defendant's Exhibit 2 -- that we are going  
4     to introduce your previous deposition testimony  
5     that will serve as the 30(b)(6) deposition  
6     testimony for the NAACP on these topics; correct?

7                   (Defendant's Exhibit No. 2 was marked  
8                   for identification.)

9           A.       That's correct.

10          Q.       (BY MR. MAZE:) Have you reviewed  
11     your previous deposition testimony since you were  
12     given that testimony?

13          A.       Yes.

14          Q.       And you agree that the testimony in  
15     there is true and accurate?

16          A.       It's -- where it says I can  
17     extrapolate the amount of money that was spent  
18     specifically on photo ID?

19          Q.       Uh-huh.

20          A.       I won't say it's incorrect, but I  
21     mean, it's almost an impossible task because of --  
22     we don't keep records of when we are talking  
23     specifically photo ID --

1 Q. Okay.

2 A. -- versus when we're doing just voter  
3 registration. So that may be not totally an  
4 accurate statement in my deposition previously.

5 Q. And we'll get to that statement in a  
6 second.

7 A. Okay.

8 Q. Is there anything else about that  
9 transcript that you found to be inaccurate?

10 A. No.

11 Q. So you are in agreement that the  
12 Defendant's Exhibit 2, your previous testimony, is  
13 also the testimony of the Alabama State Conference  
14 of the NAACP for the purposes of these topics;  
15 correct?

16 A. Yes.

17 Q. You can put that testimony aside.

18 A. Okay.

19 Q. That has significantly reduced what  
20 we need to do today.

21 A. Okay.

22 Q. I hope that makes you happy?

23 A. It does.

1           Q.       Me, too. All right. So you have  
2       seen the 8 topics that we're going to talk about  
3       today; correct?

4           A.       Yes.

5           Q.       And I think you have touched on the  
6       first one we want to get into. Tell me why it is  
7       difficult for the Alabama NAACP to extrapolate the  
8       amount of moneys that it has spent dealing with the  
9       voter ID law.

10          A.       Well, the reason it's difficult is  
11       because when we go out and to do voter  
12       registration, we talk about photo ID, we don't have  
13       a specific program that just talks specifically  
14       about photo ID without talking about voter  
15       registration, without talking about how ex-felons  
16       can receive their, you know, restore their right to  
17       vote. And so even with some of my travel, if I am  
18       going to talk to a branch about voter registration,  
19       I will talk about the photo ID requirement, but I  
20       mean, you know, my travels, most of my travels are  
21       covered. So I can't say well, you know, I talked  
22       voter ID for 10 minutes and that equates to, you  
23       know, a certain percentage of the time.

1           Q.       If I can summarize, is it fair to say  
2       that it's not possible for you to divide up what  
3       you had put in sort of a "voter" pool of money.  
4       Voter issues -- let me strike that and ask it a  
5       different way.

6           A.       Okay.

7           Q.       Can the Alabama NAACP quantify the  
8       amount of money that it spends on an annual basis  
9       on the voter-related issues, including  
10      registration, ID cards --

11          A.       Yes.

12          Q.       -- felon disenfranchisement?

13          A.       Yes, we can do that.

14          Q.       Can you tell me how much the Alabama  
15      NAACP spent in 2016 on voter-related issues?

16          A.       In 2016, I would have to refer back  
17      to my budget to get the exact amount.

18          Q.       Well, then, let me stop you right  
19      there. I am going to hand you what has been marked  
20      Defendant's Exhibit 4, which I believe is the  
21      proposed budget for the State NAACP from 2010 to  
22      2017. Am I accurately stating what that is?

23                               (Defendant's Exhibit No. 4 was marked

1 for identification.)

2 A. This is proposal of 2017.

3 Q. (BY MR. MAZE:) You can go ahead and  
4 flip through it.

5 A. Oh, okay then.

6 Q. It's got other years as you go  
7 backwards.

8 A. Okay. I just looked at the top one,  
9 there. Okay. Yes.

10 Q. I want to ask some questions about  
11 this particular document, and we'll just start on  
12 the first page. It says "proposed" --

13 A. Yes.

14 Q. -- "budget" for each one of these.  
15 Does that mean that, that this doesn't reflect  
16 actual expenses, it's what you believe the expenses  
17 will be going into the next fiscal year?

18 A. That is correct.

19 Q. Do you have any records that show  
20 what you actually spent for any of these  
21 categories, as opposed to just the proposal?

22 A. We do have those, yes.

23 Q. Okay. How -- well, strike that.

1                   Let's talk about this actual  
2     document.

3                   A.       Okay.

4                   Q.       Explain to me -- in expenses, that --  
5     the category at the bottom, "expenses." Explain to  
6     me which of these expenses reflects the amount of  
7     moneys that were proposed to be spent on  
8     voter-related issues?

9                   A.       It's typically in the  
10    Political Action, E-26.

11                  Q.       Are any of the others typically  
12    assigned for voter-related issue, or is it  
13    typically Political Action?

14                  A.       Well, that's typically, but what  
15    happens is, if you look down to E-31 through E-33,  
16    Regional Coordinators, they also -- they are  
17    typically our vice presidents, and they go out and  
18    they may talk about voter registration, too.

19                  Q.       Okay.

20                  A.       The Political Action is more  
21    specifically for our committee chairperson that  
22    does most of the voter, from the state level. Now,  
23    this is not including what the branches do. This

1 is just strictly from the State Conference level.

2 Q. Okay.

3 A. So we will get a -- if we receive a  
4 grant, we share a portion of that with local  
5 branches.

6 Q. So we've identified Political Action  
7 as related to voting.

8 A. Yes.

9 Q. And then potentially Region 1, 2, and  
10 3 Coordinator. Is there any other category that  
11 gets spent on voting-related issues?

12 A. Well, again, with Presidents Travel,  
13 E-28, a portion of that, you know, like I said, if  
14 I am going to meet with branches, some of that may  
15 be -- we talk about voter registration, get out to  
16 vote, or I may go specifically to an event that a  
17 local branch is having, either as a speaker or on a  
18 panel discussion to talk about, you know, the need  
19 to get out to vote.

20 Q. And I am assuming this is what you  
21 meant earlier when you say you can't extrapolate.  
22 You don't know how much of your \$7,000 annual  
23 budget you will spend solely on voter issues. It's



1     some percentage of it, but you don't know how much?

2             A.       That's correct.

3             Q.       Can you give me an estimate of how  
4     much of that 7,000, you believe will be dedicated  
5     to voter-related issues?

6             A.       I cannot.

7             Q.       Do you think that it's more or less  
8     than 10 percent? Like \$700 or 10 percent of that,  
9     do you think it would be more or less than that?

10            A.       I hate to give a percentage because  
11    we just don't track it, you know, that way.

12            Q.       Okay.

13            A.       And it's -- I mean, it could be, you  
14    know, I will say certainly less than 50 percent.

15            Q.       Okay.

16            A.       But other than that, I mean, I  
17    couldn't give any kind of estimate that is anywhere  
18    near accurate.

19            Q.       And just to make sure that we're  
20    clear for the record, the only one of these expense  
21    accounts that is dedicated totally to funding voter  
22    issues is E-26, Political Action?

23            A.       That is correct.

1                   Q.       Do you know -- obviously 2017 has not  
2     been completed yet. I am going to flip two pages  
3     to 2016.

4                             In 2016, you had proposed a \$500  
5     budget for Political Action. Do you know whether  
6     or not all of that \$500 was spent for  
7     voting-related issues that year?

8                   A.       No.

9                   Q.       I assume the same answer, you don't  
10    know if you spent more than 500?

11                  A.       On voting-related issues?

12                  Q.       Correct.

13                  A.       Yes. I can say we spent more than  
14    that.

15                  Q.       Okay. How much more?

16                  A.       Well, I can't give you a dollar  
17    amount. I can say that -- I mean, an accurate  
18    dollar amount. I can say that we spent more than,  
19    more than \$3,000 -- wait, hold on just a second.

20                  Q.       Okay.

21                  A.       I can say that we spent more than  
22    \$500.

23                  Q.       Okay.

1           A.       I mean, because -- and I know it's  
2       substantially more than that, but how much more, I  
3       can't tell you.

4           Q.       I saw that you were looking up into  
5       the income columns. Are you looking because there  
6       is a particular income that corresponds to the  
7       amount of money that you spend on voting?

8                   MR. ROSS: Objection.

9           A.       Yes.

10          Q.       (BY MR. MAZE:) Which one or which  
11       ones?

12          A.       It could be I 05.

13          Q.       And that's National Contributions and  
14       Local Health Grant; correct?

15          A.       Correct.

16          Q.       And I think the last time you  
17       testified, you noted that national contributions,  
18       what comes from the national NAACP, you can use  
19       towards voting issues; correct?

20          A.       Yes.

21          Q.       Okay.

22          A.       If it's so designated. They may --  
23       National may send us a grant for economic

1 development, and that I 03, it comes from -- it's  
2 kind of convoluted because it's -- actually comes  
3 through the Tides Foundation, but it's from the  
4 national office through Tides down to us.

5 Q. Do you ever spend any other moneys  
6 beyond what comes from national contributions or  
7 grants on voter-related issues, or is that where  
8 all of your voter-related expenditures come from?

9 A. It could come from corporate  
10 sponsorships, if we don't receive funding from  
11 national and we have to do something beyond our  
12 \$500 or whatever we designate for Political  
13 Action --

14 Q. Okay.

15 A. -- we dip into other, you know,  
16 fundraising efforts which is, you know, corporate  
17 sponsorship, branch assessments, possible money  
18 that we make from the state convention, because  
19 during our state convention we do talk about voter  
20 registration.

21 When Secretary Merrill came down, you  
22 know, that was not in Political Action, and it was  
23 not in National Contribution. That came out of our

1 state convention.

2 Q. Okay.

3 A. You know, to set up that particular  
4 workshop, what we call "workshop," where he  
5 presented.

6 Q. Have you ever had a fundraiser  
7 specifically targeting money for voter-related  
8 issues? In other words, have you ever had a  
9 fundraiser, going out and asked for funds  
10 specifically to educate voters about the ID law?

11 MR. ROSS: Objection.

12 A. I can't recall that we have.

13 Q. (BY MR. MAZE:) So then it's fair to  
14 say that the money you have spent educating voters  
15 about the ID law would come from these other  
16 contributions, sponsorships, or grants in these  
17 charts; correct?

18 A. Well, like I said, you know, branch  
19 assessments, it could come from that, you know,  
20 money from 500 club, so...

21 Q. What is the most amount of money you  
22 have spent in any year on voter-related issues?

23 A. I would have to go back and look at

1 another document to tell you that. That's not  
2 reflected in here.

3 Q. What document is that?

4 A. Each year a treasurer will prepare a  
5 financial -- what does he call himself? The  
6 financial treasurer. He prepares a document that  
7 says -- he goes through and looks at all of the  
8 checks that have been written, and he puts them  
9 into a category based on these, and that document  
10 reflects what the actual expenditure was in each of  
11 those categories.

12 Q. What is that document called? Do you  
13 all have a specific name for it?

14 A. I think it's called End of Year  
15 Financial Report.

16 Q. And that's something that's not  
17 available on your website, is it?

18 A. No, it's not.

19 Q. That's something that we would need  
20 to ask the Treasurer, if we were able to get it.  
21 Either you, or us, or somebody would have to ask  
22 him to produce it?

23 A. Well, it's already produced. We just

1     have to -- When you say "produce," I don't know  
2     what exactly --

3             Q.       I mean -- I am just asking, how could  
4     I get my hands on it? Would you be able to call  
5     him and say, "Hey, you know, in this litigation,  
6     someone has asked for our End of Year Financial  
7     Report. Can you send it to me?" Is that possible?

8             A.       Well, I mean, not today. I may -- we  
9     have copies in the office, in our office, so we  
10    would not necessarily have to go back to him --

11            Q.       Okay.

12            A.       -- because he gives us the official  
13    copy and, you know, it becomes one part of our  
14    records.

15            Q.       Assuming that the attorneys work out  
16    an agreement that it's something that you would  
17    need to do, it's an document that you could get us  
18    within a week or so?

19            A.       Yes.

20            Q.       Have you reviewed that recently, any  
21    of those end-year statements?

22            A.       Well, I mean, I reviewed 2016 when it  
23    was presented in January. And that was the last

1 time I think I looked at those.

2 Q. You didn't review it in preparation  
3 for your testimony today?

4 A. No.

5 Q. Do you happen to know from your last  
6 review of that document how much money in 2016 was  
7 spent on voter issues?

8 A. No, I don't.

9 Q. You would have to look at the  
10 document?

11 A. Yes.

12 Q. If we were told -- and this is a  
13 hypothetical, if we were told that a thousand  
14 dollars in a year was spent on voter-related  
15 issues, what percentage of that do you think would  
16 be for voter ID as opposed to felon  
17 disenfranchisement, or registration, or other  
18 particular topics?

19 MR. ROSS: Objection.

20 A. That would -- you know, depend on the  
21 year, because it's not the same from year to year.  
22 So, I mean, I can't give you a percentage, you  
23 know, from year to year. You know, we would have



1 to -- I just can't extrapolate, again, out of a  
2 thousand dollars how much we spend on, you know,  
3 specifically voter ID. I mean, it's just, it's  
4 very difficult because we don't just go out and do  
5 photo ID.

6 Q. Have you seen a significant increase  
7 in the amount of money you have had to spend on  
8 voter issues as a whole because of the voter ID  
9 law, or are you spending about the same amount of  
10 money every year on voter-related issues?

11 MR. ROSS: Objection.

12 A. We have seen an increase in the  
13 amount of money that we spend on voter-related  
14 issues --

15 Q. (BY MR. MAZE:) Okay.

16 A. -- since the voter ID law has  
17 become -- since it was, you know, the  
18 Supreme Court's decision in 2013.

19 Q. Would that be reflected if we get the  
20 End of Year Financial Reports, would see an  
21 increase in the amount of money spent on  
22 voter-related issues?

23 A. I can't speak to that because I don't

1 recall what the different amounts are.

2 Q. What did you do to prepare to talk  
3 about -- strike that.

4 What documents did you review before  
5 today to get ready to talk about your expenditures  
6 on voter-related issues?

7 A. Primarily the budget for the last  
8 10 years.

9 Q. Anything else? Any other documents  
10 besides this one?

11 A. To get ready to talk about  
12 expenditures?

13 Q. Right, about the money coming in and  
14 the money going out, the budget issues?

15 A. I reviewed what I call our program --  
16 our program for each year, and what I did is -- and  
17 this is a part of our budget, it's the written, the  
18 verbiage that goes along with what we plan to do in  
19 that particular, what we call committee each year.  
20 And I made a copy. Well, I extracted for Political  
21 Action what the Political Action Committee had  
22 planned to do for that year, and attached it to the  
23 budget for that year, so I reviewed that document.

1 Q. And just to make sure I am clear,  
2 this exhibit -- what number did I put on that?

3 A. 4.

4 Q. So Defendant's Exhibit 4 contains  
5 your proposed budgets back to 2010, plus excerpts  
6 from this program, and the excerpts are the  
7 Political Action excerpt from each year; correct?

8 A. That's correct.

9 Q. I think this is the last question on  
10 this topic.

11 Have you received -- and by "you," I  
12 mean the Alabama NAACP -- have you received any  
13 direct donations from a private individual or an  
14 organization of any kind specifically for the  
15 purpose of educating voters about the voter ID law?

16 MR. ROSS: Objection. Let me make  
17 clear what my objection is.

18 MR. MAZE: Sure.

19 MR. ROSS: My client and I have  
20 expressed a concern about revealing the membership  
21 of the Alabama NAACP, and I just want to make clear  
22 that that is not what you are asking.

23 MR. MAZE: This is just a yes or no

1 question.

2 MR. ROSS: Okay.

3 MR. MAZE: If it's a yes and there's  
4 follow-up, I understand the objection. Right now  
5 it's just a yes or no question.

6 Q. (BY MR. MAZE:) Do you know if you  
7 have received any donations from a private  
8 individual or an organization for the express  
9 purpose of educating persons about the voter ID  
10 law?

11 A. Not that I can recall.

12 Q. All right. Then we'll move to the  
13 next topic.

14 The last time that you testified, you  
15 said that you would -- that if given the  
16 opportunity to poll your local branches, you might  
17 be able to give a more specific answer about rides  
18 or efforts that the NAACP has given to people to  
19 get photo ID cards. Do you remember that?

20 A. Yes.

21 Q. So I am going to ask you those  
22 questions again. First of all, the Alabama State  
23 Conference of the NAACP, do you know whether or not

1     you have given any rides to an individual for the  
2     specific purpose of getting an ID card?

3             A.       No.

4             Q.       Do you know if any of your local  
5     branches have given rides to an individual for the  
6     specific purpose of getting an ID card?

7                     MR. ROSS:  Objection.

8             A.       I cannot speak for all of the units.  
9     I can only speak for the ones that I have heard  
10    from, and there were opportunities, they went  
11    through the process of publicizing -- well, let me  
12    back up.  Now, you are saying "giving rides to the  
13    polls"?

14            Q.       (BY MR. MAZE:)  No.

15            A.       Okay.

16            Q.       No, I am saying giving a ride to  
17    someone --

18            A.       Specifically for --

19            Q.       -- to the Board of Registrars'  
20    office, or somewhere, or to the DMV, for the  
21    specific purpose of getting an ID card.  Not to  
22    vote, but just to get the card so they can vote  
23    later.

1           A.       Okay. I cannot speak for all the  
2     branches, I can only speak for the ones that I have  
3     heard from. And no information in any of those  
4     responses that said they had specifically given  
5     rides to individuals for the purpose of getting a  
6     photo ID.

7           Q.       Do you know if any of those branches  
8     had offered and publicized, "We will give a ride to  
9     someone if they need it"?

10          A.       Yes.

11          Q.       Do you know which ones?

12          A.       Yes.

13          Q.       Which ones were they?

14          A.       Bullock County, Baldwin County,  
15     Crenshaw, and Elmore County.

16          Q.       How many counties responded to your  
17     question, or how many counties have you heard from  
18     on this topic?

19          A.       Let me see, three.

20          Q.       Of the counties that offered rides, I  
21     am assuming it's a true statement, then, that they  
22     didn't give any; correct?

23          A.       That is correct.

1                   Q.       Did they tell you whether or not they  
2     got any responses or any calls from persons seeking  
3     a ride?

4                   A.       One county said that they had  
5     communication with a gentleman that they had  
6     offered a ride to, but he did not want to because  
7     we requested that they fill out a form saying this,  
8     "I need a ride." He did not want to get involved,  
9     so no ride was actually given, but there was  
10    communication with this individual.

11                  Q.       Did you send this question out to all  
12    of the counties?

13                  A.       Which question?

14                  Q.       Did you ask all of the questions  
15    whether or not they had offered rides?

16                  A.       When you say -- no, not all counties,  
17    I sent it out to all of our units that have  
18    active -- or our active units.

19                  Q.       All right. So let's move to the next  
20    topic then.

21                               Recently, we received Defendant's  
22    Exhibit 3. I am going to hand that to you, and you  
23    can go ahead and look at that while I hand them

1 out.

2 (Defendant's Exhibit No. 3 was marked  
3 for identification.)

4 A. (Witness complying.) Okay.

5 Q. (BY MR. MAZE:) Have you seen that  
6 document before?

7 A. I was trying to look through and see.  
8 Yes, I have.

9 Q. I want you to turn to page 10.

10 A. (Witness complying.)

11 Q. On page 10, I am going to read  
12 paragraph 12, and just ask if I have read it  
13 correctly:

14 "Individual fact witnesses, who have  
15 information regarding the manner in which HB 19  
16 denies and/or abridges their right to vote in  
17 violation of the VRA, including but not limited to  
18 the following Alabama residents, whose contact  
19 information will be provided only after the  
20 protective order is entered in this case."

21 Have I read that correctly so far?

22 A. That is correct.

23 Q. Okay. Go down to where you see



1 "third supplement," May 12th. I have questions  
2 about the persons named there down. All right.  
3 The first person is Jewel Castophney, of I guess  
4 that's Vredenburgh, Alabama. I may have  
5 mispronounced it, but do you see where I am  
6 reading?

7 A. Yes.

8 Q. Do you know whether Jewel Castophney  
9 is a member of the Alabama NAACP?

10 A. No.

11 Q. Do you know whether Jewel Castophney  
12 has a photo identification card that is valid for  
13 voting in Alabama?

14 A. No.

15 Q. Do you know what information  
16 Ms. Castophney has regarding the manner in which  
17 HB 19 denies or abridges her right to vote?

18 A. No.

19 Q. Mr. Simelton, you understand that  
20 this document was given to us by the Alabama NAACP;  
21 correct?

22 MR. ROSS: Objection.

23 Q. (BY MR. MAZE:) That you are a

1 plaintiff in this case and that -- that your  
2 conference, Alabama State Conference says it  
3 supplements its disclosures; correct?

4 A. Well, to answer your question, I know  
5 that, but the Alabama State Conference did not  
6 provide you those -- provide those specific names.

7 Q. Well, who provided those names then,  
8 if it's not the Alabama State Conference?

9 MR. ROSS: Objection. There are  
10 other plaintiffs in this lawsuit.

11 THE WITNESS: Right.

12 MR. ROSS: There are other names,  
13 including that Josh Wahl, listed here, who the  
14 Alabama NAACP has previously testified they didn't  
15 provide the name for. So there may be other  
16 sources for this information.

17 Q. (BY MR. MAZE:) Mr. Simelton, on  
18 behalf of the Alabama NAACP, do you have any  
19 information at all regarding Jewel Castophney's  
20 knowledge about this case?

21 A. The Alabama State Conference does  
22 not. I would have to poll my units to see if they  
23 held any specific information about this

1 individual, but --

2 Q. Were you -- I am sorry, go ahead.

3 A. These names were not -- did not come  
4 from the Alabama State Conference.

5 Q. Have you seen these names before  
6 today?

7 A. When I looked over the document, I  
8 did not go through name-by-name and look at it,  
9 because these are not names that are familiar. So  
10 I can't say that I looked specifically at, you  
11 know, Jewel or any of the other individuals' names  
12 that are listed here.

13 Q. I am going to mark the next document.  
14 I'm trying to find the sticker numbers.

15 THE REPORTER: No. 5.

16 MR. ROSS: Exhibit No. 5.

17 MR. MAZE: Here it is. I've already  
18 put a five. I'll mark this one 6.

19 (Defendant's Exhibit No. 6 was marked  
20 for identification.)

21 Q. (BY MR. MAZE:) I am going to hand  
22 you what is marked Defendant's Exhibit 6. I am  
23 going to hand it to counsel, as well. And this is

1 a letter written by myself to Mr. Ross on May  
2 the 22nd. Have you seen this letter before?

3 A. Yes.

4 Q. And it outlines the topics that we  
5 were to discuss today; correct?

6 A. Yes.

7 Q. What preparation did you do, if any,  
8 to get information regarding the nine names on the  
9 second page?

10 So turn to page 2. What preparation  
11 did you do to be able to provide information on  
12 behalf of the Alabama NAACP about these nine  
13 individuals?

14 MR. ROSS: Objection, to the extent  
15 it will require you to disclose any conversations  
16 you had with your attorney.

17 Q. (BY MR. MAZE:) Correct. You don't  
18 have to tell me about what Mr. Ross talked about.  
19 I want to know what steps you took to determine the  
20 information about these persons, if any.

21 A. Okay. Could you -- I am sorry.  
22 Could you ask the question again?

23 Q. Sure. That's okay. All right. So

1 go to that second page. I am going to read the  
2 paragraph below the names:

3 "The Alabama NAACP's designee should  
4 be prepared to provide information regarding the  
5 persons that the Alabama NAACP noticed, including  
6 but not limited to whether these persons presently  
7 have a photo ID card (Topics 11-13), whether any of  
8 these persons were affected by the ALEA office  
9 closures (Topic 14), and how these persons provide  
10 a basis for plaintiffs' claims that the  
11 Photo ID Law is discriminatory in purpose or effect  
12 (Topics 15-16)."

13 Did I read that correctly?

14 A. Yes.

15 Q. Did you do anything in preparation  
16 for your testimony today to determine whether any  
17 of these nine persons have a photo ID card?

18 A. No.

19 Q. Do you know whether any of these  
20 persons have a photo ID card?

21 A. No.

22 Q. After reading this -- have you read  
23 this letter before today? I don't know if I asked

1     you that?

2                   A.       Yes.

3                   Q.       Did you not feel it was incumbent  
4     upon you to get the information that was requested,  
5     specifically in this instance whether any of these  
6     persons has an ID card?

7                   MR. ROSS:  Objection.  He is the  
8     30(b)(6) witness from the Alabama NAACP.  There are  
9     other plaintiffs in this lawsuit.  He has testified  
10    that he doesn't have this information.  Again, it  
11    could have come out from any of the other four  
12    plaintiffs.  He has told you what he knows about  
13    these individuals.

14                  MR. MAZE:  Actually, he hasn't told  
15    me anything about them yet.

16                  MR. ROSS:  Which is that he doesn't  
17    know anything about them.

18                  Q.       (BY MR. MAZE:)  Do you have any  
19    information about whether any of these nine persons  
20    were affected by the ALEA office closures?

21                  MR. ROSS:  Objection.

22                  A.       No.

23                  Q.       (BY MR. MAZE:)  Do you have any

1 information about whether -- how any of these  
2 persons provides a basis for your claim that the  
3 Photo ID Law is discriminatory in purpose or  
4 effect?

5 MR. ROSS: Objection.

6 A. No.

7 Q. (BY MR. MAZE:) Do you know which  
8 plaintiff has this information?

9 MR. ROSS: Objection.

10 MR. MAZE: State the objection,  
11 please.

12 MR. ROSS: Asked and answered.

13 MR. MAZE: I haven't asked that  
14 question yet.

15 MR. ROSS: You asked variations on  
16 the same question, but --

17 MR. MAZE: You can answer, Mr.  
18 Simelton.

19 MR. ROSS: You can answer.

20 Q. (BY MR. MAZE:) Which plaintiff knows  
21 who these people are?

22 A. I don't know.

23 Q. And on behalf of the Alabama NAACP,

1     your testimony is that the Alabama NAACP has no  
2     information about any of these nine persons?

3             A.       I will say I would have to go back to  
4     the branches and ask them, but the state -- Alabama  
5     State Conference, my office, does not have  
6     information that I am aware of on these -- that I  
7     have seen, on these individuals.

8             Q.       And the Alabama NAACP felt  
9     comfortable signing off on the initial disclosures  
10    of these persons, despite having no information as  
11    to whether or not they actually have a basis to  
12    assist you in your case?

13            MR. ROSS:  Objection.  And I'll,  
14    again, object to the extent it requires any  
15    conversations that you had with your attorneys.

16            I don't know that he can answer  
17    without talking about privileged conversations that  
18    he's had with me.

19            Q.       (BY MR. MAZE:)  Is your answer that  
20    you have had privileged conversations with counsel?

21            A.       I have had, yes.

22            Q.       About these persons, without telling  
23    me what you talked about, have you talked about



1     these persons with anyone?

2                   A.       Yes, I have spoken with counsel about  
3     them, in general.

4                   Q.       Okay.

5                   MR. ROSS: And I will instruct you  
6     not to answer beyond saying you have had  
7     conversations with counsel.

8                   THE WITNESS: Okay.

9                   Q.       (BY MR. MAZE:) Let's move to the  
10    next topic. I think we have already gone into  
11    that.

12                   In fact, that letter -- if you want  
13    to, you can turn to page 24. I am just going to  
14    ask you the questions straight from the document.

15                   MR. ROSS: Topic 24.

16                   MR. MAZE: Topic 24.

17                   A.       Okay.

18                   Q.       (BY MR. MAZE:) I am sorry -- the  
19    letter you have on your -- right there, the second  
20    page.

21                   A.       Yeah, I had it, I just --

22                   Q.       That's okay.

23                   A.       I had too many things going on.

1     Okay.

2                   Q.       How much money did the Alabama NAACP  
3     divert for educating African American voters in  
4     Alabama about the requirements of the Photo ID Law  
5     in 2016?

6                   MR. ROSS:   Objection.

7                   A.       I don't know the answer to that.

8                   Q.       (BY MR. MAZE:)   What did you do in  
9     preparation for today's testimony to come up with  
10    that answer?

11                  A.       As previously stated, I reviewed  
12    budgets from 2010 through 2017, really.

13                  Q.       Is it possible for the Alabama NAACP  
14    to quantify the amount of resources that it defers  
15    in any particular year for the purpose of educating  
16    voters about the requirements of Alabama's Photo ID  
17    Law?

18                  A.       I think I have already answered that  
19    question, and the answer, still, is no.   We can  
20    cannot quantify that.

21                  Q.       The next topic.   If the district  
22    court finds that the state legislature passed the  
23    Photo ID Law with a discriminatory purpose, what

1     does the Alabama NAACP want as the law that will be  
2     in effect, what law -- what is it that you are  
3     going to ask the Court to make the law?

4                     MR. ROSS:  Objection.

5             A.       As I stated in my previous testimony,  
6     the Voting Rights Act of 1965 does not require a  
7     person to produce a photo ID, or any other type of  
8     ID, in order to vote.  A photo ID is viewed as  
9     another attempt by the State of Alabama and  
10    Southern states who still practice racism when it  
11    comes to voting to interfere, to disenfranchise  
12    voters who may not have, in this case, documents in  
13    order to vote.

14                    So the Alabama NAACP would like to  
15    see everyone, every person, every citizen, be able  
16    to vote without having to require a photo ID.  If  
17    an ID is required, then we should go back to what  
18    it was, the law that came out of, I think it's 2003  
19    time-frame, a utility bill, birth certificate, or  
20    some other document with their name on it.

21             Q.       (BY MR. MAZE:)  Or sworn affidavit, I  
22    think, as you testified to last time?

23             A.       A sworn -- yes.  A sworn affidavit.

1                   MR. MAZE: Can we have five minutes?

2                   MR. ROSS: Yeah.

3                   (Whereupon a recess was taken.)

4                   (Deposition resumed.)

5       EXAMINATION BY MR. MAZE:

6               Q.       Mr. Simelton, I think I have got

7       about five more minutes.

8               A.       Okay.

9               Q.       You testified when -- in your

10      personal deposition, that you knew one person who

11      did not have -- presently did not have a photo ID

12      card and that was Joshua Wahl; correct?

13              A.       That's correct.

14              MR. ROSS: Objection.

15              Q.       (BY MR. MAZE:) Does the Alabama

16      NAACP have knowledge of any person other than

17      Mr. Wahl who does not have, presently, an

18      identification card that can be used for voting?

19              MR. ROSS: Objection.

20              A.       We -- I guess the answer is yes, and

21      I can say through my attorney.

22              Q.       (BY MR. MAZE:) Name those persons.

23              MR. ROSS: I mean, he just said that

1 he could only testify about what his attorney has  
2 told him.

3 MR. MAZE: This is a corporate  
4 deposition.

5 MR. ROSS: It's a corporate  
6 deposition. That doesn't mean that he can breach  
7 the privilege. What he is saying that he knows --  
8 the Alabama NAACP is aware of it through  
9 conversations -- of individuals through  
10 conversations he's had with his attorney. That is  
11 by definition privileged information.

12 Q. (BY MR. MAZE:) Does the Alabama  
13 NAACP know of any persons who do not have a state  
14 identification card used for voting -- Strike that.

15 You realize this is very difficult.

16 With the exception of Mr. Wahl, does  
17 the Alabama NAACP have any knowledge of any person  
18 in this state who lacks a valid identification card  
19 used for voting other than persons that your  
20 attorney's told you about?

21 MR. ROSS: Objection. You can answer  
22 to the, you know, again, to the extent it doesn't  
23 require conversations that you had with your

1 attorneys.

2 A. No.

3 Q. (BY MR. MAZE:) I want you to take  
4 the document -- I don't remember what number it is,  
5 but it looks like that.

6 A. That's 3? No. 3?

7 Q. Is that 3? All right. Do you  
8 know -- Strike that.

9 With the understanding that you can't  
10 tell me what counsel has talked about with you --

11 A. Yes.

12 Q. -- Does the Alabama NAACP have  
13 knowledge that any person in Alabama does not have  
14 a photo ID card that is not in this document? Is  
15 there anyone outside of this document that you know  
16 does not have an ID card?

17 MR. ROSS: Objection.

18 A. As I testified previously, Mr. Mims,  
19 who is deceased, contacted us.

20 Q. (BY MR. MAZE:) Okay.

21 A. And -- oh, well, his daughter  
22 contacted us, and said he did not. So those are  
23 the individuals that have contacted us that we are

1     aware of.

2                   Q.       And all other persons besides  
3     Mr. Wahl and Mr. Mims, that you are aware of, you  
4     became aware of them because counsel informed you;  
5     correct?

6                   MR. ROSS:   Objection.   You can, I  
7     mean --

8                   MR. MAZE:   I am not asking him for  
9     their names.   I'm not asking you for the  
10    conversations.

11                  MR. ROSS:   But I feel like you are  
12    asking that he's had -- it, I guess you can.

13                  THE WITNESS:   Yes.

14                  MR. MAZE:   Okay.

15                  MR. ROSS:   Go ahead.   Again, you  
16    know, I just raised my objections to privilege.   I  
17    have concerns about the questions that you are  
18    asking him are getting very close to that.   So...

19                  Q.       (BY MR. MAZE:)   The letter that I  
20    handed you, page 2 --

21                  A.       Okay.

22                  Q.       -- is it possible for the Alabama  
23    NAACP to determine whether those nine persons

1 listed at the top of the page are members of the  
2 Alabama NAACP?

3 A. Your question is, is it possible?

4 Q. Can you do it? Not whether you know  
5 today, but can it be done?

6 A. Yes.

7 Q. How hard would that be to do and how  
8 would you do that?

9 A. We would have to call our national  
10 office and give them these names and where they're  
11 from, and the national office would look in their  
12 records and tell us if they're members of the  
13 NAACP.

14 Q. Okay.

15 A. Or we could send out e-mail to all of  
16 our branches and ask if they know any of these  
17 individuals, whether they're members of the NAACP.

18 Q. Is it possible for the Alabama NAACP  
19 to determine whether or not these persons have  
20 photo identification cards suitable for voting?

21 MR. ROSS: Objection. Again, I'll  
22 instruct you not to answer to the extent that it  
23 requires conversations with your attorney.



1 THE WITNESS: Okay.

2 MR. MAZE: I'm not asking --

3 MR. ROSS: I understand that you are  
4 asking, you know, is it possible the Alabama NAACP  
5 to reach out to people, and you can answer to the  
6 extent that that's the question.

7 A. We can make the inquiry. We  
8 cannot -- that would be all we can do, you know.

9 Q. (BY MR. MAZE:) When a person signs  
10 up to become a member of the Alabama NAACP or the  
11 national NAACP, do you require any form of  
12 identification?

13 A. No.

14 Q. Do you do any sort of check to  
15 determine whether a person is who they say they  
16 are?

17 A. No.

18 Q. Is it your testimony that the  
19 Alabama NAACP's end of year financial report is the  
20 best document to show the amount of actual  
21 expenditures on voting-related issues?

22 MR. ROSS: Objection.

23 A. That would be the best document that

1     we produce.

2                   Q.       (BY MR. MAZE:) And you did not bring  
3     that with you today; correct?

4                   A.       That is correct.

5                   Q.       And you did not review that in  
6     preparation for your testimony today; correct?

7                   A.       That is correct.

8                   Q.       We're about to turn over the witness,  
9     but before we do, we are going to put on the record  
10    that as part of this 30(b)(6) deposition, because  
11    it is within the topic, that we request a copy of  
12    the end of year financial reports for the years  
13    2010 through 2016, because they are, as the witness  
14    has just testified, the best answer to this topic.  
15    And with that stated, we pass the witness.

16                   MR. SINCLAIR: And he's obviously not  
17    prepared to testify to it. You should agree to do  
18    it.

19                   MR. ROSS: Is that on the record,  
20    William, or is that --

21                   MR. MAZE: If she heard it, it is.

22                   MR. SINCLAIR: It should be on the  
23    record. You can have --

1                   MR. ROSS: You can say it. I mean,  
2   you can say it on the record if you have got  
3   something to say, gentlemen.

4                   MR. MAZE: Go ahead.

5                   MR. SINCLAIR: The witness is  
6   obviously not prepared to testify in detail on one  
7   of the noticed topics. This document is responsive  
8   to it, and we would expect the NAACP Counsel to  
9   produce that to us. Does counsel agree to do so?

10                  MR. ROSS: Plaintiffs will get back  
11   to you.

12                  MR. MAZE: One more. We also, for  
13   the record, object to the preparation on the  
14   identity and information possessed by the nine  
15   persons listed in the Alabama NAACP's supplemental  
16   disclosures. The disclosures themselves say that  
17   the Alabama State Conference of the NAACP hereby  
18   supplements their disclosure and then disclose  
19   these individuals, thus this information is within  
20   the possession of the Alabama NAACP. I don't think  
21   anyone disagrees that it falls within the topics,  
22   and therefore the State is entitled to know whether  
23   or not these nine individuals possessed an ID card,

1    whether or not they are members of the plaintiffs'  
2    organization, and what basis they provide to prove  
3    the plaintiffs' claims. And we would also ask  
4    plaintiffs to provide that information as part of  
5    this 30(b)(6) deposition.

6                   MR. ROSS: And plaintiffs state their  
7    prior objection which is that this information has  
8    come from sources other than the Alabama NAACP,  
9    that those other plaintiffs are prepared to testify  
10   to where this information came from, and will  
11   represent that some of this information was  
12   actually provided -- the names of these individuals  
13   were provided by the State of Alabama, and so this  
14   is completely within Alabama's ability to figure  
15   out where these names came from. They can contact  
16   the individuals who are not represented and find  
17   out who they are. And the Alabama NAACP has  
18   testified to the best of its knowledge who these  
19   individuals are and whether or not they are  
20   members.

21                   MR. MAZE: State's Counsel is asking  
22   Plaintiffs' Counsel to identify which plaintiff has  
23   this information so that we know who to ask when

1 the time comes.

2 MR. ROSS: Sure. Plaintiffs' Counsel  
3 will get back to you.

4 MR. MAZE: Plaintiffs' Counsel knows.  
5 Why can't Plaintiffs' Counsel just tell us so that  
6 we know and not go through this song and dance on  
7 every deposition.

8 MR. ROSS: We won't go through this  
9 song and dance. I will provide you with -- if you  
10 send -- we will send you a letter explaining where  
11 all these individual names came from. The Alabama  
12 NAACP has testified to the best of their knowledge  
13 they are not members of the Alabama NAACP -- and  
14 that is what the Alabama NAACP knows about it.  
15 Plaintiffs' Counsel is more than happy to provide  
16 you with additional information about these  
17 individuals, and where their names came from.

18 MR. MAZE: State's Counsel will  
19 accept that, as long as Plaintiffs' Counsel will  
20 insure the Secretary's Counsel, on the record, that  
21 that letter will come before the depositions of all  
22 other plaintiffs, including Greater Birmingham  
23 Ministries.

1                   MR. ROSS: It will come before the  
2 deposition of Greater Birmingham Ministries, which  
3 is the only plaintiffs' deposition noticed at this  
4 point.

5                   MR. MAZE: Okay. All right. We pass  
6 the witness.

7                   MR. ROSS: Can we take a 5-,  
8 10-minute break?

9                   MR. MAZE: Sure.

10                  MR. ROSS: Thanks.

11                  (Whereupon a recess was taken.)

12                  (Deposition resumed.)

13 EXAMINATION BY MR. ROSS:

14                  Q. I just have a few additional  
15 follow-up questions.

16                  Mr. Simelton, I am going to hand you  
17 what I will mark as Plaintiffs' 1, which is a  
18 letter that was sent on your behalf to opposing  
19 counsel.

20                  (Plaintiffs' Exhibit No. 1 was marked  
21 for identification.)

22                  A. Okay.

23                  Q. (BY MR. ROSS:) You understand that

1     that letter was sent on your behalf to clarify what  
2     you would be testifying about today as the 30(b)(6)  
3     witness; is that right?

4             A.       That's correct.

5             Q.       And so insofar as Mr. Maze asked you  
6     earlier whether Defendant's 2, your prior  
7     testimony, represented the Plaintiffs' 30(b)(6),  
8     testimony here, there may be some additional points  
9     referenced in that letter that are outside of the  
10    deposition testimony; is that right?

11            MR. MAZE: Objection. And you can  
12    answer, but I don't understand the question. So...

13            Q.       (BY MR. ROSS:) The letter, for  
14    example -- for clarity, references things like  
15    these supplemental disclosures, supplemental  
16    responses; is that right?

17            A.       Yes.

18            Q.       And just for the sake of clarity, I  
19    will also introduce Plaintiffs' 2, the plaintiffs'  
20    supplemental and amended objections and responses  
21    to the Secretary of State's discovery request.

22                    (P Plaintiffs' Exhibit No. 2 was marked  
23                    for identification.)

1           Q.       (BY MR. ROSS:) Your understanding,  
2       again, is that the NAACP provided these responses  
3       and objections to the Secretary of State's  
4       discovery requests; is that right?

5                   MR. MAZE: Objection. And clarify  
6       what you mean by in response to our discovery  
7       requests.

8           Q.       (BY MR. ROSS:) The interrogatory  
9       requests sent the Secretary of State, the request  
10      for production, various discovery requests sent by  
11      the Alabama Secretary of State?

12           A.       Yes.

13           Q.       And you understand that the Alabama  
14      NAACP responded to these discovery requests with  
15      information that may supplement what was in your  
16      prior deposition testimony; is that right?

17                   MR. MAZE: Objection, and the State  
18      objects to using written discovery responses,  
19      written by Counsel as a substitute of Rule 30(b)(6)  
20      depositions sworn testimony, and this is outside  
21      the agreement that we had coming in to today.

22           Q.       (BY MR. ROSS:) Defendants in their  
23      prior -- in your prior deposition read from these



1 supplemental -- from these discovery responses. Do  
2 you recall that, Mr. Simelton?

3 A. Read from these?

4 Q. Yes. Do they --

5 A. Today?

6 Q. In your prior deposition?

7 A. Oh, okay.

8 Q. Do you recall that?

9 A. Well, I can't say that I do.

10 Q. I will represent to you that they  
11 did.

12 A. Okay.

13 MR. ROSS: So to the extent there's  
14 an objection on that particular issue, the  
15 defendants had an opportunity both now and in the  
16 past to ask questions of these discovery responses.  
17 But you -- that was all I wanted to clarify.

18 MR. MAZE: Well, then, we need to  
19 clarify our position. Our position is that written  
20 responses written and signed by counsel --

21 MR. ROSS: Actually. They were  
22 signed by Mr. Simelton.

23 MR. MAZE: Well, then, I can ask him

1 later who wrote them, but I know he didn't write  
2 it. That cannot serve as a substitute for  
3 deposition testimony under oath -- to the extent  
4 that I read him a question and he responded that he  
5 agreed with it and it's in the transcript, then  
6 yes, it is. But not the entire document.

7 Everything that's --

8 MR. ROSS: I don't think I am saying  
9 the entire document. But I am saying there were  
10 instances in which you asked him what he, you know,  
11 if he is familiar with his information, if this is  
12 accurate; you read from the responses and said, you  
13 know, the work that the Alabama NAACP, is this  
14 true? I am just saying --

15 MR. MAZE: Then to the --

16 MR. ROSS: -- the same thing. If you  
17 want me to read them into the record and say, "Is  
18 this true?" I can do that. But he has already  
19 signed and verified the document, and you did the  
20 same thing in the prior deposition. So I frankly  
21 don't understand the basis of your objection.

22 MR. SINCLAIR: If he wants to open  
23 the door, we can go through it.

1                   MR. MAZE: My question is, does  
2 Counsel intend to introduce this document to say  
3 that the entire document is the testimony of the  
4 Alabama NAACP as a 30(b)(6) witness?

5                   MR. ROSS: No.

6                   MR. MAZE: Okay.

7                   MR. ROSS: If your concern is that,  
8 you know, you would like me to narrow it to  
9 particular topics, then I can have him read those  
10 topics and confirm that they are true and accurate,  
11 the same way that you did in prior deposition.

12                  MR. MAZE: I think if we can agree to  
13 the extent that he has been asked whether or not he  
14 agrees with things that are in there and clarify  
15 them, then that's fine. We have already introduced  
16 that in his deposition testimony. What we disagree  
17 with is putting in this document and saying that it  
18 is the testimony of the organization. This is the  
19 testimony of the organization.

20                  MR. ROSS: That I understand. I am  
21 not disputing that. I am not disputing that his  
22 prior testimony includes the testimony of the  
23 organization.

1 MR. MAZE: And I bring this up --

2 MR. ROSS: What I am saying is  
3 that -- and again, if what you are telling me is  
4 you want him to read particular passages and adopt  
5 them as 30(b)(6) testimony, we can do that now. If  
6 that's what your concern is. But he has also  
7 signed and reviewed this as the official response  
8 of the Alabama NAACP. So again, I don't really  
9 understand your objection, but if you want the  
10 specific -- to have him read it --

11 MR. MAZE: If you want to go through  
12 which parts you want in, then we can do that.

13 MR. ROSS: Okay.

14 Q. (BY MR. ROSS:) All right,  
15 Mr. Simelton -- Actually, can we take a quick  
16 break?

17 MR. MAZE: Yes.

18 (Whereupon a recess was taken.)

19 (Deposition resumed.)

20 EXAMINATION BY MR. ROSS:

21 Q. Mr. Simelton, can you turn to page 19  
22 of Plaintiffs' 2.

23 A. (Witness complying.) Okay.

1                   Q.       Actually, I'm sorry. Can you see  
2   that -- do you see that page 19 is the Alabama's  
3   NAACP's response to Interrogatory No. 6 from the  
4   Secretary of State? Do you see that? That's  
5   actually on page 16, I think that's where the  
6   interrogatory question actually begins.

7                   A.       16. Let's see...response...  
8   ...paragraph 13... Okay.

9                   Q.       And can you turn back to page 19 for  
10   me, please?

11                  A.       Uh-huh.

12                  Q.       In looking at page 19 through 23,  
13   there, I won't make you read the entire thing on  
14   the record, but I will ask you to review it now.

15                  A.       Okay. Okay, I am familiar with that.

16                  Q.       Is that an accurate description of  
17   activities of the Alabama NAACP undertook related  
18   to the Photo ID Law?

19                  A.       Yes. I mean, those -- these are  
20   activities that -- that the State Conference has  
21   took and some of the ones that the university also  
22   undertook.

23                  Q.       And if you look at Interrogatory

1 No. 10, which begins on page 30.

2 A. Page 30. I don't know who stapled  
3 this together, but they stapled them wrong. Okay.

4 Q. And I believe the bulk of the Alabama  
5 NAACP's responses on page 33 and 35 or so?

6 A. Page 35. No. It's No. 10; right?

7 Q. Uh-huh.

8 A. But the response -- no, that's  
9 No. 11.

10 Q. It begins here, on page 33.

11 A. Uh-huh.

12 Q. In the middle of the page and it  
13 ends --

14 A. Okay.

15 Q. -- I believe at the middle of  
16 page 35?

17 A. Right. Okay.

18 Q. Right?

19 A. Yes.

20 Q. It's stapled a little confusingly,  
21 but yeah.

22 A. Okay.

23 Q. That's all the --

1           A.       Yes, that's correct.

2           Q.       Is that also a correct and accurate  
3 description of what the Alabama NAACP has done?

4           A.       Yes.

5           Q.       Can you look for me -- I believe in  
6 your prior testimony there was some discussion  
7 about statistics, and expert reports that the  
8 Alabama NAACP was relying on for its --

9           A.       Right.

10          Q.       -- belief that there were people who  
11 didn't have ID. Do you recall that testimony from  
12 your prior deposition?

13          A.       Yes.

14          Q.       Can you look for me, Mr. Simelton, at  
15 Interrogatory -- I believe it's No. 12 here on  
16 page 36 of the responses.

17          A.       Uh-huh. Okay.

18          Q.       If you look at page 36 through 40,  
19 that lists several expert reports and studies about  
20 voters who do not have ID and face obstacles  
21 getting ID; is that right?

22          A.       Yes, it does.

23          Q.       Could those have been some of the

1 expert reports and studies that you were  
2 referencing in your prior deposition?

3 A. Yes.

4 Q. Let me ask that more clearly. Are  
5 those the prior studies and expert reports that you  
6 intended to rely on in your prior deposition?

7 A. These certainly are some of the  
8 reports that -- there may be others out there that  
9 I am not aware of at this time, but yes, these are  
10 some of them.

11 Q. Thank you. You can put that away for  
12 now.

13 A. Okay.

14 Q. Mr. Simelton, you were testifying  
15 earlier that you had polled your active units about  
16 their efforts to offer individuals rides who needed  
17 photo ID. Do you recall that testimony?

18 A. Yes.

19 Q. Why did -- well, Strike that.

20 And you said you were aware of four  
21 counties, Baldwin, Crenshaw, Elmore, and Bullock,  
22 who had offered rides; is that right?

23 A. That's correct.



1                   Q.       And you testified there were no -- no  
2     one took them up on that offer except for  
3     one person in Crenshaw who ultimately declined it;  
4     is that right?

5                   A.       That's correct.

6                   Q.       Despite no one taking them up on that  
7     sort of offer, did the units have to spend any kind  
8     of resources in order to just make the offer to  
9     individuals?

10                  A.       Yes.

11                  Q.       What kind of resources did they have  
12     to spend?

13                  A.       Well, making fliers, putting articles  
14     in newspapers, and I am not for sure if any went on  
15     TV or anything like that -- or not TV, but radio  
16     programs, which may or may not cost anything, but  
17     mainly, you know, gasoline, the costs of making  
18     fliers in -- and other -- well, I would not say  
19     "others," but making fliers and getting information  
20     out to the community at large.

21                  Q.       And I am going to introduce this as  
22     Plaintiffs' 3. I believe the Defendant already has  
23     a copy of it.

1 (Plaintiffs' Exhibit No. 3 was marked  
2 for identification.)

3 MR. MAZE: We do. I got it here.

4 A. Okay.

5 Q. (BY MR. ROSS:) Are these some of the  
6 fliers and other informational materials that the  
7 Alabama NAACP has passed out to --

8 A. Yes, these are some. But also, let  
9 me look at the rest of it on here. Yes. These are  
10 some and we passed out -- and I have got about the  
11 Mobile County branch also, so...

12 Q. So this includes the description of  
13 some of the various events that are related to the  
14 Photo ID Law; is that right?

15 A. That's correct. And I know,  
16 specifically, I didn't see the flyer from Dr. Poe  
17 down in Bullock County, but I know that based on  
18 what he told me, they passed out fliers there, as  
19 well.

20 Q. And so there may -- this, in addition  
21 to other things that have already been introduced  
22 to defendants -- and some of this, I believe all of  
23 this has already been produced to defendants. But

1     these are just examples of --

2             A.       Right.

3             Q.       -- some of the kind of activity in  
4     fliers that the Alabama NAACP's passed out; is that  
5     right?

6             A.       Yes, that is correct.

7             Q.       But there may have been -- units may  
8     have created additional materials; is that what  
9     your testimony is?

10            A.       Yes, and I would say, if you look  
11    through here, the -- where did it go? Like the  
12    flier here, that talks about mobilizing voters from  
13    the seats in the streets with special appearance by  
14    Eddie Levert. That's a branch. That was not the  
15    State Conference, that was a local branch that  
16    produced this, and Mobile branch.

17            Q.       Okay.

18            A.       So I forgot to mention that that was  
19    another branch that responded that they had done  
20    something.

21            Q.       And why did the branches -- well,  
22    strike that.

23                    Why did the branches offer rides to

1 individuals to the DMV or to the Board of  
2 Registrars?

3 A. Well, we felt that it was a need to  
4 make sure that anyone who needed a ride, or that we  
5 want to insure that every person had the  
6 credentials in order to vote in the upcoming  
7 elections.

8 Q. And is that because the Alabama NAACP  
9 believed that there were people who didn't have ID?

10 A. Believe what now?

11 Q. That there were people who did not  
12 have ID?

13 A. Oh, yes. Oh, absolutely.

14 Q. Beyond those people who directly  
15 contacted you; is that right?

16 A. Yes.

17 Q. In the supplemental disclosures that  
18 I just had you read, let's go back to those  
19 quickly.

20 A. Okay.

21 Q. We will look on page, I believe it's  
22 page 21 to 23. There's a reference to letters that  
23 the Alabama NAACP sent to the Secretary of State.

1 Do you --

2 A. Yes.

3 Q. Do you recall the Alabama NAACP  
4 sending a series of letters to the Alabama  
5 Secretary of State in 2014?

6 A. Yes.

7 Q. And they sent letters after that  
8 related to the Photo ID Law to both the Secretary  
9 of State and other state officials; do you recall  
10 that?

11 A. Yes.

12 Q. One of them is here in your  
13 production?

14 A. Yes.

15 Q. And so that also is inclusive of the  
16 advocacy that the Alabama NAACP has done; is that  
17 right?

18 A. Right.

19 Q. Did that take --

20 A. And we made phone calls, as well.

21 Q. What phone calls did you make?

22 A. We called the Secretary of State's  
23 office in -- when the guidelines for the photo ID

1 first came out, You know, they sent out for  
2 comments, and we made comments to it.

3 Q. Okay.

4 A. I think I testified to that  
5 previously.

6 Q. Again, I believe you testified to  
7 this previously, but just for the record, did that  
8 take away from what the Alabama NAACP would  
9 normally do?

10 A. Yes.

11 Q. How so?

12 A. Well, I mean, rather than making a  
13 phone call to the Secretary of State, we could have  
14 been -- about photo ID, we could have been using  
15 that time to call people to register to vote or,  
16 you know, find out whether they needed any rides to  
17 the polls or, you know, doing that type of thing.

18 Q. Did the Alabama NAACP do any, like,  
19 "Get Out and Vote," work for the 2016 election?

20 A. Yes.

21 Q. What kind of "Get Out to Vote,"  
22 activity did they do?

23 A. Well, we did a number of things,

1 including helping our National President Cornell  
2 Brooks come down and appear at the  
3 Magic City Classic game, which we passed out  
4 literature, and also he spoke at a meeting with the  
5 NAACP leaders to encourage them to work hard to get  
6 people out to vote.

7 Q. Did you do any phone calls to others?

8 A. Yes, yes. We set up in Huntsville, I  
9 think it was Birmingham and Mobile that we called  
10 people the weekend prior to the election,  
11 encouraging them to remember to get out and vote  
12 and to have these documents, you know, including  
13 the ID, photo ID, you know, so that they could  
14 vote.

15 Q. And is that --

16 A. We also encouraged them to -- if they  
17 were denied the right to vote, for any reason, that  
18 they should demand a provisional ballot.

19 Q. And so in doing that, and explaining  
20 to people about the photo ID requirement, did that,  
21 in any way, slow down the process of calling other  
22 voters or additional voters?

23 A. Well, yes, I mean, it took time to --

1 extra time, rather, to build that into our script  
2 that the call was used. And I can't recall if any  
3 of the individuals that we called had any question  
4 about the photo ID, you know, requirement. But we  
5 did say that, you know, these are some of the  
6 examples of photo IDs that you can use in order to  
7 vote. That's part of our script.

8 Q. If you did not have to include that  
9 in your script, you potentially could have called  
10 more people?

11 A. We'd have been able to call more  
12 voters. Right, more. More potential voters.

13 Q. And going back to Defendant's No. 3,  
14 there, if you're looking at page 10 and 11 again,  
15 that list of individuals.

16 A. Okay.

17 Q. If any of those people did contact  
18 you about the need to get ID, would the  
19 Alabama NAACP assist them?

20 A. Yes.

21 Q. Did you contact anyone or look at  
22 that list and try to determine whether or not any  
23 of the individuals were members of the



1 Alabama NAACP, or had been assisted by members of  
2 the Alabama NAACP?

3 A. No. We don't ask a person if they  
4 are a member of the NAACP or try to ascertain  
5 whether they're a member, either.

6 Q. I think maybe that question was not  
7 phrased in the best way.

8 A. Okay.

9 Q. You had looked at that list before  
10 today; is that correct?

11 A. Yes.

12 Q. And to the best of your knowledge,  
13 are any of those people members of the  
14 Alabama NAACP?

15 A. Not that I am aware of.

16 Q. And did you reach out to anyone to  
17 determine whether at least some of those  
18 individuals were members of the Alabama NAACP or  
19 had been assisted by members of the Alabama NAACP?

20 A. Well, I mean, there's -- some of the  
21 people have been assisted by the NAACP because they  
22 filed a complaint. At least one on here.

23 Q. Do you know which individual that is?

1                   A.       Josh Wahl.

2                   Q.       Josh Wahl.   Okay.   Right.

3                           MR. ROSS:   I think that's it for me.

4                           MR. MAZE:   Okay.   And can I actually  
5   get a copy, because mine is a little different?

6   Not that one, the --

7                           MR. ROSS:   Which one?

8                           MR. MAZE:   The fliers.   Thank you.

9   This was No. 3?

10                          MR. ROSS:   Yes.

11   EXAMINATION BY MR. MAZE:

12                   Q.       Mr. Simelton, can you go ahead and  
13   grab this one?

14                   A.       Yes.

15                   Q.       This is Plaintiffs' Exhibit 3, the  
16   color fliers, that look like this, were these  
17   printed or created by the State Conference or by  
18   the NAACP Legal Defense Fund?   Who actually created  
19   these?

20                   A.       The Legal Defense Fund, and we  
21   received them and passed those out.

22                   Q.       Are there any fliers within the  
23   packet that's Plaintiffs' Exhibit 3 that the

1 Alabama State Conference actually printed  
2 themselves, actually created from scratch as  
3 opposed to someone else doing them?

4 A. Well, I think you just -- you have  
5 your hand on one. Again, now the -- one that was  
6 created in Mobile.

7 Q. This one?

8 A. Yes. I mean that was created by the  
9 Mobile, and I think I gave, the last time, a  
10 package of -- a briefing package, what I call a  
11 briefing package, of what specifically the  
12 Alabama NAACP created, that we presented at one of  
13 our quarterly meetings. I think it was 2014, I  
14 think. '13 or '14.

15 Q. When it comes to this one, the one  
16 that's the Monday rally, November 3rd, this was  
17 created and paid for by the Mobile unit, correct?

18 A. Yes.

19 Q. Not the State Conference?

20 A. Well, and I -- what year was that?  
21 What we do is if we receive money, we send it to --  
22 a portion of it -- to the units. So for the  
23 purposes of, you know, either publishing these --

1 the State Conference did not actually create this.  
2 But it's very likely that the money that we sent  
3 them, went to reproducing these.

4 Q. But you don't know how they paid for  
5 it -- you are not a hundred percent certain how  
6 they paid for it?

7 MR. ROSS: Objection.

8 A. Well, I mean, no. But I am assuming  
9 that they paid for it with the money that we --  
10 again, that's -- that we sent them. But I -- I  
11 mean I can't -- because we don't come back and say,  
12 "Well, tell us that you present, you know, produced  
13 one hundred fliers, you know, or a thousand  
14 fliers," anything like that.

15 Q. (BY MR. MAZE:) Are there any fliers  
16 in Plaintiffs' Exhibit 3 that you, the Alabama  
17 State Conference, actually paid for, as opposed to  
18 the Legal Defense Fund or a local unit?

19 MR. ROSS: Objection.

20 A. I don't see any in this package, but  
21 like I stated earlier, the -- well, this is not a  
22 flier, but...

23 Q. (BY MR. MAZE:) The letter?

1           A.       Well, this.

2           Q.       Okay.

3           A.       That's something that we created.

4   And I don't -- no, that's not ours either. But I  
5   had given previous examples of things that we  
6   created, and certainly the -- I mean, the press  
7   release, we send that out. We create and send it  
8   out to people.

9           Q.       Well, focusing specifically on the  
10   things that you, the State Conference, created,  
11   these letters to the Secretary, the documents you  
12   just showed me, they're all word documents. How  
13   much did that cost, total?

14          A.       I don't have that number because, you  
15   know, I don't know how many we re-produced, or  
16   anything like that, so but --

17          Q.       Less than a hundred dollars?

18          A.       Well, I mean, it depends on, you  
19   know, if you are talking about the time the person  
20   creates that -- it takes to create that, you know,  
21   it certainly would be more than a hundred dollars  
22   but, you know, if you are just talking about copy  
23   and printing, you know, I don't know.

1                   Q.       And that would be reflected in your  
2   year end or your end of year statement that we  
3   talked about?

4                   A.       Not to that level, no. We don't take  
5   it down to that level, no.

6                   Q.       Following up on Mr. Ross's questions  
7   about giving rides to persons to get photo IDs, the  
8   State Conference never gave a ride to anyone to get  
9   an ID card; correct?

10                           MR. ROSS: Objection.

11                   A.       That is correct.

12                   Q.       (BY MR. MAZE:) The Magic City  
13   Classic that we talked about, you said that was a  
14   "Get Out to Vote" rally; is that correct?

15                   A.       Well, I mean, it was a football game  
16   but, you know, the president came in and had  
17   several TV interviews at the game, and as well as  
18   some radio interviews, and just met people walking  
19   down the, you know, around the game, and passed out  
20   literature. I don't have a copy of that particular  
21   document. It was something that the National sent  
22   us, and we reproduced some, but they sent us, you  
23   know, quite a few.

1                   Q.       Those type of "Get Out to Vote"  
2   events, you did those before the Photo ID Law came  
3   into effect, correct? You always --

4                   A.       Well, not with our national president  
5   coming to --

6                   Q.       It's the first time he has come?

7                   A.       Well, specifically for that, yes.

8                   Q.       Okay.

9                   A.       Because they wanted to make sure that  
10   as many people as possible were able to vote and  
11   that they actually understood the importance of  
12   getting out to vote, and having, you know, all the  
13   credentials that was required to vote.

14                  Q.       Do you know how many people that day  
15   reported that they did not have the credentials or  
16   the photo identification required to vote?

17                  A.       No, no.

18                  Q.       Estimate?

19                           MR. ROSS: Objection.

20                  A.       No.

21                  Q.       (BY MR. MAZE:) Do you know if anyone  
22   did?

23                  A.       No, I don't. I mean, no, I don't

1 know if anyone did. I mean -- I mean, we had a  
2 voter registration table -- well, not the State  
3 Conference, but the Birmingham branch, as well as  
4 the Shelby County branch had voter registration,  
5 and I don't know how many people they registered.  
6 I don't know how many people they, that came up to  
7 them and asked about photo ID or anything like  
8 that.

9 Q. I want you to -- the Secretary of  
10 State was present that day, or members of his staff  
11 were present that day; correct?

12 A. I never saw them, but we were  
13 informed, as I testified previously, that they were  
14 going to be there.

15 Q. Did you hear of any issues with  
16 persons being able to get a photo ID card from the  
17 Secretary of State that day?

18 MR. ROSS: Objection.

19 A. I mean, no, I did not. I would not  
20 have necessarily have heard about that.

21 Q. (BY MR. MAZE:) I want you to go  
22 ahead and -- I think it was No. 3. Whatever the  
23 number for the supplemental objections and



1 responses, this document?

2 A. Okay, this one here?

3 Q. Yes.

4 A. Okay.

5 Q. I just want to ask some questions  
6 about the passages that you just went over?

7 A. Okay.

8 Q. Starting on page 33.

9 A. Okay.

10 Q. The paragraph on the last -- the one  
11 full paragraph on page 33 that starts:

12 "As a non-profit organization, the  
13 Alabama NAACP raises money from private donors and  
14 membership fees."

15 Did I read that correctly?

16 A. Yes.

17 Q. And you told Mr. Ross that you agree  
18 with that as part of your testimony today; correct?

19 A. Yes.

20 Q. How much money does the Alabama NAACP  
21 raise from private donors?

22 A. Again --

23 MR. ROSS: Objection.

1           A.       -- I think, as I said earlier, you  
2     know, we don't -- I can't tell you, you know, how  
3     much it is that come from private donors that  
4     specifically for photo ID, because when we receive  
5     funds from private donors, it's not earmarked, so  
6     we can use it across the board.

7           Q.       Middle of that paragraph, the  
8     sentence starts:

9                    "Because the Alabama NAACP is  
10    required to expend greater resources on voter  
11    education and contacting the Secretary regarding  
12    the Photo ID Law, its ability to conduct other  
13    education and voter mobilization efforts is  
14    impaired."

15                   Did I read that correctly?

16           A.       Yes.

17           Q.       Are you prepared to quantify the  
18    amount of greater resources that the Alabama NAACP  
19    has expended?

20           A.       I mean, it's -- no, we cannot  
21    quantify that.

22           Q.       Can you quantify the amount of money  
23    that you spent contacting the Secretary of State

1     regarding the Photo ID Law?

2                     MR. ROSS:  Objection.

3             A.       No.

4             Q.       (BY MR. MAZE:)  Turn to page 36.

5             A.       Okay.

6             Q.       Actually, go back to page 35.  I'm  
7     sorry.

8             A.       Okay.

9             Q.       The last paragraph, that  
10    interrogatory response that y'all discussed, I'm  
11    going to read it.

12                    "Plaintiffs intend to further support  
13    their allegation with documents or exhibits" --

14             A.       You said on 35?

15             Q.       35, in the middle of the page?

16             A.       Okay, I thought you said --

17             Q.       Yeah, it's the last paragraph on that  
18    Interrogatory 10, it's right next --

19             A.       Okay.  I am with you now.

20             Q.       "Plaintiffs intend to further support  
21    their allegations with documents or exhibits cited  
22    or referred to in expert reports, deposition  
23    testimony, or documents that will otherwise be

1 produced by the parties in the course of discovery  
2 in this case, and other studies, reports, and data  
3 gathered during their investigation."

4 Did I read that correctly?

5 A. Yes, you did.

6 Q. And as part of your testimony today,  
7 you are saying that your reliance is on all of  
8 those types of things; correct?

9 A. Yes.

10 Q. Well, I just want confirm something  
11 you said earlier. It is possible that you can  
12 produce the end of year statement or end of year  
13 report on the Alabama NAACP's budget?

14 A. Yes.

15 Q. Now, we can go to 36.

16 A. Okay.

17 Q. The response to Interrogatory 12,  
18 when Mr. Ross asked you, you said that -- that you  
19 relied on all of these Plaintiffs' expert reports,  
20 articles, newspaper blog -- I mean blogs, and  
21 studies; correct? As part of your testimony today?  
22 And you can go read through that response, again,  
23 just to see the different kind?

1                   MR. ROSS: I am going to object. I  
2 think you are mischaracterizing his testimony.

3                   Q.       (BY MR. MAZE:) Well, what was your  
4 testimony with regard to Interrogatory 12?  
5 Mr. Ross asked you whether or not, you know, you  
6 sort of -- that these reports were the basis of  
7 your testimony. What were you saying that these  
8 were the basis of?

9                   MR. ROSS: I believe my question was  
10 going to his prior testimony that he intended to --  
11 he was aware of statistics and expert reports in  
12 this case. And he answered, yes, that he has  
13 included a list of those statistics and expert  
14 reports that he referenced in his prior deposition.

15                  Q.       (BY MR. MAZE:) Have you read each of  
16 these expert reports, and these statistical  
17 studies?

18                  A.       No, I have not read each of those.

19                  Q.       What is the basis of your knowledge  
20 of what they say?

21                  MR. ROSS: Objection.

22                  Q.       (BY MR. MAZE:) If you are relying on  
23 them without reading them, how do you know what it

1 is that they support?

2 MR. ROSS: I don't think he said he  
3 did not read all of them. I think he said he read  
4 some of them. So if you want to be specific about  
5 which ones he has read.

6 Q. (BY MR. MAZE:) I will ask, which  
7 ones have you seen or read?

8 A. Let's see, are you talking about out  
9 of all of the reports that start on page 37 and go  
10 through 39?

11 Q. Yes.

12 A. Okay. The U.S. Department of  
13 Transportation and the Alabama Law Enforcement  
14 Agency memorandum of agreement.

15 Q. Okay.

16 A. That's on page 30.

17 Q. Yes, the top of 30.

18 A. The -- I think it's the Bill Hobby et  
19 al, Texas Voter ID Law, I have seen that one.

20 Q. Okay.

21 A. Let's me go back here. I think it's  
22 the -- back on page 37, the Morgan Kousser  
23 plaintiffs' report, and let's see. I think those

1     are the ones that I can -- that I can recall at  
2     this time.

3             Q.       So I just want to make clear,  
4     Plaintiffs' expert report of Dr. J. Morgan Kousser,  
5     US Department of Transportation, and ALEA  
6     Memorandum of Agreement, and article by Bill Hobby  
7     of the Texas Voter ID Law in the 2014 election,  
8     those are the three documents, articles, et cetera,  
9     that form the Alabama NAACP's basis for the  
10    response to Interrogatory No. 12?

11            A.       These are the ones that I can recall.

12            Q.       Okay.

13            A.       Because I may get extracts from these  
14    other reports that, you know, I referenced without  
15    actually going to the report itself, the typed-up  
16    report.

17            Q.       Can you recall which reports you  
18    might have gotten extracts from?

19            A.       No.

20            Q.       Okay.

21                    MR. MAZE:   Can we have about  
22    three minutes?

23                    MR. ROSS:   Yes.

1 (Whereupon a recess was taken.)

2 (Deposition resumed.)

3 EXAMINATION BY MR. MAZE:

4 Q. Do you know whether or not the  
5 State Conference of the Alabama NAACP has received  
6 any bills for printing of pamphlets or other  
7 brochures directed toward photo identification?

8 MR. ROSS: Objection.

9 A. Received bills?

10 Q. (BY MR. MAZE:) Yeah. In other  
11 words, if you called up a printer company, and  
12 said, "Print me a thousand copies of this color  
13 pamphlet," you would have received a bill; correct?

14 A. Well, typically, you know, what we  
15 would do is, take it to, you know, Kinko's or  
16 Staples, or something like that, and have it  
17 printed.

18 Q. And you would keep the receipt for  
19 that?

20 A. Well, yeah. We attach it to a  
21 voucher, if -- if the person -- it depends on how  
22 many it is. You know, sometimes I will go and get,  
23 you know, 30 or 40, maybe a hundred copies,



1 especially if it is black and white. If it's  
2 color, I am more like -- I'm going to get  
3 reimbursed.

4 Q. Okay.

5 A. If person does not want to get  
6 reimbursed, then you know, they don't turn it in,  
7 and they may or may not keep the receipts.

8 Q. I thought everybody liked to get  
9 reimbursed?

10 A. Well, they do, but unfortunately when  
11 you take this job on, you realize -- a volunteer  
12 job, you have to expend some funds. It's just like  
13 traveling down here today, and I was in Montgomery  
14 on Monday, I did not submit for reimbursement for  
15 that, you know, because we don't have unlimited  
16 funding like the Attorney General's Office, where  
17 we can --

18 Q. I was going to say, as a State  
19 attorney, I actually understand.

20 MR. SINCLAIR: I would like to object  
21 to the form.

22 (Laughter.)

23 MR. MAZE: We spend a lot, but we

1     don't get paid back, either.

2                   A.       Okay, but...

3                   Q.       (BY MR. MAZE:) So when you fill out  
4     a voucher, do you put, you know, "Benard Simelton  
5     spent \$100 on brochures," and then you submit the  
6     receipt?

7                   A.       I would say, in theory, that's the  
8     way it should be done.

9                   Q.       And you would keep these vouchers;  
10    correct?

11                  A.       In theory, we should be keeping those  
12    vouchers.

13                  Q.       How far back?

14                  A.       Well, again, we should keep them for,  
15    you know, at least 5 years, and perhaps longer.  
16    But certainly 5 years.

17                  Q.       Okay, and just for clarification, I  
18    think I know the answer, but just to be clear, you  
19    are not prepared today to talk about the amount of  
20    money total that would be on those vouchers for  
21    photo ID related materials?

22                  A.       No, and again, we may produce a  
23    brochure that, you know, talks about the photo ID,

1 just like if we reproduced this particular  
2 pamphlet, or chart, or whatever you want to call  
3 it, it may have something on there about photo ID,  
4 but it also may have something on there about voter  
5 registration. It may have something on there  
6 about, you know, "Get Out to Vote" efforts. It may  
7 have something on there about, you know, if you are  
8 an ex-felon, you know, this is what you need to do.

9 So you can't just quantify and say,  
10 "Well, this is specifically spent on photo ID."  
11 What we can say is that the photo ID has caused us  
12 to spend more resources, but we cannot quantify or  
13 give you a dollar amount that we have spent on  
14 that.

15 And if you ask us, again, how much it  
16 is, we cannot quantify that.

17 Q. And a brochure like that, assuming  
18 that you had made it, because it has all of the  
19 different voting topics on it, that would be in  
20 your Political Action part of the budget, that's  
21 what you would pay it out of?

22 A. Yes. From the state, yes.

23 Q. That's all we have.

1 EXAMINATION BY MR. ROSS:

2 Q. I just have a few follow-up  
3 questions.

4 A. Okay.

5 Q. Mr. Maze was asking you about voter  
6 registration at the Classic --

7 A. Um-hm.

8 Q. -- recently. Were people asked to  
9 track the conversations with individuals who did  
10 not have photo ID?

11 A. No.

12 Q. Would there have been any -- if  
13 someone in the Alabama NAACP had had a conversation  
14 with someone who didn't have ID, or even had a  
15 question about, you know, what kind of ID they  
16 needed, would there be any way for you to quantify  
17 that except to say that you -- people were told to  
18 have those conversations?

19 MR. MAZE: Object to form.

20 A. If I understand the question  
21 correctly, I think the answer would be no, because  
22 we just would not, you know, we don't -- wouldn't  
23 track it that way.

1 Q. (BY MR. ROSS:) Let me try again.

2 Were people who were doing voter registration and  
3 voter education at the Classic last year, were they  
4 told to explain the voter ID requirement to  
5 individuals registering?

6 A. Registering to vote, yes. People,  
7 yes.

8 Q. And were they also separately told to  
9 keep track of those conversations?

10 A. No.

11 Q. You mentioned that money was sent to  
12 units to do voter education; do you recall that?

13 A. Yes.

14 Q. Why does the Alabama NAACP send money  
15 to their units --

16 A. Well...

17 Q. -- for further education?

18 A. Again, if we get a grant from the  
19 national, because the Alabama State Conference -- I  
20 guess the headquarters, if you will, cannot be  
21 every place. We rely on units to get the word out  
22 to the community. And so we send money to them to  
23 be able to utilize it, to reach out deep into the

1 community, because we don't, because it's not that  
2 many people at the state level that can do it, so  
3 we rely on the units to do it.

4 Q. Okay. So --

5 A. It's just like the national rely on  
6 state conferences to get the word out to each  
7 individual state.

8 Q. Is it fair to say then that some of  
9 that money is sent with the expectation that it  
10 will be used for education around the voter ID  
11 requirement?

12 A. Yes, I can say that some of the money  
13 will be used to -- to educate people, to find out  
14 if they have a photo ID, and to inform them of  
15 where they need to go to get, you know, photo ID,  
16 if they don't have it.

17 Q. Okay.

18 A. I mean, that's an ongoing thing that  
19 we remind people of.

20 Q. And I want to go back to Defendant's  
21 4 with two more questions, and we should be done.  
22 If you look at the 2013 budget and the attached  
23 description of what actions were taken in 2013, is

1       there any money spent on Political Action in 2013?

2               A.       Yes.   Yes.

3               Q.       Is it listed here?

4               A.       No, no, it's not.   For some reason, I  
5       don't know, we did not list it specifically, but --

6               Q.       Okay.

7               A.       But --

8               Q.       Is there money listed in 2014 for  
9       Political Action?

10              A.       Yes.

11              Q.       And in 2014, there's also a  
12       description of Political Action?

13              A.       Yes.

14              Q.       And does that include a new item  
15       about the photo ID requirement?

16              A.       Yes.

17              Q.       And why did the Alabama NAACP in 2014  
18       feel that they need to work on that particular  
19       aspect of Political Action?

20              A.       Well, that was the first year that it  
21       was -- we were going to have an election when it  
22       was -- it went into effect.   And if you recall,  
23       after that the Supreme Court decision in 2013,

1 Alabama rushed and passed the -- well, not passed,  
2 but implemented the photo ID requirement.

3 Q. And I am going to turn back to the  
4 budget for 2016.

5 A. Uh-huh.

6 Q. Mr. Maze was asking you if there were  
7 other items that might have involved voter  
8 education. I am going to point out a couple that  
9 may also have to do with voter education that  
10 weren't referenced for Mr. Maze.

11 The 51st Anniversary of the  
12 Selma-to-Montgomery March, does that also include  
13 voter education work?

14 A. In what year? Is that 2000?

15 Q. '16.

16 A. Okay, no.

17 Q. Okay.

18 A. That was primarily, the gala event  
19 2016. No, 2016 -- this is '17. Yeah, well, you  
20 know, it's 2016. Yes, that may have -- yes.  
21 That -- that did. I can say that did.

22 Q. That did include some voter education  
23 work?



1                   A.       Yes.

2                   Q.       Potentially related to the photo ID?

3                   A.       It's '16, right?

4                   Q.       Right. The latest of the photo ID  
5 laws; is that right?

6                   A.       Right.

7                   Q.       Let me, since we've talked over each  
8 other a little bit. So the line item for the  
9 January 2016 budget about the 51st Anniversary for  
10 the Selma-to-Montgomery March, some of that money  
11 may have been spent on voter education related to  
12 the photo ID requirement; is that correct?

13                  A.       Yes.

14                  Q.       You also have a line item, I see, for  
15 the Moral Movement, what is that?

16                  A.       Moral Movement is -- it's a movement  
17 within Alabama that started in North Carolina,  
18 Reverend Dr. Barber, to address issues to our  
19 legislatures and the government about, you know,  
20 moral issues such as healthcare, minimum -- raise  
21 the minimal wage, and certain -- the voting rights,  
22 and trying to insure that the legislature pass laws  
23 to -- moral laws, that take care of all the people

1 in the state, not just certain groups or certain  
2 income status.

3 Q. And so that may have also included  
4 education related to the photo ID requirement?

5 A. Well, it specifically -- that was  
6 money that we gave to the Moral Monday Movement.

7 Q. Okay.

8 A. And so you could say that we gave it  
9 to them and they spent it on that, but...

10 Q. But your understanding is that they  
11 would have spent some of that money on voter  
12 education or advocacy around the photo ID  
13 requirement?

14 A. Right.

15 Q. And I believe you previously  
16 testified that some of the state convention money,  
17 depending on what topics were covered, that state  
18 convention may have also been spent on voter  
19 education and the Photo ID Law?

20 A. Right. I would say that on all of  
21 our state conventions, there is something to  
22 mention about voting and the need to vote -- either  
23 a workshop, or we have handouts to our units,

1     because we have a lot of units there that talks  
2     about, you know, voting and of course now, the new  
3     requirement for the photo ID.

4             Q.       My last question. Mr. Maze was  
5     asking you about the Interrogatory No. 12 earlier?

6             A.       Okay.

7             Q.       Is it possible that you have read  
8     additional studies and reports, and you just can't  
9     recall them at this moment?

10            A.       Yes.

11            Q.       Okay.

12                    MR. ROSS: That's it.

13                    MR. MAZE: No questions.

14                    THE WITNESS: No questions?

15                    MR. MAZE: That's it. Conclusion.

16                    MR. ROSS: Sorry, actually. Can we  
17     go off the record for, really, just a minute?

18                    (Discussion held off the record.)

19                    (Deposition resumed.)

20     EXAMINATION BY MR. ROSS:

21             Q.       Mr. Simelton, can you pull back the,  
22     again, the supplemental responses that the  
23     plaintiffs -- I believe it's Plaintiffs' 3, there.

1 Can you look at the response to --

2 A. 3?

3 Q. Yes, sir. The one -- this one, right  
4 here.

5 A. Okay. That's 2, now.

6 Q. Oh, is that 2? I am sorry.  
7 Plaintiffs' 2.

8 A. Okay.

9 Q. Can you look at page 6 there, which  
10 has a -- the beginning of Interrogatory No. 1?

11 A. Yes.

12 Q. Do you see the answer to page 6 is  
13 there on 7, 8, 9, and 10?

14 A. Yes.

15 Q. Just take a second to review that.

16 A. You said review it?

17 Q. Yes. Particularly, the  
18 Alabama NAACP's responses there. I believe most of  
19 the Alabama NAACP responses begin in the middle of  
20 page 9.

21 A. You said go to page 9?

22 Q. Yes, sir.

23 A. Okay.

1                   Q.       I believe a little more, there's also  
2     some on additional on page 10?

3                   A.       Uh-huh.   Okay.

4                   Q.       As far as you know, that's also an  
5     accurate description of work that the Alabama NAACP  
6     has done to identify voters; is that right?

7                   A.       Yes.

8                   Q.       Okay.   That's it.

9                             MR. MAZE:   All right.   I need to  
10    follow up.

11                            MR. ROSS:   Sure.

12    EXAMINATION BY MR. MAZE:

13                   Q.       What is the beginning and the end of  
14    the portion that you just designated as things that  
15    are within the knowledge of the Alabama NAACP?

16                   A.       That --

17                   Q.       What's the first?

18                   A.       It starts on page 9, there.   Where it  
19    says, "Alabama NAACP has also assisted or been  
20    contacted by several..."

21                   Q.       Okay, and how far do you go?

22                   A.       Over to Interrogatory -- that word --  
23    No. 2.

1                   Q.       So the rest of the answer?

2                   A.       I beg your pardon?

3                   Q.       So all the way down to where it says  
4 Interrogatory No. 2?

5                   A.       Right.

6                   Q.       Did you review this document before  
7 you came today to give your testimony?

8                   A.       Yes.

9                   Q.       How many hours do you think you spent  
10 preparing for today's testimony, between the time  
11 you were deposed last time and today?

12                  A.       Including the time I spent with  
13 counsel?

14                  Q.       Uh-huh.

15                  A.       Probably, what, 10 or 12 hours.

16                  Q.       Okay. No further questions.

17                       (Deposition concluded at 12:36 p.m.)

18

19

20

21

22

23

1 C E R T I F I C A T E

2

3 STATE OF ALABAMA

4 SHELBY COUNTY

5

6 I hereby certify that the above and  
7 foregoing proceedings were taken down by me in  
8 stenotype, and the questions and answers thereto  
9 were reduced to computer print under my  
10 supervision, and that the foregoing represents a  
11 true and correct transcript of the testimony given  
12 by said witness upon said proceedings.

13 I further certify that I am neither  
14 of counsel nor of kin to the parties to the action,  
15 nor am I in anywise interested in the result of  
16 said cause.

17 Signed the 6th day of June, 2017.

18

19

20

21 /s/ Chanetta L. Sinkfield

22 CHANETTA L. SINKFIELD, CCR, RMR

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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF ALABAMA  
3 SOUTHERN DIVISION  
4 Civil Action Number 2:15-cv-02193-LSC  
5  
6 GREATER BIRMINGHAM  
7 MINISTRIES, et al.,  
8 PLAINTIFFS,  
9 VS.  
10 STATE OF ALABAMA,  
11 et al.,  
12 DEFENDANTS.

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21 DEPOSITION OF BENARD SIMELTON

22 TUESDAY, MARCH 28, 2016

23 JOB NUMBER 209229

1                                   S T I P U L A T I O N

2                   IT IS STIPULATED AND AGREED by and between  
3   the parties through their respective counsel,  
4   that the deposition of BENARD SIMELTON may be  
5   taken before Donna Winters, Commissioner and  
6   Notary Public, State of Alabama at Large, at the  
7   law offices of Wiggins, Childs, Quinn & Pantazis,  
8   The Kress Building, 301 Nineteenth Street North,  
9   Birmingham, Alabama 35203, on the 28th day of  
10   March, 2016 commencing at 10:30 a.m.

11   DEPOSITION OF BENARD SIMELTON

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1           IT IS FURTHER STIPULATED AND AGREED that  
2     the signature to and the reading of the  
3     deposition by the witness is waived, the  
4     deposition to have the same force and effect as  
5     if full compliance had been had with all laws and  
6     rules of Court relating to the taking of  
7     depositions.

8           IT IS FURTHER STIPULATED AND AGREED that it  
9     shall not be necessary for any objections to be  
10    made by counsel as to any questions, except as to  
11    form or leading questions, and that counsel for  
12    the parties may make objections and assign  
13    grounds at the time of the trial, or at the time  
14    said deposition is offered in evidence or prior  
15    thereto.

16           IT IS FURTHER STIPULATED AND AGREED that  
17    notice of filing of this deposition by the  
18    Commissioner is waived.

19    In accordance with Rule 5(d) of Alabama Rules of  
20    Civil Procedure, as amended, effective May 15,  
21    1988, I, Donna Winters, am hereby delivering to  
22    Winfield J. Sinclair, Esquire, the original  
23    transcript of the oral testimony taken on the



1 28th day of March, 2016, along with exhibits.

2 Please be advised that this is the same and  
3 not retained by the Court Reporter, nor filed  
4 with the Court.

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1	E X H I B I T S
2	EXHIBIT PG DESCRIPTION
3	DX-1 38 Second Amended Complaint
4	DX-2 69 Plaintiffs' Responses to Secretary of
5	State John H. Merrill's First Set of Discovery to
6	Plaintiffs
7	DX-3 68 3-3-2017 Letter
8	DX-4 8 Plaintiffs' Initial Disclosures Under
9	FRCP Rule 26(a)(1)
10	DX-5 18 11-19-2016 AL NAACP News
11	DX-6 90 Alabama Photo Voter Identification, Valid
12	ID at the Polls
13	DX-7 90 Alabama Photo Voter Identification, How
14	to Get a Free Photo Voter ID Card
15	DX-8 90 Alabama Photo Voter Identification, Free
16	Alabama Voter ID Locations
17	DX-9 90 Alabama Photo Voter Identification,
18	Contact US page
19	DX-10 91 Alabama Photo Voter ID Guide, 2nd
20	Edition
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I N D E X

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A P P E A R A N C E S:

MR. DEUEL ROSS and MS. NATASHA C. MERLE (by telephone), Attorneys at Law, 40 Rector Street, 5th Floor, New York, NY 10006-1738, appearing for the Plaintiffs.

OFFICE OF THE ATTORNEY GENERAL, State of Alabama, by Messrs. Winfield J. Sinclair and Corey L. Maze, 501 Washington Avenue, Montgomery, Alabama 36130, appearing for the Defendants.

1           I, Donna Winters, a Court Reporter of  
2   Birmingham, Alabama, acting as Commissioner, and  
3   a Notary Public for the State of Alabama at  
4   Large, certify that on this date, as provided by  
5   Rule 30 of the Alabama Rules of Civil Procedure,  
6   and the foregoing stipulation of counsel, there  
7   came before me, BENARD SIMELTON, witness in the  
8   above cause, for oral examination, whereupon the  
9   following proceedings were had:

10

11                           BENARD SIMELTON,  
12   having been first duly sworn, was examined  
13   and testified as follows:

14

15                   COURT REPORTER:   Usual stipulations?

16                   MR. MAZE:   Yes.

17                   MR. ROSS:   Yes.

18

19           EXAMINATION BY MR. MAZE:

20   Q.     Mr. Simelton, my name is Corey Maze.  I  
21   work for the Attorney General of Alabama.  We've  
22   never met before, that's right?

23   A.     That's correct.

1 Q. Have you ever been deposed before?

2 A. No.

3 Q. So just general ground rules, I'm going to  
4 ask questions and you will verbally answer, so  
5 the court reporter can take them down. Does that  
6 make sense?

7 A. That makes sense.

8 Q. If he objects on privilege grounds, if he  
9 says "That's privileged, don't answer," then you  
10 don't have to answer, okay? Any other type of  
11 objection, he will say "Objection," and then  
12 you'll answer. Is that understood?

13 A. Okay.

14 Q. Otherwise, we're just here just asking you  
15 some questions about what you know about the  
16 case.

17 A. Okay.

18 (Whereupon, Defendants' Exhibit Number 4  
19 was marked for identification, a copy of which is  
20 attached to the original of the transcript.)

21 Q. The first thing I want to do is hand you  
22 what we've marked as Defendants' Exhibit 4, and  
23 this is the Plaintiffs' Initial Disclosures. I

1 want to turn specifically to -- they're not  
2 page-numbered, but it's the third page and it's  
3 paragraph number one. I just want to read it out  
4 loud and then just ask you if I read it  
5 correctly.

6 A. Okay.

7 Q. "Individuals affiliated with Plaintiffs GBM  
8 and the Alabama NAACP who have information  
9 regarding the manner in which Alabama's photo ID  
10 law, House Bill 19, denies and/or abridges the  
11 right to vote in violation of the Voting Rights  
12 Act of 1965, VRA; the resources spent by each  
13 organization in response to HB 19's  
14 disenfranchising, and burdensome effects on their  
15 constituents, and the discriminatory purpose of  
16 HB 19, and who must be contacted through  
17 undersigned counsel, including," and then  
18 subparagraph B is "Benard Simelton, president of  
19 the NAACP." Did I read that right?

20 A. That's correct.

21 Q. So I want to break down this paragraph. It  
22 says that you have information regarding the  
23 manner in which Alabama's photo ID law denies or

1 abridges the right to vote in violation of the  
2 Voting Rights Act. And we're going to get into  
3 more specifics later, but I want you to tell me,  
4 as best you can, what information do you  
5 personally have that the photo ID law abridges or  
6 denies the right to vote of any person in the  
7 state of Alabama?

8 MR. ROSS: Objection.

9 Q. You can answer after he says "Objection."

10 A. Okay. The photo ID law abridges  
11 individuals' right to vote by it requiring a  
12 document that particular -- some groups may not  
13 have, some individuals may not have.

14 Q. Okay. What type of document?

15 A. Specifically, the photo ID that is required  
16 to vote, a lot of people may not have that  
17 particular photo ID that's required by -- the  
18 government-issued photo ID that's required by the  
19 State of Alabama.

20 Q. So your particular information is that  
21 certain persons won't have photo IDs, correct?

22 A. That's correct.

23 Q. Would you have a problem with Alabama's law

1 if it took away the photo requirement? In other  
2 words, we go back to the day in which you can  
3 bring other documents, like a utility bill, that  
4 don't have your picture on it. Were you okay  
5 with that?

6 MR. ROSS: Objection.

7 A. In general, we don't believe that the  
8 Voting Rights Act of 1965 require any type of  
9 photo ID or any type of ID in order to vote.

10 Q. When you say "we," are you talking about --

11 A. The NAACP.

12 Q. The state chapter, or national?

13 A. Well, this is national, right.

14 Q. So the national organization NAACP believes  
15 that no identification should be required under  
16 the law?

17 A. We believe that the Voting Rights Act of  
18 1965 does not require, one, to produce an ID in  
19 order to vote.

20 Q. Is that what relief you want out of this  
21 case, is to get rid of all forms of  
22 identification when going to the voting booth?

23 MR. ROSS: Objection.



1 A. We want to make it that all states comply  
2 with the Voting Rights Act of 1965 so that  
3 individuals, regardless who, will not be denied  
4 the right to vote.

5 Q. And you told me earlier that to comply with  
6 the Voting Rights Act, there should be no  
7 identification required at all, because the law  
8 doesn't require it. So, again, is it the NAACP's  
9 position that the result of these lawsuits should  
10 be that there's no identification required when  
11 someone goes to the voting booth?

12 MR. ROSS: Objection.

13 A. I'll restate what I just stated; that, you  
14 know, we believe that the law, when it was  
15 enacted, was enacted for a reason, to prevent  
16 discriminatory -- discriminatory effects on  
17 African-Americans in particular, and so it did  
18 not require ID then. Why should it require ID  
19 now?

20 Q. So your answer, then, is you don't believe  
21 in 2017 the Voting Rights Act should require  
22 forms of identification?

23 MR. ROSS: Objection.

1       A.       I believe that we should be in compliance  
2       with the Voting Rights Act of 1965. We should  
3       not --

4       Q.       Let's do it this way. If you were Federal  
5       Judge Simelton and you got the opportunity to  
6       craft an order that says, "This is what the law  
7       should be; here's what you must bring to the  
8       voting booth," what would you write in your  
9       opinion as this is now the law on what comes to  
10      the voting booth?

11           MR. ROSS: Objection. He's not a judge,  
12      he's not a lawyer. But you can answer, to the  
13      extent you can.

14      A.       You know, there is certainly a lot of  
15      legalese that if I were a judge that I would have  
16      knowledge of; but as an individual, when I go to  
17      the polls to vote, I should go to the polls  
18      uninhibited and with the ability to cast my vote,  
19      one person, one vote.

20      Q.       If there's no requirement of  
21      identification, then how do we ensure that you  
22      are indeed Benard Simelton when you come up to  
23      the poll -- and let's assume that the poll worker

1     doesn't know who you are. How is that poll  
2     worker supposed to know that you are indeed  
3     Benard Simelton?

4             MR. ROSS: Objection.

5     A.     The poll worker, how did they do it, you  
6     know, prior to having a photo ID? You brought  
7     another type of ID, utility bill or something.  
8     How did they know then that I was who I say I  
9     was? So I believe that, you know, if I were a  
10    judge writing an opinion, the determination would  
11    be made on me presenting myself as a voter and  
12    the poll worker checking my name off the roster  
13    saying that I have voted. There has not been any  
14    evidence presented that says people are voting  
15    for other people.

16    Q.     We'll get to the evidence in a minute. But  
17    in your situation, would you at least require  
18    yourself to bring your utility bill saying that  
19    "I'm Benard Simelton, and I live at this  
20    address"?

21    A.     If a person had that document, then, fine,  
22    but that still should not prevent them from being  
23    able to cast their vote.

1 Q. So how would you prevent the situation in  
2 which someone else came an hour earlier and said,  
3 "I'm Benard Simelton, I want to vote"?

4 MR. ROSS: Objection.

5 Q. How do you prevent someone who is not  
6 Benard Simelton from actually voting as Benard  
7 Simelton?

8 MR. ROSS: Objection.

9 A. Okay. There is -- you're proposing a  
10 question that, you know, there's no evidence that  
11 people are doing that. You're trying to get a  
12 solution to something that doesn't exist. So if  
13 I present myself as a voter, if I don't have an  
14 ID, I still should be able to cast my vote  
15 according to the Voting Rights Act of 1965. And  
16 I'll say, how did people back during '65, how did  
17 they ensure that my father, Eddie Simelton, who  
18 was denied the right to vote because he didn't  
19 pay poll taxes, or because he couldn't read or  
20 tell how many bubbles were in a bar of soap, how  
21 did they vote? How were they able to determine  
22 who he was then, you know?

23 Q. Do you know the answer to that question?

1 How did they do it in 1965?

2 MR. ROSS: Objection.

3 A. No, I don't know the answer to that  
4 question, other than my father was eventually  
5 able to vote.

6 Q. So, again, I'm just trying to understand,  
7 are you okay with any form of identification  
8 requirement in 2017?

9 MR. ROSS: Objection.

10 A. I am okay with states complying with the  
11 Voting Rights Act of 1965.

12 Q. Are you okay with any state requiring an  
13 identification to vote in an election?

14 MR. ROSS: Objection, asked and answered.  
15 How many times are you going to ask him this  
16 question?

17 MR. MAZE: He hasn't actually answered the  
18 question of whether or not the NAACP or  
19 himself --

20 MR. ROSS: I think he answered what his  
21 understanding of what the national NAACP said.  
22 He also answered that he was open to a utility  
23 bill, which under the prior act was acceptable.

1 He answered in various ways at various times. So  
2 if you want to ask him again, you can keep asking  
3 him, but it's clearly asked and answered multiple  
4 times now.

5 Q. You are okay with a utility bill in 2017?

6 A. I'm okay with, again, compliance with the  
7 Voting Rights Act of 1965. If a person has that  
8 form of ID, they bring it, that's fine. If they  
9 do not have that, I want to make it clear that if  
10 they do not have that, that should not prevent  
11 them from being able to cast a vote.

12 Q. Who is in charge of enforcing the Voting  
13 Rights Act of 1965?

14 MR. ROSS: Objection.

15 A. You're talking about on a national level?

16 Q. Yes, on a national level, the federal  
17 government.

18 A. The Department of Justice.

19 Q. And who is the head of the Department of  
20 Justice?

21 A. Jeff Sessions at this time.

22 Q. And you personally have protested very  
23 openly about Mr. Sessions, correct?

1 MR. ROSS: Objection.

2 A. Yes. I protested his nomination for  
3 Attorney General.

4 Q. You and/or your organization -- and I have  
5 the documents, if we need to get into it -- but  
6 have openly called Attorney General Sessions a  
7 racist, correct?

8 MR. ROSS: Objection.

9 A. Are you talking about me personally?

10 Q. Well, I'll do the organization first.

11 A. The organization has not called  
12 Mr. Sessions a racist.

13 MR. ROSS: If you have documents, you know,  
14 that may be helpful. And I would also object to  
15 the relevance of their position on Jeff Sessions.

16 (Whereupon, Defendants' Exhibit Number 5  
17 was marked for identification, a copy of which is  
18 attached to the original of the transcript.)

19 Q. I'm going to mark this as Defendants'  
20 Exhibit 5, and I'll hand a copy to counsel. You  
21 can keep that copy. I highlighted some of the  
22 statements that I wanted to ask about. First of  
23 all, who in your office drafts official

1 statements for the state chapter of the NAACP?

2 A. Anyone can draft a statement, but the  
3 president is the one who releases it for the  
4 state.

5 Q. So Defendants' Exhibit 5, the one you have  
6 in front of you, it would have been you who would  
7 have released this particular statement?

8 A. Or authorized the release of it, yes.

9 Q. I want to go to the bottom of the page on  
10 the part you have highlighted, and I'll just read  
11 the quote. It says, "This is deeply troubling to  
12 empower a person who believes in White Supremacy.  
13 Sessions has blatantly and largely ignored  
14 decades of complaints and fears of people who  
15 live in his district in Dothan, Alabama." Did I  
16 read that correctly?

17 A. Yes, sir.

18 Q. Is it your position, as president of the  
19 NAACP, that the current Attorney General of the  
20 federal government believes in White Supremacy?

21 MR. ROSS: Objection.

22 A. Based on his actions, yes, that is a  
23 statement that we stick by.



1 Q. And the next paragraph, it says that  
2 "President-elect Donald Trump's selections are a  
3 constant reminder that his Administration will be  
4 anti-Obama, anti-Semitic, anti-African-American,  
5 anti-Muslim, anti-woman, anti-civil rights, and  
6 anti-human rights. It will no doubt take this  
7 country back to a Jim Crow era where whites  
8 ruled, where people of color were never seen as  
9 equal and lived in fear." Other than the fact  
10 that I corrected it to anti-Muslim, did I read  
11 that correctly?

12 A. Yes, sir.

13 Q. Do you, as president of the NAACP, Alabama  
14 Chapter, believe that Attorney General Sessions  
15 is anti-African-American and anti-civil rights?

16 MR. ROSS: Objection.

17 A. Yes, sir.

18 Q. And here is why I ask. You can put that  
19 away. The Federal Department of Justice headed  
20 by Jeff Sessions, as you have testified, has been  
21 charged with enforcing the Voting Rights Act of  
22 1965, correct?

23 A. Yes, sir.

1 Q. What trust do you have in Attorney General  
2 Sessions and the federal government that they  
3 will properly enforce the Voting Rights Act in  
4 the way that you see that it should be enforced?

5 MR. ROSS: Objection. You can continue  
6 down this line of questioning and waste your time  
7 on whatever you want, but there are no  
8 allegations in our Complaint about Jeff Sessions  
9 or his enforcement of the Voting Rights Act.  
10 This case is about the State of Alabama and its  
11 enforcement of the photo ID law, so if you want  
12 to ask questions about that, you know, go ahead.  
13 But I just object to this entire line of  
14 questioning about Attorney General Sessions and  
15 its relevance to this case.

16 Q. You can answer.

17 MR. ROSS: Can you repeat the question for  
18 him also?

19 MR. MAZE: First of all, Deuel, I  
20 appreciate your position, but we have both agreed  
21 before the deposition began to our normal  
22 objections, which you can object to form. I am  
23 leading to multiple lines of relevant questioning

1 based on your Complaint, and I would appreciate  
2 from now forward all objections being to form;  
3 and if you have any objections to the relevance  
4 after the end of the deposition, then you can do  
5 it in motions at the proper time. I'm trying to  
6 get through this very quickly so Mr. Simelton can  
7 get home, and we will do it much more quickly if  
8 we do it under the rules.

9 Q. All right. Mr. Simelton, the question is,  
10 what level of trust -- strike that. Do you  
11 believe that you can trust the federal Department  
12 of Justice, as currently constituted, to properly  
13 enforce the Voting Rights Act of 1965?

14 A. No.

15 Q. What evidence do you have that leads to  
16 your belief and your statement that Attorney  
17 General Sessions is anti-African-American and  
18 anti-civil rights?

19 A. Well, it goes back to what Mr. Sessions  
20 said when he was U.S. Attorney for the state of  
21 Alabama when he referred to Mr. Figures as "boy"  
22 and when he said to Mr. Figures, "You need to  
23 learn how to talk to white folks." When

1 Mr. Sessions attempted to prosecute the folks  
2 over in Marion County for voter fraud when there  
3 was little to no evidence that any voter fraud  
4 had taken place, Mr. Sessions' recent statements  
5 on immigration, you know, those type statements  
6 lead me to believe that, from his position, he  
7 will not be fair in implementing the laws of the  
8 United States.

9 Q. Just to help the court reporter out, what  
10 is Mr. Figures' full name?

11 A. Thomas Figures.

12 Q. So certainly you're basing your opinion on  
13 statements Mr. Sessions has made. Have there  
14 been any particular actions or bills that he has  
15 pushed in his time as a senator, or as state  
16 Attorney General, that would further your belief  
17 in those particular statements?

18 A. Well, as I have said in other statements,  
19 it's difficult to believe what Mr. Sessions says,  
20 when he testified in his confirmation hearings  
21 that he had not spoken to the Russians when  
22 Senator Franklin asked him. Later on, he found  
23 out that he had spoken to the Russians. So that

1     leads me to believe that Mr. Sessions is not  
2     trustworthy in what he says.

3     Q.     In fact, if I read the news reports  
4     correctly, the state chapter of the NAACP has  
5     asked for Mr. Sessions to be disbarred in the  
6     state of Alabama, correct?

7     A.     That is correct.

8     Q.     And that was based largely on, what you  
9     just talked about, about the Senate testimony,  
10    correct?

11    A.     Yes, sir.

12    Q.     So, so far we've based it on statements  
13    that Attorney General Sessions has made in the  
14    past and also the actions that he took in his  
15    confirmation hearings to the Senate. Is there  
16    anything else that you would base that opinion  
17    on, that he is anti-civil rights and  
18    anti-African-American?

19    A.     Well, I mean, I told you about his position  
20    on immigration, and there may be other things I  
21    can't think of right off the top of my head. But  
22    those are certainly some of the ones I can think  
23    of.

1 Q. Bolstered by, like this week, the sanctuary  
2 city, the defunding of sanctuary city, is that  
3 the type of action that you would say is further  
4 evidence of some sort of anti-minority sentiment  
5 by the Department of Justice?

6 MR. ROSS: Objection.

7 A. That certainly ties in with  
8 anti-immigration.

9 Q. First of all, do you have any degrees or  
10 expertise? And I know this is going to sound  
11 silly, and I'll explain it later. But do you  
12 have any Ph.D.s or degrees or expertise to give  
13 an opinion as to whether someone is racist or  
14 anti-minority or anti-civil rights? What would  
15 make you an expert to definitively say under oath  
16 that you believe someone is against civil rights?

17 MR. ROSS: Objection. You are  
18 mischaracterizing his testimony.

19 A. I grew up in Mississippi during the '60s.  
20 I was born in 1954. I have seen people in my  
21 community terrorized by burning up crosses in  
22 their yards, by people saying hateful things to  
23 another person only because of their race;

1 calling them -- using the N-word, and going to  
2 facilities that says "whites only." So my  
3 background gives me an understanding of when I  
4 hear someone talk, when I see their action, I'm  
5 not saying whether they are racist or not; but I  
6 can understand by their action whether they are,  
7 quote, unquote, a friend or foe.

8 Q. Right. You don't need advanced degrees in  
9 mathematics or something else to understand that.  
10 You have life experience. That's pretty much  
11 what you're saying?

12 A. Yes. I do have a degree in sociology and a  
13 master's degree in political science -- I mean,  
14 in public administration.

15 Q. But more than anything, it's your life  
16 experience that helps you understand some of  
17 these issues?

18 A. Yes.

19 Q. Let's go back to the document that we  
20 started with. It also says that you have  
21 information regarding the resources spent --

22 A. Where are you reading at?

23 Q. I'm sorry. We're in that paragraph 1.

1     A.     You're still in 1?

2     Q.     Yes, right in the middle after "VRA." It  
3     says, "The resources spent by each organization  
4     in response to HB 19's disenfranchising and  
5     burdensome effects on their constituents." Did I  
6     read that right?

7     A.     Yes, sir.

8     Q.     Do you personally have knowledge on how  
9     much money the Alabama Chapter of the NAACP has  
10    spent in response to the photo voter ID bill?

11    A.     Ask that question again.

12    Q.     Okay. The document says, "We have been  
13    informed that you will be able to testify about  
14    the resources spent"; in other words, the money  
15    spent, the manpower, et cetera, that the Alabama  
16    NAACP has spent dealing with or responding to the  
17    photo voter ID bill. So my question to you is,  
18    first of all, do you know how much money the  
19    Alabama NAACP has spent responding to the photo  
20    voter ID law?

21    A.     To answer that question, I don't know off  
22    the top of my head. We can extrapolate that  
23    amount from our documents, you know, from our



1 budget documents and from our actual expenditures  
2 from year-to-year. I don't have that information  
3 available.

4 Q. That's fine. Who at your chapter is in  
5 charge of keeping those budget documents?

6 A. Well, now, when you say "keeping," do you  
7 mean just physically keeping them, or what do you  
8 mean, "keeping" them?

9 Q. We'll start with that. Who physically  
10 keeps them? I assume they're probably in a  
11 computer? It's not like you have filing  
12 cabinets?

13 A. Well, we have both. We produce an  
14 electronic copy; and we, of course, give a hard  
15 copy budget document now, at the beginning of the  
16 year for approval.

17 Q. Who puts that together every year when you  
18 put it out for approval?

19 A. Myself and the treasurer.

20 Q. What's the name of the treasurer?

21 A. Leon Steele.

22 Q. And you said that you would be able to take  
23 those documents and extrapolate from them an

1 amount spent dealing with this particular law,  
2 correct?

3 MR. ROSS: Objection.

4 A. Right.

5 Q. It's something you can't do today, but it  
6 could be done?

7 MR. ROSS: Objection.

8 A. Right. And I want to make sure you clearly  
9 understand what I'm saying.

10 Q. Right.

11 A. Because we do -- when we do voting  
12 registration, when we do get-out-to-vote efforts,  
13 we tie it all together. We don't go out strictly  
14 just to say, "Well, today we're just going to do  
15 photo ID efforts only," because the photo ID is  
16 tied all together.

17 Q. Sure. You might have a rally where you're  
18 talking about three different things?

19 A. Yes, sir.

20 Q. And we'll get into more specifics as we get  
21 into the Complaint. It says that you have  
22 personal information about the discriminatory  
23 purpose of House Bill 19. My first question

1     about that is, do you personally believe that the  
2     purpose of the photo voter ID bill was to  
3     discriminate against minorities?

4             MR. ROSS:  Objection.

5     A.     I believe that the bill certainly has  
6     discriminatory impacts on minority voters.

7     Q.     Different question.  Understood that you  
8     believe it has impacted, and we're going to ask  
9     you what those impacts are later.  But stepping  
10    back for a second, at the date that this bill was  
11    passed, do you believe it was the purpose of the  
12    legislature who passed it to disenfranchise  
13    minority voters?

14    A.     Yes.

15    Q.     What evidence do you have of that?

16    A.     Well, the evidence is the bill itself, and  
17    the impact it has on people.  Clearly, the bill  
18    states a requirement that minorities,  
19    African-Americans, don't have.

20    Q.     Again, we're going to talk about the  
21    impacts later.  I want to talk about the purpose.  
22    Did any particular person ever make a statement  
23    to you that "We are passing this bill because we

1 want to disenfranchise minority voters"?

2 A. No, no one made that specific statement.

3 Q. Do you know of anyone who has ever made  
4 that type of statement?

5 MR. ROSS: Objection.

6 A. When you say "anybody," are you talking  
7 about legislators or who?

8 Q. Let's start with legislators first. Do you  
9 know of any legislator, who was a legislator at  
10 the time this bill was passed, that made a  
11 statement that the purpose or even a purpose of  
12 this bill is to disenfranchise minority voters?

13 MR. ROSS: Objection.

14 A. I know legislators that I have spoken to  
15 that says this bill will have a discriminatory  
16 impact on black voters.

17 Q. Okay. Who are they? Name them.

18 A. Senator Hank Sanders is one.

19 Q. When did Senator Sanders say that to you?

20 A. Oh, I can't remember that.

21 Q. Before or after it was passed?

22 A. I know after. I just don't remember if we  
23 talked to him before or not, but certainly

1 afterwards.

2 Q. Any other senators or legislators?

3 A. The others I can't think of, but certainly  
4 Senator Sanders.

5 Q. And I'll go back a little bit. This is one  
6 of the reasons I asked you about Attorney General  
7 Sessions. You have concrete examples of  
8 statements he has made in the past that leads you  
9 to believe that he will enforce the Voting Rights  
10 Act in a discriminatory manner, correct?

11 MR. ROSS: Objection.

12 A. Yes.

13 Q. You don't have similar statements from any  
14 legislator in Alabama that the purpose of this  
15 bill was to discriminate against minorities,  
16 correct?

17 MR. ROSS: Objection.

18 A. No, I don't have evidence to that effect.

19 Q. And you don't have any evidence -- again,  
20 you said that one of the problems you have with  
21 Attorney General Sessions is the fact that it  
22 appears -- and I'm paraphrasing, you can change  
23 it if that's wrong. It appears to you that he

1     lied to Congress when talking about his dealing  
2     with the Russians, correct?

3     A.     Well, I mean, "appears"? If I used that  
4     word, I used it incorrectly; but based on his  
5     testimony before and after, he said he spoke to  
6     the Russians. And when Senator Franklin asked  
7     him, he said he had not.

8     Q.     And you don't have any similar statements,  
9     certainly under oath, but I don't think any  
10    statements at all, of an Alabama legislator lying  
11    about this particular bill, correct?

12           MR. ROSS: Objection.

13    A.     Do I have a statement?

14    Q.     Correct. You personally?

15    A.     No.

16    Q.     Let me ask you this. I represent the  
17    Secretary of State John Merrill. Have you ever  
18    heard Secretary of State John Merrill make any  
19    statements that leads you to believe that he  
20    personally enforces the photo voter ID bill in a  
21    manner that discriminates against minority; that  
22    that's his purpose in doing so, is to hurt  
23    minority voters?

1 MR. ROSS: Objection.

2 A. I have not heard him make that statement,  
3 make that statement. Now, there are actions that  
4 he has taken that leads one to believe, at least  
5 leads me to believe that.

6 Q. Well, what actions would those be? What  
7 has Secretary of State Merrill done that changes  
8 your opinion of him, or makes you form an opinion  
9 of him? First of all, let me strike that. What  
10 is your opinion of Secretary of State Merrill  
11 when it comes to the enforcement of the photo  
12 voter ID bill?

13 MR. ROSS: Objection.

14 A. He tries to enforce it.

15 Q. He tries to enforce it, okay. Does he try  
16 to enforce it in a manner that either hurts or  
17 advantages any particular race?

18 A. Yes.

19 Q. Which race is he trying to advantage or  
20 disadvantage?

21 A. Well, he's trying to disadvantage  
22 African-American and other minorities.

23 Q. Other than just enforcing the bill as it is

1     written, what actions has the Secretary of State  
2     taken that leads you to believe that he is doing  
3     his actions to suppress minority vote?

4             MR. ROSS:  Objection.

5     A.     Well, when he says that he wants to make  
6     it -- I want to make sure I get it correctly --  
7     he wants to make it easy to -- let me see -- easy  
8     to vote, difficult to cheat -- no.  Something to  
9     that effect.  I forgot exactly how he said it,  
10    but something to that effect.  Additionally, when  
11    he says that he wants to do his mobile ID units  
12    to ensure that everyone has the opportunity to  
13    register -- I mean, to get the photo ID, he does  
14    not go into the African-American community where  
15    we live and where we congregate in order to  
16    ensure that those individuals have an opportunity  
17    to register for the photo ID.  Additionally, when  
18    the State of Alabama closed the DMVs, I did not  
19    see him jumping up and saying, "Don't close them,  
20    we need to keep these open because this is where  
21    people can get their photo ID, which is required  
22    to vote."

23    Q.     You do understand that the Secretary of



1 State does not control ALEA, correct, that those  
2 are two different state agencies?

3 A. Well, I fully understand that, but that  
4 still did not prevent him as a candidate-level  
5 position for the governor -- well, for the State  
6 of Alabama cabinet level. It's a misnomer,  
7 because he runs as Secretary of State himself.  
8 But I still did not see him speaking out saying,  
9 "I have a responsibility to ensure that all  
10 voters have a photo ID. How dare you, Governor,  
11 close these places."

12 Q. You understand that Secretary of State  
13 Merrill offers free photo ID cards not only in  
14 his office, but in the offices of every county  
15 Board of Registrars, correct?

16 A. Yes, sir.

17 Q. And that none of those were closed at the  
18 same time the ALEA offices were closed, correct?

19 A. Yes, sir.

20 Q. So even during the period of time in which  
21 ALEA offices had been closed at the governor's  
22 direction, Secretary of State Merrill and the  
23 Board of Registrars were still offering photo ID

1 cards in the same places and times that they  
2 always had, correct?

3 A. Yes, sir.

4 Q. You don't believe that that is enough for  
5 the Secretary of State to show that he is trying  
6 to get photo IDs into the hands of everyone, that  
7 he also had to take the additional step of  
8 re-opening ALEA offices?

9 MR. ROSS: Objection. You are  
10 mischaracterizing his testimony.

11 Q. I'll strike it, and I'll ask it an easier  
12 way. You understand that the Secretary of State  
13 can only control the photo ID cards for voting  
14 that he and the registrars give out? He doesn't  
15 control driver's license that ALEA gives out,  
16 correct?

17 A. Yes, I understand, but I didn't say what he  
18 controls. I'm talking about him speaking out.

19 Q. So you would have preferred to see the  
20 Secretary of State issue a public statement  
21 saying that the ALEA offices need to be re-opened  
22 for the purposes of allowing someone to purchase  
23 a driver's license?

1 A. Yes, which is one of the documents that  
2 they can use to vote.

3 Q. Not the only one, but one?

4 A. Right.

5 (Whereupon, Defendants' Exhibit Number 1  
6 was marked for identification, a copy of which is  
7 attached to the original of the transcript.)

8 Q. Let's hand you what we have marked as  
9 Defendants' Exhibit 1. This is a copy of the  
10 Second Amended Complaint. I'll ask you just some  
11 general questions to begin with, before we get  
12 into the document itself. Whose idea was it to  
13 file this lawsuit initially?

14 MR. ROSS: Objection. I object to any line  
15 of questioning that requires you to discuss the  
16 contents of conversations that you've had with  
17 your attorneys. If you can clarify, I may not  
18 instruct him to not answer.

19 Q. Sure. Let me make very clear, any question  
20 I ask you, I'm not asking you for any words or  
21 conversations between Deuel or any attorney and  
22 yourself.

23 MR. ROSS: And yet you're asking him about

1     why he --

2                   MR. MAZE:   No.   No.

3                   MR. ROSS:   -- filed the lawsuit, which,  
4     you know, fundamentally requires him to talk to  
5     an attorney.

6     Q.     My question is, did you or the chapter  
7     personally wish to file this lawsuit, and you  
8     sought out the attorneys; or did attorneys come  
9     to you first? I'm not asking you the content of  
10    your conversations. I'm asking who initiated the  
11    conversation.

12                  MR. ROSS:   You can answer to the extent you  
13    can do so without revealing the contents of any  
14    conversation you've had with myself or any other  
15    one of your attorneys in this case or other  
16    cases.

17    A.     I think it's difficult to answer that  
18    question without disclosing attorney-client  
19    privilege information.

20    Q.     You can't answer -- again, I'm not asking  
21    you for any conversations at all.

22    A.     I understand.

23    Q.     The only question I'm asking you is, who

1 initiated the first contact? In other words, who  
2 picked up the phone and called who? I don't want  
3 to know who said what, what was said. Who picked  
4 up the phone or hit "send" on the e-mail that  
5 said "I would like to do this"?

6 MR. ROSS: I just object to this line of  
7 questioning. I don't think he has to or should  
8 answer it, so I think you should move on. So I'm  
9 instructing him not to answer.

10 MR. MAZE: And the State will note its  
11 objection to that, and we will preserve our  
12 rights to re-ask if necessary.

13 Q. Did you read a copy of the Complaint before  
14 it was filed?

15 A. Yes.

16 Q. And you agreed with all of the statements  
17 that were in the Complaint when it was filed?

18 MR. ROSS: Objection. You can answer.

19 A. Yes. You said when it was filed, right?

20 Q. Yes, when it was initially filed. What you  
21 have in front of you now is a Second Amended  
22 Complaint; in other words, your organization and  
23 the plaintiffs have filed two amendments to the

1 Complaint. Do you know if you have reviewed the  
2 Amended Complaints before each of them was filed?

3 MR. ROSS: Objection. My question to you,  
4 Corey, is, you know, you've asked a series of  
5 what I consider harassing lines of questioning  
6 that have nothing to do with this case  
7 whatsoever. I don't know any instance in which  
8 I've heard someone ask who initiated litigation  
9 for the purposes of the deposition, or any of  
10 your line of questioning. So I strenuously  
11 object, because I find it harassing to my client.

12 MR. MAZE: Your objection is noted. I will  
13 again state that we're not going to have speaking  
14 objections today.

15 MR. ROSS: This is not a speaking  
16 objection. If you continue to harass my client,  
17 I'm going to just end the deposition.

18 Q. Mr. Simelton, this is not being videotaped,  
19 obviously, correct?

20 A. They may have videos in the lights.  
21 They've got them in microwaves and things, so  
22 they may have them in here somewhere. I don't  
23 know.

1 Q. Do you feel harassed by me personally in  
2 any way?

3 A. I mean, that's -- I don't think I need to  
4 answer that question.

5 Q. I need it personally, because your attorney  
6 is accusing me of harassing you. To the best of  
7 my ability, I have tried to be very calm and very  
8 civil and not --

9 A. See, I'm not an attorney, so things that he  
10 may consider as harassment, I may not, and vice  
11 versa. Things that I consider harassment, he may  
12 not.

13 Q. Right.

14 A. So if my attorney says it's harassment,  
15 then I'll have to defer to what the person that's  
16 representing me says.

17 Q. I'm not asking you what you think Mr. Ross  
18 feels. I'm asking you personally, for my own  
19 reasons, do you feel as though I have harassed  
20 you in any way today?

21 A. Again, I'm going to refer to my attorney  
22 because, I mean, I don't want to answer it one  
23 way or the other, because I'm not a legal expert

1 to determine when I'm being harassed. I mean, I  
2 know when I think I'm being harassed; but I don't  
3 know from a legal perspective, you know, because  
4 I look at a lot of shows on TV, and I see that an  
5 attorney is not harassing or an attorney is  
6 harassing, but the judge allows it. You know,  
7 I'm just not qualified to make a legal  
8 determination whether I'm being harassed or not,  
9 you know.

10 Q. Take legal harassment out of the picture.  
11 Do you feel personally harassed or threatened at  
12 all?

13 MR. ROSS: Objection.

14 MR. MAZE: Deuel, I can't allow --

15 MR. ROSS: Let's go off the record, if  
16 you're okay with that, Corey.

17 MR. MAZE: I'm actually not. I don't think  
18 that we should be accusing attorneys of  
19 harassment and continuing speaking objections --

20 MR. ROSS: I'm going to renew my speaking  
21 objection, because I think that you have asked a  
22 series of questions which have no relevance  
23 whatsoever to this case. You have asked my



1 client multiple times questions, I've objected  
2 "asked and answered," and you've then gone on to  
3 ask four or five more times. So frankly, we  
4 started the deposition in the last half-hour, and  
5 I don't think you've asked a relevant question  
6 yet, so I'm just going to object. So we can go  
7 off the record and have a conversation about it,  
8 or we can continue to do this on the record.

9 MR. MAZE: We will continue on the record,  
10 and I will ask a new question.

11 Q. Mr. Simelton, who is paying for this  
12 lawsuit?

13 MR. ROSS: Objection. Again, I'll instruct  
14 my client not to answer to the extent it requires  
15 any conversations you've had with your attorneys.

16 Q. Now you can answer.

17 A. Again, I have spoken with the attorney, my  
18 attorney about that.

19 MR. ROSS: Objection. I'm going to  
20 instruct my client not to answer since he's  
21 clearly going into conversations he's had with  
22 his attorneys.

23 Q. Let me ask it this way. Is the Alabama

1 Chapter of the NAACP spending its own money to  
2 litigate this case?

3 MR. ROSS: Objection.

4 A. No.

5 Q. Let's turn to paragraph 17. It's page 9 at  
6 the bottom. I'm going to read this out loud.  
7 "The Alabama NAACP is now, as a result of the  
8 photo ID law, required to undertake such  
9 activities as number 1, assessing who among its  
10 constituency lacks the required photo IDs and/or  
11 determining which underlying documents each  
12 constituent needs in order to obtain the required  
13 photo ID." Did I read that correctly?

14 A. Yes, sir.

15 Q. Who at the Alabama NAACP has been tasked  
16 with assessing the persons who lack the required  
17 photo ID? Whose job is that?

18 A. Each branch -- you keep calling us a  
19 chapter. We're not a chapter. I'm the state  
20 conference, and then each county theoretically  
21 would have a branch, but some counties don't have  
22 a branch. So each branch would assess, do their  
23 own assessment; and if there's a county where

1     there's no branch, then the State would try to do  
2     that assessment. That's not totally always the  
3     case, but that's the way we try to do it.

4     Q.     On your website you call these branches  
5     units; is that correct?

6     A.     Correct.

7     Q.     So "unit" and "branch" is the same thing?

8     A.     Not necessarily. Anything under the  
9     regional director is a unit, meaning we are a  
10    unit. The national refers to us as a unit, and  
11    they refer to branches as a unit, and they refer  
12    to the college chapters as units, prison branches  
13    are units, youth councils are units. So when  
14    they refer to unit, that's something globally  
15    they refer to. Basically that's anything under  
16    the regional office.

17    Q.     Now, do you fund the units or branches?  
18    Like do you give them money, or are they  
19    self-funded?

20    A.     They are self-funded.

21    Q.     So if they are --

22    A.     Let me clear that up. They are  
23    self-funded. We do get some funds that we may

1 parcel out to them for them to participate in  
2 certain activities, such as, you know, doing  
3 voter registration and stuff like that. But for  
4 the most part, they're self-funded.

5 Q. Then let's focus solely on the Alabama  
6 NAACP, not the branches or units, but your  
7 organization. Who at the Alabama NAACP -- and by  
8 "who," it could be plural, it could be multiple  
9 people -- has been assessing the persons who lack  
10 a required photo ID or underlying documents?

11 A. That would be myself as the president and  
12 our political action chair, Jerry Burnet.

13 Q. Can you spell the second person's name?

14 A. Yes. J-E-R-R-Y, B-U-R-N-E-T. There's only  
15 one T at the end.

16 Q. Okay. So I'm not going to ask you what  
17 Jerry knows, I'm going to ask you what you  
18 personally know. In the time that you have spent  
19 assessing the persons who lack photo IDs, how  
20 many persons, as of this moment right now, can  
21 you name among your constituency who does not  
22 have the required photo ID?

23 MR. ROSS: Objection.

1 Q. How many can you name?

2 A. I can name -- I mean, I can't -- it's hard  
3 to say well -- the ones I know are the ones I  
4 know.

5 Q. Okay. Who are they?

6 A. One is Mr. Wahl.

7 Q. Do you know his full name? Can you at  
8 least spell the last name?

9 A. W-A-H-L.

10 Q. W-A-H-L?

11 A. Yes.

12 Q. Is Mr. Wahl white, African-American? Do  
13 you know his race?

14 A. I don't know. I've never met him. I've  
15 talked to him on the phone, but I haven't met  
16 him.

17 Q. Do you know if he is a constituent of the  
18 Alabama NAACP?

19 MR. ROSS: Objection.

20 A. Well, by the mere fact that he called us,  
21 then, you know, we don't -- I mean, we have a lot  
22 of people who call us for all kinds of things,  
23 and they become our constituents at that time.

1 Q. How would you define "constituent"? Who is  
2 your constituency as the Alabama NAACP?

3 A. Anyone whose civil rights or economic  
4 rights, political rights are being violated.

5 Q. So no racial requirement?

6 A. No.

7 Q. Anybody can call?

8 A. Anybody.

9 Q. And you will help anybody?

10 A. Yes, we will, absolutely.

11 Q. So other than Mr. Wahl, who do you know  
12 lacks the required photo ID?

13 A. There was Mr. Mims, I think, was his name,  
14 he did not have the required photo ID. We got a  
15 call from, I think, his daughter.

16 Q. Do you know if he currently has it?

17 A. I don't know.

18 Q. You've seen it in the past?

19 A. Right.

20 Q. So you don't know presently whether or not?

21 A. Right. Both of these individuals -- they  
22 have not told me that they have -- have not  
23 circled back with me that they have the photo ID;

1 but when they went to vote, they did not have.

2 Q. Voted in which election?

3 A. Well, Mr. Wahl, I know he -- both were in  
4 '14.

5 Q. And you have not heard from either of them  
6 since?

7 A. Well, Mr. Wahl, I spoke to him since.

8 Q. And he still doesn't have an ID?

9 A. Well, I don't know as of today. But the  
10 last time I spoke to him, which was maybe last  
11 year sometime, he did not.

12 Q. Do you know how we could contact Mr. Mims?  
13 Do you know where he lives, or just sort of how  
14 you could find him?

15 A. I would have to go back and research  
16 records and find contact information for him.

17 Q. He is not a currently named plaintiff in  
18 this case, is he? His name is not on the front,  
19 on the cover?

20 A. I don't think so.

21 Q. Anybody else besides Mr. Wahl and Mr. Mims  
22 that you know lack the required photo ID card?

23 A. Those are the ones that I have been made

1     aware of. There was another gentleman who was  
2     not initially able to vote with his military ID;  
3     but that was, I think, some error on the poll  
4     worker's part, because he had a military ID, and  
5     it didn't have an address on it, so they didn't  
6     want him to vote.

7     Q.     And I assume that these persons you've  
8     named -- Jerry Burnet, would Jerry Burnet have  
9     told you, if Jerry had seen or heard of anyone  
10    else, would that knowledge come to you?

11           MR. ROSS: Objection.

12    A.     Typically, yes.

13    Q.     How many hours would you estimate that you  
14    have spent trying to assess who among your  
15    constituency lacks a photo ID card?

16    A.     I mean, that's -- I don't know. Again, I  
17    couldn't tell you; but, you know, we do it  
18    without keeping track of hours. I mean, it's  
19    hard to say how many hours.

20    Q.     I'm going to read number 2 in that  
21    paragraph. "Assisting and educating  
22    African-Americans and the general public about  
23    complying with the photo ID law." Did I read



1     that correctly?

2     A.     Yes.

3     Q.     Tell me as many specifics as you can, how  
4     the Alabama NAACP assists and educates  
5     African-Americans and the general public on how  
6     to comply with the photo ID law.

7     A.     Well, we certainly put it on our website.  
8     We put information out through churches,  
9     newspaper articles, relative discussions at our  
10    quarterly meetings, at our annual state  
11    conventions. I mean, all those are methods in  
12    which we use to get information out, even talking  
13    to people. When we do phone banking, we remind  
14    people about the need to have a photo ID.

15    Q.     Which of those activities that you just  
16    named costs money? When are you having to spend  
17    money to do this?

18    A.     Well, phone banking -- when we -- I forgot  
19    to mention door-to-door canvassing, you know,  
20    when we do that, that's money we have to spend.  
21    Sometimes we have door knockers that we put on a  
22    lot of doors. And when we make our handouts, you  
23    know, it cost monies to go in churches or go into

1 barber shops and beauty shops throughout the  
2 community. Rallies and things like that, you  
3 know, everything from renting equipment, to we  
4 had something in Birmingham where we provided --  
5 well, snacks, hot dogs, hamburgers at a rally out  
6 in the park, and stuff like that. Those events  
7 cost money.

8 Q. And again, that's a number that you can't  
9 give me today?

10 A. Right.

11 Q. But you think that if you went back and  
12 looked at your documents, you could put it  
13 together?

14 A. I mean, I can pull some numbers together;  
15 but, you know, it's not like I can say -- you  
16 know, because from a state perspective, sometimes  
17 we give money to the branch to do things for --  
18 if it's a state effort, but it's done in a local  
19 community, you know.

20 Q. Let's look at number 3.

21 A. Okay.

22 Q. "Encouraging defendants to mitigate the  
23 most egregious discriminatory effects of the

1 photo ID law." Describe your efforts to  
2 encourage defendants" -- and by "defendants," I'm  
3 assuming we mean the Secretary of State, the  
4 governor, et cetera. What are the ways that you  
5 have encouraged them to mitigate the most  
6 egregious discriminatory -- first of all, I'm not  
7 going to ask that question, strike it. What do  
8 you believe are the most egregious discriminatory  
9 effects of the law? What do you mean by that?

10 MR. ROSS: Objection.

11 A. Well, again, I just go back to requiring  
12 people to have the photo ID in order to walk up  
13 to the poll and cast their vote.

14 Q. How many times have you met personally with  
15 the defendant, Secretary of State John Merrill?  
16 How many times have you met with Mr. Merrill to  
17 discuss this law?

18 A. Personally, I think maybe once I met with  
19 him. I have spoken to Ms. Brown on several  
20 occasions, and I've had Mr. Burnet to talk to Ms.  
21 Brown also. Mr. Merrill is not, you know, the  
22 easiest person to get in contact with, because  
23 he's Secretary of State; but we've spoken to

1 several people in his office.

2 Q. I'm just going to clarify for the record,  
3 Ms. Brown is Jean Brown, who was counsel for the  
4 Secretary of State?

5 A. Right.

6 Q. What have been some of those conversations?  
7 What were you asking Jean Brown about?

8 A. Well, we asked about -- well, first of all,  
9 we talked to her about what we felt about the  
10 law, how it's not a good law. And then we talked  
11 about -- we had a question about the  
12 implementation, everything from the date it was  
13 going to be implemented to the -- they initially  
14 put on the website, I think, how the process  
15 of -- well, they put out initially, I think, some  
16 comment or comment period that they wanted to get  
17 comments about their plan, and we provided some  
18 comments to that. And we've spoken to her since,  
19 you know, while the plan was -- when the plan was  
20 finalized, and about how it was going to be  
21 implemented.

22 Q. How receptive have you found, first of all,  
23 Jean Brown to be? Has she been generally

1     receptive when you've responded or reached out to  
2     her?

3     A.     Yes.

4     Q.     Pretty helpful, to the extent she can be?

5     A.     Well, I mean, she's subject to the party  
6     line.

7     Q.     Right. Which is "We are going to enforce  
8     the law the way it's written"?

9           MR. ROSS: Objection. You're  
10    mischaracterizing his testimony.

11    Q.     Well, what is your testimony? What is the  
12    party line?

13    A.     Well, the party line is that -- I mean, she  
14    has said that "That's the new law, and that's  
15    what we're going to enforce."

16    Q.     So she generally said, "We have to enforce  
17    the law the way it's written," correct?

18    A.     Right.

19    Q.     I'm going to read paragraph 18. "Thus, the  
20    photo ID law is causing and will continue to  
21    cause the Alabama NAACP to divert a portion of  
22    its financial and other organizational resources  
23    to educating African-American voters in Alabama

1 about the requirements of the law and assisting  
2 registered voters with complying with it in order  
3 to vote." Did I read that part correctly?

4 A. Yes.

5 Q. Does the Alabama NAACP spend any money or  
6 resources educating Latino or Hispanic voters?

7 A. Yes. We work with Alabama Coalition of  
8 Immigrant Justice, and we have gone out into the  
9 community to help them register voters over in, I  
10 think, Russellville. They assisted the branch  
11 over there, and this comes down to the branch  
12 level. So they assisted the branch over there  
13 registering people last year at a festival in  
14 Russellville.

15 Q. Who is your contact with that organization?  
16 Who do you call?

17 A. Sarai Portillo. And I didn't pronounce her  
18 name correctly.

19 Q. How about spelling?

20 A. I can look it up in my phone and spell it.

21 Q. We can do it during the break, if you want  
22 to. That's just for the court reporter to make  
23 it easier on her. Any other groups, besides the

1 ones you just named, that you work with to  
2 educate other minority groups?

3 A. You say other minorities?

4 Q. Right. Not African-Americans, but other  
5 minority groups. I'll tell you why I'm asking.  
6 The Complaint says "educating African-American  
7 voters," and I'm just trying to see how far  
8 beyond that you expand.

9 A. Well, I think if you go back up to the  
10 statement, it says "and the general public," so  
11 it's just not limited to African-Americans. I  
12 mean, we educate, you know, our white voters or  
13 anyone who attends our events, you know, and our  
14 rallies. You know, so it's not limited to  
15 African-American voters, but certainly the  
16 majority of the people that we interact with are  
17 African-American.

18 Q. I'm going to read the next sentence. "As a  
19 result, the Alabama NAACP is limited and will  
20 continue to be limited in the organizational  
21 resources that it can devote to its other core  
22 goals." Did I read that correctly?

23 A. Yes, sir.

1 Q. What other goals of the Alabama NAACP do  
2 you think are now being limited because of the  
3 photo ID law?

4 A. Well, we have been pushing the expansion of  
5 the Affordable Care Act, which the government has  
6 not expanded. We are still limited  
7 educationally -- well, education, economic, and  
8 other political issues. We're a 501(c)(3) or  
9 (c)(4), but we still like to educate people about  
10 the issues that are going on in the community.

11 Q. Do you feel like you've had to divert money  
12 away from promoting the Affordable Care Act or  
13 your work on that particular act, because of the  
14 photo ID law?

15 A. Well, yes. Yes. I mean, it's -- yes. The  
16 answer is yes.

17 Q. Can you estimate how much money has been  
18 moved from one to the other?

19 A. No. I mean, If we have to, we can quantify  
20 it, but I can't say. I can't say, you know, it's  
21 been \$1,000 or \$2,000, because we don't have that  
22 figure.

23 Q. It's one of those you would have to go back



1 and actually sit down and work on the numbers?

2 A. Yes, do some extrapolation.

3 Q. Okay.

4 (Whereupon, at this time a short break  
5 was taken.)

6 Q. We're back on the record, and I want you to  
7 turn to page 71. Actually, page 70, sorry. I'm  
8 going to start by reading paragraph 186. It  
9 starts at the bottom and then goes onto the next  
10 page. "Plaintiffs Ambrosio, Harris, Silvers, and  
11 Ware have a right to vote free from racial  
12 discrimination. Plaintiffs GBM and the Alabama  
13 NAACP have a right not to be burdened with the  
14 expenditure and diversion of limited  
15 organizational resources to address  
16 discriminatory restrictions on the right to  
17 vote." So far, have I read that correctly?

18 A. Yes.

19 Q. Okay. Next sentence, "As alleged above,  
20 Defendants enacted and/or operate the photo ID  
21 law with the purpose or effect of abridging or  
22 denying the right to vote on account of race."  
23 Did I read that sentence correctly?

1 A. That's correct.

2 Q. That's the sentence I want to talk about,  
3 for now. It says, "Defendants enacted or operate  
4 the photo ID law with the purpose of abridging or  
5 denying the right to vote."

6 A. Purpose or effect.

7 Q. Right. I'm going to ask you about them  
8 separately, because you have the word "or." What  
9 do you believe to be the purpose -- strike that.  
10 What evidence do you personally have that the  
11 purpose of enacting this law was to abridge or  
12 deny the right to vote?

13 MR. ROSS: Objection.

14 A. Well, I'll go back to what I've said  
15 previously. The impact that it has -- the group  
16 of people that it has the most impact on is  
17 African-American, which is, you know, a protected  
18 class, if you will, of people.

19 Q. How do you know that?

20 MR. ROSS: Objection.

21 A. How do I know what?

22 Q. How do you know that the greatest impact  
23 will be on African-Americans?

1 A. Because African-Americans are least likely  
2 to have the photo ID.

3 Q. How do you know that?

4 A. Because when I talk to people, they don't  
5 have the required ID.

6 Q. But I asked you earlier who hadn't, and you  
7 named two persons, one of whom I was told had  
8 passed away.

9 A. So these individuals I'm talking about now  
10 are individuals who don't have ID because, you  
11 know, they're not voters. They're ineligible  
12 voters, but they don't have the ID because of,  
13 you know, records, criminal records that they  
14 have. So that's what I'm talking about, that,  
15 you know, in general African-Americans don't  
16 have --

17 Q. Let's set aside the persons who, due to  
18 criminal records, can't vote; and let's talk  
19 about people who are actually able to vote.

20 A. Okay.

21 Q. What evidence do you have that  
22 African-Americans, who are able to vote, are less  
23 likely to have photo IDs than any other race?

1       A.       Well, I think the evidence is that when the  
2       Secretary of State issued -- when this law was  
3       enacted, when it actually went into effect -- not  
4       when they passed it, but when it went into  
5       effect, if I remember correctly, there were, I  
6       think, 200,000 or 300,000 people that were  
7       instantly without the photo ID law -- I mean,  
8       without the photo ID; and he never provided the  
9       percentage that was African-Americans or white.

10      Q.       So you can't use that particular "study" --  
11      putting that in air quotes -- you can't cite to  
12      that to say that African-Americans are less  
13      likely to have photo IDs, because there's no  
14      percentages, correct?

15      A.       Well, he didn't release percentages with  
16      his.

17      Q.       Well, then what evidence do you, the  
18      Alabama NAACP, have in your possession that shows  
19      that African-Americans are less likely to have  
20      photo identification?

21              MR. ROSS:   Objection.

22      A.       African-Americans are less likely to have  
23      the required documentation such as birth

1 certificate to obtain the photo ID. And when I  
2 said earlier, you know -- and you were asking me  
3 specifically about people that I knew personally,  
4 that does not take into consideration of the  
5 units within the NAACP that may help, you know,  
6 other people who don't have ID. But based on the  
7 percentage of people that I have spoken to and  
8 that I know of, you know, I know Mr. Mims is  
9 African-American, and I know the gentleman that  
10 had the military ID, I know he's  
11 African-American, based on what they told me.  
12 You know, like I say, I don't know about Mr.  
13 Wahl. I talked to him personally, and I didn't  
14 ask him. But that's the evidence that I have.

15 Q. So your evidence is based on the persons  
16 that you've talked to, correct?

17 MR. ROSS: Objection. That  
18 mischaracterizes his testimony.

19 A. The people I'm aware of.

20 Q. The people you're aware of is your evidence  
21 that African-Americans are more likely not to  
22 have photo IDs?

23 MR. ROSS: Objection.

1 A. Yes.

2 Q. Would you admit, though, that you are more  
3 likely to have conversations about this topic  
4 with African-Americans than white voters;  
5 because, again, you're the president of the  
6 Alabama NAACP?

7 MR. ROSS: Objection.

8 A. Well, not -- well, not necessarily, because  
9 when we go out to rallies, you know, we, you  
10 know, have Hispanic; we have whites; we have  
11 African-American, and any other nationality that  
12 wants to come; but most all our rallies, we have  
13 that mixture of people.

14 Q. Do you have any studies or statistics that  
15 show that African-Americans are less likely to  
16 have a photo ID than white voters?

17 MR. ROSS: Objection.

18 A. I don't have any personally, but I know  
19 there's nationally -- there's studies -- if you  
20 ask me to cite one, I won't be able to cite it;  
21 but I know there have been studies that have done  
22 that in other states.

23 Q. Has the Alabama NAACP conducted a study to

1 show the percentage of African-Americans who  
2 don't have photo IDs?

3 MR. ROSS: Objection.

4 A. No. No, we have not done a study.

5 Q. The other part of that, you were correct,  
6 that it says "effect." "Defendants enacted or  
7 operate or the photo ID law with the effect of  
8 abridging or denying the right to vote on account  
9 of race." I've already asked you to name  
10 persons, so we won't do that again. But what  
11 other evidence do you have personally, you being  
12 Mr. Simelton, that the photo ID law has the  
13 effect of preventing minority voters from voting?

14 A. Well, I'll just refer back to the studies  
15 that I've read. Again, I'll have to go back and  
16 pull some of those up. Now, you're talking about  
17 here specifically in Alabama?

18 Q. Yes.

19 A. Okay. Well, in Alabama, other than what  
20 particular legislators have said to me, that  
21 would be the primary document or source, really.

22 Q. We talked about that earlier, and you said  
23 Mr. Sanders had made comments -- Senator Sanders

1     had made comments to you. Can you name any other  
2     legislators -- when you're talking about  
3     statements that have been made to you, can you  
4     name anyone other than Hank Sanders that has made  
5     such a statement?

6     A.     Not off the top of my head.

7     Q.     Let's turn the page to page 74. This is  
8     the relief section. This is what you're asking  
9     for. I want to look at paragraph 197. "Issue an  
10    order requiring the Defendants State, Governor,  
11    and Secretary of ALEA to return the 31  
12    partially-closed ALEA offices to their full hours  
13    of operation prior to October 2015." Did I read  
14    that correctly?

15    A.     Yes.

16    Q.     Now, since the time that this has been  
17    filed, which is December 6th of 2016, ALEA has  
18    agreed to re-open the offices, correct?

19    A.     Yes.

20    Q.     Are you satisfied with -- "you" being the  
21    Alabama NAACP, are you satisfied with the  
22    re-opening of those offices?

23    A.     No.



1 Q. What is unsatisfactory about the current  
2 hours and times of ALEA?

3 A. Well, that's it. They opened them back to  
4 where they were. They should be open every day.

5 Q. So you're saying that the current solution,  
6 for lack of a better term, still is not good  
7 enough because they're not open every day?

8 A. Yes.

9 Q. And that's what you, as the Alabama NAACP,  
10 would like for the Court to order, is for all of  
11 those to be re-opened every day?

12 MR. ROSS: Objection.

13 A. Yes.

14 Q. You can put that document away.

15 (Whereupon, Defendants' Exhibit Number 3  
16 was marked for identification, a copy of which is  
17 attached to the original of the transcript.)

18 Q. I'm just going to hand it to you briefly.  
19 It's marked Defendants' 3, and this is the  
20 letter. During the break, Mr. Ross correctly  
21 noted to me that we had been informed that Willie  
22 Mims had passed away. Is Mr. Mims who you were  
23 talking about earlier?

1 A. Yes.

2 Q. And Defendants' 3 informs us that Mr. Mims  
3 has passed away, correct? Just on that very  
4 first page, on interrogatory number 1, it says,  
5 "Mr. Willie Mims passed away in July 2015"?

6 A. Yes.

7 Q. And that's the person you were talking  
8 about?

9 A. Yes.

10 Q. Okay. You can put that away.

11 (Whereupon, Defendants' Exhibit Number 2  
12 was marked for identification, a copy of which is  
13 attached to the original of the transcript.)

14 Q. I want to hand you Defendants' Exhibit  
15 Number 2, which is the Plaintiffs' Responses to  
16 Secretary of State John Merrill's First Set of  
17 Discovery. The first thing I want to do is, turn  
18 to the very last page. Is that your signature  
19 for Benard Simelton?

20 A. Yes.

21 Q. So clearly, you have read these responses  
22 and signed it, correct?

23 A. Yes.

1 Q. I just want to ask you about a couple of  
2 them. Let's turn to page number 8. I want to  
3 read the second paragraph. We're not going to  
4 talk about Mr. Mims, because he has passed away;  
5 but I do want to read the portion about Mr. Wahl.  
6 "The Alabama NAACP has also assisted or been  
7 contacted by several Alabama citizens who lack  
8 photo ID. Benard Simelton, the Alabama NAACP  
9 president, was contacted by two voters who lack  
10 photo ID, Joshua Wahl and the family of  
11 Mr. Willie Mims. According to Mr. Wahl, he was  
12 denied a regular ballot in the November 4, 2014  
13 election because he lacks photo ID and poll  
14 workers refused to, quote, 'positively identify'  
15 him. Mr. Wahl told Mr. Simelton that he had been  
16 previously been allowed to vote under the, quote,  
17 'positively identify' provision in June 2014."  
18 Did I read that correctly?

19 A. Yes.

20 Q. That's the same person you were talking  
21 about earlier, correct?

22 A. Yes, it is.

23 Q. And this is an accurate reflection of how

1     you remember being contacted by Mr. Wahl?

2     A.     Yes.

3     Q.     And I think you told me that you have not  
4     spoken to him anytime recently?

5     A.     Well, last year, I think it was, was the  
6     last time I talked to him. I don't know if that  
7     is considered recent. Probably about a year ago,  
8     I think, was the last time I talked to him.

9     Q.     You can turn to page 12. This is the  
10    response to number 4, which is on the previous  
11    page. Actually, go back to page 11. We asked  
12    the question -- or we asked you to identify, and  
13    I'm going to quote, "Identify any Alabama  
14    resident whom you know to have attempted to get a  
15    photo voter ID without success and, for each,  
16    describe any efforts taken by or on behalf of  
17    such person to obtain a photo voter ID." Did I  
18    read that correctly?

19    A.     Yes.

20    Q.     Do you know of any persons, person or  
21    persons, that the Alabama NAACP has attempted to  
22    help get a photo ID card, but that person was  
23    never successfully able to get one?

1       A.       No, I do not.

2       Q.       Okay. Turn to page 16. While you're on

3       16, just for background, this interrogatory is

4       asking for you to identify the date, time, and

5       location of activities in which you have

6       attempted to help persons understand or get a

7       photo ID card. So I just want to talk about the

8       specifics of some of these that were outlined,

9       the first of which is at the bottom of the page,

10      the paragraph that starts "The Alabama NAACP."

11      And it says, and I'm going to quote, "The Alabama

12      NAACP and its units have also undertaken

13      activities to assess who among its constituency

14      lacks the required photo IDs and assist such

15      voters, including, but not limited to: On

16      April 14, 2014, the Birmingham NAACP held a rally

17      to begin its, quote, 'Voter Photo ID Victory

18      Project,' end quote, a grassroots campaign in the

19      greater Birmingham area designed to inform

20      citizens about the need for a photo ID and to

21      assist them in whatever challenges they faced in

22      securing that ID." So far, have I read that

23      correctly?

1 A. Yes.

2 Q. Describe to me, the best you can remember,  
3 this photo voter -- strike that -- Voter Photo ID  
4 victory party. What do you remember about that  
5 party?

6 MR. ROSS: Objection.

7 A. If that's the one I'm thinking it was, it  
8 was out here in the park. The Birmingham NAACP  
9 held -- it was kind of a combination rally and  
10 served food to encourage people to come out and  
11 hear about, you know, the speakers who talked  
12 about the photo ID required. I think that was  
13 going to be implemented in June, and so we held a  
14 rally out in the park out here and just invited  
15 the community to come out and hear.

16 Q. Was it pretty well attended?

17 A. Well, I mean, there was probably about -- I  
18 know they sold out. We gave away all the food.  
19 So there were probably 100 to, somewhere between,  
20 150 people that came through, you know.

21 Q. Did you have the ability to actually give  
22 out photo IDs that day?

23 A. No.

1 Q. Like did you invite the Secretary of State?

2 A. No.

3 Q. How were you informing voters how to get  
4 the photo ID? Where were you sending them to?

5 A. Well, we were just telling them the process  
6 that the Secretary of State had published; that,  
7 you know, you go to your local registrar; or  
8 either if you have these type of IDs, your  
9 driver's license, you know, you're good. If you  
10 don't, then you have to use your birth  
11 certificate and go to one of these other  
12 locations to obtain the photo ID.

13 Q. Did you ever do any follow-up or ever hear  
14 from anyone that said they actually got their ID  
15 card after that rally?

16 A. No.

17 Q. The next one, you say, "At the August 23,  
18 2014 quarterly meeting, the Alabama NAACP  
19 conducted a voter registration drive in Calera,  
20 Shelby County. At the meeting Mr. Simelton  
21 talked to a group of mostly Latino voters about  
22 voting requirements, including the photo ID law."  
23 Did I read that correctly?

1       A.       That's correct.

2       Q.       What do you remember about that particular  
3       registration drive?

4       A.       Well, what we did is, we had a quarterly  
5       meeting, and then we went out into the local  
6       community there, the Latino community, and we did  
7       some door-to-door campaigning. We had, I think,  
8       one person with us that spoke, you know,  
9       English -- I mean, spoke Spanish. You know, they  
10      translated it for us. So we just went  
11      door-to-door encouraging people to -- you know,  
12      make sure they had a photo ID and to encourage  
13      them, you know, get out to vote. Register to  
14      vote, rather.

15      Q.       Am I right in assuming that this is also an  
16      instance where you didn't actually bring someone  
17      who could give the photo ID cards out?

18      A.       No.

19      Q.       You were just telling them how they could  
20      go do it?

21      A.       Exactly.

22      Q.       And you don't have any knowledge of how  
23      many people actually went out and got their ID?



1     A.       No.    No.

2     Q.       The next sentence is, "Before the November  
3     2014 election, the Birmingham NAACP and Limestone  
4     County NAACP offered free rides to polling places  
5     to any individual and publicly informed voters  
6     about the photo ID law." Did I read that  
7     correctly?

8     A.       Yes.   Yes.

9     Q.       Let me twist -- not twist the question, but  
10    let me ask it a little differently. First of  
11    all, you do offer free rides to polling places,  
12    correct?

13   A.       Yes.

14   Q.       Have you ever offered -- and by "you," I  
15    mean the Alabama NAACP. Has the Alabama NAACP  
16    ever offered free rides to a location where you  
17    could get a photo voter ID card?

18   A.       Yes.

19   Q.       And do you know how many times you've done  
20    that?

21   A.       Okay. Now, again, let me make sure to get  
22    clarity on this. Now, when you're saying the  
23    Alabama NAACP, are you talking about me

1 specifically?

2 Q. Well, start there.

3 A. Well, see, I specifically don't -- I  
4 haven't done that. We work through our units to  
5 do that, because our units are the ones who are  
6 on the ground, and so we provide them the  
7 knowledge and information to go out and do that.

8 Q. So let me see if I understand this. If you  
9 had a Birmingham voter who didn't have an ID  
10 card, that called you personally and said, "I  
11 would like to get a card," you could call the  
12 Birmingham NAACP and say, "Will you please give  
13 that person a ride to the registrar's office and  
14 help them get the card?"

15 A. Right.

16 Q. And that has happened in the past?

17 A. Well, I don't know about get the card; but  
18 as far as voting, you know, I would take them to  
19 the polls and stuff, yes.

20 Q. My question is, would you offer -- strike  
21 that. Do you offer the same service to get the  
22 card? Not on voting day, but let's say a month  
23 before they're like, "I don't have a card, I want

1     one"?

2     A.     Yes.   And we did that.   When ALEA closed  
3     their offices, we offered rides.

4     Q.     Do you know how many people got a ride?  
5     You can give an estimate.   It doesn't have to be  
6     exact.

7     A.     No.   We offered a ride, and we did kind of  
8     a pilot a program down in Union Springs, Alabama,  
9     because that was one of the places that closed,  
10    and we offered them a ride to -- Dr. Poe, who was  
11    the branch president down there, offered people a  
12    ride to Montgomery.

13    Q.     More or less than 20 people?

14    A.     Probably less than 20, you know.

15    Q.     Less than 10?

16    A.     Really, I would have to ask him.   You know,  
17    I mean, he actually took --

18    Q.     How many other examples can you think of  
19    where you have offered or given rides -- by  
20    "you," I mean the Alabama NAACP or any branch,  
21    has given rides to someone for the specific  
22    purpose of going to get a photo ID?

23    A.     I would have to poll my branches to find

1 out if any of them have given that specific.

2 Q. When you say "poll your branches," you  
3 could simply send an e-mail out? You have like  
4 an e-mail server that says --

5 A. No. In theory, that's true. The people  
6 that work, they do this voluntarily, so I may not  
7 get the response back, you know, until two or  
8 three days later; but, yes.

9 Q. Okay, good. In 2015, about half or a  
10 little farther down the page where it says "On  
11 October 23rd," do you see that?

12 A. Yes.

13 Q. "On October 23, 2015, the Alabama NAACP  
14 invited Defendant Secretary of State Merrill to  
15 attend its annual conference in Mobile. At the  
16 conference, Mr. Simelton requested Secretary  
17 Merrill explain and discuss the photo ID law and  
18 the availability of the voter ID cards." Did I  
19 read that one correctly?

20 A. Yes.

21 Q. Do you remember what the Secretary of State  
22 spoke about?

23 A. Well, yes.

1 Q. Okay. What was it?

2 A. Well, the Secretary of State was proud to  
3 bring in two posters, one with Nick Saban and the  
4 other one with --

5 Q. Gus Malzahn?

6 A. -- Scott Malzahn on it, and he's saying,  
7 "We bring this, we want each of you all to take  
8 these posters and distribute them to your  
9 community," and they were encouraging people to  
10 get out and vote and get the photo ID that's  
11 required.

12 Q. And my understanding, you correct me if I'm  
13 wrong, is he was not allowed to give those  
14 posters out, or was told not to. Is that  
15 correct?

16 A. That is correct.

17 Q. And the reason was that -- I'll strike  
18 that. Why don't you tell me the reason?

19 A. Well, you know the reason, and the reason  
20 was several of my members were asking "Do you  
21 have any posters with African-Americans on it?"  
22 And Secretary Merrill said, "No, but we are  
23 working on getting" -- I think at that time he

1     said Charles Barkley and, I think, one or two  
2     other African-American -- prominent name  
3     African-Americans. If I remember correctly, I  
4     think I said something like, "Why don't you get  
5     someone local like Senator Sanders, or someone  
6     like that, people recognize?" You know, not that  
7     they didn't recognize Barkley; but, you know, to  
8     encourage people to get the photo ID and get out  
9     to vote. He said he was going to work on that.

10    Q.     Have you seen the posters since, that he  
11    ended up publishing?

12    A.     Yes.

13    Q.     Deontay Wilder and Charles Barkley?

14    A.     Yes.

15    Q.     And those, have those been distributed by  
16    the Alabama NAACP or any of its branches?

17    A.     We've distributed some, yes.

18    Q.     Generally, has response been favorable to  
19    those posters?

20    A.     I mean, they like them because, you know,  
21    they are people they recognize, yes.

22    Q.     Mr. Wilder, just for the record, is, I  
23    think, still the heavyweight champion of the

1 world in boxing, correct?

2 A. Right.

3 Q. At the bottom of the page, starting with  
4 the last sentence, "In March and April 2016, the  
5 Alabama NAACP president, Benard Simelton,  
6 appeared before members of the U.S. Congress in  
7 Birmingham and Washington, D.C., respectively to  
8 raise broader public and governmental awareness  
9 about the impact of the photo ID law." Did I  
10 read that one correctly?

11 A. Yes.

12 Q. What did you talk to Congress about?

13 A. Well, I talked to them about the issues and  
14 problems that we were having in Alabama with our  
15 voter turnout, the law that requires voters to  
16 have photo ID laws and how voters were being  
17 disenfranchised.

18 Q. Was there anything you specifically asked  
19 Congress for, like some action that you wanted  
20 them to take?

21 A. Well, we wanted Congress to get more  
22 involved in overturning the Supreme Court  
23 decision to strike down Section 4(b) of the

1 Voting Rights Act.

2 Q. And that's the Shelby County decision?

3 A. Right.

4 Q. Let's skip down to the last thing on that  
5 particular paragraph. On October 9, 2016,  
6 Cornell Brooks, the president of the NAACP, will  
7 be in Alabama for the Magic City Classic football  
8 game, where the focus will be on get out to vote  
9 work. Did I read that correctly?

10 A. Yes.

11 Q. Obviously, that has since occurred?

12 A. Yes.

13 Q. Were you at the game?

14 A. Yes.

15 Q. Did you personally participate in any of  
16 the get-out-the-work vote?

17 A. Yes. Get-out-the-vote work, yes.

18 Q. What was done by Mr. Brooks, yourself, or  
19 any branch of the NAACP, to help inform voters  
20 about the photo ID law?

21 A. Well, several things. One, we started that  
22 Saturday morning at the Magic City Classic.  
23 Actually, I think that date was the 29th. We



1 started with a meeting with several of our unit  
2 leaders, and we met with them; and then we left  
3 there and went to the Magic City Classic where we  
4 passed out literature about get out to vote and  
5 spoke to smaller groups that we encouraged people  
6 to get out to vote and to make sure that they  
7 have their required ID, you know. We had a list  
8 of things, IDs that were acceptable. Also, the  
9 president conducted several interviews, TV  
10 interviews, stuff like that. That was on  
11 Saturday. Then on Sunday, he also went to two  
12 different churches to speak. Not just about  
13 voting, but certainly that was part of his  
14 concern.

15 Q. When you say literature that you hand out,  
16 is that literature that is created by the NAACP,  
17 whether it's Alabama, national, or branch?

18 A. Yes.

19 Q. Do you ever hand out materials created by  
20 the State itself, like something the Secretary of  
21 State has created, such as his fliers or posters?

22 A. Yes. When the Secretary of State published  
23 his requirement, you know, how to get the photo

1 ID and what IDs were acceptable, we published  
2 that.

3 Q. Do you find that guide to be helpful? Do  
4 you think it's pretty comprehensive?

5 A. Well, I mean, I don't agree with the guy,  
6 but it provides the required information that a  
7 person needs.

8 Q. Okay. I think we can both, you know,  
9 assume for the rest of the time, you don't agree  
10 with the law, regardless of the fact that you're  
11 trying to help people comply, correct?

12 A. Right. My philosophy is let's let people  
13 get the required ID; let's elect people who are  
14 going to overturn it at the state level.

15 Q. So you handed out literature created by the  
16 Secretary of State, correct?

17 A. Yes.

18 Q. Have you seen his website, the website  
19 where he has the ability to get a card and all of  
20 the requirements, et cetera?

21 A. His ability to get a card?

22 Q. Yes. You know, I'll come back to that when  
23 I have time to grab the sheet, so let's just

1 strike that for now.

2 A. Okay.

3 Q. When you have events like this, how often  
4 do you ask the Secretary of State to send a  
5 mobile unit so that people can actually get their  
6 card on that day?

7 MR. ROSS: Objection. You need to define  
8 mobile unit.

9 Q. I'll re-ask it. When I'm talking about  
10 mobile unit, do you understand that to be a van  
11 that the Secretary of State sends out that  
12 persons can come up to and get an ID card?

13 A. Well, I understand mobile unit as a system  
14 that -- you know, not necessarily a van, but it's  
15 a computer that you can go to a table, or  
16 wherever they set up. I don't think you can get  
17 the fully -- you can get the ID cards. You can  
18 get a temporary card, more or less, and then your  
19 permanent card will be sent to you later, from  
20 what I understand.

21 Q. And it's correct, isn't it, that the mobile  
22 unit was at the Magic City Football Classic?

23 A. Now, personally, I did not see it. There

1     was someone who contacted me from his office  
2     saying that they were going to be there. I did  
3     not see them. I tried to call them to confirm  
4     that they were going to be there, but I just  
5     didn't see them.

6     Q.     How many events can you remember in which  
7     you asked the Secretary of State to come so that  
8     ID cards could be given out at that event?

9     A.     Well, I know we had the event in Limestone  
10    County, where we asked them to come. You know,  
11    like I said, we had coordinated for them to come  
12    to Magic City Classic. Again, I didn't  
13    personally see them if they were there. I'm  
14    quite sure they were there. So those are two  
15    events.

16    Q.     Okay. Any others that you can think of?

17    A.     Not that I'm personally knowledgeable of,  
18    that I can think of, but other branches may have  
19    done something similar.

20    Q.     Let's turn to page 56, skip way ahead. I'm  
21    just going to read the interrogatory, which is  
22    what we had asked as a question.

23    A.     Okay.

1 Q. "Identify all prospective voters to whom  
2 you've spoke who said that they would not vote  
3 because they lacked the required photo ID." Did  
4 I read that correctly?

5 A. Yes.

6 Q. Have you ever spoken to a voter who said  
7 that they would not vote because they lacked the  
8 photo ID?

9 MR. ROSS: Objection.

10 A. I spoke to a voter that did not vote  
11 because they lacked the ID.

12 Q. Let me ask it to you this way. Have you  
13 ever spoken to someone who said, "As long as that  
14 law is in effect, I will not vote"?

15 MR. ROSS: Objection.

16 A. I don't recall speaking to anyone that said  
17 specifically they will not vote because of the  
18 laws in effect.

19 Q. So your sense would be that while people  
20 may disagree with the law, everyone still wants  
21 to vote and, therefore, will try to get an ID if  
22 they can?

23 MR. ROSS: Objection. You're, again,

1 mischaracterizing what he said.

2 Q. I'll strike it, and I'll ask you to  
3 characterize it. Tell me what your feeling is  
4 about voters. Do they want the ID card so they  
5 can vote, or are they upset about the law and  
6 will decide not to vote because they don't have  
7 one?

8 A. I will refer to a statement I made earlier.  
9 We encourage people to get out to get their photo  
10 ID so they can vote so they can overturn this  
11 discriminatory law that Alabama has enacted, and  
12 other southern states.

13 Q. Okay.

14 (Whereupon, at this time a short break  
15 was taken.)

16 Q. Let's go to page 59, and I'm going to read  
17 interrogatory number 21. "Identify each  
18 registrar whom you contend has failed to issue a  
19 photo voter ID without good cause." Did I read  
20 that correctly?

21 A. Yes.

22 Q. Do you know of any county registrar who has  
23 turned down a voter for an ID card?

1 MR. ROSS: Objection.

2 A. No.

3 Q. Have you gotten any complaints that someone  
4 went to a county registrar's office and was told  
5 that they could not get a photo ID card?

6 MR. ROSS: Objection.

7 A. No.

8 (Whereupon, Defendants' Exhibit Numbers 6,  
9 7, 8, and 9 were marked for identification,  
10 copies of which are attached to the original of  
11 the transcript.)

12 Q. We can put that document away. During the  
13 break, I was able to find what I was looking for  
14 earlier. I'm going to hand you a series of  
15 exhibits, Defendants' Exhibits 6, 7, 8, and 9.  
16 I'll give you a couple of minutes to look at them  
17 and just tell me when you've had time to look  
18 through them.

19 MR. ROSS: Can you clarify? You gave me  
20 three. Did you say there were four exhibits; 6,  
21 7, 8, 9?

22 MR. MAZE: 6, 7, 8, and 9.

23 A. I'm ready.

1 Q. Let's talk about the one that says Ballot  
2 ID at the Polls. That's Number 6. Is this the  
3 document you were talking about earlier from the  
4 Secretary of State's website that says what kind  
5 of IDs someone can use?

6 A. You're talking about that we distributed,  
7 or what?

8 Q. Yes, that you distributed. This is  
9 different?

10 A. Yes. This is not the one that we  
11 distributed, no. It was the earlier version, I  
12 think, of this.

13 (Whereupon, Defendants' Exhibit Number 10  
14 was marked for identification, a copy of which is  
15 attached to the original of the transcript.)

16 Q. I'm going to mark one other document as  
17 well. It's going to be called Defendants'  
18 Exhibit 10, and it is the Alabama Photo Voter ID  
19 Guide?

20 A. Right.

21 Q. So you've seen this one before?

22 A. Yes.

23 Q. Is this the document that contains the list



1     you're talking about?

2     A.     Yes.

3     Q.     We typically call it a pamphlet, and we  
4     just blew it up to make it bigger. So that's  
5     what you've seen in the past?

6     A.     Right.

7     Q.     And you have generally found -- again,  
8     understanding that you disagree with the law  
9     itself, you have found the list to be helpful?

10           MR. ROSS: Objection.

11     A.     The list contains information that a  
12     prospective voter needs.

13     Q.     So you can put that one away. I want to  
14     talk about these website pictures for a second.  
15     This is a Secretary of State website that  
16     addresses alabamavoterid.com. Have you ever been  
17     to that website before?

18     A.     Yes.

19     Q.     So you've seen the pages that I've handed  
20     you before, correct?

21     A.     Yes. I mean, I haven't studied them, but  
22     I've seen them, yes.

23     Q.     For example, Defendants' Exhibit 6 has a

1 list of valid IDs at the polls, correct?

2 A. Right.

3 Q. And Exhibit 7 is step-by-step on how to get  
4 a free photo voter ID card, correct?

5 A. Yes.

6 Q. With links to downloading the application,  
7 et cetera, correct?

8 A. Yes.

9 Q. Then the next one, Number 8, has a list of  
10 all the places that a person can go to get the  
11 photo voter ID, including all the county board of  
12 registrars, correct?

13 MR. ROSS: Objection.

14 A. Well, I don't know if it has all the  
15 places. If you say it does.

16 Q. It has a list of county board registrars.  
17 Whether it's complete or not, we'll leave for  
18 later, right?

19 A. Yes.

20 Q. First of all, do you have a link to this  
21 website on your website for the Alabama NAACP?

22 A. I think it's on there. I know we've done  
23 some modifications to our website because we have

1 a new webmaster, and I'm not sure if it's still  
2 there or not. I know it has been on there.

3 Q. So you have no objection to putting a link  
4 to this to help your constituency to find this  
5 information?

6 MR. ROSS: Objection.

7 A. No, I have no objection.

8 Q. You can put those away. We're done with  
9 the lawsuit documents for now. I want to talk  
10 more about the Alabama NAACP for a minute. How  
11 many members do you have, if you know?

12 A. I mean, it's hard to determine. Any given  
13 day, you know, membership drops off; but, you  
14 know, it's several thousand.

15 Q. Is it a paid membership, free membership?  
16 What do you have to do to be a member?

17 A. If you give me \$30, I'll give you a  
18 membership.

19 Q. Again, you told me earlier, by "you," that  
20 would include me, because you have no sort of  
21 racial requirements?

22 A. Oh, absolutely not.

23 Q. Do you know what the percentage make-up is,

1 just as an estimate?

2 A. I don't know. We don't track it by that.  
3 We just track members.

4 Q. Have you ever tracked the racial  
5 demographics of the Alabama NAACP?

6 A. No, huh-uh.

7 Q. Do you track information on who was born or  
8 married in the state? Is that something you  
9 would have any ability to know?

10 MR. ROSS: Objection.

11 A. No.

12 Q. Do you have an idea -- again, I'm just  
13 asking for a general idea. We can get into  
14 specifics if you do. Do you have a general idea  
15 whether your organization is, from an economic  
16 standpoint, sort of middle of the road, less  
17 affluent, more affluent?

18 A. Less affluent.

19 Q. Than the average Alabamian?

20 A. Right.

21 Q. And do you have a particular part of the  
22 state where you have a larger percentage of  
23 membership as composed of the general population

1 and then parts of the state where you have less?  
2 In other words, let's say that -- well, let me  
3 just let you answer. Is there any particular  
4 part of the state where you have a lot of  
5 members, like an overwhelming number come from  
6 particular areas?

7 MR. ROSS: Objection.

8 A. I'm not sure how to answer that, because  
9 when you say "part of the state," are you talking  
10 about city, are you talking about --

11 Q. That's fair. Let me ask it this way. I  
12 would assume that Jefferson County is your  
13 largest county as of memberships. Do you have  
14 more members from Jefferson County than somewhere  
15 else, by county?

16 A. Jefferson County is not our largest.

17 Q. Which one is?

18 A. Huntsville, Madison County.

19 Q. Okay, Madison. Any reason why? That's  
20 where your office is, correct?

21 A. Well, my office is actually in Limestone  
22 County. I don't know. I mean, it's based on the  
23 individual leader and his, quote, unquote, staff

1 ability to go out into the community to obtain  
2 members.

3 Q. How long have you been president of the  
4 state NAACP?

5 A. Since 2009, so -- '8.

6 Q. It would make sense, then, because you have  
7 probably created the largest local chapter if  
8 it's in Huntsville, or helped?

9 A. Well, it's not because I'm there.

10 Q. You have a good staff, too?

11 MR. ROSS: Objection.

12 A. I do.

13 Q. You said that the staff largely helps bring  
14 in the people, so.

15 A. I'm talking about staff of the branches,  
16 right. There's different branches.

17 Q. How is the Alabama NAACP funded? What are  
18 your primary funding sources?

19 A. Through donations, corporations and  
20 donations.

21 Q. What change in donations have you seen as a  
22 result of the photo voter ID law? In other  
23 words, did any organizations or private

1 individuals give you donations to help fight the  
2 law or to help educate people about the law?

3 MR. ROSS: Objection.

4 A. There have not been -- well, we have  
5 received donations through our national  
6 organization to help, you know, with voter  
7 registration and ensuring that people are  
8 knowledgeable of what's required to obtain the  
9 photo ID here in the state of Alabama.

10 Q. Do you have an estimate on how much money  
11 that's been?

12 A. I would say over the past -- probably  
13 around 12 or 15K.

14 Q. Who has been your largest private donor  
15 since the photo voter ID law went into effect?

16 A. Private donor, I mean, that's -- I -- why  
17 is that relevant? I mean, I told you donations.  
18 Why is it relevant to know what company? I don't  
19 want you to go back and --

20 Q. That's a fair point. Without naming the  
21 company, have any companies donated at least one  
22 million dollars to the Alabama NAACP in the last  
23 six years?

1 A. No.

2 Q. Have any donated at least \$10,000 in the  
3 last five years?

4 A. Yes.

5 Q. How many \$10,000 or more?

6 A. Are you talking about organizations in  
7 Alabama or just --

8 Q. Anywhere. National is fine.

9 A. Now, are you talking about over that period  
10 of time, or are you just talking about in one  
11 lump sum?

12 Q. Over that period of time.

13 MR. ROSS: Are you talking about specific  
14 to photo ID or just broad?

15 MR. MAZE: Generally, to begin with.

16 A. There's probably been about six, six or  
17 seven organizations.

18 Q. Did any of those six or seven  
19 organizations, over that period of time, give you  
20 more than \$100,000, cumulative?

21 A. No.

22 Q. Did any of those six or seven organizations  
23 tell you at any point that they would like you to



1 use that money to either assist voters to get  
2 their identification cards or to fight the photo  
3 voter ID law?

4 MR. ROSS: Objection.

5 A. Some of the funding comes through our  
6 national organization. The answer would be yes.  
7 But please understand that's through our national  
8 organization to us.

9 Q. Got you. So it's possible -- and you don't  
10 have to name anybody, but it's possible that  
11 private organizations give large sums of money to  
12 the national organization that is then funneled  
13 down to Alabama NAACP to educate voters and to  
14 fight photo ID laws?

15 A. To educate, to help with voter  
16 registration, get-out-to-vote efforts, yes.

17 Q. And would you or someone at the Alabama  
18 NAACP be able to determine the amount of money  
19 that is, or is that a question for the national  
20 organization?

21 A. Well, the amount that actually comes to us,  
22 we can determine that, or either the national can  
23 determine it. Either one of us can determine how

1 much is given to us, yes. I mean, the national  
2 can determine how much came from the national.

3 Q. Sure.

4 A. We can determine how much we receive  
5 directly.

6 Q. From them?

7 A. No, not from them, but directly to us, not  
8 funneled through national.

9 Q. National can tell you how much money they  
10 got from organizations across the country. You  
11 could tell us how much money you got from  
12 national of that?

13 A. National can tell you how much they gave to  
14 Alabama from organizations across the country. I  
15 can tell you how much the Alabama state  
16 conference has received from an organization that  
17 we directly partner with.

18 Q. Good. Understood. Have you talked to any  
19 other state presidents about their state ID laws?

20 A. Yes.

21 Q. Which ones?

22 A. Mississippi, Texas, North Carolina, South  
23 Carolina, Georgia, and Tennessee, and Florida.

1 Q. What have been their primary complaints  
2 about their particular state laws?

3 MR. ROSS: Objection. To the extent it  
4 involved any kind of litigation and there were  
5 conversations with or about what attorneys said  
6 within the context of you all being members, same  
7 organization representatives and same  
8 organization, I instruct you not to answer. So  
9 to the extent you can answer without talking  
10 about things, conversations with attorneys.

11 Q. Makes it difficult now, doesn't it? I'll  
12 re-ask it. What do you know about other state's  
13 laws that are different than Alabama's? What  
14 have you been told other states do that Alabama  
15 doesn't?

16 MR. ROSS: Objection. You can answer.

17 A. For instance, in Texas, I've been told that  
18 you can use a gun permit as an ID, but you  
19 can't -- you can use a gun permit as a photo ID.  
20 North Carolina, you can use -- well, North  
21 Carolina, they do not allow students to use --  
22 allow you to use student ID.

23 Q. Are there any other states that you know --

1 do you ever hear that some other states are more  
2 restrictive? Like North Carolina, there are  
3 certain things they don't allow that Alabama  
4 does?

5 MR. ROSS: Objection. Again, in what  
6 context are we talking about it?

7 Q. I'm not asking you to tell me anything  
8 counsel has ever told you. I'm going to re-ask  
9 the question, but I just want to be clear, I  
10 don't want you to tell me anything an attorney  
11 has ever told you. I'm just trying to find out  
12 what you personally know. Do you personally know  
13 or have you heard from any non-attorney state  
14 president, of one of these other state chapters  
15 of the NAACP, that their law is even more  
16 restrictive than yours, that they're facing  
17 problems that are even harder than Alabama's?

18 MR. ROSS: Again, just be careful. I  
19 understand some of the state presidents that  
20 you've named are, in fact, attorneys themselves,  
21 and so, you know, to the extent it doesn't  
22 involve conversations that you've had with your  
23 own attorneys or, again, conversations within the

1 organization about what attorneys have told the  
2 NAACP, I'll allow you to answer.

3 A. Well, I'll just go back to what I said  
4 earlier. You know, North Carolina, they make it  
5 difficult for students who live on campus,  
6 enrolled in college, difficult for them to vote  
7 in North Carolina.

8 Q. Any other states?

9 A. I'm not sure about Texas, but I know in  
10 North Carolina, that was one of the main concerns  
11 from the president there.

12 Q. Different topic. The Selma to Montgomery  
13 March, this one that just happened in March of  
14 this year, were you in Selma for that weekend?

15 A. Yes.

16 Q. Were you present when Secretary of State  
17 Merrill spoke at the church?

18 A. No, I was not present then.

19 Q. Did you happen to see the Secretary of  
20 State's mobile unit giving out IDs in Selma that  
21 weekend?

22 A. No, I did not see that.

23 Q. Did you know that there were protests

1 around the table, people protesting the Secretary  
2 of State and/or the photo ID law as he was  
3 attempting to give out identification?

4 MR. ROSS: Objection.

5 A. I mean, I didn't know that; but I mean, we  
6 protest the photo ID law all the time, so I'm not  
7 sure the relevance of that question.

8 MR. ROSS: Define "protest." He himself  
9 has said that he was not there, so.

10 Q. Do you know of anyone who attempted to get  
11 an ID law that weekend?

12 A. An ID law?

13 Q. I'm sorry. Do you know anyone who  
14 attempted to get a photo ID card that weekend?

15 A. No, I don't know anyone.

16 Q. Do you have any knowledge of protests of  
17 the photo ID law that weekend, particularly  
18 protests around the Secretary of State's location  
19 where he was giving out ID cards?

20 MR. ROSS: Objection.

21 A. No.

22 Q. Would you personally ever ask someone to  
23 protest in front of a mobile unit as they were

1 attempting to give out ID cards?

2 MR. ROSS: Objection.

3 A. As I said previously, we protest the photo  
4 ID law, and we'll continue to protest the photo  
5 ID law.

6 Q. I'll let you know what my concern is. I'm  
7 just trying to find out, would you ever want a  
8 protest to inhibit someone's ability to actually  
9 get the ID card if they wanted it? Regardless of  
10 how you feel about the law, do you personally  
11 wish to see all minority voters have an ID card  
12 so that they can vote?

13 MR. ROSS: Objection.

14 A. Voting is a basic and fundamental right of  
15 all citizens. To require someone to have a photo  
16 ID in order to vote violates -- what I consider  
17 violates the Voting Rights Act of '65. We work  
18 hard every day to ensure that people are  
19 registered to vote, and we encourage them to get  
20 out and vote. So I would not -- I would  
21 protest -- I have no problem protesting a  
22 location where an ID is -- a photo ID is being  
23 given. If we did that, I would not be protesting

1 a person that comes up, I would not stop that;  
2 but I want that person to certainly be informed  
3 that this is a violation, or we perceive it as a  
4 violation. So I would not inhibit the person,  
5 but I would want them to have knowledge of why we  
6 are out there protesting.

7 Q. Different topic. You talked about the  
8 elections themselves, and I want to go back first  
9 to the 2014 election. You recognize that the  
10 2014 election was the first time this law had  
11 gone into effect?

12 A. Well, first election --

13 Q. That it was enforced?

14 A. Right.

15 Q. Did the Alabama NAACP have any monitoring  
16 or any people at the polls to see whether or not  
17 there were complications arising from the  
18 enforcement of the ID law?

19 A. Yes.

20 Q. Did you get any reports that persons were  
21 unable to vote because they lacked the proper  
22 identification?

23 A. Yes.



1 Q. Can you describe those?

2 A. Well, those are the ones that we've already  
3 talked about.

4 Q. So that's -- your knowledge of any  
5 particular problems in 2014 is in the documents  
6 we've already talked about?

7 A. Those are the ones that I'm aware of.

8 Q. Did you meet with, at any time -- you were  
9 president in 2014, correct?

10 A. Yes.

11 Q. Did you at any time, during that election  
12 cycle, meet with Parker Griffith?

13 MR. ROSS: Objection.

14 A. In 2014?

15 Q. Correct. First of all, do you know who  
16 Parker Griffith is?

17 A. Yes, I know Parker.

18 Q. And you know that he ran for governor that  
19 year, correct?

20 A. Yes.

21 Q. Did you ever, at any point during that  
22 election campaign, meet with Parker Griffith?

23 A. No. Certainly not during the campaign, no.

1 Q. So he never asked to speak at any sort of  
2 NAACP functions during 2014?

3 A. You know, I can't say that he didn't speak  
4 at any NAACP functions, because we have  
5 candidates and we invite candidates to speak at  
6 all our functions. I mean, I won't say "all,"  
7 but we do have a function where we invite  
8 candidates to speak. I don't know if Parker has  
9 spoken at, you know, somewhere in Huntsville,  
10 something like that. I don't know.

11 Q. You just don't have personal knowledge, one  
12 way or the other, if he did or didn't?

13 A. No.

14 Q. Let's jump ahead to 2016. Do you know who  
15 Ron Crumpton is?

16 A. Yes.

17 Q. Did you ever talk to Ron Crumpton as he was  
18 running for senate in 2016?

19 A. Ron Crumpton?

20 Q. Do you know who ran against Richard Shelby  
21 for the United States Senate in 2016?

22 A. Yes. Yes.

23 Q. Have you ever met Ron Crumpton?

1 A. Yes.

2 Q. What generally did y'all talk about?

3 A. He told me he was running for office, yes.

4 Q. Did he ask for your support or the support  
5 of your organization?

6 A. Yes.

7 Q. And did you give it to him?

8 A. No. I told him we could not support him,  
9 you know. The only thing we could do is register  
10 people to vote.

11 Q. And that's a standard policy, is that your  
12 organization doesn't support openly --

13 A. Endorse.

14 Q. Or endorse is the right word, any  
15 particular candidate?

16 A. Correct.

17 Q. Do you track voter turnout for any  
18 particular elections at the Alabama NAACP?

19 MR. ROSS: Objection.

20 A. Can you define what you mean by "track"?

21 Q. Sure. Let's say, for example, could you  
22 tell me or do you have numbers that would show  
23 the percentage of African-American voters who

1     voted in the 2012 election versus the 2016  
2     election?

3     A.     I mean, you're talking about our personal  
4     numbers, or the numbers that the Secretary of  
5     State publishes?

6     Q.     Well, I want to know if your organization  
7     has any particular numbers.

8     A.     No, we don't have those numbers.

9     Q.     So you don't do any polling of any kind to  
10    see who is and who isn't voting?

11    A.     No. We don't have the staff or the  
12    technology to do that.

13           (Whereupon, at this time a short break  
14    was taken.)

15    Q.     We've taken several breaks today, so I just  
16    want to actually clarify a few things before we  
17    end. The first thing is, how many people do you  
18    have on staff at the Alabama NAACP?

19    A.     Well, what do you mean by staff?

20    Q.     First of all, where is your physical  
21    location, your office?

22    A.     It's in Athens, Alabama.

23    Q.     How many people work there at Athens?

1       A.       Again, we're totally volunteers, even  
2       myself, so no one gets paid. We have a  
3       secretary, she is a volunteer just like I am in  
4       an elected position, so all of our people -- we  
5       don't have any quote, unquote, "staff," so  
6       everybody is an elected position, or either  
7       appointed by me and confirmed by the -- what we  
8       call the Executive Committee.

9       Q.       Does everybody report to you? Like do they  
10      give you reports or tell you what they're doing?

11     A.       Yes.

12     Q.       So if they're doing a project or something,  
13      you're going to know about it?

14     A.       Again, you're talking about the state?

15     Q.       Yes, the state. Not the branches, the  
16      state. Who controls the Alabama NAACP's website?

17             MR. ROSS: Objection.

18     Q.       Who puts the content on the website?

19     A.       The webmaster, he generally puts stuff on  
20      it. I mean, well, he puts everything on it,  
21      because he's the one who knows how to do it.

22     Q.       Who tells him what to put on it?

23             MR. ROSS: Objection.

1 A. Primarily myself.

2 Q. Who has the ability to tell him to put  
3 something on there without your authorization;  
4 anybody?

5 A. Well, that would be the vice president,  
6 first vice, because we have -- there's certain  
7 things that, you know, he can put on without  
8 having to get, you know, my approval. If it's an  
9 update of a newly elected officer, replacement  
10 telephone information, that kind of stuff doesn't  
11 need to come through me.

12 Q. But press releases --

13 A. Press releases, yes.

14 Q. -- definitely come through you?

15 A. Yes.

16 Q. Who controls the content of the Alabama  
17 NAACP Twitter page? You have a Twitter account?

18 A. Right.

19 Q. Who is the person that actually writes and  
20 sends out the tweets?

21 A. I mean, I send out -- I do some tweeting,  
22 but our communication chair -- I mean, it's  
23 usually something that we have talked about in

1     some regard that she may tweet something.

2     Q.     Has it ever happened where she has tweeted  
3     something that you don't agree with?

4     A.     Well, I don't know about tweet, but there  
5     have been -- I can't say that, because I don't  
6     remember ever receiving anything from Twitter,  
7     but I know that our Facebook page, as well as  
8     some of our posts have had to be modified.  
9     Twitter, I don't -- I'm not a regular follower of  
10    Twitter.

11    Q.     Can you think of anything that the Alabama  
12    NAACP in the last five years has put out into the  
13    public, whether it's Facebook, press release,  
14    Twitter, that you disagree with or had to modify?

15           MR. ROSS:  Objection.

16    A.     I mean, we've -- to answer your question,  
17    yes.

18    Q.     Okay.  What was it?

19    A.     It was one of the press releases about  
20    Sessions, I think.  It wasn't that I didn't agree  
21    with the overall.  It was just some of the  
22    content of it that I disagreed with, and she had  
23    to -- I think it got to the website, I'm not for

1     sure, but I know we had to change it.

2     Q.     What was the specific content that had to  
3     be taken out?

4     A.     I don't remember, but I know it had to do  
5     something with characterization of him.

6     Q.     Negative characterization?

7           MR. ROSS: Is that a question?

8           MR. MAZE: Yes.

9     Q.     Was it a negative characterization?

10    A.     Yes.

11    Q.     Do you remember any of the words that were  
12    used?

13    A.     I mean, I don't remember what they were,  
14    but I can certainly go back and get the old  
15    e-mail. I mean, not e-mail, but the old press  
16    release that was put out.

17    Q.     Who was the person that originally drafted  
18    it?

19    A.     Our communication chair, Patricia Mokolo.

20    Q.     Can you think of any other press releases  
21    or other public statements by the Alabama NAACP  
22    that you disagree with?

23    A.     I mean, I can't think of any, because



1 usually they come to me and I get a chance to  
2 read them before they are put out publicly, but  
3 sometimes they may get sent to people. Of  
4 course, once you hit the "send" button, it's kind  
5 of over with.

6 Q. I just want to give you a final chance,  
7 because I'm about done. We've taken a couple  
8 breaks; and I asked you this in the first  
9 session, I just want to give you another chance.  
10 Other than Mr. Wahl and Mr. Mims, do you have any  
11 personal knowledge of any Alabama voter who does  
12 not possess a photo ID card that desires to have  
13 one?

14 MR. ROSS: Objection.

15 A. I don't -- I can't think of anyone.

16 Q. And same question with regard to, can you  
17 recall any state legislator, other than Hank  
18 Sanders, who has made any comment or taken any  
19 actions that reflects a discriminatory purpose or  
20 intent behind the photo voter ID law?

21 MR. ROSS: Objection.

22 A. I mean, my answer is still the same. I  
23 can't think of anyone else right now.

1           MR. MAZE: That's all the questions we  
2     have.

3           (Whereupon, at this time a short break  
4     was taken.)

5

6     EXAMINATION BY MR. ROSS:

7     Q.     Mr. Simelton, we're back on the record.  
8     I'm going to ask you a few follow-up questions  
9     based on what Mr. Maze asked you. Can you tell  
10    me a little bit of background information about  
11    yourself? When were you born?

12    A.     I was born in 1954.

13    Q.     And how old are you now?

14    A.     63.

15    Q.     Where were you born?

16    A.     Ripley, Mississippi.

17    Q.     And where do you live now?

18    A.     Harvest, Alabama.

19    Q.     How long have you lived there?

20    A.     Since 2003.

21    Q.     And what's your current -- do you have a  
22    job right now, a paying job?

23    A.     No, retired.

1 Q. When did you retire?

2 A. May of 2000 -- 2016.

3 Q. So prior to May of 2016, did you have a  
4 full-time job?

5 A. Yes.

6 Q. And you did that in addition to your time  
7 as Alabama NAACP president?

8 A. Yes.

9 Q. Do you sit on the boards of any  
10 organizations other than the Alabama NAACP?

11 A. Yes.

12 Q. For what organizations?

13 A. Alabama Coalition of Immigrant Justice.

14 Q. Any others?

15 A. That's all at this time. I just got off  
16 some boards, but that's all at this time. Well,  
17 deacon, deacon at church.

18 Q. What's the name of your church?

19 A. Indian Creek Primitive Baptist Church.

20 Q. Where is that?

21 A. In Huntsville, Alabama.

22 Q. Is that a predominantly African-American  
23 church?

1 A. Yes.

2 Q. You're the president of the Alabama NAACP,  
3 correct?

4 A. That's correct.

5 Q. Can you tell me again how long you've been  
6 president?

7 A. Yes. I was elected in October 2009.

8 Q. And you're obviously a member of the NAACP  
9 as well, right?

10 A. I'm what?

11 Q. A member of the NAACP?

12 A. Yes.

13 Q. When did you first become a member of the  
14 NAACP?

15 A. 1996, '7, time frame.

16 Q. And since you've lived in Alabama since  
17 2001, have you been a member of the NAACP since  
18 that time?

19 A. Yes.

20 Q. And why did you become a member of the  
21 NAACP?

22 A. Well, again, it goes back to my upbringing  
23 when I was young. I learned and knew the

1     benefits of the organization, and I wanted to  
2     contribute to the betterment of my community and  
3     the people that live in the community.

4     Q.     And when you say "the benefits of the  
5     organization," can you tell me a little bit about  
6     that?

7     A.     Sure. It's an organization that fights for  
8     equality of all people, fights for civil rights  
9     for people, and it's been around for 108 years,  
10    and it's a great organization to belong to  
11    because it's nonpartisan, and so we fight for --  
12    advocate for individual rights, for especially  
13    those who cannot advocate for themselves.

14    Q.     Two follow-up questions on that. You  
15    mentioned sort of your own experience with the  
16    NAACP, and earlier when you were speaking with  
17    Mr. Maze, you mentioned your father specifically?

18    A.     Yes.

19    Q.     Can you tell me your father, prior to 1965,  
20    if you can remember, was he able to vote in  
21    Mississippi?

22    A.     No. No.

23    Q.     Why not?

1     A.     Well, he was not registered to vote. I  
2     remember him not being able to pay poll tax and  
3     not able to vote.

4     Q.     What was poll tax?

5     A.     Poll tax is a tax that people who wanted to  
6     vote, they had to pay in order to vote.

7     Q.     And why couldn't your father pay the poll  
8     tax?

9     A.     Well, growing up on a farm, he just didn't  
10    have the money to pay that type of, you know,  
11    tax.

12    Q.     You're African-American, right, Mr.  
13    Simelton?

14    A.     Yes.

15    Q.     Is it your understanding that  
16    African-Americans in Mississippi at the time,  
17    many of them were like your father, too poor to  
18    pay a poll tax?

19    A.     Yes.

20    Q.     Do you know whether Alabama had a poll tax?

21    A.     I mean, I don't know for a fact, but I can  
22    assume they did.

23    Q.     And based on your experience as the

1 president of the Alabama NAACP now -- well,  
2 strike that. When you were growing up in  
3 Mississippi, did you experience racial  
4 discrimination?

5 A. Yes.

6 Q. Can you describe that for me?

7 A. Sure. Where I went to school, I went to a  
8 segregated school that, you know, no whites went  
9 there, just blacks. We also were called the  
10 N-word; and when we went to the local town, they  
11 had the whites' own water fountain and the  
12 blacks', you know, water fountains. We were  
13 treated differently. We had to go to the back of  
14 restaurants when we went to eat; and I remember  
15 this one little restaurant, they served -- and  
16 consider my mindset at that time, they served  
17 great hamburgers; but you had to go to the back,  
18 you know, and they opened a little window. They  
19 would take your order and, you know, you wouldn't  
20 ever see what they were doing to it. Even though  
21 we had integrated schools, when I was a senior in  
22 '72, one of the things that we did for our  
23 senior -- it wasn't a trip, but Senior Day or

1 something, we went to the local movie theaters,  
2 and all the blacks, you know, went upstairs, and  
3 the whites, you know, were downstairs.

4 Q. And that was in the 1970s?

5 A. That was '72.

6 Q. And as the president of the Alabama NAACP,  
7 do you talk to a lot of African-Americans here in  
8 Alabama and learn about their, sort of, life  
9 experience?

10 A. Yes.

11 Q. Do you think that African-Americans living  
12 in Alabama for most or all their lives had  
13 similar experiences to you growing up in  
14 Mississippi?

15 A. Yes. Yes. We compare notes all the time,  
16 members of my church.

17 Q. They went to segregated schools?

18 A. Yes.

19 Q. And experienced having to go to black and  
20 white water fountains?

21 A. Right.

22 Q. And do you think that that had an impact on  
23 African-Americans here in Alabama?



1 A. Sure.

2 Q. How so?

3 A. Well, I mean, it made you feel less than a  
4 person. As a young kid -- you know, I'm saying  
5 young, maybe 10, 12, you know, or below, you  
6 know, it didn't really register with you what was  
7 going on. But as you got older, you know, you  
8 realized that that was not right, especially when  
9 we had mandatory school integration. You know,  
10 that's when you really realized that, you know,  
11 you were not looked upon the same as everyone  
12 else, white, people of white persuasion.

13 Q. And in speaking to African-Americans, have  
14 you talked to other African-Americans who also  
15 did not go to integrated schools --

16 A. Oh, yes.

17 Q. -- until the 1970s or later?

18 A. Yes. '60s, late '60s it was mostly  
19 mandatory, yes.

20 Q. Sir, I'm going to take a step back a little  
21 bit from your history and go back to the Alabama  
22 NAACP today. You were asked a few different  
23 questions about sort of voter education efforts

1     that the Alabama NAACP undertakes. Can you  
2     describe those efforts?

3     A.     The NAACP, we educate people on not only  
4     requirements to vote, but also who is running for  
5     office and their different positions that they  
6     held on the issues that are being discussed. So  
7     we try to have forums where we invite people to.  
8     Again, this is done mainly through our branches.  
9     They have forums they invite people to, you know,  
10    to educate people on, you know, the voting  
11    rights, what's required, as well as the issues  
12    that are being voted on in a particular election.

13    Q.     So the branch presidents -- strike that.  
14    The local unit presidents of the NAACP, are they  
15    required to report to you on everything that they  
16    do related to voter education?

17    A.     Not everything, no.

18    Q.     Are they required to report to you on the  
19    number of voters that they assist with photo ID?

20    A.     No.

21    Q.     Are they required to report to you on, you  
22    know, the amount of -- strike that. If you were  
23    to -- does the state NAACP give money to local

1 NAACPs to do voter education work?

2 A. Yes, sometimes.

3 Q. And does that money include -- is the  
4 expectation that that money will be used to do  
5 education that includes photo ID law work?

6 A. Yes, uh-huh.

7 Q. But do you require local units to report  
8 back to you on how that money was spent?

9 A. No. We normally get that at our quarterly  
10 meeting. We have our unit presidents to prepare  
11 a report on what they've done. But it's not a  
12 check and balance, you know, we gave you, say,  
13 \$1,000, and an itemized list of what they gave  
14 us.

15 Q. So they may not give you an itemized list  
16 of how many people they helped or spoke to, or  
17 things like that?

18 A. Right, they may not.

19 Q. And they may not give it even in detail,  
20 you know, that "I spoke to someone about photo  
21 IDs" specifically, things like that?

22 A. Right, exactly.

23 Q. So is it possible that local units of the

1 Alabama NAACP have assisted more voters than  
2 you're aware of, sitting here today?

3 A. Yes, absolutely.

4 Q. And it's possible that they may have used  
5 money that the state NAACP gave them to assist  
6 those voters?

7 A. Yes. It's possible, yes.

8 Q. Does the Alabama NAACP -- well, strike  
9 that. Mr. Maze was asking you earlier about the  
10 constituency of the Alabama NAACP?

11 A. Uh-huh.

12 Q. And it was your testimony that the  
13 constituency is everyone; is that right?

14 A. Right.

15 Q. But are there particular groups of people  
16 that the Alabama NAACP sort of helps more often,  
17 like the African-American community, for example?

18 A. Well, right. Yes, the African-American  
19 community certainly reaches out to us more; but,  
20 you know, there are whites, Hispanics, Native  
21 Americans that reach out to us also.

22 Q. The constituents of the Alabama NAACP, the  
23 folks who reach out to you, are they always

1 members of the NAACP?

2 A. No.

3 Q. In your understanding of your membership  
4 and your constituents, do the constituents tend  
5 to be poorer than the actual members of the  
6 NAACP?

7 A. I would say the majority of them -- a lot  
8 of them are, yes.

9 Q. Can an organization be a member of the  
10 NAACP?

11 A. Yes.

12 Q. Is the Alabama Coalition for Immigrant  
13 Justice a member of the NAACP?

14 A. Yes.

15 Q. When did the Alabama NAACP start working on  
16 the issue of photo ID?

17 A. Well, it started when it was first brought  
18 up in the legislature, because we knew the  
19 impact, potential impact it would have on voters,  
20 and so we started then. It was amazing that, you  
21 know, the governor -- this bill, they had signed,  
22 I think it was back in 2011 or '12, and it just  
23 sat there until the Supreme Court's ruling in the

1 Shelby case; and then almost like clockwork, as  
2 soon as it was over, they decided to implement  
3 the photo ID.

4 Q. And by "implement the photo ID," do you  
5 mean they issued regulations related to the photo  
6 ID law?

7 MR. MAZE: Object to form.

8 Q. You can answer.

9 A. Meaning requiring people to have the photo  
10 ID in order to vote.

11 Q. Do you recall if the Secretary of State did  
12 anything to advertise the photo ID law prior to  
13 June 2013?

14 A. I don't remember. I don't recall.

15 Q. Did he do anything, to your knowledge, to  
16 assist voters in obtaining photo IDs prior to  
17 June 2013?

18 A. No, because it was not in effect, so I  
19 don't remember him doing that.

20 Q. So in your opinion -- well, when was the  
21 photo ID law passed?

22 A. It was 2011 or 2012 legislature, one of  
23 those two. I can't remember exactly which one.

1 Q. I'll represent to you that it was  
2 approximately June 2011.

3 A. Okay.

4 Q. Does that sound right, Mr. Simelton?

5 A. Yes.

6 Q. Would it have been helpful for the  
7 Secretary of State to spend time rolling out the  
8 photo ID law and educating voters about it for  
9 several years before implementing it?

10 A. Well, I think it certainly would have been.  
11 You know, if the State really had the intent of  
12 implementing it, you know, they should have done  
13 it immediately, but they knew that we would file  
14 a complaint with the Justice Department.

15 Q. And by "filing a complaint with the Justice  
16 Department," is that in reference to the Voting  
17 Rights Act?

18 A. Right, because they violated -- it would be  
19 violating -- they would have violated the Voting  
20 Rights Act of 1965 by implementing the photo ID  
21 law, specifically Section 5.

22 Q. You mean by implementing the photo ID law  
23 without pre-clearance; is that right?

1 MR. MAZE: Object to form.

2 A. Right.

3 Q. Earlier Mr. Maze was asking you about  
4 evidence that you have about the impact of the  
5 photo ID law?

6 A. Uh-huh.

7 Q. And you referenced that you knew about  
8 national studies related to photo ID; is that  
9 right?

10 A. Right.

11 Q. Do you recall what those national studies  
12 indicated about photo ID laws and  
13 African-American voters?

14 A. I mean, I don't recall specifically, but I  
15 just know that they indicate that they would have  
16 a disproportionate impact on African-American  
17 people.

18 Q. And are you aware that there are and will  
19 be expert reports filed in this case?

20 A. Yes.

21 Q. And some of those expert reports filed on  
22 behalf of the Alabama NAACP may include analysis  
23 of the number of voters without a photo ID; is



1     that right?

2     A.     Yes.

3     Q.     And your understanding is that there may  
4     be -- beyond what you can remember right now,  
5     there may be other evidence that the plaintiffs  
6     would present in this case; is that right?

7     A.     Right. Right.

8     Q.     And you mentioned earlier, in talking about  
9     sort of the impact of the photo ID law on  
10    African-Americans, that African-Americans in  
11    Alabama may be less likely to possess birth  
12    certificates. Do you recall that?

13    A.     Right, uh-huh.

14    Q.     Why do you think African-Americans in  
15    Alabama are less likely to possess birth  
16    certificates?

17    A.     Well, especially in older generations, many  
18    of them were not born -- well, they were not born  
19    in a hospital. They were born by a midwife, and  
20    the midwife didn't record their births; and,  
21    therefore, you know, the actual -- the state  
22    agency that issues birth certificates did not  
23    have a record of their birth. It wasn't until

1 later that they, you know, required it, because  
2 hospitals -- you know, where I went to doctors in  
3 Mississippi, you know, if you went to the doctor,  
4 you know, there were separate waiting rooms,  
5 separate -- you know, just discrimination against  
6 people because of where you would -- how you  
7 would be able to see the doctor.

8 Q. Are you saying there would be segregated  
9 hospitals; is that right?

10 A. Well, I won't say hospitals, but rooms  
11 within hospitals. You had a separate waiting  
12 room. You know, you might go to see the same  
13 doctor, but you saw them in a separate room in  
14 the hospital.

15 Q. And that's based on your experience in  
16 Mississippi?

17 A. Oh, yes. Yes.

18 Q. So is it your understanding that  
19 African-Americans may be less likely to have  
20 birth certificates, in part, because of Alabama's  
21 history of discrimination in healthcare?

22 MR. MAZE: Object to the form.

23 Q. Segregated -- well, strike that. You can

1     answer.

2             MR. MAZE: Well, what's the question? I  
3     don't understand the question, because you struck  
4     it.

5     Q.     Let me start over. So is it your  
6     understanding that the reason why  
7     African-Americans in Alabama are less likely to  
8     have photo ID is, in part, because of the state's  
9     history of segregated healthcare?

10            MR. MAZE: Object to form.

11     A.     Yes.

12     Q.     Why do you have that understanding?

13     A.     Well, again, I think Alabama is just like  
14     Mississippi. Based on what conversations I've  
15     had with people here in Alabama that were in the  
16     state and born in the state during that time, you  
17     know, with the segregated hospital -- not  
18     hospital but rooms within the hospitals. Nurses  
19     did not, you know, take the precaution to record  
20     everything properly, and also many were born to  
21     midwives at home, and their births just was never  
22     recorded.

23     Q.     Mr. Maze was asking you about specific

1 voters who you know don't have photo ID; is that  
2 right?

3 A. Uh-huh.

4 Q. Beyond people who you can name  
5 specifically, do you have a general sense, in  
6 speaking to the community and units, that there  
7 are individuals who don't have photo ID, beyond  
8 who you've spoken about today?

9 A. Repeat that question again.

10 Q. You've named a few specific individuals who  
11 don't have photo ID, right?

12 A. Right, uh-huh.

13 Q. In your conversations with individuals in  
14 the community and unit presidents, do you have an  
15 understanding that there are more than those two  
16 individuals who you named that don't have photo  
17 ID?

18 MR. MAZE: Object to form.

19 A. Yes. It's my belief that there are more  
20 people out there that -- well, I mean, I know  
21 there are more out there, but I think there's  
22 also more that are eligible to vote that don't  
23 have the photo ID, that have not come forward.

1 Q. There are individual plaintiffs in this  
2 case, is that right, Mr. Simelton?

3 A. Yes.

4 Q. And have you spoken to any of those  
5 individual plaintiffs?

6 A. Yes. I've spoken to Mr. Wahl.

7 Q. That's right. But other than Mr. Wahl,  
8 have you spoken to any of the individual  
9 plaintiffs in this case?

10 A. No. He's the only one.

11 Q. So those may include individuals who don't  
12 have photo ID and may not have been -- well,  
13 strike that. Strike that entire question. Do  
14 you believe that it is more difficult for  
15 African-Americans than white voters to get the  
16 photo ID needed to vote?

17 A. It's more difficult in a general sense.  
18 Now, if you have all the IDs -- I mean, all the  
19 required documents, you know, you can walk down  
20 to the place to get it. But because  
21 African-Americans are less likely to have the  
22 documents, and because African-Americans may not  
23 have transportation to the registrar to get the

1 photo ID, then that makes it more difficult for  
2 them to obtain, as a general, say, group of  
3 people.

4 Q. So in talking about going to the  
5 registrars, is there public transportation in  
6 every county in Alabama?

7 A. No. No. Well, I guess it depends on what  
8 you mean by "public transportation." I'm quite  
9 sure that someone in each county probably has a  
10 taxi or something; but it's not, you know, like  
11 here in Birmingham, you know.

12 Q. Maybe an informal system where you can pay  
13 someone to give you a ride?

14 A. Right.

15 Q. Taking, for example, the Black Belt in  
16 Alabama, is it your understanding that counties  
17 in the Black Belt have the same kind of public  
18 transportation infrastructure as the city of  
19 Birmingham?

20 A. No.

21 Q. No, they do not?

22 A. No, they do not have the same type of  
23 transportation.

1 Q. So for a resident who lives five or ten  
2 miles away from a board of registrars, would it  
3 be difficult for them -- if they don't have a  
4 vehicle, would it be difficult for them to get to  
5 a board of registrars?

6 A. Yes. Yes, because they don't have the  
7 transportation and they would have to, you know,  
8 call someone or wait until someone, you know,  
9 gets off work or something; and, of course, when  
10 they get off work, the place is closed, so.

11 Q. Do you know whether African-Americans in  
12 Alabama are more likely or less likely than  
13 whites to own vehicles?

14 A. They're less likely to own vehicles.

15 Q. You believe that African-Americans are less  
16 likely to own vehicles than whites in Alabama?

17 A. Yes.

18 Q. So Mr. Maze was asking you earlier about a  
19 mobile unit. Have you ever heard of a mobile  
20 unit coming to someone's home?

21 A. No.

22 Q. Have you ever seen advertisements for a  
23 mobile unit going to someone's home?

1     A.       No.

2     Q.       Turn back to the Second Amended Complaint  
3     for a moment.

4               (Whereupon, at this time a short break  
5     was taken.)

6     Q.       Mr. Simelton, can you turn to page 65 of  
7     the Complaint?

8     A.       (Witness complies.) Okay.

9     Q.       Do you see at the bottom, paragraph 172 of  
10    the Complaint?

11    A.       Uh-huh.

12    Q.       It mentions that there was a letter sent to  
13    the defendants in approximately September 2014  
14    about the number of voters who were  
15    disenfranchised in the 2014 primary, the  
16    defendants not adequately making photo IDs  
17    accessible to African-Americans, and election  
18    officials' compliance with the photo ID law. Do  
19    you see that?

20    A.       Uh-huh.

21    Q.       Do you recall a series of letters sent on  
22    behalf of the Alabama NAACP that raised those  
23    concerns?



1 A. Yes. Yes.

2 Q. And why did the Alabama NAACP raise those  
3 concerns?

4 A. Well, because of the fact that there was a  
5 perception that there would be a lot more  
6 African-Americans that would be without the photo  
7 ID law and, therefore, be disenfranchised than  
8 other voters.

9 Q. Do you recall the Alabama NAACP ever asking  
10 for the number of voters -- well, strike that.  
11 You mentioned earlier that your understanding is  
12 the Alabama Secretary of State had a list of  
13 voters who may not have photo ID; is that right?

14 MR. MAZE: Object to form.

15 A. Right.

16 Q. And did the Alabama NAACP ever request that  
17 list of voters who may not have photo ID?

18 A. Yes.

19 Q. Why did the Alabama NAACP request that  
20 list?

21 A. Well, I mean, if we had that list, we could  
22 better target the people that we wanted to help  
23 with the photo ID and help with voter

1 registration.

2 Q. Were there other letters sent to the  
3 Secretary of State's office concerning the  
4 implementation of the photo ID law?

5 A. Yes. We sent some ourselves from the  
6 state.

7 Q. Did the Alabama NAACP write to the governor  
8 or the secretary of ALEA after the ALEA office  
9 closures?

10 A. Yes.

11 Q. What's the budget, approximately, of the  
12 Alabama NAACP for year 2016, this past year?

13 A. About 120 -- somewhere between \$120,000 and  
14 \$130,000. I can get you those exact numbers.

15 Q. Approximately how much of that money was  
16 devoted to voting in 2016?

17 A. Around five, maybe five, six, seven  
18 thousand, somewhere in there.

19 Q. And how was that money allocated in 2016?  
20 Was it given to local branches?

21 A. Well, some was given to local branches. I  
22 mean, I don't know -- I would have to go back and  
23 look at exactly how it was distributed.

1 Q. Why was it given to the local branches?

2 A. It was for their voter registration and  
3 get-out-to-vote efforts.

4 Q. And did that include educating voters about  
5 the photo ID requirement?

6 A. Yes.

7 Q. Earlier you were talking about money that  
8 was given by the national NAACP?

9 A. Uh-huh.

10 Q. How much in 2016 did the national NAACP  
11 give the state NAACP for photo ID in particular?  
12 I'm sorry, for voting in particular?

13 A. Well, it was close to \$5,000, I think, that  
14 we received from them.

15 Q. And is that in addition to the money that  
16 the state NAACP --

17 A. No, that's part of it. Also in 2016, the  
18 money didn't come -- well, there was other  
19 efforts that was under the NAACP, but the money  
20 didn't flow through us. It was moved direct from  
21 national to -- in other words, the national hired  
22 a -- what do you call it -- a person to do voter  
23 registration and get-out-to-vote and voter

1 education efforts. The money didn't come through  
2 our coffers, but it went directly to that person,  
3 a man or woman. It was money spent in the state  
4 of Alabama trying to help with the --

5 Q. And you were talking earlier about the  
6 Alabama Classic?

7 A. Magic City Classic.

8 Q. Magic City Classic, I'm sorry. What was  
9 the purpose -- well, strike that. You talked a  
10 little bit about sort of how the purpose of it  
11 was related to voter education and the photo ID  
12 law, in particular?

13 A. Yes.

14 Q. And you mentioned that there was an effort  
15 to contact the Secretary of State's office about  
16 the mobile unit?

17 A. Right.

18 Q. You talked about there being an effort to  
19 confirm whether the mobile unit was coming to the  
20 Magic City Classic?

21 A. Right. Yes.

22 Q. What happened when you called the State  
23 asking them to confirm that the mobile unit would

1 be there?

2 A. Well, initially -- I don't remember the  
3 gentleman's name, but he reached out to me and  
4 asked me if President Brooks was coming. He had  
5 heard that President Brooks was coming and asked  
6 if President Brooks could come by the mobile  
7 unit, and I said, "Well, sure, he'll come by."  
8 And I think when we got to the Classic, I may  
9 have called twice. On one occasion, I think it  
10 was the first occasion I called, and the  
11 gentleman I spoke with said, well, you know, he  
12 would find out; he wasn't sure if he was going to  
13 be there or not. And the second time I called  
14 back, I don't think I got an answer. No one  
15 would answer the phone, so I wasn't sure. But I  
16 did leave a message.

17 Q. And why did you follow up about having a  
18 mobile unit at the Magic City Classic?

19 A. Well, I mean, they had wanted to meet  
20 President Brooks, wanted him to come by, and I  
21 was trying to do what I promised them I would do.

22 Q. Was it related to your effort to educate  
23 voters?

1 A. Right.

2 Q. And to assist them with getting a photo ID?

3 A. Well, it was to assist -- really, in this  
4 case, President Brooks, so that he would have  
5 knowledge of what specifically the photo ID  
6 mobile unit would look like in the state of  
7 Alabama, so as he goes to other states, you know,  
8 it would be something that he could put in the  
9 back of his head to have knowledge.

10 Q. Did you ever see a mobile unit while you  
11 were at the Magic City Classic?

12 A. I did not see one while I was there, no.

13 Q. The Alabama NAACP, how much time prior to  
14 your retirement did you spend every week on  
15 working for the Alabama NAACP?

16 A. Well, you need to ask my wife that  
17 question. She kept better track of it than I  
18 did. I would say -- I know I spent probably 35  
19 to 40 hours, you know, on average.

20 Q. And since retiring, how much time have you  
21 spent?

22 A. Probably about 60 hours, you know, and  
23 that's -- well, yes, about -- every day, just

1     about, I'm doing something with the NAACP, then  
2     on weekends. So maybe 50 hours.

3     Q.     And does that include time spent on talking  
4     about the photo ID law or addressing issues  
5     related to the photo ID law?

6     A.     Certainly some of it is. I don't know how  
7     to break out a certain specific amount of time,  
8     but certainly some of it is.

9     Q.     And is that time that you would spend on  
10    other issues that the Alabama NAACP wishes to  
11    address?

12    A.     Sure.

13    Q.     And when the Alabama NAACP does  
14    get-out-the-vote work and talks to voters about  
15    photo ID, is that time and effort that could be  
16    spent doing other things unrelated to photo ID?

17    A.     Yes, uh-huh.

18    Q.     Do you know if there's a history of --  
19    beyond sort of the segregated schools and things  
20    that we've talked about, is there a history of  
21    racial discrimination voting in Alabama?

22           MR. MAZE: Object to form.

23    A.     Yes.

1 Q. And do you consider the photo ID law a part  
2 of that history?

3 MR. MAZE: Object to form.

4 A. The photo ID law, yes, is one more -- one  
5 additional effort that has been made to  
6 disproportionately affect African-American  
7 voters.

8 Q. Mr. Maze was asking you earlier about sort  
9 of evidence that you had of -- well, I think he  
10 started with comments made by particular  
11 legislators that led you to believe that this law  
12 was intentionally discriminatory. Do you recall  
13 that?

14 A. Yes.

15 Q. Do you know who Senator Scott Beason is?

16 A. Yes.

17 Q. What do you know about Senator Beason?

18 A. I mean, I don't know a whole lot about him,  
19 but I do know him.

20 Q. Do you know if he has ever made any  
21 comments that related to African-Americans in  
22 particular in Alabama?

23 A. I mean, I don't have any firsthand



1 knowledge of what Senator Beason has made.

2 Q. Have you heard that there was a controversy  
3 around him?

4 MR. MAZE: Object to the form. I object.

5 Q. You can answer.

6 A. I've heard that; but like I say, I don't  
7 have firsthand knowledge, but I've heard that.

8 Q. You have heard it, okay. Do you recall,  
9 there was a case called the Alabama Legislative  
10 Black Caucus versus Alabama?

11 A. Yes.

12 Q. Did you testify in that case?

13 A. Yes.

14 Q. Do you know what happened in that case?

15 A. Yes. The Court ruled that the -- I guess  
16 you want me to --

17 Q. Well, what is your understanding of what  
18 happened -- what has happened recently, I'll say,  
19 in the last few months?

20 A. It's my understanding that the Court rules  
21 that the State of Alabama in their  
22 redistricting -- redistricted the -- did some  
23 redistricting with the intention, really, of

1 diluting the African-American vote by putting all  
2 the African-Americans kind of in one district.

3 You know, not literally one, but in an  
4 African-American district.

5 Q. And we've already established, you're not a  
6 lawyer, is that right, Mr. Simelton?

7 A. Right.

8 Q. So in your description of that case, there  
9 may be details that you're missing; is that  
10 right?

11 A. Well, yes.

12 Q. But based on your understanding of what  
13 that case was about, that involved some amount of  
14 racial discrimination in voting; is that right?

15 MR. MAZE: Object to form.

16 Q. Let me strike that. Let me start over.  
17 Are you aware that there's going to be expert  
18 testimony in this case related to discriminatory  
19 intent?

20 MR. MAZE: Object to form.

21 A. Yes.

22 Q. And that expert testimony will include  
23 potentially evidence that you are not aware of --

1 I'm sorry, strike that. Evidence that you don't  
2 recall at this moment; is that right?

3 MR. MAZE: Object to form.

4 A. Yes.

5 Q. Do you know what the positively identify  
6 provision is in the Alabama law?

7 A. Yes.

8 Q. What is that?

9 A. That's where two people can -- if they  
10 identify me at the polls, they can sign a form  
11 saying who I am and still allow me to cast a  
12 ballot.

13 Q. Do you believe that that provision is  
14 racially discriminatory?

15 MR. MAZE: Object to the form.

16 A. Yes.

17 Q. Why?

18 A. Well, first of all, there's few -- there's  
19 a fewer number of African-Americans working the  
20 polls; and if you kind of just go by people you  
21 live with or associate with, that would mean that  
22 the likelihood of me going to the polls and  
23 people positively identifying me would be less

1     likely than a white person going to the polls.

2     Q.     So you think that white poll workers are  
3     less likely to positively identify an  
4     African-American, because of their sort of social  
5     situation, right?

6     A.     Right.

7     Q.     Is that right?

8     A.     Yes.

9     Q.     Do you believe that that's tied to  
10    Alabama's history of segregation by law?

11    A.     Well, you know, I think it also has to do  
12    with the poll workers really wanting to identify  
13    the person. Just like in the case of Mr. Wahl,  
14    from what I understand, the poll workers knew who  
15    he is, but they refused to identify him. I think  
16    it would be the same way with, you know, other  
17    folks, other African-Americans. When they go to  
18    the poll, the poll worker will say, "Well, even  
19    though I may not know you working with you every  
20    day, but I know you," they would say "I don't  
21    know you."

22    Q.     Do you know what voter impersonation fraud  
23    is?

1 A. Yes.

2 Q. What does that mean to you?

3 A. That's when someone comes to the poll and  
4 presents themselves to be someone who they are  
5 not.

6 Q. Have you ever heard of anyone being  
7 prosecuted for that here in Alabama?

8 A. I haven't personally heard, but I've read  
9 some document that there may have been one  
10 case -- one or two cases where someone tried  
11 to -- someone tried to prosecute someone for  
12 impersonating another person.

13 Q. Do you know the results of that  
14 prosecution?

15 A. From what I understand -- and I don't have  
16 the whole facts on it, but I don't think the  
17 person was ever actually prosecuted.

18 Q. You were discussing earlier Senator, now  
19 Attorney General Sessions and the Marion three?

20 A. Uh-huh.

21 Q. Who are the Marion three?

22 MR. MAZE: Object to the form.

23 MR. ROSS: What's your objection to form?

1           MR. MAZE: I never asked him about the  
2 Marion three.

3           MR. ROSS: He mentioned it earlier.

4           THE WITNESS: Yes, I mentioned the Marion  
5 three. I didn't say "Marion three," but --

6 Q.       Go ahead.

7 A.       There was three individuals in Marion  
8 County who Attorney General Sessions said they  
9 were marking ballots, absentee ballots for black  
10 voters in the election; and he tried to prosecute  
11 them for voter fraud, and the judge threw it out  
12 for lack of evidence, from my understanding.

13 Q.       Mr. Simelton, you were asked earlier about  
14 your understanding of the Voting Rights Act and  
15 what it does and doesn't require. Really, the  
16 photo ID. Do you recall that conversation with  
17 Mr. Maze?

18 A.       Yes, sir.

19 Q.       And was it your testimony that an  
20 individual showing up with a utility bill to  
21 vote, that that should be acceptable ID; is that  
22 right?

23 A.       If a person shows up with that and they

1 have that document, they should be allowed to  
2 vote.

3 Q. And do you think if someone signed a sworn  
4 affidavit saying that they were the person who  
5 they allege to be, do you think that would be  
6 sufficient proof of who they are?

7 A. Yes.

8 Q. And even potentially those two, an  
9 affidavit and presenting a utility bill, do you  
10 think that that would be sufficient proof to  
11 prove who someone is for purposes of voting?

12 A. Yes. But, again, I go back to the Voting  
13 Rights Act of '65.

14 Q. Mr. Simelton, a few more questions. I know  
15 it's getting late.

16 A. Take your time.

17 Q. In your conversations with  
18 African-Americans in Alabama, do you think most  
19 people have heard of voter ID cards?

20 A. I think most people now know about photo  
21 ID.

22 Q. Do you think more people -- well, I'm not  
23 asking about photo ID. Let me try it a different

1 way. Do you think more people know about  
2 driver's licenses or non-driver IDs as acceptable  
3 forms of photo ID -- let me strike that. In your  
4 conversations with individuals in Alabama, people  
5 are looking to get the photo ID needed to vote?

6 A. Uh-huh.

7 Q. Do most individuals go -- are individuals  
8 looking for a driver's license, or is that sort  
9 of the first place where people think to get a  
10 photo ID, a driver's license issuing office?

11 MR. MAZE: Object to form.

12 A. Yes. I think the majority of the people,  
13 because that's what they ask for at first at the  
14 poll, most of them ask for a photo -- I mean,  
15 your driver's license, so that's probably the  
16 first one that they --

17 Q. So you think most commonly the form of ID  
18 that people use to vote is a driver's license; is  
19 that right?

20 A. Right.

21 Q. Do you know whether public housing IDs are  
22 acceptable for voting in Alabama?

23 A. I don't think they are, because I don't



1 think -- well, I would have to look back at  
2 these.

3 Q. Do you know if African-Americans are  
4 disproportionately in public housing in Alabama,  
5 as compared to whites?

6 A. Yes.

7 Q. Yes, you know?

8 A. Yes, I know.

9 Q. Yes, African-Americans are --

10 A. Yes, they are.

11 Q. Okay. Mr. Maze was asking you also about  
12 sort of the posters that Secretary of State  
13 Merrill was trying to pass out a few years ago.  
14 Do you remember that conversation?

15 A. Yes.

16 Q. Why were members of the NAACP concerned  
17 about the lack of African-Americans on the  
18 posters that the secretary was distributing?

19 A. Well, we felt that if he was coming to an  
20 NAACP event, that the majority of people that  
21 were there would be African-Americans, at least  
22 he should have brought the poster that related to  
23 the community which he was coming to. It appears

1     that -- I think he's an Alabama grad, and we told  
2     him that we thought he was promoting the school  
3     rather than voting.

4     Q.     Do you think African-Americans are more  
5     likely to pay attention to a poster that features  
6     African-Americans?

7     A.     Oh, yes. And I think he agreed to that,  
8     too. I mean, he didn't say that, because he did  
9     mention that he was going to get some  
10    African-American like Charles Barkley.

11    Q.     Mr. Maze showed you copies of the Alabama  
12    Voter ID.com website?

13    A.     Uh-huh.

14    Q.     Do you recall whether that website has any  
15    information in Spanish?

16    A.     I don't recall.

17    Q.     Did any of the pages that Mr. Maze showed  
18    you, did any of those appear to be in Spanish to  
19    you?

20    A.     No.

21    Q.     Do you know whether African-Americans in  
22    Alabama are less likely than whites to have  
23    Internet access?

1 MR. MAZE: Object to form.

2 A. Yes, less likely.

3 Q. You believe that they are less likely to  
4 have Internet access?

5 A. Yes.

6 Q. So posting something on the Internet,  
7 African-Americans may be less likely than whites  
8 to see it; is that right?

9 A. Yes.

10 Q. We talked a little bit about NAACP units  
11 and how they may have done more than what you're  
12 aware of related to photo ID; is that right?

13 A. Right.

14 Q. Is it possible that individual NAACP  
15 members may have also spent time educating people  
16 about the photo ID requirement?

17 A. Well, that's possible, but usually that  
18 would be presented to the branch. But it's  
19 possible that someone might go out on their own,  
20 or either just strike up a conversation in a  
21 church meeting or something like that, you know.

22 Q. And even beyond individual members but  
23 organizational members, like ACIJ, may be

1     doing more?

2     A.     Oh, yes, definitely organizational members.

3     Q.     Mr. Maze was asking about donations to the  
4     NAACP related to photo ID in particular. Do you  
5     remember that conversation?

6     A.     Uh-huh.

7     Q.     Yes?

8     A.     Yes, I remember. I'm sorry, yes, I  
9     remember.

10    Q.     You have to answer orally, Mr. Simelton.  
11    When someone donates to the Alabama NAACP, are  
12    they asked why they are donating to the Alabama  
13    NAACP?

14    A.     When you say "are they asked," do you mean  
15    do we ask them?

16    Q.     Yes. Does Alabama NAACP ask someone why  
17    they are donating money to them?

18    A.     No.

19    Q.     Does the Alabama NAACP receive grants in  
20    which they're -- well, strike that. So a  
21    donation may be given to the Alabama NAACP, but  
22    you may not know why that donation was given; is  
23    that right?

1 A. Yes, that's correct.

2 Q. So when Mr. Maze was asking you about the  
3 amount of money donated to photo ID, was that a  
4 guess, or was that based on -- did people  
5 actually tell you that money had been given to  
6 you all for photo ID specifically? And if you  
7 don't recall the question from Mr. Maze, that's  
8 fine, too.

9 A. Yes. I don't remember that question.

10 Q. That's fine. Mr. Maze was asking also  
11 about the mobile unit in Selma. You testified,  
12 if I'm correct, that you didn't see the mobile  
13 unit in Selma; is that right?

14 A. That's correct.

15 Q. The individuals who come to Selma Jubilee  
16 weekend every March, do those include individuals  
17 who come from out of town, so outside of Alabama?

18 A. Yes.

19 Q. Do they tend to be people who are lower  
20 income?

21 A. I would -- of course -- I don't think so.

22 Q. Do they tend to be the kind of people who  
23 may not have photo ID? And if you don't know,

1     that's fine.

2     A.     I don't know. I don't think they would be,  
3     because most of the time when you come to Selma,  
4     even though you're coming to get the history,  
5     they have all these other things that you have to  
6     buy. It doesn't require money to attend the  
7     workshop; but, you know, people generally spend  
8     money.

9     Q.     So the people who come to Selma tend to  
10    have money to spend on other things; is that  
11    right?

12    A.     Yes.

13    Q.     Did you hear about the protest that  
14    Mr. Maze alleged to have happened at the mobile  
15    unit this year?

16    A.     No, I did not hear about that particular  
17    protest.

18    Q.     Did the Alabama NAACP play any role in the  
19    alleged protest that Mr. Maze mentioned?

20    A.     No.

21    Q.     There was some discussion about press  
22    releases and Twitter accounts for the Alabama  
23    NAACP. Do you recall that?

1 A. Yes.

2 Q. Do you monitor -- well, do you have access  
3 to the Alabama NAACP's Twitter account?

4 A. I have access, yes.

5 Q. Do you know who posts information on the  
6 Alabama NAACP's Twitter account?

7 A. That would be our communication chair.

8 Q. Does that person always check with you when  
9 information is posted on the Twitter account?

10 A. No.

11 Q. You mentioned at least one instance in  
12 which you could remember having to modify the  
13 content of something that was posted online. Do  
14 you recall that?

15 A. Yes.

16 Q. Could there have been other instances in  
17 which you just --

18 A. Yes.

19 Q. -- in which you would suggest that  
20 something be modified that was posted online?

21 A. I mean, there could have been, yes. Yes.

22 Q. Could there have been other instances in  
23 which you either weren't aware of something being

1 posted or disagreed with something that was  
2 posted?

3 A. I mean, if it's a press release, then all  
4 press releases -- they're good about sending  
5 those to me, but there may have been some other  
6 thing that was posted, or they could have taken  
7 an article from somewhere else and linked it or  
8 posted it on the site without my knowledge. But  
9 as far as stuff that we create, except for  
10 Twitter, it all comes through -- well, most times  
11 it comes through me before it's posted.

12 Q. So is it your understanding today that you  
13 were deposed in your individual capacity, is that  
14 right, Mr. Simelton?

15 A. Repeat that again, now.

16 Q. Did the defendants --

17 MR. MAZE: Deuel, we'll stipulate this is a  
18 personal capacity deposition.

19 MR. ROSS: That's all I need.

20 (Whereupon, at this time a short break  
21 was taken.)

22

23



1 RE-EXAMINATION BY MR. MAZE:

2 Q. Hopefully, Mr. Simelton, this will take  
3 about ten minutes, and then we will all go eat  
4 lunch. How many constituents would you estimate  
5 you talk to in an average year?

6 A. You're talking about me personally?

7 Q. You personally.

8 A. Now, you're talking about one-on-one, as a  
9 group, or what, now?

10 Q. How many people call you, e-mail you, come  
11 up to you at the Football Classic? How many  
12 people do you have a discussion with per year?

13 MR. ROSS: Objection.

14 Q. Let me ask it this way. More than 1,000?

15 A. Yes.

16 Q. More than 10,000?

17 A. No.

18 Q. So somewhere between 1,000 and 10,000? You  
19 speak to a couple thousand people a year?

20 A. Somewhere between one and ten, I would say,  
21 yes.

22 Q. You testified regarding the State not  
23 having regulations or -- strike that. You

1 testified that the State waited to start  
2 promoting the voter ID requirement until after  
3 Shelby County, correct?

4 A. Yes. Yes.

5 Q. Did the Alabama NAACP wait to start  
6 educating people about photo voter ID until  
7 Shelby County?

8 A. We educated people that the law had been  
9 passed, and that if it's implemented, then it's  
10 going to have a negative impact on voters, in  
11 particular African-American voters, because we  
12 felt that's who it was targeting.

13 Q. Do you feel like that you were able to  
14 adequately inform your constituency about the  
15 photo ID law by the time the 2014 elections came  
16 about?

17 MR. ROSS: Objection.

18 A. I mean, the answer to that is no.

19 Q. Why?

20 A. Well, I mean, because we don't have the  
21 resources to adequately inform people. We do the  
22 best we can. When you say "adequately inform," I  
23 mean, I don't think the Secretary of State has

1 the resources to adequately inform.

2 Q. What do you think adequately inform would  
3 be? What would be your definition?

4 A. That would mean reaching out to each person  
5 that needs an ID -- really, reaching out to each  
6 person, you know, what, 95, 99 percent of the  
7 population, and inform them that "This is what  
8 you need," either through direct contact with  
9 them or through ensuring that they have some kind  
10 of postcard.

11 Q. You talked about funding. You told Mr.  
12 Ross that your budget in 2016, you spent  
13 approximately \$5,000 to \$6,000 on educating  
14 persons about voting and photo ID, correct?

15 A. Yes.

16 Q. You also testified that you received a  
17 \$5,000 grant from the national NAACP for the same  
18 purpose, correct?

19 A. Right. That's the same grant.

20 Q. Yes. You testified that part of the  
21 reasoning that you believe that Alabama's  
22 legislature acts with a discriminatory intent or  
23 purpose is they did the same thing in the

1     redistricting case, correct?

2             MR. ROSS:   Objection.

3     Q.     Is that what you believe?

4     A.     Well, I mean, I didn't say it that way.

5     Q.     Well, let me ask it this way.   Do you  
6     believe that Alabama's redistricting plan is  
7     proof of Alabama's discriminatory purpose for  
8     photo voter ID?

9             MR. ROSS:   Objection.

10    A.     I believe that the redistricting is another  
11    indicator of how Alabama disenfranchises voters,  
12    and particularly African-Americans.

13    Q.     Were you aware that that redistricting plan  
14    was pre-cleared by the federal Department of  
15    Justice?

16             MR. ROSS:   Objection.

17    A.     No.

18    Q.     Were you aware that we had to work on this  
19    with the federal Department of Justice to get it  
20    where it was pre-cleared?

21             MR. ROSS:   Who is "we"?

22    Q.     The State worked with the Department of  
23    Justice to come up with a plan that was

1 pre-cleared?

2 MR. ROSS: Objection.

3 A. No.

4 Q. Does that change your opinion that the  
5 Alabama legislature's redistricting plan proves  
6 discriminatory intent, now that you know the  
7 federal Department of Justice, under President  
8 Obama at the time, had pre-cleared it?

9 MR. ROSS: Objection.

10 A. I mean, I would have to see -- you know, I  
11 don't know what the Department of Justice said or  
12 what was the back-and-forth. I mean, I just  
13 can't say, you know. I don't understand why the  
14 Department of Justice would clear it on one  
15 point, and then on the next level come back and  
16 say, "Well, you know, it was done with  
17 discriminatory intent."

18 Q. Is it possible it's because the federal  
19 Department of Justice didn't believe it violated  
20 the Voting Rights Act at the time that it  
21 pre-cleared it?

22 MR. ROSS: Objection.

23 A. I mean, I cannot answer that.

1 Q. You have testified a lot, particularly with  
2 Mr. Ross, about what you believe the Voting  
3 Rights Act requires, correct?

4 A. Yes.

5 Q. Well, do you believe that the fact that the  
6 Department of Justice pre-clears something shows  
7 that the Department of Justice doesn't believe  
8 there's a discriminatory purpose?

9 MR. ROSS: Objection.

10 A. The Department of Justice is a  
11 clearinghouse. If the Department of Justice  
12 clears it, does that mean that it has no  
13 discriminatory impact? No.

14 Q. Well, then what does it mean?

15 A. It means that they didn't find anything.

16 Q. Okay. If they didn't find anything -- if  
17 the Department of Justice can't find a  
18 discriminatory purpose or impact, then how do you  
19 personally find one?

20 MR. ROSS: Objection. Mr. Simelton is not  
21 an attorney. There has been no basis that he  
22 understands exactly what the difference is  
23 between a Section 5 litigation and what happened

1 in the redistricting case.

2 MR. MAZE: He has testified that the  
3 redistricting case is part of the reason he  
4 believes --

5 MR. ROSS: He did not testify to that,  
6 because I never asked him that question.

7 MR. MAZE: The record will reflect what it  
8 does.

9 Q. Let's go into something else that you  
10 pointed out as being proof of discriminatory  
11 purpose. Let's talk about PIP, the personal poll  
12 worker's ability to identify a person. Has the  
13 Alabama NAACP done any studies that show the  
14 percentage of poll workers who are  
15 African-American in Alabama?

16 MR. ROSS: Objection.

17 A. No.

18 Q. Then how do you know that the percentage of  
19 poll workers in Alabama are not reflective of  
20 African-Americans overall?

21 A. When we go out and do poll-watching, we see  
22 who is in the polls.

23 Q. So do you keep studies or records or

1 statistics to show?

2 A. No. Just -- you know, just kind of ask the  
3 workers -- I mean, the people who go and visit  
4 the polls, you know, how many African-American  
5 worked this poll, how many, you know, worked that  
6 poll.

7 Q. Now, when you were testifying with me and  
8 with Mr. Ross, you said that -- well, strike  
9 that. You told Mr. Ross that you believed it was  
10 possible that poll workers have a sort of desire  
11 or discriminatory purpose in the way that they  
12 identify people. Is that correct?

13 MR. ROSS: Objection.

14 A. I don't think it was quite like you're  
15 putting it there.

16 Q. Explain to me what you meant by the fact  
17 that Mr. Wahl was turned away, that that proved  
18 some sort of discriminatory intent or purpose.

19 MR. ROSS: Objection.

20 A. Well, what I was trying to say and may not  
21 have been very clear in it, is that the majority  
22 of the poll workers are whites.

23 Q. Okay.



1       A.       Therefore, if an African-American comes to  
2       that poll, there is an increased chance that he  
3       or she will not be identified by the poll  
4       workers, or that the poll workers will just deny  
5       that they know the person in order to keep them  
6       from being able to vote. And I used the case of  
7       Mr. Wahl as an example where the poll workers  
8       knew him, and they refused to sign his affidavit  
9       for him to vote.

10      Q.       You're not aware that Mr. Wahl is white,  
11      are you?

12             MR. ROSS: Objection.

13      A.       Well, as I said earlier, I don't know what  
14      Mr. Wahl -- he and I talked. We didn't get into  
15      race.

16      Q.       Here is our confusion. We don't understand  
17      how Mr. Wahl's experience proves discriminatory  
18      intent of poll workers towards African-Americans  
19      when your one example is a white voter who was  
20      turned away.

21             MR. ROSS: Objection. The transcript will  
22      read as it reads, but Mr. Simelton was discussing  
23      the experience of voters going to the poll. He

1 wasn't discussing discriminatory purpose on  
2 behalf of the poll workers.

3 Q. Do you believe the poll workers have a  
4 discriminatory intent or purpose when they are  
5 allowing or not allowing someone under the  
6 positively identify provision?

7 MR. ROSS: Objection.

8 A. I just can't see they have a discriminatory  
9 intent. I would say that there's some that do  
10 and some that perhaps do not.

11 Q. But you have no other examples of  
12 discriminatory intent or purpose on behalf of a  
13 poll worker, other than Mr. Wahl?

14 MR. ROSS: Objection.

15 A. Now, I want to make it clear how I'm using  
16 Mr. Wahl. I didn't say they discriminated,  
17 anyone did or did not discriminate against Mr.  
18 Wahl. I used that as an example of how a poll  
19 worker can say, "Well, I don't know this person,"  
20 and get away with that. You know, whether Mr.  
21 Wahl is white, black, or blue, I don't know,  
22 until you just told me. So I'm just saying,  
23 there's no check there to prevent that poll

1 worker from denying that person the right to  
2 vote, because they just don't want him or her to  
3 vote because they're white.

4 Q. And my question is, what is the basis of  
5 your belief that that check, that lack of a check  
6 disproportionately affects African-American  
7 voters, as opposed to white voters?

8 MR. ROSS: Objection.

9 A. Because there are a disproportionate number  
10 of African-American poll workers.

11 Q. More or less African-American poll workers  
12 compared to the populous?

13 A. Less African-American poll workers.

14 Q. You stated during your testimony with Mr.  
15 Ross that it would be acceptable to you if a  
16 person was allowed to sign an affidavit that  
17 said, "I am Benard Simelton," correct?

18 A. Yes.

19 Q. Would it be okay for you to say that "I  
20 swear" -- that that affidavit say, "I swear I am  
21 Benard Simelton, and I do so under penalty of  
22 perjury"?

23 A. Yes. When you register to vote, you

1      essentially do the same thing.

2      Q.      So you have no problem with the fact that  
3      when you swear who you are in person to vote,  
4      that you could be subject to some sort of penalty  
5      if you're lying?

6              MR. ROSS:    Objection.

7      A.      I mean, the problem I have with that is as  
8      long as it's done fairly, and people understand  
9      what they're saying, because sometimes an  
10     uneducated person will read that and say -- it  
11     frightens them.

12     Q.      Sure.

13     A.      Not that they have done anything wrong, but  
14     because just sometimes people don't understand.

15     Q.      But if it's properly explained to them, and  
16     someone comes in and says, "I swear that I'm  
17     Benard Simelton, and I understand that I could  
18     get in trouble if I'm lying about that," that,  
19     you would be okay with?

20              MR. ROSS:    Objection.

21     A.      Right.

22     Q.      Let's talk about Selma.    You were not  
23     present for what I've labeled protest.    Whether

1     it was or wasn't is beside the point. Were you  
2     present when Mr. Ross and Ms. Eiffles were  
3     talking to Secretary of State Merrill outside of  
4     the church?

5     A.     No, I was not there.

6     Q.     How do you know what your legal expert is  
7     going to say in this case?

8           MR. ROSS: Objection.

9     Q.     You told Mr. Ross that you knew what the  
10    subject was going to be.

11           MR. ROSS: I'm going to object to the  
12    extent that it requires conversation, any kind of  
13    conversations or communications you've had with  
14    your attorney.

15           MR. MAZE: Well, that's sort of my  
16    question. You broached the subject and raised it  
17    to have him say this is going to be the subject,  
18    but the only way he could have known that is from  
19    you telling him.

20           MR. ROSS: And we have provided to  
21    defendants months ago the subjects of our expert  
22    reports, and we have already produced to you  
23    several of the expert reports. So the fact that

1 our client knows that we've had communications  
2 with the defendants about expert reports is not  
3 privileged and that's what we've revealed. We  
4 have not revealed any privileged information.

5 MR. MAZE: Okay. If that's the case, then  
6 I'll move on.

7 Q. You were talking about the website,  
8 Secretary of State website not having Spanish,  
9 correct?

10 A. Yes.

11 Q. Did you know that the Secretary of State's  
12 website offers in-home visits of the mobile ID  
13 unit?

14 A. No, I did not.

15 Q. Now that you do know that, would you be  
16 willing to post a link to that on the Alabama  
17 NAACP web site so that persons can go to your  
18 website and ask for in-home visits?

19 A. Yes.

20 Q. So the answer is "yes"?

21 A. Yes. We could link that post, that's no  
22 problem.

23 MR. MAZE: That's all. Thank you, sir.

1 While we're still on the record, we brought a  
2 check for your witness fee. That is for you, and  
3 we just want to make sure that you sign it.

4 THE WITNESS: Is this reportable to the  
5 IRS?

6 MR. MAZE: I am not your counsel. I am not  
7 going on the record to say what tax consequences  
8 it has. We just need you to sign that to show  
9 that you received that today.

10 THE WITNESS: Sign where? Oh, right here?

11 MR. MAZE: Right there.

12 MR. ROSS: Before we finish, I have just a  
13 few more questions for you, Mr. Simelton, on the  
14 record.

15

16 RE-EXAMINATION BY MR. ROSS:

17 Q. Mr. Maze was asking you about the Secretary  
18 of State's efforts to, in his words, adequately  
19 inform voters about the photo ID requirement.  
20 Again, you talked earlier about a list of voters  
21 who don't have photo ID that the Secretary of  
22 State created?

23 A. Uh-huh.

1 Q. Would one way to have informed voters about  
2 the photo ID requirement have been to contact the  
3 voters on that list?

4 A. Right, exactly. That's what I testified  
5 to.

6 Q. Do you know whether the Secretary of State  
7 ever did that?

8 MR. MAZE: Object to form.

9 A. No, I do not.

10 MR. MAZE: And object to scope.

11 Q. There was a question about a \$5,000 grant  
12 that was given to the Alabama NAACP by the  
13 national NAACP; is that right?

14 A. Yes.

15 Q. And your testimony earlier was that some of  
16 that money was spent on educating voters about  
17 the photo ID law; is that right?

18 A. Right.

19 Q. If there had been no photo ID law in  
20 Alabama, would that money have been spent on  
21 other projects?

22 MR. MAZE: Object to form.

23 A. Yes.



1 Q. And Mr. Maze was asking you about  
2 pre-clearance of the 2012 redistricting plan  
3 earlier. Do you remember that?

4 A. Yes.

5 Q. You've testified several times that you're  
6 not a lawyer; is that right?

7 A. Yes. I'm not.

8 Q. And are you familiar with -- I believe you  
9 testified earlier that you're not intimately  
10 familiar with the details of that litigation  
11 around redistricting; is that right?

12 A. Well, I'm familiar with it in terms of what  
13 I've read about the case.

14 Q. But I believe there was a nearly 200-page  
15 opinion in that case, maybe longer. Have you  
16 read that opinion?

17 A. No.

18 Q. But you're familiar with general news  
19 reports; is that right?

20 A. Right, exactly.

21 Q. So to the extent you were testifying about  
22 it earlier, that's based on your understanding as  
23 a layperson in reading news reports; is that

1 right?

2 A. Right.

3 Q. Going back to Mr. Wahl and the photo ID,  
4 his experience with the positively identify  
5 provision, was your testimony there -- well,  
6 strike that.

7 MR. ROSS: I think I'm done.

8 MR. MAZE: We are, too.

9 (Whereupon, at this time, the deposition  
10 was concluded at 3:00 p.m.)

11 FURTHER DEPONENT SAITH NOT.

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1 C E R T I F I C A T E

2

3 STATE OF ALABAMA)

4 JEFFERSON COUNTY)

5

6 I hereby certify that the above and  
7 foregoing deposition was taken down by me in  
8 stenotype and the questions and answers thereto  
9 were reduced to typewriting under my supervision  
10 and that the foregoing represents a true and  
11 correct record of the testimony/evidence given by  
12 the deponent.

13 I further certify that I am neither of  
14 counsel nor of kin to any of the parties to the  
15 action, nor am I in anywise interested in the  
16 results of said cause.

17

18

19 /s/Donna L. Winters

20 Donna L. Winters, Commissioner

21 ACCR Certificate Number: AL-373

22 Commissioner for State of Alabama

23 Notary commission expires: 10-22-2017

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF ALABAMA 3 SOUTHERN DIVISION 4 Civil Action Number 2:15-cv-02193-LSC 5 6 GREATER BIRMINGHAM 7 MINISTRIES, et al., 8 PLAINTIFFS, 9 VS. 10 STATE OF ALABAMA, 11 et al., 12 DEFENDANTS. 13 14 15 16 17 18 19 20 21 DEPOSITION OF SCOTT DOUGLAS, III 22 TUESDAY, MARCH 31, 2016 23 JOB NUMBER 208282</p>	<p>1 IT IS FURTHER STIPULATED AND AGREED that 2 the signature to and the reading of the 3 deposition by the witness is waived, the 4 deposition to have the same force and effect as 5 if full compliance had been had with all laws and 6 rules of Court relating to the taking of 7 depositions. 8 IT IS FURTHER STIPULATED AND AGREED that it 9 shall not be necessary for any objections to be 10 made by counsel as to any questions, except as to 11 form or leading questions, and that counsel for 12 the parties may make objections and assign 13 grounds at the time of the trial, or at the time 14 said deposition is offered in evidence or prior 15 thereto. 16 IT IS FURTHER STIPULATED AND AGREED that 17 notice of filing of this deposition by the 18 Commissioner is waived. 19 In accordance with Rule 5(d) of Alabama Rules of 20 Civil Procedure, as amended, effective May 15, 21 1988, I, Donna Winters, am hereby delivering to 22 James W. Davis, Esquire, the original transcript 23 of the oral testimony taken on the 31st day of</p>
<p style="text-align: right;">Page 2</p> <p>1 S T I P U L A T I O N 2 IT IS STIPULATED AND AGREED by and between 3 the parties through their respective counsel, 4 that the deposition of SCOTT DOUGLAS, III may be 5 taken before Donna Winters, Commissioner and 6 Notary Public, State of Alabama at Large, at the 7 law offices of Wiggins, Childs, Quinn &amp; Pantazis, 8 The Kress Building, 301 Nineteenth Street North, 9 Birmingham, Alabama 35203, on the 31st day of 10 March, 2016 commencing at 8:00 a.m. 11 DEPOSITION OF SCOTT DOUGLAS, III 12 13 14 15 16 17 18 19 20 21 22 23</p>	<p style="text-align: right;">Page 4</p> <p>1 March, 2016, along with exhibits. 2 Please be advised that this is the same and 3 not retained by the Court Reporter, nor filed 4 with the Court. 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>

<p style="text-align: right;">Page 5</p> <p style="text-align: center;">E X H I B I T S</p> <p>EXHIBIT PG DESCRIPTION</p> <p>DX-1 21 List of people with no photo ID</p> <p>DX-2 25 Redacted, Bates GBM 0003164</p> <p>DX-3 25 Redacted, Bates GBM 0003162</p> <p>DX-4 26 Redacted, Bates GBM 0003159</p> <p>DX-5 27 Plaintiffs' Initial Disclosures Under</p> <p>FRCP Rule 26(a)(1)</p> <p>DX-6 68 Scott Douglas Expert Biography and</p> <p>Organization Profile</p> <p>DX-7 77 3-29-2016 e-mail and Voting Rights &amp;</p> <p>Voter Suppression Rites - A Timeline</p> <p>DX-8 98 So Be It - A Testimony from GBM's Moral</p> <p>Revival article</p> <p>DX-9 199 GBM Responds to the Voting Rights Act</p> <p>Decision article</p>	<p style="text-align: right;">Page 7</p> <p>I, Donna Winters, a Court Reporter of</p> <p>Birmingham, Alabama, acting as Commissioner, and</p> <p>a Notary Public for the State of Alabama at</p> <p>Large, certify that on this date, as provided by</p> <p>Rule 30 of the Alabama Rules of Civil Procedure,</p> <p>and the foregoing stipulation of counsel, there</p> <p>came before me, SCOTT DOUGLAS, III, witness in</p> <p>the above cause, for oral examination, whereupon</p> <p>the following proceedings were had:</p> <p style="text-align: center;">SCOTT DOUGLAS, III,</p> <p>having been first duly sworn, was examined</p> <p>and testified as follows:</p> <p style="text-align: center;">COURT REPORTER: Usual stipulations?</p> <p style="text-align: center;">MR. DAVIS: Yes.</p> <p style="text-align: center;">MR. ROSS: Yes.</p> <p>EXAMINATION BY MR. DAVIS:</p> <p>Q. Good morning, Mr. Douglas.</p> <p>A. Good morning.</p>
<p style="text-align: right;">Page 6</p> <p style="text-align: center;">I N D E X</p> <p>EXAMINATION BY: PAGE NUMBER</p> <p>Mr. Davis               7 - 111</p> <p>                              183 - 200</p> <p>Mr. Ross               111 - 182</p> <p>                              200 - 205</p> <p style="text-align: center;">A P P E A R A N C E S:</p> <p>MR. DEUEL ROSS and MS. NATASHA C. MERLE (by</p> <p>telephone), Attorneys at Law, 40 Rector Street,</p> <p>5th Floor, New York, NY 10006-1738, appearing for</p> <p>the Plaintiffs.</p> <p>OFFICE OF THE ATTORNEY GENERAL, State of</p> <p>Alabama, by Mr. James W. Davis, 501 Washington</p> <p>Avenue, Montgomery, Alabama 36130, appearing for</p> <p>the Defendants.</p>	<p style="text-align: right;">Page 8</p> <p>Q. Would you state your name for the record,</p> <p>please?</p> <p>A. Scott Douglas, III.</p> <p>Q. What do you do for a living, Mr. Douglas?</p> <p>A. I'm executive director of Greater</p> <p>Birmingham Ministries.</p> <p>Q. We met earlier. My name is Jim Davis. I</p> <p>represent Secretary of State John Merrill in a</p> <p>lawsuit filed by Greater Birmingham Ministries</p> <p>and others concerning Alabama's photo ID law.</p> <p>Are you aware of that litigation?</p> <p>A. Yes.</p> <p>Q. Are you familiar with that litigation?</p> <p>A. Yes.</p> <p>Q. And are you familiar, roughly, with the</p> <p>photo ID law?</p> <p>A. Yes.</p> <p>Q. Have you ever given a deposition before?</p> <p>A. No.</p> <p>Q. I've got some questions about the lawsuit</p> <p>that Greater Birmingham Ministries has filed. I</p> <p>would like to understand your position a little</p> <p>better, as the executive director, although</p>

<p style="text-align: right;">Page 9</p> <p>1 you're noticed individually here today. If you  2 don't understand my questions, please let me  3 know. I'll try to ask a better way. If you need  4 a break, just say so.  5 A. Sure.  6 Q. Do you believe that the photo ID law is  7 discriminatory?  8 A. Yes.  9 Q. Tell me why.  10 A. I believe that the photo ID law is  11 discriminatory because it places additional  12 burdens of access and financial burdens on the  13 people we try to serve, which is low income  14 people, African-American low income people  15 mainly, but not exclusively. It makes it more  16 difficult to obtain the proper documentation to  17 get the photo ID, and also the finances.  18 Q. We'll talk about it more as we go along  19 today. So it places additional burdens on  20 voting; is that correct?  21 A. Yes.  22 Q. And one of those burdens is financial, you  23 say?</p>	<p style="text-align: right;">Page 11</p> <p>1 might not like the way those people would vote?  2 A. Yes.  3 Q. What leads you to think that that was their  4 purpose?  5 A. Not simultaneously, but in the same  6 session, a lot of the same legislators passed two  7 bills. One was the photo ID law, and the other  8 one was -- two discriminatory bills -- was HB 56,  9 the anti-immigrant law, that places a burden on  10 the immigrant population here in Alabama. So I  11 think the photo ID law was passed to increase  12 barriers to African-Americans voting in the state  13 of Alabama, and the HB 56 was passed to prevent  14 the growth of a Latino vote in the state of  15 Alabama.  16 Q. Is there any reason, other than the fact  17 that HB 56 was passed in the same session, that  18 you think the photo ID law was passed for this  19 discriminatory purpose?  20 A. Some of the -- yes.  21 Q. What other reasons are there?  22 A. Some of the leaders in passing both of  23 those bills had -- before, in 2011 and 2010, were</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Yes.  2 Q. What financial burdens do you understand  3 are involved in having a photo ID or obtaining  4 one?  5 A. One that's fundamental is transportation,  6 owning a car, being able to make an additional  7 trip. Originally, the cost of it, of a driver's  8 license; the expense of going to the DMV and  9 getting back, in families in which the only car  10 is gone all day, for the ones who work.  11 Q. Do you believe that the photo ID law was  12 passed with a discriminatory purpose?  13 A. I believe the law was passed for the  14 purpose of increasing the power of those who  15 passed it.  16 Q. Okay. Why do you think that?  17 A. Because the photo ID law has a  18 disproportionate impact on people of color, low  19 income people and rural people, especially rural  20 African-Americans, as well as urban.  21 Q. So let me see if I understand you right.  22 Do you think that the legislature passed the law  23 to keep some people from voting because they</p>	<p style="text-align: right;">Page 12</p> <p>1 taped making discriminatory comments, negative  2 comments, hurtful comments about African-American  3 voters, and the issue at that time was whether or  4 not a gambling amendment should be on the ballot.  5 Q. That was one legislator who made those  6 comments?  7 A. More than one.  8 Q. Really? Okay.  9 A. The Aborigine one was Scott Beason, but  10 others were there too.  11 Q. They were there?  12 A. Yes.  13 Q. But they didn't say it, did they?  14 MR. ROSS: Objection.  15 Q. Do you know?  16 A. I don't know. I read press reports about  17 Beason.  18 Q. What about the other members of the  19 legislature? Why do you think that they had a  20 discriminatory purpose, if you do?  21 A. The same purpose, is to suppress the black  22 vote in Alabama.  23 Q. What makes you think that the legislature</p>

<p style="text-align: right;">Page 13</p> <p>1 knew that if they passed the photo ID law, that</p> <p>2 it would impact African-American voters?</p> <p>3 MR. ROSS: Objection.</p> <p>4 Q. Do you understand my question?</p> <p>5 A. I don't know what's in their head.</p> <p>6 Q. Okay. Do you have any reason to believe</p> <p>7 that the legislature knew that African-American</p> <p>8 voters were less likely to have a photo ID?</p> <p>9 MR. ROSS: Objection.</p> <p>10 A. State that again.</p> <p>11 Q. Sure. Let's go back to 2011 when the</p> <p>12 legislature was considering the photo ID law and</p> <p>13 voting law. Do you have any reason to believe</p> <p>14 that at that time legislators believed that if</p> <p>15 they passed the photo ID law, it would impact</p> <p>16 African-American voters differently than it</p> <p>17 impacted white voters?</p> <p>18 MR. ROSS: Objection.</p> <p>19 A. Not a single African-American legislator</p> <p>20 voted for that bill. That should tell them</p> <p>21 something. There was a very short -- I knew of</p> <p>22 no public hearings before, for the public to come</p> <p>23 and testify "Would this have an impact on you?"</p>	<p style="text-align: right;">Page 15</p> <p>1 legislature?</p> <p>2 A. Part of our coalition in Alabama advocates</p> <p>3 for change in the legislature. Yes, we do. We</p> <p>4 have given testimony at hearings. We've provided</p> <p>5 testimony for people on welfare on the impact of</p> <p>6 the welfare reform law, those kinds of things.</p> <p>7 Q. Those are some examples. Can you give me</p> <p>8 any other examples of things that you go to the</p> <p>9 legislature and say, "This is how we would like</p> <p>10 to see the law changed"?</p> <p>11 A. Yes. Housing trust fund, we supported a</p> <p>12 mortgage deed tax on every house sale. A small</p> <p>13 portion will go towards establishing a fund to</p> <p>14 support affordable housing in the state of</p> <p>15 Alabama. We have supported proposals for --</p> <p>16 Alabama does not allow for any state funding for</p> <p>17 public transportation, it's all local events, and</p> <p>18 to have a tire tax to help pay for public</p> <p>19 transportation statewide. Those are a couple of</p> <p>20 them, you know.</p> <p>21 Q. Were either of those passed by the</p> <p>22 legislature?</p> <p>23 A. No.</p>
<p style="text-align: right;">Page 14</p> <p>1 Nothing like that happened.</p> <p>2 Q. Okay. Are you aware of any information</p> <p>3 that the legislature had in 2011 about who had</p> <p>4 IDs and who did not?</p> <p>5 MR. ROSS: Objection.</p> <p>6 A. No.</p> <p>7 Q. Let's talk about Greater Birmingham</p> <p>8 Ministries for a second. And I talked with</p> <p>9 Ms. Bender yesterday, and she helped me</p> <p>10 understand a little bit about Greater Birmingham</p> <p>11 Ministries' missions, but I would like your view</p> <p>12 on it as well. What do you consider to be the</p> <p>13 purposes and goals of Greater Birmingham</p> <p>14 Ministries?</p> <p>15 A. Well, simply put, we're 48 years old, and</p> <p>16 we work to serve people in immediate need. We</p> <p>17 work to build interfaith and multi-racial</p> <p>18 dialogue to establish common humanity, common</p> <p>19 purpose; and we also work to address policies</p> <p>20 that affect the poor unjustly, or policies or</p> <p>21 systems. Housing is a system, public education</p> <p>22 is a system, transportation is a system.</p> <p>23 Q. Do you advocate for change in the</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Still trying?</p> <p>2 A. Still trying, still need transportation.</p> <p>3 Q. Who do you consider to be Greater</p> <p>4 Birmingham Ministries' constituents?</p> <p>5 A. Constituents are those that are primarily</p> <p>6 in the metropolitan Birmingham area who have low</p> <p>7 income; African-American, White, Latino, and</p> <p>8 others who have to struggle to make ends meet,</p> <p>9 and struggle in their daily lives to access, as</p> <p>10 we call it, the bread and the roses, the</p> <p>11 necessities and amenities of a full and wholesome</p> <p>12 life.</p> <p>13 Q. And if people have needs, they can bring</p> <p>14 them to Greater Birmingham Ministries?</p> <p>15 A. Yes.</p> <p>16 Q. What type of needs is Greater Birmingham</p> <p>17 Ministries set up to address?</p> <p>18 A. Sure. On an ongoing basis, it's hunger.</p> <p>19 Weekly we see over fifty families to help them</p> <p>20 qualify, to help them with our food pantry. We</p> <p>21 provide free clothing, new and used; and to the</p> <p>22 degree we can, we pay utility bills to prevent</p> <p>23 utility cut-offs. Primarily they're low income</p>



<p style="text-align: right;">Page 17</p> <p>1 families or elderly people on a fixed income.  2 Q. Where do your funds come from?  3 A. Our funds come from three sources;  4 foundations, congregations, and individuals.  5 Q. How long have you been executive director  6 of Greater Birmingham Ministries?  7 A. 23 years.  8 Q. Was that your first position with Greater  9 Birmingham Ministries?  10 A. That's my first staff position with GBM,  11 yes.  12 Q. Did you have another kind of position  13 before you became executive director?  14 A. Yes. Two -- well, three. I was on the  15 board eight years before I was the director. I  16 was a volunteer before I was on the board, and I  17 was a client when I first came to Birmingham.  18 Q. You were a what?  19 A. A client.  20 Q. I see.  21 A. We had a two-year-old, and I was  22 unemployed. My wife was in graduate school at  23 UAB, and she was going to need some clothes.</p>	<p style="text-align: right;">Page 19</p> <p>1 foundation that was started by supporters of  2 Robert Kennedy after he was assassinated who  3 wanted to kind of fulfill his legacy of concern  4 for poor people across the country, and so it was  5 established by primarily his donors. That was  6 long before I got there, but yes. And they  7 provided grants to low income groups trying to  8 improve their communities across the country.  9 Q. Partnership for Democracy largely existed  10 to address the needs of the poor, is that fair?  11 A. Yes, particularly to organize the poor, for  12 the poor to organize themselves to address their  13 needs.  14 Q. And what did you do before you worked for  15 Partnership for Democracy?  16 A. Before the Partnership for Democracy, I  17 worked for a group called the Southern Organizing  18 Committee for Economic and Social Justice.  19 Q. What did you do for them?  20 A. I was their executive director.  21 Q. And what is that organization's purpose, or  22 was it when you were there?  23 A. It was a South-wide network of community</p>
<p style="text-align: right;">Page 18</p> <p>1 Someone told me there was a place called Greater  2 Birmingham Ministries, and we got some clothes  3 for her and our son.  4 Q. What did you do for a living before you  5 became executive director?  6 A. Immediately before, I was an organizer for  7 Sierra Club in Alabama.  8 Q. What does the Sierra Club do?  9 A. It is a national environmental group,  10 conservancy and environmental justice group that  11 in Alabama is interested in preserving Alabama's  12 natural assets and also the public's access to  13 natural assets.  14 Q. And what did you do before you were an  15 organizer for the Sierra Club?  16 A. I was a foundation program officer for a  17 foundation known as the Partnership for  18 Democracy. It was based in Washington, D.C., but  19 I was a field officer for the Southeast region --  20 the deep South region, and I worked out of my  21 home. That was for three years.  22 Q. What is Partnership for Democracy?  23 A. It no longer exists, but it was a national</p>	<p style="text-align: right;">Page 20</p> <p>1 organizations and individual leaders working to  2 address issues of poverty, racism, and injustice  3 in the South.  4 Q. How long have you lived in the Birmingham  5 area?  6 A. Since 1976.  7 Q. Where did you grow up?  8 A. Nashville, Tennessee.  9 Q. And what brought you to the Birmingham  10 area?  11 A. I worked for an aircraft facility company  12 that made airplane wings. I was an aircraft  13 assembler, and I was laid off for a while. My  14 wife had worked as a cashier at Sears and decided  15 that wasn't her lifetime ambition, so she applied  16 to change careers to become a teacher. And she  17 applied to several schools, and UAB gave her a  18 scholarship. I was unemployed, so my skills were  19 transportable, so we came here in '76, and she  20 became a teacher. Now she's retired.  21 Q. Where did she teach?  22 A. Kindergarten.  23 Q. What schools?</p>



<p style="text-align: right;">Page 21</p> <p>1 A. Primarily Eureka Kindergarten and Charles 2 Brown Elementary, just two. 3 Q. Do you have children? 4 A. One son, Fred. 5 Q. Where does he live? 6 A. He lives in Nashville, Tennessee now. 7 Q. Grandkids? 8 A. No grandkids. 9 Q. We were provided some documents that I 10 think you might be able to tell me generally what 11 they are. Let's mark this as Exhibit Number 1. 12 (Whereupon, Defendants' Exhibit Number 1 13 was marked for identification, a copy of which is 14 attached to the original of the transcript.) 15 Q. Do you recognize this document, 16 Mr. Douglas? 17 A. Yes. 18 Q. What can you tell me about it? 19 A. These were individuals that our staff 20 identified in the interview process in giving 21 them services, identified as having no valid 22 photo ID. 23 Q. Is there anything on this document that</p>	<p style="text-align: right;">Page 23</p> <p>1 try to keep a record of everyone who contacts 2 them for one need or another, a record of this 3 sort? 4 A. The records that we keep are those that we 5 were able to, one, speak to in person and/or 6 assist. The list of those who contact us and we 7 can't help them, we don't keep. 8 Q. Is this a list that was created for the 9 purpose of addressing the photo ID law, or is 10 this something Greater Birmingham Ministries does 11 anyway? 12 A. This is something Greater Birmingham 13 Ministries does anyway. 14 Q. Did you speak to any of these folks? 15 A. No, I did not. 16 Q. Does this chart tell me who did? 17 A. No, it does not. 18 Q. How would I find out, for example, who 19 spoke to Harrietta Smith? Is there a way? 20 A. Not that I know of. We have several staff, 21 four, who interview people about what they need. 22 Q. Do you know their names, those four staff 23 members who interview folks?</p>
<p style="text-align: right;">Page 22</p> <p>1 tells me that they don't have an ID? 2 A. On this first page? 3 Q. Yes. 4 A. No, these are just individuals. 5 Q. Oh, I see. The table goes all the way 6 across to the other pages, right? 7 A. That's right. It's a printer thing. 8 Q. These are long rows that were broken up 9 over several pages? 10 A. Yes. I'm sorry. 11 Q. So, for example, this first person, 12 Harrietta Smith, she's someone who contacted 13 Greater Birmingham Ministries for one purpose or 14 another, and Greater Birmingham Ministries 15 identified her as not having a photo ID; is that 16 correct? 17 A. Correct. 18 Q. So did Greater Birmingham Ministries decide 19 to keep a separate list of people they ran across 20 without a photo ID? 21 A. It's not a separate list. It's inside the 22 database. 23 Q. Okay. Does Greater Birmingham Ministries</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Yes. 2 Q. Who are they? 3 A. Sarah Price, Mary Jones, Tari Williams. 4 Q. How do you spell that? 5 A. T-A-R-I. 6 Q. Tari Williams. And the fourth? 7 A. Lexi Ambrose, L-E-X-I. Oh, I'm sorry, Lexi 8 is not staff, she's a volunteer. She volunteers 9 every week. 10 Q. So Harrietta Smith would have come to 11 Greater Birmingham Ministries because she had 12 some need she was hoping Greater Birmingham 13 Ministries would meet, and one of the four people 14 you listed would have interviewed her to find out 15 what the needs were? 16 A. Correct. 17 Q. And in the course of that interview, it 18 came up that Ms. Smith did not have a photo ID? 19 A. Correct. 20 Q. To the best of your knowledge -- strike 21 that. Let's look at this one. I'm going to mark 22 the document as Exhibit 2. 23 (Whereupon, Defendants' Exhibit Number 2</p>

<p style="text-align: right;">Page 25</p> <p>1 was marked for identification, a copy of which is                  2 attached to the original of the transcript.)                  3 MR. ROSS: Jim, I think there are four                  4 copies of each one. These are different                  5 documents. So this Exhibit 2, these are the                  6 copies of Exhibit 2. Does that make sense?                  7 MR. DAVIS: Oh, yes. You mean these are                  8 all the same thing?                  9 MR. ROSS: Yes. Those two that I just                  10 handed you are all the same thing, yes. Does                  11 that make sense? If you look at the Bates                  12 number.                  13 MR. DAVIS: Oh, yes, I do see the Bates                  14 number. I missed that.                  15 MR. ROSS: So there are four pages, three                  16 pages with "redacted" on it, and there are four                  17 copies each in what we gave you.                  18 MR. DAVIS: That's okay. I'm sorry, may I                  19 see this, Mr. Douglas?                  20 THE WITNESS: Yes.                  21 MR. DAVIS: Exhibit 2 is Bates number 3164,                  22 and let's mark 3162 as Exhibit 3.                  23 (Whereupon, Defendants' Exhibit Number 3</p>	<p style="text-align: right;">Page 27</p> <p>1 have come to Greater Birmingham Ministries in                  2 this fashion, who have been identified as not                  3 having a photo ID?                  4 A. Yes.                  5 Q. This is all the folks that have come in                  6 this fashion that Greater Birmingham Ministries                  7 has identified as lacking a photo ID?                  8 A. Yes.                  9 Q. Can you tell me any information about these                  10 individuals that isn't included on the records                  11 that we've marked as Exhibits 1 through 4?                  12 A. No.                  13 Q. I'm going to mark a document as Exhibit 5,                  14 Mr. Douglas. These are some disclosures that the                  15 plaintiffs have filed in this case, and you were                  16 listed as a person who may have information about                  17 the lawsuit and the claims made in this lawsuit,                  18 so I want to ask about what information you have.                  19 (Whereupon, Defendants' Exhibit Number 5                  20 was marked for identification, a copy of which is                  21 attached to the original of the transcript.)                  22 Q. I'm showing you Exhibit 5, and on the third                  23 page you'll see where you're listed as having</p>
<p style="text-align: right;">Page 26</p> <p>1 was marked for identification, a copy of which is                  2 attached to the original of the transcript.)                  3 (Off-the-record discussion.)                  4 (Whereupon, Defendants' Exhibit Number 4                  5 was marked for identification, a copy of which is                  6 attached to the original of the transcript.)                  7 Q. I understand better now. These are three                  8 separate documents, and I thought they were                  9 copies of the same thing. So Exhibit 2 is Bates                  10 number 3164, Exhibit 3 is Bates number 3162, and                  11 Exhibit 4 is Bates number 3159. Mr. Douglas,                  12 what can you tell me about these documents?                  13 A. Not much.                  14 MR. DAVIS: Okay. There's a good bit                  15 that's redacted, and I'm assuming that those are                  16 probably records of people in the database who                  17 have nothing to do with the photo ID law?                  18 MR. ROSS: That's correct.                  19 Q. Do you know if this is part of the same                  20 database as the document that we marked as                  21 Exhibit 1?                  22 A. It appears to be.                  23 Q. Do you know if these are all the folks who</p>	<p style="text-align: right;">Page 28</p> <p>1 information about certain subjects. It's in                  2 paragraph 1. Are you ready to discuss it?                  3 A. Yes.                  4 Q. So you're listed as a person who may have                  5 information about the manner in which Alabama's                  6 photo ID law denies or abridges the right to vote                  7 in violation of the Voting Rights Act. Do you                  8 have information about the manner in which the                  9 photo ID law denies or abridges the right to                  10 vote?                  11 A. Yes.                  12 Q. What information do you have about that?                  13 A. The analysis of the folks who study voting                  14 rights law.                  15 MR. ROSS: Objection. Let me instruct my                  16 client not to answer to the extent it requires                  17 anything that you've discussed with your                  18 attorneys.                  19 MR. DAVIS: Well, something discussed with                  20 a lawyer is admissible.                  21 MR. ROSS: I know. Let me clarify.                  22 Anything that's involving legal advice that your                  23 attorneys have given you about, for example, what</p>

<p style="text-align: right;">Page 29</p> <p>1 does violate the Voting Rights Act. So to the  2 extent that you know personally, based on your  3 own personal experience and not conversations  4 you've had with your attorneys that particularly  5 relate to this litigation, you can answer.  6 Q. Let me limit it to get some of the legalese  7 out of it. What information do you have about  8 how, in your opinion, the photo ID law denies or  9 abridges the right to vote?  10 A. Oh, that question.  11 MR. ROSS: You can answer, again, to the  12 extent it doesn't require you to divulge  13 attorney-client privilege.  14 A. In my opinion, in my experience, this law  15 increases the barriers to people obtaining the  16 documentation to vote discriminates, because it's  17 a discriminatory barrier based on the income you  18 have, whether you have access to a car all the  19 time, transportation in a state that has very low  20 public transportation facilities. If you don't  21 have a car, you can't get around to do things.  22 It just makes it hard to achieve something that a  23 lot of people take for granted because they have</p>	<p style="text-align: right;">Page 31</p> <p>1 tell me "My vote doesn't count." And when the  2 state apparatus comes out in ways that makes it  3 harder for them to even register to vote, it adds  4 fuel to that. "Not only that my vote doesn't  5 count, they don't want me to vote."  6 Q. Let's say there are two people who live in  7 rural Jefferson County. They're both poor,  8 neither has a car or reliable access to  9 transportation, neither has a photo ID. One of  10 them is black; one of them is white. Do they  11 face any different barrier with respect to the  12 photo ID law?  13 MR. ROSS: Objection.  14 A. Yes.  15 Q. How?  16 A. The voucher requirement that if you don't  17 have a valid ID, an alternative is to have two  18 persons at the polling table vouch for you by  19 signed affidavit. That's discriminatory, it's  20 arbitrary and capricious, based on your social  21 networks. As we know in the history of Alabama,  22 in Jefferson County, different races don't share  23 the same social networks. There's black</p>
<p style="text-align: right;">Page 30</p> <p>1 access to transportation, they have the finances  2 for transportation, they have independence of  3 mobility to go back and forth. Any barrier that  4 is increasing that. In addition is the patterns  5 of Alabama's tendency to suppress votes going  6 back, you know, fifty years and more to the  7 Constitution of 1901. But in my legal  8 experience, there have been efforts by the State  9 of Alabama to intimidate black voters, as well as  10 to accuse black voters who try to increase the --  11 African-American, increase their voter  12 participation in lawsuits, I mean with criminal  13 charges, like Perry County 3, the Greene County  14 folks.  15 Q. Okay. Any other information that you have  16 about how the photo ID law denies or abridges the  17 right to vote, in your opinion?  18 MR. ROSS: Objection. You can answer.  19 A. Other than financial burden, transportation  20 burden, no. But there's another one, too.  21 Q. What's that?  22 A. In my experience in trying to increase  23 voter participation, I've heard African-Americans</p>	<p style="text-align: right;">Page 32</p> <p>1 churches, there's white churches, black  2 neighborhoods, white neighborhoods. Precincts  3 can be mixed, so we're relying on someone behind  4 the table -- well, two people will vouch for you.  5 It's discriminatory and arbitrary. It's the luck  6 of the draw, more for African-Americans than for  7 whites.  8 Q. Why do you think it's more for  9 African-Americans than for whites?  10 A. Because of the way the -- for years in  11 Alabama, we still haven't gotten to a point --  12 now, if you're in an all-black precinct in an  13 all-black part of town, you may have black  14 registrars; but in a mixed county, you're going  15 to have more white registrars disproportionately  16 than the blacks. We go to different churches,  17 went to different schools, especially the adults,  18 the older people who are behind those tables.  19 There's not many young people behind those tables  20 at voting places.  21 Q. Does Greater Birmingham ever encourage more  22 people to volunteer to be poll workers, to work  23 at the polls?</p>

<p style="text-align: right;">Page 33</p> <p>1 A. We have from time to time, but it's not a 2 regular program of ours.</p> <p>3 Q. Do you think Greater Birmingham Ministries 4 would be willing to do that, to encourage 5 particularly more African-Americans to volunteer 6 to be poll workers?</p> <p>7 MR. ROSS: Objection.</p> <p>8 A. More, especially younger generations.</p> <p>9 Q. Do you think Greater Birmingham Ministries 10 would be willing to encourage people to volunteer 11 like that?</p> <p>12 MR. ROSS: Objection. Asked and answered. 13 Speculation. You can answer.</p> <p>14 A. Yes. We encourage more people to run for 15 office, especially to be trustworthy and 16 accountable.</p> <p>17 Q. Greater Birmingham Ministries, you said, 18 works with a lot of interfaith projects, right?</p> <p>19 A. Yes.</p> <p>20 Q. I'm curious to speak to someone who may 21 have given this some thought and have some 22 information about this. Why do you think 23 churches have particularly been slow to</p>	<p style="text-align: right;">Page 35</p> <p>1 Out of tradition, out of family traditions, out 2 of neighborhoods they're located in. That's the 3 same for my church. We've had white pastors, 4 we've never had white members.</p> <p>5 Q. Is your church more integrated than it was 6 twenty years ago?</p> <p>7 MR. ROSS: Objection.</p> <p>8 A. No.</p> <p>9 Q. No?</p> <p>10 A. My church is at 1500 Sixth Avenue North, 11 and the First United Methodist Church is two 12 blocks away. Now it's integrated, yes, First 13 United Methodist Church is.</p> <p>14 Q. Do you believe that African-American voters 15 are less likely to have a photo ID than white 16 voters?</p> <p>17 A. Yes.</p> <p>18 Q. What is your basis for that belief?</p> <p>19 A. Because the African-American voters are 20 disproportionately poor. African-American 21 potential voters disproportionately have less 22 access to a vehicle, a car. Both income and 23 transportation, transportation freedom is</p>
<p style="text-align: right;">Page 34</p> <p>1 integrate?</p> <p>2 MR. ROSS: Objection.</p> <p>3 A. My best one is that -- I guess he's still 4 alive. Mr. John Hurst Athens says "Why are there 5 still white churches and black churches?" And he 6 says it's because the white churches came out of 7 culture; the black churches came out of 8 counter-culture. Black churches post slavery 9 were formed because they were not allowed to 10 participate in the white churches. The AME 11 Church, African Methodist Episcopal Church, came 12 out of that condition in Philadelphia in the 13 1700s. They tried to pray, a black man tried to 14 pray at the altar of the white church. They 15 wouldn't let him. He went on to found the 16 African Methodist Episcopal Church.</p> <p>17 Q. Do you think that's changing somewhat in 18 the Birmingham area?</p> <p>19 MR. ROSS: Objection. You can answer.</p> <p>20 A. It is changing somewhat. United Methodist 21 Church has integrated multi-national. It's got 22 Koreans, Asians, Latinos, and you still have 23 black churches in the United Methodist Church.</p>	<p style="text-align: right;">Page 36</p> <p>1 important to access any benefit or service, 2 particularly this one.</p> <p>3 Q. So is it largely related to poverty levels?</p> <p>4 MR. ROSS: Objection.</p> <p>5 A. It's related to poverty levels, social 6 conditions, even lack of birth certificates; 7 disproportionately lack, more African-Americans.</p> <p>8 Q. Why do you say that?</p> <p>9 A. It is a declining phenomenon, but for 10 decades -- and still there are people alive who 11 were born under conditions in rural areas, born 12 at home, with the help of a midwife hopefully, 13 without access to the public health system of 14 Alabama. Especially older people, because they 15 were discriminated from participating in the 16 public health system. Even here at UAB, there 17 are people still around today who were born in 18 the basement of UAB, at the boiler room, because 19 it was segregated. You know, people my age were 20 born in those conditions. And they may have a 21 birth certificate; but in rural areas, the 22 absence of birth certificates is a big problem.</p> <p>23 Q. You would agree that there are poor</p>



<p style="text-align: right;">Page 37</p> <p>1 African-Americans in Alabama, and there are poor  2 whites in Alabama?</p> <p>3 MR. ROSS: Objection.</p> <p>4 A. Yes.</p> <p>5 Q. We've imagined two people who have the same  6 amount of money, same access to transportation,  7 one is black, one is white, and you say that  8 they're still in a different position with the  9 photo ID law because of the positively identify  10 provision?</p> <p>11 A. That's one of them.</p> <p>12 Q. How else might they be in a different  13 situation, even if they have the same amount of  14 money and the same access to transportation?</p> <p>15 A. If they have the same access to money and  16 the same access to transportation, and that's the  17 only criteria you use, there would not be a  18 difference just at the obtaining it. The  19 difference will come when they try to vote the  20 alternative way, that I told you earlier, with a  21 voucher. Same amount of money, same  22 transportation, but the voucher wouldn't work  23 equally.</p>	<p style="text-align: right;">Page 39</p> <p>1 don't have a photo ID. I just know them by first  2 name.</p> <p>3 Q. Got you. Give me one of the first names so  4 we can talk about them as an example.</p> <p>5 A. Mike.</p> <p>6 Q. Okay, Mike. So you're aware of a person  7 named Mike who is homeless?</p> <p>8 A. Yes. He's often homeless.</p> <p>9 Q. He's often homeless?</p> <p>10 A. Often homeless, yes.</p> <p>11 Q. And you're aware that Mike doesn't have a  12 photo ID?</p> <p>13 A. Yes.</p> <p>14 Q. How did you come to know that Mike does not  15 have a photo ID?</p> <p>16 A. I asked him.</p> <p>17 Q. Why did you ask him?</p> <p>18 A. Because there's a church in Birmingham that  19 offers free photo IDs for homeless people.</p> <p>20 Q. I've seen that, and I don't have the  21 information off the top of my head. I've seen  22 the name of the woman who works with that  23 project. What's the name of the church?</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. And the reason you say that is because it's  2 your belief that poll workers are less likely to  3 know African-American voters?</p> <p>4 A. White poll workers are less likely to know  5 black voters.</p> <p>6 Q. Are black poll workers less likely to know  7 white voters?</p> <p>8 MR. ROSS: Objection.</p> <p>9 A. That's interesting. In the culture of race  10 and society in Alabama, black folks know a lot  11 about white folks, who they are, where they come  12 from; and the history of it, because they worked  13 in white folks' homes. They know their children;  14 they cooked their meals. I don't know the  15 history of many cases of white people being maids  16 to black people, and knowing their family  17 histories and their relationships.</p> <p>18 Q. Do you know any people who do not have a  19 photo ID?</p> <p>20 A. Yes.</p> <p>21 Q. Who?</p> <p>22 A. I can't give you a whole list, but I know  23 some homeless people who have come by our place</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Highlands United Methodist Church, Five  2 Points South.</p> <p>3 Q. And what's the name of the program to help  4 people get an ID?</p> <p>5 A. Project ID.</p> <p>6 Q. Did you refer Mike to Project ID?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know if he went?</p> <p>9 A. He didn't go.</p> <p>10 Q. He did not go?</p> <p>11 A. He did not go.</p> <p>12 Q. Why not?</p> <p>13 A. In Mike's case, Mike has a mental problem.</p> <p>14 Q. I see. Have you referred other people to  15 Project ID?</p> <p>16 A. Not me personally.</p> <p>17 Q. Do you know if others at Greater Birmingham  18 Ministries have referred other people to Project  19 ID?</p> <p>20 A. Not by name, but that's one of the places.  21 This population that comes by there, it's for  22 clothing, because we serve food that generally  23 has to be prepared and cooked, so we have like</p>

<p style="text-align: right;">Page 41</p> <p>1 snack food for homeless people but meal-type                  2 things for families.                  3 Q. So this person Mike has disabilities that                  4 may not make him a typical example?                  5 A. Correct. Who I know personally.                  6 Q. Right. Yes, you answered the question that                  7 I asked. But let's say another person comes in                  8 without such disabilities and they're homeless,                  9 and someone at Greater Birmingham Ministries                  10 refers them to Project ID. Do you know anything                  11 about how Project ID helps them?                  12 A. Yes.                  13 Q. What do they do?                  14 A. Based on what I've heard, because I've                  15 never gone through the process myself, is that                  16 they will help them have -- they produce their                  17 own ID, a photo ID of that person that's not good                  18 for voting purposes but good for other purposes                  19 for identification. But they will also help, if                  20 there's a cost burden, to have the person get a                  21 valid state-issued photo ID.                  22 Q. Are you aware that you can get an ID for                  23 voting at the registrar's office?</p>	<p style="text-align: right;">Page 43</p> <p>1 license to drive people; it requires                  2 transportation that we don't have, as far as our                  3 budget impact goes. We have one vehicle, and                  4 that's only used to pick up donated goods around                  5 the city for us to give out to people.                  6 Q. Well, now you have get-out-the-vote                  7 programs, don't you?                  8 A. Yes.                  9 Q. And you give people rides to the polls?                  10 A. This is exactly what we do. We find out                  11 what churches or organizations are giving rides                  12 to the polls, where they're located in the city,                  13 and we print up fliers to tell people what number                  14 to call where you can get a ride. Other                  15 organizations do that much better than we do, so                  16 we collect information and distribute it to                  17 people who need it.                  18 Q. Well, how about directing some of that                  19 apparatus to helping people get to the                  20 registrar's office to get an ID?                  21 MR. ROSS: Objection.                  22 A. That's a great idea.                  23 Q. Do you think Greater Birmingham Ministries</p>
<p style="text-align: right;">Page 42</p> <p>1 A. Yes.                  2 Q. And you're aware that the registrar's                  3 office does not charge a fee for that ID?                  4 A. Yes.                  5 Q. Do you know if you or anyone else in                  6 Greater Birmingham Ministries has referred folks                  7 to the registrar's office?                  8 A. Yes.                  9 Q. Do you know if those people were able to                  10 get an ID?                  11 A. I heard fortunately that some were.                  12 Q. Have you heard that some were not able to                  13 get an ID?                  14 A. What I've heard is some were not able to                  15 get to the registrar's office for lack of                  16 transportation. The registrar's office is open                  17 eight hours a day, but they work during those                  18 eight hours and can't get off work.                  19 Q. Does Greater Birmingham Ministries offer                  20 rides to people to the registrar's office?                  21 A. No, we do not.                  22 Q. Why not?                  23 A. We don't have the capacity. It requires a</p>	<p style="text-align: right;">Page 44</p> <p>1 might consider such a thing?                  2 MR. ROSS: Objection.                  3 A. The way we work is that we would work with                  4 our congregations to develop a volunteer pool of                  5 people who could rotate shifts in doing that.                  6 Q. Yes. So let's say there's someone who                  7 needs a photo ID, and they say, "I don't have                  8 transportation, I can't get to the registrar's                  9 office," perhaps Greater Birmingham Ministries                  10 could help get them there?                  11 A. Perhaps we could have same-day voter                  12 registration when people show up at the polls.                  13 Q. Well, that's a different issue, isn't it?                  14 A. No.                  15 Q. Why not?                  16 A. It's the least restrictive barrier. If                  17 you're going to make voting as fully accessible                  18 as humanly possible, cut out the middleman.                  19 Q. Are you an attorney?                  20 A. No.                  21 Q. Is it your belief that the law requires the                  22 least restrictive barriers to voting?                  23 MR. ROSS: Objection.</p>

<p style="text-align: right;">Page 45</p> <p>1 A. Which law?</p> <p>2 Q. The law in general.</p> <p>3 MR. ROSS: Objection.</p> <p>4 A. We were doing just fine before 2011. I</p> <p>5 mean, there were no voting impersonation before</p> <p>6 that.</p> <p>7 Q. You brought up registration. Do you think</p> <p>8 it's discriminatory to require people to register</p> <p>9 to vote?</p> <p>10 MR. ROSS: Objection.</p> <p>11 A. No.</p> <p>12 Q. Do you think it's discriminatory to require</p> <p>13 them to register to vote in advance of the</p> <p>14 election?</p> <p>15 MR. ROSS: Objection.</p> <p>16 A. Yes.</p> <p>17 Q. Is it your personal view that requiring</p> <p>18 people to register to vote in advance of election</p> <p>19 violates civil rights laws?</p> <p>20 MR. ROSS: Objection.</p> <p>21 A. It doesn't violate civil rights law. It</p> <p>22 violates the rights of principles. All our</p> <p>23 principles aren't law yet.</p>	<p style="text-align: right;">Page 47</p> <p>1 A. Oh, I see. Documentation?</p> <p>2 Q. Yes.</p> <p>3 A. I think as long as we have registrations,</p> <p>4 right, because you could have voting without</p> <p>5 registration.</p> <p>6 Q. Yes, theoretically.</p> <p>7 A. To theorize it, yes.</p> <p>8 Q. What type of documentation, in your</p> <p>9 opinion, is it okay for the State to require?</p> <p>10 A. Age, if you're 14, until we lower the</p> <p>11 voting age.</p> <p>12 Q. Well, you said "We were doing just fine</p> <p>13 before 2011."</p> <p>14 A. Under Alabama conditions, we were.</p> <p>15 Q. What did you mean by that?</p> <p>16 A. I meant that, I think there's 14 different</p> <p>17 forms of ID. Like your lease, you had your</p> <p>18 address and your name on it; your utility bill</p> <p>19 with your address and your name on it, that</p> <p>20 that's who you are, that's where you live, that</p> <p>21 was acceptable.</p> <p>22 Q. You didn't have a problem with the old law,</p> <p>23 then?</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. Do you have a problem with the State of</p> <p>2 Alabama requiring people, when they go to vote,</p> <p>3 to prove that they are who they say they are?</p> <p>4 MR. ROSS: Objection.</p> <p>5 A. Do I have a problem who they are -- who</p> <p>6 they say they are?</p> <p>7 Q. Right. Proving their identity in some</p> <p>8 fashion.</p> <p>9 A. I have a small problem with that, but it's</p> <p>10 not a big one, for the purpose of counting.</p> <p>11 Q. I'm sorry?</p> <p>12 A. Just for the purpose of counting.</p> <p>13 Q. Of counting?</p> <p>14 A. Yes, how many people voted.</p> <p>15 Q. Do you think that I should be able to go to</p> <p>16 the polls to vote and just say, "My name is Jim</p> <p>17 Davis" and get a ballot, without having to show</p> <p>18 any type of documentation whatsoever?</p> <p>19 MR. ROSS: Objection.</p> <p>20 A. No.</p> <p>21 Q. You think it's okay to require me to show</p> <p>22 some type of documentation, to show that I really</p> <p>23 am Jim Davis?</p>	<p style="text-align: right;">Page 48</p> <p>1 A. No. No.</p> <p>2 Q. Are there folks in Alabama who don't have</p> <p>3 utilities in their name?</p> <p>4 A. There are some who don't have utilities in</p> <p>5 their name, don't have leases in their name, yes,</p> <p>6 but it's one of the things. It expanded the base</p> <p>7 of access.</p> <p>8 Q. But the old law was still okay, in your</p> <p>9 view?</p> <p>10 A. It was okay. It could be better.</p> <p>11 Q. What if there were people who didn't have</p> <p>12 any of the forms of ID under the old law, are you</p> <p>13 still okay with it?</p> <p>14 MR. ROSS: Objection.</p> <p>15 A. We should have pushed for a free voter ID</p> <p>16 for those who had none of the 14, yes.</p> <p>17 Q. It would be okay if there was a free photo</p> <p>18 ID option available?</p> <p>19 A. Or if they were homeless, we could have got</p> <p>20 them an address. I'd give them my house. You</p> <p>21 know, identify the barriers and remove the</p> <p>22 barrier.</p> <p>23 Q. Do you know anyone who was unable to vote</p>

<p style="text-align: right;">Page 49</p> <p>1 in any election since the photo ID law was passed</p> <p>2 because they did not have a photo ID?</p> <p>3 A. Not personally.</p> <p>4 Q. Are you aware of any such person?</p> <p>5 A. Yes.</p> <p>6 Q. How are you aware of any such person?</p> <p>7 A. In 2014, we did poll monitoring. It was</p> <p>8 the first election we was at.</p> <p>9 Q. Now, I talked with Ms. Bender about some of</p> <p>10 that, and she said she was interviewing folks who</p> <p>11 were coming out of the polling place, asking if</p> <p>12 they had any trouble voting. Is that what you're</p> <p>13 talking about?</p> <p>14 A. Yes.</p> <p>15 Q. Anyone else that you're aware of who has</p> <p>16 been unable to vote?</p> <p>17 A. Not personally, directly or indirectly.</p> <p>18 (Whereupon, at this time a short break</p> <p>19 was taken.)</p> <p>20 Q. Mr. Douglas, what relationship does Greater</p> <p>21 Birmingham Ministries have with the Alabama</p> <p>22 NAACP?</p> <p>23 A. We have participated in some joint</p>	<p style="text-align: right;">Page 51</p> <p>1 Birmingham; the Episcopal Diocese of Birmingham;</p> <p>2 the Sheppards and Lapsley Presbytery, a</p> <p>3 Presbyterian organization; the AME Zion District;</p> <p>4 the AME District; the CME District; the Baptist</p> <p>5 Cooperative Fellowship. Those are the -- oh, the</p> <p>6 Shades Valley Lutheran Church, these are</p> <p>7 individual churches. Shades Valley Lutheran</p> <p>8 Church, 16th Street Baptist Church, Baptist</p> <p>9 Church of the Covenant, the Unitarian</p> <p>10 Universalist Church of Birmingham. Another</p> <p>11 denomination, Disciples of Christ, the UCC, and</p> <p>12 others.</p> <p>13 Q. Got it. And there may be others, because</p> <p>14 you don't have a list in front of you?</p> <p>15 A. Oh, I've got to be inclusive, Temple</p> <p>16 Beth-El, Temple Emanu-El, and the Birmingham</p> <p>17 Islamic Society.</p> <p>18 Q. Can you think of any other -- you listed</p> <p>19 several Christian denominations and</p> <p>20 congregations, and you've listed Jewish and</p> <p>21 Islamic. Are there any other faiths that are</p> <p>22 represented as sponsors?</p> <p>23 A. The Unitarian is kind of eclectic, but I</p>
<p style="text-align: right;">Page 50</p> <p>1 activities, or something.</p> <p>2 Q. Is there any formal organizational</p> <p>3 connection?</p> <p>4 A. Oh, no, sir.</p> <p>5 Q. Does Greater Birmingham Ministries have</p> <p>6 members?</p> <p>7 A. As of 2017, we do.</p> <p>8 Q. Are your members individuals or</p> <p>9 organizations or both?</p> <p>10 A. The only organizations that are part of GBM</p> <p>11 are congregations and denominations, but they're</p> <p>12 called sponsors. Members are individuals.</p> <p>13 Q. How does one become a member?</p> <p>14 A. By making a donation and working --</p> <p>15 supporting the goals of GBM.</p> <p>16 Q. What denominations and congregations are</p> <p>17 sponsors? Well, that might be an unfair</p> <p>18 question, because it would be more than a person</p> <p>19 could remember. Can you give me a rough estimate</p> <p>20 of how many sponsors you have?</p> <p>21 A. 22.</p> <p>22 Q. Can you give me some examples?</p> <p>23 A. Sure. The Roman Catholic Diocese of</p>	<p style="text-align: right;">Page 52</p> <p>1 think I've covered it all.</p> <p>2 Q. Any others you can think of?</p> <p>3 A. No.</p> <p>4 Q. Back to the initial disclosures, you're</p> <p>5 also listed, Mr. Douglas, as a person who might</p> <p>6 have information about the resources spent in</p> <p>7 response to the photo ID law.</p> <p>8 A. Yes.</p> <p>9 Q. Can you tell me, what information do you</p> <p>10 have about resources Greater Birmingham</p> <p>11 Ministries has spent in response to the law?</p> <p>12 A. Primarily it's been time and staff, four</p> <p>13 people -- three people, myself, our community</p> <p>14 organizers in particular, as far as financial</p> <p>15 resources go, their time.</p> <p>16 Q. And how have they spent their time? What</p> <p>17 have they been doing that's in response to the</p> <p>18 photo ID law?</p> <p>19 A. The time spent was in research; in</p> <p>20 communicating with the Secretary of State</p> <p>21 starting in, I think, '14, maybe, about how it's</p> <p>22 going to be implemented; producing -- for the</p> <p>23 first elections under the new law, producing</p>



<p style="text-align: right;">Page 53</p> <p>1 information sheets or palm cards to distribute to                  2 our constituents about what they needed and how                  3 to go about it, printing and production of those                  4 things. So printing, production, salaries. Some                  5 meetings, going to meetings in Montgomery and                  6 communicating with John Merrill, the Secretary of                  7 State.                  8 Q. This information that you handed out to                  9 people about the photo ID law, was it in part to                  10 help them understand the requirements of the law?                  11 A. Yes.                  12 Q. Was it in part to help them understand how                  13 to get a photo ID?                  14 A. Yes.                  15 Q. You said you've met with Secretary of State                  16 John Merrill, or you spoke with him?                  17 A. My staff did, yes.                  18 Q. Have you ever personally met with Secretary                  19 of State John Merrill?                  20 A. I don't recall my being in a room with him,                  21 just my staff person, and my staff person did all                  22 the e-mails back and forth, you know.                  23 Q. Did you ever meet with any former Secretary</p>	<p style="text-align: right;">Page 55</p> <p>1 back and forth, back and forth.                  2 Q. Do you know if they ever reached a                  3 resolution?                  4 A. I think we were clear in time for the March                  5 primary. That was the first election I know of,                  6 yes.                  7 Q. You mentioned meetings in Montgomery about                  8 the photo ID law?                  9 A. Yes.                  10 Q. What meetings were those?                  11 A. There were some meetings, myself was with                  12 the governor about the hardships that the photo                  13 ID law would put on people we serve.                  14 Q. So you met with Governor Bentley?                  15 A. Yes.                  16 Q. Who else was at that meeting?                  17 A. Senator Hank Sanders. I can't recall the                  18 whole table around the room. It was at the                  19 invitation of the governor to African-American                  20 leaders, and Hank invited me and others. The                  21 invitation was to Senator Sanders, and Senator                  22 Sanders brought some other folks.                  23 Q. I'm not expecting you to be able to tell me</p>
<p style="text-align: right;">Page 54</p> <p>1 of State about the photo ID law?                  2 A. No.                  3 Q. Now, which member of your staff has                  4 communicated with John Merrill?                  5 A. He's no longer there now. His name is                  6 Brandon Fountain.                  7 Q. Did Mr. Fountain tell you anything about                  8 those conversations?                  9 A. Yes.                  10 Q. What did he say?                  11 A. This was three years ago.                  12 Q. Sure.                  13 A. Basically, we were seeking to get some                  14 clarifications. It wasn't clear, especially                  15 about the free photo ID. And there were -- local                  16 election officials had different opinions, saying                  17 different things than what the Secretary of State                  18 was saying about implementation. The                  19 implementation didn't all roll out at once; and                  20 right before the first election in '14, we were                  21 still getting discord.                  22 Q. Do you remember what the inconsistency was?                  23 A. Not specifically, no, but I know it moved</p>	<p style="text-align: right;">Page 56</p> <p>1 every single person who was there; but other than                  2 you and Senator Sanders, can you remember anyone                  3 else who was at the meeting?                  4 A. I'm trying to look at the table.                  5 Q. That's how I remember, too, try to                  6 visualize it.                  7 A. I will tomorrow at 12:00 noon.                  8 Q. I know how that goes. And if, in the                  9 course of the day, someone pops into your head,                  10 just let me know.                  11 A. Okay.                  12 Q. What do you remember was said at that                  13 meeting?                  14 A. It was a wide-ranging meeting. As I said,                  15 the agenda was issues of concern to the                  16 African-American community. Photo ID was one,                  17 and the implementation of it and its impact.                  18 Another one was -- I can remember what I told the                  19 governor, too, was that there was a policy in                  20 Alabama that if you had been convicted of a                  21 non-violent drug offense, you were ineligible for                  22 food stamps or TANF for life. If you were a                  23 man-slaughterer, you could get food stamps, but</p>

<p style="text-align: right;">Page 57</p> <p>1 not just a non-violent drug offender. It came                  2 out in the drug offensive 1970s, and almost every                  3 state had it briefly; but Alabama was one of four                  4 states that still had it this late, after 1997                  5 and stuff. So we informed the governor that that                  6 was discriminatory. He didn't know it. And the                  7 only reason we knew about it was because when                  8 people came to us, some person came to us to ask                  9 for food, we said, "Have you applied for food                  10 stamps?" They said, "I can't." We said, "Why?"                  11 "Because I'm a non-violent drug offender." That                  12 was my first knowledge of it. So we carried it                  13 to the governor, that was in '13. And we finally                  14 won that in the Prison Reform Bill last year. So                  15 as of February '16, you know --                  16 Q. It got changed, huh?                  17 A. It got changed, yes.                  18 Q. Going back to that meeting with the                  19 governor, what do you remember being discussed                  20 about the photo ID law and its implementation at                  21 that meeting?                  22 A. Simply put, several of us spoke to it as                  23 being a barrier and a burden, an extra barrier</p>	<p style="text-align: right;">Page 59</p> <p>1 different work shifts have equal access to the                  2 polls. Multi-day voting.                  3 Q. And I understand that, but can you think of                  4 any changes you would like to see to the photo ID                  5 law? If it weren't possible to go back to 2011,                  6 hypothetically, are there any ways you can think                  7 of that the photo ID law could be improved, in                  8 your view?                  9 MR. ROSS: Objection.                  10 A. Not reasonably, not practically, not                  11 effectively.                  12 Q. Is it all or nothing, in your view?                  13 MR. ROSS: Objection.                  14 A. I don't believe there's a right way to do                  15 the wrong thing.                  16 Q. You talked about meetings in Montgomery;                  17 you talked about your staff doing certain things.                  18 Have you told me all the information you have                  19 about the resources Greater Birmingham Ministries                  20 has spent in response to the photo ID law?                  21 MR. ROSS: Objection.                  22 A. Staff time, printing and production,                  23 travel. That's it.</p>
<p style="text-align: right;">Page 58</p> <p>1 and burden; and the governor just pretty much                  2 said, "I hear you, but we've got to stop voter                  3 impersonation; you know, we still allow voter                  4 impersonation." It's described there.                  5 Q. I am imagining, based on Greater Birmingham                  6 Ministries' involvement in this suit and some of                  7 the things you've talked about in your first                  8 deposition, that you would be in favor of the                  9 photo ID law being repealed?                  10 MR. ROSS: Objection.                  11 Q. Is that true?                  12 A. I'm in favor of going back to the original,                  13 if that's what it takes.                  14 Q. Going back to the way things were in 2011?                  15 A. Exactly.                  16 Q. If that didn't happen, can you think of any                  17 other ways you would like to see the photo ID law                  18 changed, maybe that wouldn't satisfy you as much,                  19 but that would make it better?                  20 MR. ROSS: Objection.                  21 A. I imagine it the other direction. I                  22 imagine same-day registration, voting on                  23 Saturdays and Sundays, so that people with</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Now, the third factor that's listed in                  2 these initial disclosures, towards the end of                  3 that paragraph, is the plaintiffs have said you                  4 may have information about the discriminatory                  5 purpose of the law. Now, we talked about some of                  6 that at the beginning, but tell me what                  7 information you have about the discriminatory                  8 purpose of the photo ID law.                  9 MR. ROSS: Objection.                  10 A. Well, my belief is that the discriminatory                  11 purpose of HB 19 was to suppress African-American                  12 voter participation in the state, erecting                  13 barriers to that participation by increasing the                  14 steps necessary to require a -- no, not to                  15 require -- to vote.                  16 Q. I understand your belief. Do you have                  17 facts that back that up or facts on which you're                  18 basing that belief?                  19 MR. ROSS: Objection.                  20 A. I don't have any confessions of                  21 legislators. It's the previous activities of                  22 some of the key legislators, the leaders, and                  23 statements they have made in public about black</p>

<p style="text-align: right;">Page 61</p> <p>1 voters.</p> <p>2 Q. We have talked about the Scott Beason</p> <p>3 comment. Any other statements by legislators</p> <p>4 that leads you believe that the photo ID law has</p> <p>5 a discriminatory purpose?</p> <p>6 A. Not directly African-Americans, no.</p> <p>7 Q. What do you mean, not directly</p> <p>8 African-Americans?</p> <p>9 A. Well, the ones that -- and I can't recall</p> <p>10 their names, but there are many legislators that</p> <p>11 talked about the photo ID law, that talked about</p> <p>12 the voter fraud that's going on, voter</p> <p>13 impersonation going on. And when asked to talk</p> <p>14 about it, "What voter impersonation was there?"</p> <p>15 They can't come up with anything.</p> <p>16 Q. But you think they're wrong about there</p> <p>17 being voter impersonation?</p> <p>18 A. Yes.</p> <p>19 Q. How is that discriminatory, if they're just</p> <p>20 wrong about that?</p> <p>21 MR. ROSS: Objection.</p> <p>22 A. When people make up stuff that they can't</p> <p>23 document, and the effect of it is to increase</p>	<p style="text-align: right;">Page 63</p> <p>1 statistically insignificant.</p> <p>2 Q. What about absentee voter fraud?</p> <p>3 MR. ROSS: Objection.</p> <p>4 A. That has been known to occur, but showing</p> <p>5 up at the polls has not.</p> <p>6 Q. Do you have any problem with having people</p> <p>7 put a copy of their photo ID in with their</p> <p>8 absentee ballot?</p> <p>9 MR. ROSS: Objection.</p> <p>10 A. If they put a copy of their lease, if they</p> <p>11 put a copy of their utility bills, still tells me</p> <p>12 there has to be more forms of ID.</p> <p>13 Q. Do you think it's okay for the legislature</p> <p>14 to try to address absentee voter fraud and</p> <p>15 minimize it?</p> <p>16 MR. ROSS: Objection.</p> <p>17 A. I think it's okay for them to minimize it</p> <p>18 and simplify it.</p> <p>19 Q. I'm going to state the obvious to set up</p> <p>20 other questions. You clearly don't think there</p> <p>21 should be absentee ID voter fraud; you wouldn't</p> <p>22 think that was okay?</p> <p>23 MR. ROSS: Objection.</p>
<p style="text-align: right;">Page 62</p> <p>1 barriers for people of color and low income</p> <p>2 people, I think that's discriminatory, because</p> <p>3 there's no rational reason for it.</p> <p>4 Q. Why do you say they're making it up as</p> <p>5 opposed to just simply being mistaken?</p> <p>6 MR. ROSS: Objection.</p> <p>7 A. Intentionally obstructing people's lives,</p> <p>8 as opposed to unintentional. That's what makes</p> <p>9 it discriminatory. And when they are countered</p> <p>10 with countervailing that there is no evidence of</p> <p>11 this and then they still persist, anybody can</p> <p>12 believe something that's not tested. But when</p> <p>13 you come up with the facts and they go against</p> <p>14 your belief, and you retain it? My question is,</p> <p>15 they must be retaining it for discriminatory</p> <p>16 intent.</p> <p>17 Q. Well, haven't there been cases of voter</p> <p>18 fraud in Alabama?</p> <p>19 MR. ROSS: Objection.</p> <p>20 A. Two out of some 22,000,000 votes cast. So,</p> <p>21 you know, statistically insignificant. It's not</p> <p>22 like murder, right? One murder is too much. But</p> <p>23 voter fraud -- voter impersonation is</p>	<p style="text-align: right;">Page 64</p> <p>1 A. No.</p> <p>2 Q. Of course not. Of course not. And you</p> <p>3 don't think it would be okay to pretend to be</p> <p>4 somebody else and cast an absentee ballot in that</p> <p>5 person's name?</p> <p>6 MR. ROSS: Objection.</p> <p>7 A. No.</p> <p>8 Q. That would not be fair, or that would not</p> <p>9 be reasonable? That would interfere with</p> <p>10 someone's else's right to vote, wouldn't it?</p> <p>11 MR. ROSS: Objection.</p> <p>12 A. To pretend to be someone else?</p> <p>13 Q. Right.</p> <p>14 A. Yes.</p> <p>15 Q. We might disagree about how the legislature</p> <p>16 should go about it, but you agree that the</p> <p>17 legislature should try to prevent that from</p> <p>18 happening, wouldn't you?</p> <p>19 MR. ROSS: Objection.</p> <p>20 A. It depends on how they tried to prevent it.</p> <p>21 Q. Going back to the category of</p> <p>22 discriminatory purpose and what information you</p> <p>23 may have on that, can you think of any other</p>

<p style="text-align: right;">Page 65</p> <p>1 information that you have, any facts on which you                  2 base your opinion that the law has a                  3 discriminatory purpose?                  4 MR. ROSS: Objection.                  5 A. The election in 2010 was a campaign that,                  6 to me, was characterized by racist comments.                  7 That projected my opinion that the future of                  8 Alabama, it wasn't about including everyone in                  9 terms of the quality of life. The way I saw the                  10 attempts to reduce public benefit funding like                  11 schools, school funds and other things, kind of                  12 put me on notice that the legislature that would                  13 be incoming after 2010 would not be beneficial to                  14 poor people, period, and black people in                  15 particular.                  16 Q. You said the campaign in 2010?                  17 A. Right.                  18 Q. Are you talking about the campaign                  19 generally of legislators?                  20 A. Yes, legislators.                  21 Q. You're saying they have different policy                  22 views than you do about how to address the needs                  23 of the poor?</p>	<p style="text-align: right;">Page 67</p> <p>1 A. I don't recall that.                  2 Q. You don't know one way or the other?                  3 A. No.                  4 Q. Since 2010, what has the legislature done                  5 that you would say had a discriminatory purpose?                  6 MR. ROSS: Objection.                  7 Q. You mentioned HB 56.                  8 A. Uh-huh.                  9 Q. I want to get a list as complete as you                  10 can, as we're sitting here today, of what laws                  11 they've passed that you think are discriminatory.                  12 A. I need to get my list.                  13 Q. Okay, that's fine.                  14 A. I'm trying to go year by year.                  15 Q. I beg your pardon?                  16 A. Hopefully they haven't passed much. I'm                  17 sorry. I can't recall anything in particular. A                  18 lot of it was in the budget, and also our                  19 legislators have a disparate impact on what they                  20 don't do. Certain things they don't do, for                  21 instance, on taxes, right, we continue to have                  22 low property taxes and very high sales tax; and                  23 that's discriminatory because all poor people</p>
<p style="text-align: right;">Page 66</p> <p>1 MR. ROSS: Objection.                  2 A. In particular.                  3 Q. Well, was there anything in that campaign                  4 that led you to think that -- were there racist                  5 comments made in that campaign?                  6 MR. ROSS: Objection.                  7 A. I can't remember if it was racist comments                  8 that triggered me to think about it in the                  9 campaign. I do remember the comments of some                  10 after they won, on some of the legislation. For                  11 instance, we're also following HB 56, and there                  12 some racist comments were made regarding                  13 immigrants, in terms of defending the                  14 legislation. One guy said, "I'll do anything to                  15 get them to deport short of shooting them," and                  16 that's in the public record.                  17 Q. There were black legislators who made                  18 racist comments during that debate, weren't                  19 there?                  20 MR. ROSS: Objection.                  21 A. Not that I recall. Racist comments about                  22 immigrants?                  23 Q. About Latinos.</p>	<p style="text-align: right;">Page 68</p> <p>1 lean on sales tax, the most aggressive tax there                  2 is. And Alabama has the lowest property taxes in                  3 the country; double them, and they'll still be                  4 the lowest.                  5 Q. But in terms of you've mentioned the photo                  6 ID law that was passed in 2011; you've mentioned                  7 HB 56 which was also passed in 2011. Are there                  8 any other big pieces of legislation that you                  9 would say were discriminatory?                  10 MR. ROSS: Objection.                  11 A. I think the School Accountability Act is                  12 discriminatory. That's one where tax breaks to                  13 corporations and public school funding can be                  14 diverted to charter schools or private schools.                  15 In terms of its impact, it's discriminatory,                  16 especially for low income counties in the Black                  17 Belt and other places.                  18 Q. Your lawyers produced some documents to us,                  19 including a document I'm going to mark as Exhibit                  20 6 --                  21 (Whereupon, Defendants' Exhibit Number 6                  22 was marked for identification, a copy of which is                  23 attached to the original of the transcript.)</p>



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1 Q. -- where you include some bio information  
2 before either speaking or being part of a panel,  
3 I don't remember which. Take whatever time you  
4 need to look. There's a string of e-mails, and  
5 then in the back is some biographical information  
6 that you provided. So take a look, and tell me  
7 when you're ready to discuss it.  
8 A. Okay. (Witness complies.)  
9 MR. ROSS: Is it just the biographical  
10 information you want him to look at?  
11 MR. DAVIS: Oh, he can look at whatever he  
12 wants, but my questions are going to be -- let's  
13 see.  
14 Q. Somewhere in here, and I'm looking for it  
15 now, there's a comment about voter suppression  
16 measures and corrupt redistricting, and I want to  
17 explore what he means by that. Honestly, I'm  
18 having trouble finding where it says that, but I  
19 think it's here somewhere. Oh, it's on the  
20 document that's Bates-numbered 657. There's a  
21 section called Barriers and Challenges, and in  
22 the second paragraph of that section there's a  
23 comment about voter suppression measures and

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1 corrupt redistricting, and I would like to  
2 understand those comments.  
3 MR. ROSS: Read that carefully.  
4 A. Okay. Thank you.  
5 Q. I probably have a copy of it where it was  
6 underlined. I'm sorry it took me so long to find  
7 that. You make a reference to recently renewed  
8 voter suppression measures. What were you  
9 talking about?  
10 MR. ROSS: Objection.  
11 A. If this was after 2011, I was talking about  
12 the photo ID law.  
13 Q. And it was. This was from 2016, as I look  
14 at the e-mail. So you were talking about the  
15 photo ID law?  
16 A. Yes.  
17 Q. Were you talking about anything other than  
18 the photo ID law?  
19 MR. ROSS: Objection.  
20 A. I was talking about the redistricting that  
21 was produced by the 2010 legislature, in terms of  
22 that extreme gerrymandering that took -- I've  
23 heard the defense of it was even worse, making

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1 black districts very super-compact, you know,  
2 where you're guaranteeing an African-American  
3 that the person elected in that district will be  
4 African-American just by overwhelming numbers,  
5 but at the same time lowering the -- let the  
6 voice of the voting power of African-Americans in  
7 districts where they're a minority have  
8 influence.  
9 Q. Do you think it's wrong to draw a district  
10 where it's guaranteed that an African-American  
11 would win that district?  
12 MR. ROSS: Objection.  
13 A. The math is, it's wrong to gettoize,  
14 segregate black voters so extremely that they  
15 have no mitigating voice in the other districts.  
16 The goal wasn't for black districts or for black  
17 voice. The super-compacting of African-Americans  
18 in districts, and I can't remember his name, one  
19 legislator said about State Senator Vivian  
20 Figures, "I want to assure her a safe seat," and  
21 Vivian -- State Senator Figures said, "I don't  
22 need to be that safe." And this was before the  
23 Supreme Court ruled, of course, that now Alabama

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1 is being forced to redo its districts.  
2 Q. Wouldn't you agree -- and you may not know  
3 one way or the other, and that's fine. Wouldn't  
4 you agree that the Justice Department for years  
5 has required Alabama to draw districts that have  
6 a majority of black voters?  
7 MR. ROSS: Objection.  
8 A. That's not exactly it.  
9 Q. Really?  
10 A. No. It's a little more complicated than  
11 that.  
12 Q. Why do you say that?  
13 A. The Alabama redistricting process so far  
14 exceeded the Justice Department requirements,  
15 that it reduces the -- it put a cap on the number  
16 of black districts -- no, the number of districts  
17 where a black could be reliably elected in, a cap  
18 on it by making them super-compact. This also  
19 meant that there was less of a chance of -- I'm  
20 not going to say balanced voices where  
21 African-Americans are, say, 40 percent of the  
22 voting population, and they can influence --  
23 maybe, maybe not elect a black elected official.

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1 But like in other places and districts, elect  
2 white elected officials who are -- this is more  
3 important -- white elected officials who assist  
4 the needs of everyone in the community. It's not  
5 just about black representation in terms of the  
6 personage, but also a black voice being heard and  
7 being influential. Yes.  
8 Q. Should redistricting be color-blind?  
9 MR. ROSS: Objection.  
10 A. Redistricting should not be color-blind as  
11 long as power is not color-blind. You know,  
12 distribution of power is not color-blind. As  
13 long as the distribution of power recognizes  
14 color, then redistricting has to recognize color  
15 as well.  
16 Q. And I understand that you're not an  
17 attorney. I'm looking to see what your personal  
18 opinion is about some of these issues. So in  
19 your personal opinion, is it permissible for the  
20 legislature to draw a district that has a  
21 majority of black voters in that district?  
22 MR. ROSS: Objection.  
23 A. It's permissible, and no district stands

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1 alone in terms of representation.  
2 Q. Oh, sure. They're all surrounded by other  
3 districts?  
4 A. They could. Under that, they could draw  
5 one district that includes every black person in  
6 Alabama, be one district. I know it's against  
7 the law.  
8 Q. But I'm trying to understand your objection  
9 to what the legislature did.  
10 A. The goal is maximum participation and  
11 maximum voice heard according to your numbers in  
12 the population. And that is achieved with  
13 balance. There will be some black districts, and  
14 the districts of the Black Belt will be  
15 influenced. Everyone has these weird-shaped  
16 districts to get around having effective black  
17 participation.  
18 Q. Of course, Alabama is what, about  
19 26 percent African-American?  
20 A. Yes.  
21 Q. But there are still areas of the state that  
22 are more or less than 26 percent  
23 African-American, right?

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1 A. Right, more or less.  
2 Q. Places in Jefferson County, places in the  
3 Black Belt? There are places where there is a  
4 larger concentration of African-American  
5 citizens?  
6 A. Uh-huh.  
7 Q. Isn't it true that some places, if you draw  
8 a district, it's just going to be 65 or 70  
9 percent African-American?  
10 MR. ROSS: Objection.  
11 A. Yes. In a county that's 80 percent  
12 African-American, that's what happens. But  
13 also -- well, go ahead.  
14 Q. No, please.  
15 A. It's like Jefferson County, there are white  
16 legislators who dilute the power of  
17 African-Americans in Jefferson County by having a  
18 foothold of that district in Jefferson  
19 County that makes them a part -- mostly Shelby  
20 County and mostly other counties, the foot of it  
21 is in Jefferson County, just to make them part of  
22 the Jefferson County delegation, which is the  
23 largest delegation in the legislature. It's all

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1 about power. It's all about power.  
2 Q. In your personal opinion, was the  
3 legislature intentionally violating the law when  
4 they did a redistricting plan, or were they  
5 mistaken about what the voting acts required?  
6 MR. ROSS: Objection.  
7 Q. If you have an opinion on that issue.  
8 A. I don't know if they intentionally violated  
9 the law. They were intentionally maximizing  
10 their own power, the incumbents.  
11 Q. If hypothetically as part of the  
12 redistricting plan, a district was drawn for,  
13 say, an African-American senator using a design  
14 that that African-American senator himself or  
15 herself had given the legislature, would that be  
16 okay?  
17 MR. ROSS: Objection.  
18 A. No. That would be -- that would be a  
19 coalition of African-American and white power  
20 structure against African-American community.  
21 The idea is not to make a safe district for a  
22 person, but a district that will reflect the  
23 values and ambitions of those represented. It's

<p style="text-align: right;">Page 77</p> <p>1 all about those who are represented, not about                  2 the individual.                  3 Q. So when you make a reference in this bio to                  4 corrupt redistricting, do you mean by that, that                  5 the legislature was trying to maximize its own                  6 power with the districts that it drew?                  7 A. That it was trying to maximize the power of                  8 not just white but white right wing power.                  9 Q. Why do you say white right wing power?                  10 A. Because when I say white right wing power,                  11 I meant that moderate whites couldn't be elected.                  12 It reduces the number of moderate whites in the                  13 legislature as a whole. It's not just                  14 anti-African-Americans.                  15 (Whereupon, Defendants' Exhibit Number 7                  16 was marked for identification, a copy of which is                  17 attached to the original of the transcript.)                  18 Q. I'm going to mark a document as Exhibit 7.                  19 There's a timeline attached to this that I would                  20 like to discuss with you on the last page. Is                  21 this something you created?                  22 A. Oh, yes.                  23 Q. What I want to ask you about specifically</p>	<p style="text-align: right;">Page 79</p> <p>1 A. I don't know. The people at the park were.                  2 Q. The people in the park?                  3 A. They told me.                  4 Q. Those are citizens?                  5 A. Yes.                  6 Q. But what about the people who were elected?                  7 You said "Extremists take Alabama government."                  8 What I'm asking is, do you think that any of the                  9 people who were elected in 2010, would you                  10 classify them as extremists?                  11 A. I believe that the people in the park                  12 wasn't everybody, but those people were the                  13 voting base of the legislature, of the majority                  14 of the legislature.                  15 Q. Is there anyone in the legislature that you                  16 would say is an extremist?                  17 MR. ROSS: Objection.                  18 A. Not to my knowledge, but they were                  19 supported by extremists.                  20 Q. Is it your view that all Republicans are                  21 extremists?                  22 MR. ROSS: Objection.                  23 A. No way.</p>
<p style="text-align: right;">Page 78</p> <p>1 is the box talking about 2010. You said                  2 "Extremists take Alabama government." What did                  3 you mean by that?                  4 A. That there was a massive Tea Party upsurge                  5 in Alabama that began with, inside the state,                  6 vicious, racist anti-Obama comments starting in                  7 2009 that I witnessed here in Birmingham. At                  8 Kelly Ingram Park, they came to Kelly Ingram Park                  9 with pictures of Obama with a Hitler mustache on                  10 and other kinds of negative graphics claiming                  11 that they were the new civil rights movement, and                  12 that's why they were at Kelly Ingram Park. And                  13 they were bussed in, not from Jefferson County,                  14 but surrounding counties, most of them.                  15 Q. Were those people running for legislature                  16 at that event?                  17 A. No. They were the Tea Party base. They                  18 said they were Tea Party, I didn't say they were.                  19 Q. Were any public officials there?                  20 A. Not that I recall. I didn't stay long.                  21 Q. Do you think that the people elected in                  22 2010 were racist?                  23 MR. ROSS: Objection.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. What is an extremist position, in your                  2 opinion?                  3 A. That's a broad term, but excessive, yes --                  4 excessive -- I can't think of the right word --                  5 excessive infatuation, excessive coherence with                  6 public policies that exclude the weak, the                  7 powerless, people of color; at the same time, put                  8 tremendous resources for the rich, the powerful,                  9 the large corporations, and that mobilize their                  10 base by appeals to fear, not reason, fear of the                  11 immigrant, fear of black people, fear of poor                  12 people, fear, fear, fear.                  13 Q. By the way, if you look at the front page                  14 of that document, do you see the e-mail? This is                  15 something I've seen on several of your e-mails.                  16 Under your name and address is the statement that                  17 "Alabama is a state, not an excuse"?                  18 A. Yes.                  19 Q. What does that mean?                  20 A. That came from a speech I gave years ago                  21 when we were working on Constitutional reform.                  22 This is a pattern -- I've seen people get                  23 hopeless. "We can't have better schools because</p>

<p style="text-align: right;">Page 81</p> <p>1 this is Alabama," "We can't have affordable                  2 housing because this is Alabama," "We can't have                  3 better anything because this is Alabama." I'm                  4 proud of Alabama; and my response was "Alabama is                  5 a state, not an excuse." You can't let                  6 difficulties in achieving things that people need                  7 and want be an excuse for not trying. So you                  8 can't say, "Well, this is Alabama, we can't do                  9 that." It's not an excuse. We're full -- one of                  10 the fifty states in the United States of America.                  11 We've got to claim that with dignity and respect.                  12 Q. Got it. I was just curious, because I saw                  13 that on several of your e-mails. Was that a                  14 tagline that was programmed to appear on all your                  15 e-mails, at least for a time?                  16 A. Yes. I forgot to take it off.                  17 Q. Well, I like it. Have you ever run for                  18 elected office?                  19 A. Yes.                  20 Q. What elected offices have you run for?                  21 A. I ran for Congress while I was in                  22 Nashville, and I ran for mayor when I was in                  23 Birmingham.</p>	<p style="text-align: right;">Page 83</p> <p>1 A. Oh, just being able to be -- our side was                  2 saying there was a broader approach to social                  3 change. For instance, one of the key things we                  4 were fighting for is that the Communist party had                  5 not taken a stand on gay rights, and we wanted it                  6 to. That's one of the key ones. And the other                  7 side wanted to focus just on economic issues. We                  8 wanted to focus on broader social issues, so that                  9 led to a disagreement.                  10 Q. Was it a group that disassociated with the                  11 Communist party at that time?                  12 A. There was a group, but there were a lot of                  13 people like me who just disassociated                  14 individually.                  15 Q. That was what I was wondering. The group                  16 that disassociated, did they go their separate                  17 ways or did they, as a group, do something else?                  18 A. They went their separate ways, as far as I                  19 know. There were people who stayed in touch with                  20 each other.                  21 Q. I mean, you didn't form a splendor party,                  22 for example?                  23 A. No.</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. In trying to do some research to prepare                  2 for this deposition, what party did you represent                  3 when you ran for Congress?                  4 A. I ran as an independent, but it was the                  5 Communist party.                  6 Q. Are you still associated with the Communist                  7 party?                  8 A. Oh, no. They asked me that when I applied                  9 for this job.                  10 Q. When did you disassociate with the                  11 Communist party?                  12 A. Around '90, '91. No later than '91.                  13 Q. I saw something about that, the dissidence?                  14 A. Yes.                  15 Q. What was that about?                  16 A. It was a long time back. It was a debate                  17 in the Communist party about democratizing the                  18 Communist party. And we were on the losing side                  19 of that debate.                  20 Q. There were different views within the party                  21 on this issue?                  22 A. Yes.                  23 Q. What do you mean, "democratize the party"?</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. And to the extent the group that left, they                  2 did not necessarily go as a group to some other                  3 party?                  4 A. Correct.                  5 Q. As part of this case, meaning Secretary of                  6 State John Merrill, defending the lawsuit, sent                  7 some document requests to the plaintiffs. Did                  8 you provide any information to help your lawyers                  9 respond to those requests?                  10 A. Yes.                  11 Q. And you provided documents?                  12 A. Yes.                  13 Q. And you've provided some new ones that                  14 you've come across that we talked about today,                  15 right?                  16 A. Yes.                  17 Q. To the best of your knowledge, have you                  18 provided all the documents responsive to the                  19 requests?                  20 A. I think more, yes.                  21 Q. Did you attend any of the festivities in                  22 Selma recently, where Secretary Merrill spoke?                  23 A. No, I missed it this year. I generally do,</p>



<p style="text-align: right;">Page 85</p> <p>1 but not this year.</p> <p>2 Q. You've told me, for example, that you spoke</p> <p>3 to Governor Bentley to raise some issues about</p> <p>4 the photo ID law to explain why you didn't like</p> <p>5 it. Has Greater Birmingham Ministries done</p> <p>6 anything else to oppose the law or to try to keep</p> <p>7 it from remaining in effect?</p> <p>8 A. No.</p> <p>9 Q. This is going to help me understand your</p> <p>10 views. Do you know about the mobile unit, the</p> <p>11 mobile ID unit?</p> <p>12 MR. ROSS: Objection.</p> <p>13 A. Yes. I heard there were mobile units.</p> <p>14 I've never seen one.</p> <p>15 Q. You say that emphatically. Do you have a</p> <p>16 problem with it?</p> <p>17 A. They're mostly immobile.</p> <p>18 Q. As a concept, do you think it's okay for</p> <p>19 the Secretary of State to have a mobile unit to</p> <p>20 go to different parts of the state and help</p> <p>21 people get an ID?</p> <p>22 A. As a concept, I think -- not me personally,</p> <p>23 but those who are opposed to it, it was a</p>	<p style="text-align: right;">Page 87</p> <p>1 response to the photo ID law?</p> <p>2 MR. ROSS: Objection.</p> <p>3 A. I don't know what the intent was. I can't</p> <p>4 imagine what the intent was, unless the intent</p> <p>5 was to say "Some of you may see a mobile unit</p> <p>6 designed to help people get their voter ID, but</p> <p>7 it's really not there." In other words, the</p> <p>8 promise -- the reality doesn't jibe with the --</p> <p>9 the promise doesn't jibe with the reality.</p> <p>10 Q. What do you mean by that?</p> <p>11 A. Because I've heard reports of mobile units</p> <p>12 being parked in front of county courthouses,</p> <p>13 where you could get the same thing, during the</p> <p>14 day, during the weekdays that the county</p> <p>15 courthouse is open, and not being available --</p> <p>16 when the idea first came up and we was talking</p> <p>17 about it, it was like, "Oh, like book mobiles,</p> <p>18 right," traveling around and getting access to</p> <p>19 books, only it's the photo ID. But the</p> <p>20 organization of them, the scarcity of them, the</p> <p>21 deployment of them was not very effective</p> <p>22 whatsoever.</p> <p>23 Q. Where do you think they should go?</p>
<p style="text-align: right;">Page 86</p> <p>1 response to a challenge made to Mr. Merrill,</p> <p>2 "What about access to, you know, the downtown</p> <p>3 county courthouse?" His response was, to that</p> <p>4 challenge, mobile units. That didn't come out at</p> <p>5 first. That was a later development. So go</p> <p>6 ahead. I'm sorry.</p> <p>7 Q. Well, I want to represent to you that there</p> <p>8 were some folks, at least for a time, who were</p> <p>9 sort of blocking the mobile unit itself.</p> <p>10 A. Blocking it?</p> <p>11 Q. Yes, with banners, covering up the banners.</p> <p>12 A. When was that?</p> <p>13 Q. The day that Secretary Merrill spoke in</p> <p>14 Selma.</p> <p>15 A. Oh, this past March?</p> <p>16 Q. Yes.</p> <p>17 A. The first part of March?</p> <p>18 Q. Yes, but at least for a brief period of the</p> <p>19 mobile unit area, the table work that was set up</p> <p>20 to get people IDs was blocked by people who</p> <p>21 aren't in favor of the photo ID law. Assuming</p> <p>22 that happened. You weren't there. If that were</p> <p>23 to happen, do you think that's an appropriate</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Public housing communities or maybe senior</p> <p>2 citizen communities, assisted living places, and</p> <p>3 also pre-announced scheduled stops in the Black</p> <p>4 Belt and rural counties that people know about</p> <p>5 when it's coming, we can go. The idea was to get</p> <p>6 over the transportation hurdle, so it's</p> <p>7 recognition to me that transportation is a hurdle</p> <p>8 by going to the people, going to small towns in</p> <p>9 the areas away from the county seat. So that's</p> <p>10 the way it should go, but it didn't do it that</p> <p>11 way effectively.</p> <p>12 Q. Have you suggested this?</p> <p>13 A. Yes.</p> <p>14 Q. To whom?</p> <p>15 A. Along with others, Senator Sanders, and</p> <p>16 written communications to the Secretary of State</p> <p>17 before they played it; not as a response to how</p> <p>18 they were played, but as they were played. Then</p> <p>19 we started getting reports from people in Greene</p> <p>20 County about the ludicrousness of where the</p> <p>21 mobile unit went, as far as the lack of advance</p> <p>22 information that it's going to be there in the</p> <p>23 first place. So nobody knows there's a mobile</p>

<p style="text-align: right;">Page 89</p> <p>1 unit coming, like where it's going to be. I</p> <p>2 mean, outside of the county courthouse square,</p> <p>3 that's not very effective.</p> <p>4 Q. Are you aware that you can schedule a</p> <p>5 mobile unit visit in your home?</p> <p>6 MR. ROSS: Objection.</p> <p>7 A. No.</p> <p>8 Q. If there is a link on the Secretary of</p> <p>9 State's website where someone can request that</p> <p>10 the mobile unit come to their house, do you think</p> <p>11 Greater Birmingham Ministries would be willing to</p> <p>12 advertise that?</p> <p>13 MR. ROSS: Objection.</p> <p>14 A. No, because we would advertise to people</p> <p>15 that access the Internet, and that's not the most</p> <p>16 vulnerable people we know of. You said one that</p> <p>17 comes to your house?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. In one fashion or another, do you think</p> <p>21 Greater Birmingham Ministries would be willing to</p> <p>22 tell people, "If you can't get to the registrar's</p> <p>23 office, the mobile unit can come to your house"?</p>	<p style="text-align: right;">Page 91</p> <p>1 MR. ROSS: Objection.</p> <p>2 A. I'm not hopeful in terms of strengthening</p> <p>3 what remains of the Voting Rights Act,</p> <p>4 strengthening the effectiveness of it.</p> <p>5 Q. We talked a little bit about the mobile</p> <p>6 unit. You don't think, if I understood you</p> <p>7 correctly, that the Secretary of State has done</p> <p>8 the best job in how to schedule and roll out the</p> <p>9 mobile unit?</p> <p>10 A. Right.</p> <p>11 Q. Is there anything else that you can think</p> <p>12 of that the Secretary of State has done with</p> <p>13 respect to the photo ID law, that you disagree</p> <p>14 with?</p> <p>15 MR. ROSS: Objection.</p> <p>16 A. I'm not sure I know everything that he's</p> <p>17 done.</p> <p>18 Q. I understand. You haven't been following</p> <p>19 him around, you don't know everything. But does</p> <p>20 anything come to mind -- well, I'm going to</p> <p>21 represent to you that as part of this lawsuit,</p> <p>22 the plaintiffs are claiming that the</p> <p>23 implementation of the law has been</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Especially with free photo ID.</p> <p>2 Q. Have you personally been involved in any of</p> <p>3 the debate concerning Jeff Sessions' appointment</p> <p>4 as U.S. Attorney General?</p> <p>5 MR. ROSS: Objection.</p> <p>6 A. Not personally.</p> <p>7 Q. What are your views on Jeff Sessions as</p> <p>8 Attorney General, if you have any?</p> <p>9 MR. ROSS: Objection.</p> <p>10 A. I don't know Attorney General Sessions</p> <p>11 personally. All I know of him is his work as a</p> <p>12 U.S. attorney in the Mobile district, when he was</p> <p>13 involved in the trial of the Marion 3 and Perry</p> <p>14 County 3. I covered part of that trial for the</p> <p>15 Southern Organizing Committee, they lost the</p> <p>16 trial. The jury came back after four hours,</p> <p>17 acquittal. That's where I learned of him first,</p> <p>18 and I thought then that he was interested in</p> <p>19 suppressing the black vote in Alabama and</p> <p>20 activities to increase the black vote in Alabama.</p> <p>21 Q. Do you have any opinions about how the</p> <p>22 Justice Department, under Attorney General</p> <p>23 Sessions' leadership, will enforce voting laws?</p>	<p style="text-align: right;">Page 92</p> <p>1 discriminatory. So I'm curious if you personally</p> <p>2 know of anything that the Secretary of State has</p> <p>3 done that you think is discriminatory?</p> <p>4 MR. ROSS: Objection.</p> <p>5 A. The only thing that comes to mind is the</p> <p>6 uneven rollout. You know, it's like which -- I</p> <p>7 mean, when we first came about the date and the</p> <p>8 lack of information disseminated, who was it that</p> <p>9 closed the DMVs? I'm going to say the Secretary</p> <p>10 of State didn't do that, I don't guess. I guess</p> <p>11 it was ALEA. You know, but the closure of the</p> <p>12 DMVs, whoever did that, it was discriminatory.</p> <p>13 Q. We can talk about that. That was not the</p> <p>14 Secretary of State. I know you think that there</p> <p>15 shouldn't be a photo ID law at all; but if there</p> <p>16 is, can you think of anything that you think the</p> <p>17 Secretary of State should have done differently</p> <p>18 in carrying out his duties to enforce the law?</p> <p>19 MR. ROSS: Objection.</p> <p>20 A. Yes. Deeply publicize the non-driver photo</p> <p>21 ID, widely available as being free from day one,</p> <p>22 the non-driver photo ID.</p> <p>23 Q. You're saying he should have advertised</p>

<p style="text-align: right;">Page 93</p> <p>1 that more?</p> <p>2 A. Yes, from day one, very beginning. It</p> <p>3 would end a lot of confusion.</p> <p>4 Q. So more advertisement?</p> <p>5 A. Yes.</p> <p>6 Q. That's something you would like to have</p> <p>7 seen?</p> <p>8 A. Yes.</p> <p>9 Q. Anything else?</p> <p>10 A. That's about it, if there was going to be</p> <p>11 one, the photo ID law.</p> <p>12 Q. Given that the law exists, we're talking</p> <p>13 about the job that the Secretary of State has</p> <p>14 done. Do you think that John Merrill himself has</p> <p>15 intended to discriminate against African-American</p> <p>16 voters?</p> <p>17 MR. ROSS: Objection.</p> <p>18 A. I don't know his intent, so I don't know.</p> <p>19 Q. Okay. You said that the ALEA closures were</p> <p>20 discriminatory, right?</p> <p>21 A. Yes.</p> <p>22 Q. What did you mean by that?</p> <p>23 A. That the preponderance of those that were</p>	<p style="text-align: right;">Page 95</p> <p>1 Q. Now, you know those closures didn't affect</p> <p>2 the registrars' offices, right?</p> <p>3 MR. ROSS: Objection.</p> <p>4 A. The registrar's office did not close.</p> <p>5 Q. Right. They're still open?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Still offering photo IDs?</p> <p>8 A. Uh-huh. Uh-huh.</p> <p>9 Q. Do you have any reason to believe,</p> <p>10 Mr. Douglas, that the photo ID law has been</p> <p>11 enforced inconsistently around the state?</p> <p>12 MR. ROSS: Objection.</p> <p>13 A. Every law in Alabama is inconsistent around</p> <p>14 the state. Has the law been enforced? What does</p> <p>15 that mean? I don't understand what you mean.</p> <p>16 Q. I mean in the way --</p> <p>17 A. That some people don't have to go by it?</p> <p>18 Q. Well, that's what I'm wondering. You may</p> <p>19 not have any information or opinion about this</p> <p>20 whatsoever. Let me break it down into some</p> <p>21 components maybe, I might be clearer that way.</p> <p>22 Do you have any reason to think that in some</p> <p>23 places people are asking for photo ID and in some</p>
<p style="text-align: right;">Page 94</p> <p>1 closed, that reduced hours and days, were in</p> <p>2 rural areas, the Black Belt in particular. The</p> <p>3 Black Belt is disproportionately</p> <p>4 African-American, so we had disproportionate</p> <p>5 impact, regardless of intent. It reduces</p> <p>6 accessibility, once again.</p> <p>7 Q. Let's say there's a county in the Black</p> <p>8 Belt, a majority black county. I grew up in</p> <p>9 Lamar County, which I don't know the demographics</p> <p>10 now, but at the time I lived there it was</p> <p>11 probably 10 or 12 percent African-American, and</p> <p>12 in the very rural part of the state, in kind of</p> <p>13 northwest Alabama. But if the office was closed</p> <p>14 in Lamar County and the office was closed in a</p> <p>15 Black Belt county, do you see any difference</p> <p>16 there? Is one worse than the other?</p> <p>17 MR. ROSS: Objection.</p> <p>18 A. I would see the only difference being that</p> <p>19 white Alabamians in the income level, same income</p> <p>20 level, need to have access to automobile</p> <p>21 transportation that the African-American</p> <p>22 population does. So only in that sense would</p> <p>23 that be one-on-one.</p>	<p style="text-align: right;">Page 96</p> <p>1 places they're not --</p> <p>2 MR. ROSS: Objection.</p> <p>3 Q. -- at the polls?</p> <p>4 A. I have no direct knowledge of that.</p> <p>5 Q. Do you have any indirect knowledge of it?</p> <p>6 MR. ROSS: Objection.</p> <p>7 A. I have suspicions of it.</p> <p>8 Q. Okay, that's fine. Have you ever heard</p> <p>9 that that is happening?</p> <p>10 MR. ROSS: Objection.</p> <p>11 A. I have heard that was happening, but I</p> <p>12 couldn't prove it. It harkens back to a literacy</p> <p>13 test. Alabama requires a literacy test.</p> <p>14 Everybody wasn't given a literacy test. Mostly</p> <p>15 African-Americans were given a literacy test.</p> <p>16 Q. Where did you hear that it may be that some</p> <p>17 people aren't asking for photo IDs?</p> <p>18 A. It would be a meeting I attended one time.</p> <p>19 Q. What meeting was that?</p> <p>20 A. It was a meeting in Montgomery at Alabama</p> <p>21 State 2015, I guess. I just heard it in the</p> <p>22 workshop.</p> <p>23 Q. Was it your impression that people were</p>

<p style="text-align: right;">Page 97</p> <p>1 saying something like, "I hope it's not happening  2 that they're enforcing it this way," or were they  3 saying, "Hey, this is happening; this is going on  4 right now in the polling places"?</p> <p>5 A. No. It was stated like it's probably  6 happening in certain precincts, where everybody  7 knows everybody.</p> <p>8 Q. People were concerned that that might be  9 happening?</p> <p>10 A. Yes.</p> <p>11 Q. Not necessarily -- they hadn't necessarily  12 witnessed that it was happening that way?</p> <p>13 A. That's correct. That's correct. Like I  14 said, it was a workshop.</p> <p>15 Q. Do you have any reason to believe,  16 Mr. Douglas, that registrars are giving IDs to  17 white voters but tending to refuse to give IDs to  18 black voters?</p> <p>19 MR. ROSS: Objection.</p> <p>20 A. I have no evidence.</p> <p>21 (Whereupon, at this time a short break  22 was taken.)</p> <p>23 (Whereupon, Defendants' Exhibit Number 8</p>	<p style="text-align: right;">Page 99</p> <p>1 it."</p> <p>2 Q. People in 1901 were okay with that?</p> <p>3 A. They were okay with that. They were okay  4 with that.</p> <p>5 Q. Did you mean that the people who voted for  6 the photo ID law were like the people who voted  7 for the Constitution in 1901?</p> <p>8 MR. DAVIS: Objection.</p> <p>9 A. Yes. They also were okay with that, that  10 poor whites and poor blacks be treated this way,  11 but the intent was to get rid of the blacks.</p> <p>12 Q. Do you think that everyone who voted for  13 the photo ID law had that intent?</p> <p>14 MR. ROSS: Objection.</p> <p>15 A. Just the majority of them.</p> <p>16 Q. Can you tell me what legislators did and  17 did not have that intent, in your opinion?</p> <p>18 MR. ROSS: Objection.</p> <p>19 A. I know those who voted against it didn't  20 have that intent. I can't differentiate between  21 those who did and did not.</p> <p>22 Q. What, if anything, has the legislature done  23 that you think is discriminatory from 2014</p>
<p style="text-align: right;">Page 98</p> <p>1 was marked for identification, a copy of which is  2 attached to the original of the transcript.)</p> <p>3 Q. Mr. Douglas, I have marked a document as  4 Exhibit 8. Do you recognize this?</p> <p>5 A. Oh, yes.</p> <p>6 Q. Can you tell me what this is?</p> <p>7 A. It is my words at a revival meeting we had  8 at New Pilgrim Baptist Church in which I spoke  9 about -- the first time I used these words,  10 anyway, about the importance of the Voting Rights  11 Act.</p> <p>12 Q. What was your general message? How would  13 you summarize it?</p> <p>14 A. In summary, is that vote suppression today  15 was a continuation of the black voter  16 disenfranchisement movement that peaked,  17 culminated in the Alabama Constitution in 1901.  18 I have read a lot of the transcript of that  19 convention. When the poll tax was proposed, one  20 decent gentleman said, "But, sir, if you impose  21 the poll tax that disenfranchise the Negro, you  22 will also disenfranchise the poor whites." And  23 the response in the transcript was, "Well, so be</p>	<p style="text-align: right;">Page 100</p> <p>1 forward?</p> <p>2 MR. ROSS: Objection.</p> <p>3 A. Nothing big sticks out. I look at, once  4 again, what they refuse to do. It's pretty  5 discriminatory right now, so status quo is  6 discriminatory. In taxes, for instance; school  7 funding, for instance. Raising property -- not  8 raising property taxes to better fund public  9 education, or making public education more so  10 dependent on sales taxes, that's discriminatory.  11 So existing to meet the status quo is where  12 they're at.</p> <p>13 Q. Can you tell me anything the legislature  14 has done, starting with the 2014 session forward,  15 that has made it worse?</p> <p>16 MR. ROSS: Objection.</p> <p>17 A. Made what worse?</p> <p>18 Q. Let's say racial justice in Alabama.</p> <p>19 A. Nothing comes to mind at the moment.</p> <p>20 Q. We talked about this some at the very  21 beginning, but I want to make sure that I  22 understand your position. Do you have any basis  23 for believing that the legislature knew what</p>



<p style="text-align: right;">Page 101</p> <p>1 would happen if it passed the photo ID law?</p> <p>2 MR. ROSS: Objection.</p> <p>3 Q. In terms of who it would impact?</p> <p>4 MR. ROSS: Objection.</p> <p>5 A. Since they did have some testimony before</p> <p>6 they voted, yes.</p> <p>7 Q. What testimony did they have before they</p> <p>8 voted?</p> <p>9 MR. ROSS: Objection.</p> <p>10 A. Some black legislators talked about there</p> <p>11 being disparate impact. It was a very short</p> <p>12 period of time. There were no public hearings.</p> <p>13 My pattern is that when the legislative majority</p> <p>14 wants to really shovel something through, they</p> <p>15 have no public hearings. No public hearing.</p> <p>16 Q. Were you present when the legislators were</p> <p>17 talking about it?</p> <p>18 A. No.</p> <p>19 Q. You heard about it after the fact?</p> <p>20 A. A day after, right.</p> <p>21 Q. How did you hear about it?</p> <p>22 A. In the newspaper first.</p> <p>23 Q. And did you speak to any members of the</p>	<p style="text-align: right;">Page 103</p> <p>1 Sanders, do you remember in general how he</p> <p>2 described it?</p> <p>3 A. Like John Rogers, like the freight train</p> <p>4 analogy, rolled over us.</p> <p>5 Q. Did you understand from them that there</p> <p>6 were legislators who said, during the debate,</p> <p>7 that they believed this law would have a</p> <p>8 discriminatory impact?</p> <p>9 A. No one told me that, that they heard that,</p> <p>10 no.</p> <p>11 Q. I may have misunderstood you. Is it your</p> <p>12 belief that during the debate African-American</p> <p>13 legislators said, "Hey, if we pass this law,</p> <p>14 there's going to be discriminatory impact"?</p> <p>15 A. That's my belief, yes.</p> <p>16 Q. Do you know, one way or the other, if that</p> <p>17 was said?</p> <p>18 A. No, I don't. No. I didn't ask anybody I</p> <p>19 met later what they said.</p> <p>20 Q. My original question was what basis you</p> <p>21 have for believing that the legislature knew in</p> <p>22 2011 that if they passed this law, it would have</p> <p>23 a discriminatory impact. So can you give me any</p>
<p style="text-align: right;">Page 102</p> <p>1 legislature about the debate?</p> <p>2 A. I did afterwards, yes.</p> <p>3 Q. Who did you speak to?</p> <p>4 A. Senator Sanders; Vivian Figures; much later</p> <p>5 after the debate, John Rogers.</p> <p>6 Q. What do you remember Representative Rogers</p> <p>7 telling you about the debate?</p> <p>8 A. Mostly he was rushed. He said something</p> <p>9 like -- I can't remember, something like a train,</p> <p>10 freight train, something like that.</p> <p>11 Q. Anything else you can remember that</p> <p>12 Representative Rogers said?</p> <p>13 A. No. No. It's hard to remember what John</p> <p>14 said. Sorry.</p> <p>15 Q. What do you remember about what Senator</p> <p>16 Figures said about the debate?</p> <p>17 A. I can't recall her exact words.</p> <p>18 Q. Do you have any memory of the topic in</p> <p>19 general of what she said about the debate?</p> <p>20 A. No, I don't.</p> <p>21 Q. I don't mean to ask for direct quotes or</p> <p>22 anything. I just want to know in general how</p> <p>23 they described the debate. What about Senator</p>	<p style="text-align: right;">Page 104</p> <p>1 information that leads you to believe that they</p> <p>2 were aware of discriminatory impact?</p> <p>3 A. I wasn't there watching any of the debate</p> <p>4 that happened.</p> <p>5 Q. Sure.</p> <p>6 A. But in time I did hear that some black</p> <p>7 legislators did speak out against it having a</p> <p>8 discriminatory impact, before it passed.</p> <p>9 Q. So you did hear people say that black</p> <p>10 legislators said there would be discriminatory</p> <p>11 impact?</p> <p>12 A. Yes. Well, they didn't say discriminatory</p> <p>13 impact.</p> <p>14 Q. I understand. They may not have used that</p> <p>15 exact language, but it's your understanding that</p> <p>16 that was their general message?</p> <p>17 A. Yes.</p> <p>18 Q. Where did you hear that?</p> <p>19 A. I heard that at an Alabama New South</p> <p>20 Coalition meeting. What month did that pass?</p> <p>21 Anyway, that year. That session. It was before</p> <p>22 May, but yes.</p> <p>23 Q. That was back in 2011?</p>

<p style="text-align: right;">Page 105</p> <p>1 A. Yes.</p> <p>2 Q. Was that a large meeting, lots of people</p> <p>3 there, or just a few?</p> <p>4 A. A large meeting. It was at Alabama State</p> <p>5 University.</p> <p>6 Q. Were any legislators present at that</p> <p>7 meeting?</p> <p>8 A. There were several. Let's see. I know</p> <p>9 Senator Sanders was there; a legislator from</p> <p>10 Montgomery, John Knight, was there. That's it.</p> <p>11 Q. What else can you tell me about that</p> <p>12 meeting?</p> <p>13 A. The major thing that came out of that</p> <p>14 meeting was that the next -- the annual</p> <p>15 Selma-Montgomery March commemoration would have a</p> <p>16 large contingent of people talking about the</p> <p>17 photo ID law and HB 56 that were passed; that is,</p> <p>18 like protesting it, even before it came into</p> <p>19 effect. HB 56 was in effect, but HB 19 was not</p> <p>20 in effect, so that became part of the reasons to</p> <p>21 attract people to come to Selma, was the photo ID</p> <p>22 law and HB 56.</p> <p>23 Q. Assuming there were legislators who said,</p>	<p style="text-align: right;">Page 107</p> <p>1 part of it, and lack of access to the support</p> <p>2 documents, yes. Disproportionate lack of access.</p> <p>3 Q. Are you aware of any studies that prove</p> <p>4 that African-Americans are less likely to have</p> <p>5 supporting documents?</p> <p>6 MR. ROSS: Objection.</p> <p>7 A. I haven't read them myself.</p> <p>8 Q. But it's your belief that they are?</p> <p>9 A. Yes.</p> <p>10 Q. Just to be clear, when we're talking about</p> <p>11 supporting documents, what I'm thinking of are</p> <p>12 things like a birth certificate or marriage</p> <p>13 certificate?</p> <p>14 A. Yes.</p> <p>15 Q. We're talking about the same thing?</p> <p>16 A. Yes. Yes.</p> <p>17 Q. Good. What do you think should happen with</p> <p>18 the ALEA offices? What would you like to see</p> <p>19 changed?</p> <p>20 MR. ROSS: Objection.</p> <p>21 A. The DMVs?</p> <p>22 Q. Yes.</p> <p>23 A. Essentially open five days a week, maybe</p>
<p style="text-align: right;">Page 106</p> <p>1 during the debate, that in essence the law would</p> <p>2 have a discriminatory effect on black voters, do</p> <p>3 you know if they had any statistics or data to</p> <p>4 back that up?</p> <p>5 MR. ROSS: Objection.</p> <p>6 A. I don't know if they had access to the data</p> <p>7 to back that up, how many would be affected and</p> <p>8 where, no.</p> <p>9 Q. As we sit here today, do you believe that</p> <p>10 African-Americans are less likely to have a photo</p> <p>11 ID than white voters?</p> <p>12 MR. ROSS: Objection.</p> <p>13 A. Say that again.</p> <p>14 Q. As we sit here today, do you believe that</p> <p>15 African-Americans are less likely to have a photo</p> <p>16 ID than whites?</p> <p>17 A. Oh, yes. Yes.</p> <p>18 Q. And I think we've addressed this, we've at</p> <p>19 least talked around the edges of it. I know one</p> <p>20 reason that you may think that is poverty rates.</p> <p>21 Is there any other reason why you think that may</p> <p>22 be the case?</p> <p>23 A. If you include lack of transportation as</p>	<p style="text-align: right;">Page 108</p> <p>1 open later in the day and close later in the</p> <p>2 afternoon to catch people off of work, and some</p> <p>3 days on weekends.</p> <p>4 Q. Would you still think that if it meant</p> <p>5 longer lines in Jefferson County?</p> <p>6 MR. ROSS: Objection.</p> <p>7 A. Why would there be longer lines in</p> <p>8 Jefferson County?</p> <p>9 Q. Because you can only hire so many people,</p> <p>10 so many driver's examiners. If you assume there</p> <p>11 are limited resources --</p> <p>12 A. I'm not assuming there are limited</p> <p>13 resources. I'm assuming reallocating resources.</p> <p>14 Q. I know you're not. But if you assume that</p> <p>15 staff offices five days a week in this part of</p> <p>16 the state might mean having to move some of the</p> <p>17 people out of the more populous areas, and that</p> <p>18 would mean longer lines for citizens in Jefferson</p> <p>19 County or Mobile or Montgomery.</p> <p>20 A. There's a solution for that.</p> <p>21 MR. ROSS: Objection. Speculation on top</p> <p>22 of speculation. You can answer.</p> <p>23 A. I get carried away with speculation.</p>

<p style="text-align: right;">Page 109</p> <p>1 Q. You would agree, would you not, that it may  2 not be possible for ALEA to hire enough people to  3 have all offices open five days a week?  4 MR. ROSS: Objection.  5 A. I have no knowledge of that.  6 Q. We don't have enough information between us  7 to really talk about that, so I'm going to move  8 on. Do you believe, as we've been talking today,  9 that you've given me all the information that you  10 have about the laws of discriminatory impact?  11 MR. ROSS: Objection.  12 A. As of this moment at this time, I can't  13 recall that I left out any discriminatory impact.  14 Q. To the best of your knowledge, have you  15 given me all the information that you have about  16 the way GBM, Greater Birmingham Ministries, has  17 had to reallocate resources in response to the  18 photo ID law?  19 MR. ROSS: Objection.  20 A. To the best of my knowledge, yes.  21 Q. To the best of your knowledge, have you  22 given me all the information that you have in  23 regards to the discriminatory purpose of the</p>	<p style="text-align: right;">Page 111</p> <p>1 about that makes you suspicious of their motives  2 with the photo ID law?  3 MR. ROSS: Objection.  4 A. Once objections were raised to it once it  5 was passed, they didn't revisit it and repeal it.  6 Q. They left it as it is?  7 A. Yes.  8 MR. DAVIS: I'm done. Thank you.  9 (Whereupon, at this time a short break  10 was taken.)  11  12 EXAMINATION BY MR. ROSS:  13 Q. A few follow-up questions for you, Scott.  14 Mr. Davis was asking you earlier about, in your  15 opinion, what legislators knew. Do you recall  16 that?  17 A. Yes.  18 Q. Do you think legislators in Alabama know  19 that black voters are poorer than white voters in  20 general?  21 MR. DAVIS: Object to the form.  22 A. Yes.  23 Q. Why do you think that?</p>
<p style="text-align: right;">Page 110</p> <p>1 photo ID law?  2 MR. ROSS: Objection.  3 A. Yes.  4 Q. Can you think of any other statements that  5 we haven't talked about made by legislators that  6 suggests to you that the law has a discriminatory  7 purpose?  8 MR. ROSS: Objection.  9 A. No.  10 Q. And I know you don't like, say, HB 56 and  11 redistricting, correct?  12 A. Correct.  13 Q. And is it your view that if they did that,  14 that that makes you suspicious about photo ID  15 law?  16 MR. ROSS: Objection.  17 A. If they did what, HB 56?  18 Q. If they pass HB 56, that makes you  19 suspicious about their motives over here?  20 A. If the same people pass both laws in the  21 same session with the same speech, yes.  22 Q. Can you think of anything else that the  23 legislators have done that we haven't talked</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Because African-American legislators have  2 been in the legislature in the audience and have  3 told them that on hearings on different bills  4 that affect low income people, particularly  5 school funding.  6 Q. Why do you think African-Americans in  7 Alabama in general tend to be poorer than whites?  8 A. Because of laws and practices that  9 discriminated against access of African-Americans  10 to education, jobs, better-paying jobs, seniority  11 rights on jobs.  12 Q. When did you move to Alabama?  13 A. March 30, 1976.  14 Q. And when you described sort of the history  15 of discrimination in Alabama, what's your basis  16 for that knowledge?  17 A. History books, current events at the time,  18 news, and my experience traveling around the  19 state and in Birmingham.  20 Q. Let's talk a little bit about that  21 experience. I understand when you first moved to  22 Alabama, you were unemployed, but what was your  23 first job when you got to Alabama?</p>

<p style="text-align: right;">Page 113</p> <p>1 A. First part-time and then full-time, I began                  2 working for the Southern Organizing Committee for                  3 Economic and Social Justice.                  4 Q. Who founded that?                  5 A. Oh, it was originally founded around 1939.                  6 Q. Well, who was in charge of it when you were                  7 there?                  8 A. Reverend Fred Shuttlesworth of Birmingham                  9 and Ann Braden of Louisville, Kentucky.                  10 Q. Who is Fred Shuttlesworth?                  11 A. Reverend Fred Shuttlesworth is an iconic                  12 African-American pastor and civil rights leader                  13 who was in leadership of the NAACP when it was                  14 the future of its membership list, and he created                  15 the Alabama Christian Movement for Human Rights                  16 in '57 and led bus boycotts in Birmingham. But                  17 he eventually invited Dr. King to come here in                  18 1963.                  19 Q. And what was your job when you were -- is                  20 there an acronym for the Southern Organizing                  21 Committee for Economic and Social Justice?                  22 A. Yes. SOC, S-O-C.                  23 Q. What did you do for SOC when you first</p>	<p style="text-align: right;">Page 115</p> <p>1 terms of articles?                  2 Q. Yes.                  3 A. It wasn't about school funding but about                  4 segregation in schools.                  5 Q. What do you know about school segregation                  6 in Alabama?                  7 A. When I arrived here in Birmingham, the                  8 desegregation plan had already been adopted, but                  9 it hadn't yet been implemented fully. I got here                  10 in '76 and had a two-year-old, and four years                  11 later he was six, and we enrolled him in                  12 Birmingham schools. All the schools in our part                  13 of town were all African-American, no whites                  14 whatsoever. Until he got to the third grade, he                  15 had a white teacher but no white students, until                  16 he got to high school at Ramsay, in high school.                  17 Q. So your son didn't go to school with white                  18 students until he was in high school?                  19 A. Correct.                  20 Q. Do you know if that kind of segregation                  21 existed in Alabama in other parts of the state?                  22 A. Yes. I have visited schools and school                  23 kids in Selma during the same period, in</p>
<p style="text-align: right;">Page 114</p> <p>1 started working there?                  2 A. When I first started working as staff, I                  3 was executive director; and my job was to, one,                  4 coordinate the twice-a-year board meetings; to                  5 write articles for the organization's newsletter                  6 that went out nationally; and also, in order to                  7 write the articles, to travel around the state                  8 and get stories about poor people, black people,                  9 basic challenges and difficulties in the                  10 environment or civil rights areas.                  11 Q. Before you were the SOC executive director,                  12 what was your position at SOC?                  13 A. Board member.                  14 Q. Did you ever work there part-time?                  15 A. I worked there part-time before I worked                  16 full-time, so I worked for the board part-time.                  17 Q. How long did you work there part-time?                  18 A. Part-time was like '76 to '84.                  19 Q. So you mentioned that you wrote about a lot                  20 of issues going on in Alabama at the time?                  21 A. Yes.                  22 Q. Did those issues include education?                  23 A. Well, education in the sense that -- in</p>	<p style="text-align: right;">Page 116</p> <p>1 particular. I knew of others, but I have seen                  2 that.                  3 Q. What is your understanding of when Alabama                  4 started to desegregate the schools?                  5 A. I don't know about the state. I knew that                  6 the effect was in order -- I found out when I got                  7 here that it had been started in 1970, and at                  8 Greater Birmingham Ministries I know that they                  9 were instrumental in 1972. They started                  10 something called River Patrol Center. And that                  11 was volunteers from black churches and white                  12 churches came together with law enforcement to                  13 calm the nerves of parents, because whoever was                  14 doing it was making phone calls of bomb threats                  15 or there was going to be a fight at school, to                  16 keep the kids out of school. I think one way to                  17 fight desegregation was to keep everybody out of                  18 school.                  19 Q. So Greater Birmingham Ministries tried to                  20 keep people in school; is that right?                  21 A. That's correct.                  22 Q. When you speak to African-Americans who                  23 grew up in Alabama, what do they say about how</p>



<p style="text-align: right;">Page 117</p> <p>1 segregated schools affected them?</p> <p>2 MR. DAVIS: Object to the form.</p> <p>3 Q. You can answer.</p> <p>4 A. People I know who grew up here talk about</p> <p>5 it in two different ways. One is school</p> <p>6 supplies. Books are tore up or in bad condition,</p> <p>7 some with no binders on them; the desks were</p> <p>8 messed up, like secondhand. They spoke a lot</p> <p>9 about secondhand stuff or hand-me-downs. They</p> <p>10 talked about -- on the good side, they talk about</p> <p>11 their sports teams. They talk about the</p> <p>12 friendships that they made that last a lifetime.</p> <p>13 And then secondhand stuff, supplies, shortage of</p> <p>14 supplies, secondhand books, mismatched supplies.</p> <p>15 Q. Do you think your son experienced some of</p> <p>16 that when he was in school?</p> <p>17 A. Yes. Yes. Because in terms of teachers,</p> <p>18 he expressed twice that sometimes the black</p> <p>19 teachers weren't quite as prepared. And I know</p> <p>20 when he had his first white teacher in elementary</p> <p>21 school -- that's when I was part-time at home a</p> <p>22 lot. I was a stay-at-home working dad. And he</p> <p>23 came home crying, and the teacher -- his second</p>	<p style="text-align: right;">Page 119</p> <p>1 middle-aged and one elderly -- black women had</p> <p>2 been charged with voting fraud and had -- I don't</p> <p>3 know the date it went to trial, but that was</p> <p>4 state charges, and they had been convicted. It</p> <p>5 was little known outside of Alabama of this case,</p> <p>6 so we were able to use our newsletter and other</p> <p>7 contacts to publicize it nationwide to draw some</p> <p>8 national attention to it.</p> <p>9 Q. What do you remember about the trial of</p> <p>10 Ms. Bozeman and Ms. Wilder?</p> <p>11 A. At this time I remember more about the</p> <p>12 appeal case than I do the original trial, because</p> <p>13 I wasn't there at the very beginning. It was</p> <p>14 already going on when I first heard about it.</p> <p>15 The first thing that happened was, due to an</p> <p>16 Alabama statewide campaign, they were kind of</p> <p>17 granted some mercy, like taken out of prison and</p> <p>18 put in house arrest in Macon County. We saw it</p> <p>19 at SOC as still being punishment because they</p> <p>20 were being separated from their community, from</p> <p>21 their base, from people they know, their church,</p> <p>22 their relatives, and house arrest was not</p> <p>23 frequent. I wrote about that and got some</p>
<p style="text-align: right;">Page 118</p> <p>1 white teacher, it was fourth grade, had sent him</p> <p>2 home -- not sent him home, but he had come home</p> <p>3 crying, and I went to see the teacher. What he</p> <p>4 told me was he had been put in the slow learners</p> <p>5 section of the classroom, and he had gotten there</p> <p>6 in fourth grade reading at eighth grade level.</p> <p>7 So I wanted to know why he was in the slow</p> <p>8 section, and she said, "He's just quiet. He's</p> <p>9 too quiet." And I told her, "Do you know how</p> <p>10 many teachers would pay for a quiet fourth grade</p> <p>11 male kid in their classroom?" But he had done</p> <p>12 good on his grades, but she thought something was</p> <p>13 wrong with him because he was quiet.</p> <p>14 Q. Did you write about voting issues at the</p> <p>15 time?</p> <p>16 A. Oh, yes. That was one of the key issues I</p> <p>17 wrote about. I had heard about, before I got</p> <p>18 here about Greene County electing their first</p> <p>19 black sheriff, and the platforms to get --</p> <p>20 programs to get more black folks elected, and</p> <p>21 then I think the first case I wrote about was the</p> <p>22 Maggie Bozeman and Julia Wilder case in Pickens</p> <p>23 County, where these two elderly -- one</p>	<p style="text-align: right;">Page 120</p> <p>1 attention about that issue. And in the appeal</p> <p>2 case that we saw, the convictions were</p> <p>3 overturned. And it was overturned because they</p> <p>4 were -- how do you say this? They were convicted</p> <p>5 of charges they weren't charged with.</p> <p>6 Q. Do you recall anyone singing at the trial</p> <p>7 of Ms. Bozeman and Ms. Wilder?</p> <p>8 A. Sitting?</p> <p>9 Q. Singing.</p> <p>10 A. Yes.</p> <p>11 Q. What did they sing?</p> <p>12 A. This was outside the courtroom.</p> <p>13 Q. Well, first, who sang?</p> <p>14 A. It was some civil rights activists from</p> <p>15 Alabama, not just Pickens County but</p> <p>16 surrounding -- SCLC, Southern Christian</p> <p>17 Leadership movement had the biggest group of</p> <p>18 people attending the trial.</p> <p>19 Q. What were they singing?</p> <p>20 A. They sang just some songs like "We Shall</p> <p>21 Overcome," you know, at the courthouse. They</p> <p>22 also sang a song called "Satan Is Going to Tear</p> <p>23 Your Temple Down."</p>

<p style="text-align: right;">Page 121</p> <p>1 Q. Why were they singing?</p> <p>2 A. They were singing those songs to lift the</p> <p>3 spirits of those there and support Maggie Bozeman</p> <p>4 and Julia Wilder, as well as those two women</p> <p>5 themselves. And the whole "Satan Is Going to</p> <p>6 Tear Your System Down" is a reference -- because</p> <p>7 they changed the words to "Satan Is Going to Tear</p> <p>8 Your Justice Down," you know, that kind of stuff,</p> <p>9 switching words out. They were singing that</p> <p>10 because they saw voter suppression and</p> <p>11 retaliation against those who increased the black</p> <p>12 vote as being a system, as being systematic, as</p> <p>13 being intentional.</p> <p>14 Q. Why do you think the prosecutions were</p> <p>15 brought against Ms. Bozeman and Ms. Wilder?</p> <p>16 MR. DAVIS: Object to the form.</p> <p>17 A. They were some of the most industrious and</p> <p>18 infatiguable, not just get-out-the-vote, but they</p> <p>19 did a lot of voter registration. They really</p> <p>20 increased black voter numbers in Pickens County.</p> <p>21 It's a small county, but tremendously it</p> <p>22 increased the number of black voters who</p> <p>23 participated. And that was under dangerous</p>	<p style="text-align: right;">Page 123</p> <p>1 and the Marion 3; Albert Turner, his wife Evelyn</p> <p>2 Turner, and a colleague, Spencer Hogue. I</p> <p>3 attended several days of that trial and</p> <p>4 participated in press conferences. When I say</p> <p>5 "participated in press conferences," I was the</p> <p>6 press. I was taking pictures for a newsletter</p> <p>7 and getting news for my newsletter.</p> <p>8 Q. Mr. and Mrs. Turner, who are they?</p> <p>9 A. Evelyn Turner is still alive.</p> <p>10 Q. But who are they?</p> <p>11 A. Albert Turner, Sr. was a member of SCLC and</p> <p>12 a prominent voting rights activist all over the</p> <p>13 Black Belt. And Spencer Hogue was a colleague</p> <p>14 from the same county who worked with them on</p> <p>15 voter registration in particular.</p> <p>16 Q. What happened with the Marion 3?</p> <p>17 A. The case went to trial with a jury. The</p> <p>18 jury returned an innocent verdict in less than</p> <p>19 four hours.</p> <p>20 Q. And you mentioned there were other</p> <p>21 prosecutions of the same?</p> <p>22 A. This was an extended period in the '80s.</p> <p>23 There were a lot of them. There was Greene</p>
<p style="text-align: right;">Page 122</p> <p>1 situations. For instance, as blacks began to run</p> <p>2 for office, there could be reprisals against</p> <p>3 black voters, not just from, say, officials, but</p> <p>4 from like the local furniture store. People in</p> <p>5 that area would get furniture on credit. Well,</p> <p>6 if you were seen voting and there was a black</p> <p>7 candidate and he's in the race, they assume</p> <p>8 you're voting for the black person, and so you</p> <p>9 couldn't get credit at the store. Things like</p> <p>10 that.</p> <p>11 Q. When was this?</p> <p>12 A. Around '81, '82.</p> <p>13 Q. So in the 1980s?</p> <p>14 A. Yes.</p> <p>15 Q. So is it your belief that the prosecutions</p> <p>16 of Ms. Bozeman and Ms. Wilder by the State were</p> <p>17 designed to suppress the black vote?</p> <p>18 A. Yes. Particularly voter registration.</p> <p>19 Q. Do you recall any other trials or</p> <p>20 convictions for voter fraud, that you're aware</p> <p>21 of?</p> <p>22 A. Yes. Personally I can think of two or</p> <p>23 three other cases. One was the Perry County 3</p>	<p style="text-align: right;">Page 124</p> <p>1 County, in which there were some convictions and</p> <p>2 some acquittals, and I attended some of those</p> <p>3 trials; and they were held in the courthouse in</p> <p>4 Birmingham, federal courthouse in Birmingham.</p> <p>5 Q. What was the impact of those prosecutions</p> <p>6 that you just described on the black community in</p> <p>7 the Black Belt?</p> <p>8 A. Well, on the one hand -- there was two. It</p> <p>9 had a chilling effect on people volunteering to</p> <p>10 go out and register people to vote, but later it</p> <p>11 had an amplifying effect of letting people feel</p> <p>12 like we're able to work to get more people to</p> <p>13 vote, you know. But immediately, it was very</p> <p>14 much a chilling effect.</p> <p>15 Q. And what do you think the purpose of those</p> <p>16 prosecutions were?</p> <p>17 MR. DAVIS: Object to the form.</p> <p>18 A. I felt the purpose of those prosecutions</p> <p>19 was continued voter suppression. This was a</p> <p>20 period of when -- after the Voting Rights Act of</p> <p>21 '65 that immediately didn't happen because the</p> <p>22 voter registration was so low. But by the late</p> <p>23 '70s and early '80s, the numbers were getting</p>

<p style="text-align: right;">Page 125</p> <p>1 high enough to start replacing key offices at the                  2 county level; the sheriff, county commissioners,                  3 school boards. Those positions that had been                  4 held even in majority black counties by white                  5 elected officials were beginning to be                  6 represented by black and white, increasing number                  7 of black elected officials. It was one of the                  8 fastest-growing movements into elected office of                  9 African-Americans in the country.</p> <p>10 Q. And you believe that prosecutions were in                  11 response to that?</p> <p>12 MR. DAVIS: Object to the form.</p> <p>13 A. I believe they were responsible for the                  14 rapid growth of black elected representation.</p> <p>15 Q. Earlier you talked about you worked for the                  16 Sierra Club?</p> <p>17 A. Yes.</p> <p>18 Q. What did you do there?</p> <p>19 A. I was the first grassroots environmental                  20 justice organizer. What that meant was, I was to                  21 travel the Southeast finding low income                  22 communities, people of color communities facing                  23 environmental threats like waste dumps, toxic</p>	<p style="text-align: right;">Page 127</p> <p>1 people of color?</p> <p>2 MR. DAVIS: Object to the form.</p> <p>3 MR. ROSS: What's the objection?</p> <p>4 MR. DAVIS: Why he -- repeat the question,                  5 please. It called for such great speculation.</p> <p>6 Q. You can answer. Based on your experience                  7 and your understanding why you believe that the                  8 communities you visited were communities of                  9 color?</p> <p>10 MR. DAVIS: And I object to the                  11 speculation.</p> <p>12 A. These were all areas in the Black Belt that                  13 had previously been dominated by plantations.                  14 These were emancipated people no longer on                  15 plantations; and even in the plantation days,                  16 they were the majority then, too. So these were                  17 the descendants who had previously been there in                  18 servitude trying to eke out a life post slavery,                  19 under the watchful eye of the post masters. So I                  20 think like the 1901 Constitution is post slavery,                  21 but it is due to poll tax. So the poll tax and                  22 other -- literacy tests. And even though those                  23 tests were more -- they were statewide, they were</p>
<p style="text-align: right;">Page 126</p> <p>1 spills, chemicals in the air, and to bring the                  2 resources of Sierra Club to those communities.                  3 Not me, but leverage those resources to assist                  4 those communities with soil testing, air testing,                  5 what legal options they may have, because Sierra                  6 Club had the expertise and the technology, but                  7 the community had the conditions. And my job was                  8 to work with Sierra Club volunteers nearby to see                  9 how they could bring the national Sierra Club's                  10 resources to help in those communities.</p> <p>11 Q. What was the racial make-up of the                  12 communities that you worked with?</p> <p>13 A. Well, the great number of ones that I                  14 attended were -- I attended -- I visited were                  15 mostly African-American, and then on one case it                  16 was a Vietnamese refugee from the Bangladesh                  17 area.</p> <p>18 Q. Where were the African-American                  19 communities?</p> <p>20 A. In Alabama, all in the Black Belt, but also                  21 went to Mississippi as well.</p> <p>22 Q. In Alabama, why do you think the                  23 communities that you visited were predominantly</p>	<p style="text-align: right;">Page 128</p> <p>1 more practiced in the Black Belt, even in the                  2 '70s and '80s.</p> <p>3 Q. We'll come back to that. But the literacy                  4 test in Alabama, is it your understanding that                  5 that was a requirement for registration?</p> <p>6 A. I understand, my testimony is it was added                  7 by J. Mason Davis, and it was a requirement.</p> <p>8 Q. For registering to vote?</p> <p>9 A. Registering to vote.</p> <p>10 Q. So can voter registration be                  11 discriminatory?</p> <p>12 A. Yes. Voter registration can and has been                  13 discriminatory, and arbitrary.</p> <p>14 Q. Would you consider it discriminatory for                  15 the State to -- strike that. Do you believe that                  16 legislators in Alabama know about the history of                  17 racial discrimination in the state?</p> <p>18 A. Yes.</p> <p>19 Q. Why do you believe that?</p> <p>20 A. It's not emphasized strongly, but it's in                  21 the textbooks that they went to school in                  22 Alabama. It's documented in news articles and TV                  23 and newspaper articles. It is also lifted up</p>

<p style="text-align: right;">Page 129</p> <p>1 through things like the annual Selma Montgomery  2 March, voting rights, those who catch that, and  3 it's raised by African-American legislators in  4 the legislature.  5 Q. So you think just based on -- would it be  6 fair to say it's general knowledge in Alabama,  7 this history of racial discrimination in the  8 state?  9 A. Yes.  10 Q. And the effects of that racial  11 discrimination in terms of African-Americans  12 being poor, do you think that's also generally  13 known in the state?  14 A. That's generally known in the state.  15 Q. Mr. Davis asked you about what he purported  16 to be discriminatory comments that may have been  17 made by African-American legislators around  18 HB 56. Do you recall that?  19 A. Yes, I do recall it.  20 Q. Mr. Davis's representations, right?  21 A. Yes.  22 Q. Do you know any African-American  23 legislators who voted for HB 56?</p>	<p style="text-align: right;">Page 131</p> <p>1 that recently.  2 Q. Consistent with whatever the law was in  3 Alabama?  4 A. Yes. I give people the application.  5 Q. Right, you hand them the application. So a  6 requirement that someone -- your understanding of  7 how the absentee process worked, does a voter  8 ever show up in front of someone, so that their  9 face could be compared to a photograph?  10 A. No, except when perfectly -- no, that's  11 true. I was thinking about when people are going  12 out of the country or something, they would  13 actually take their absentee ballot to the  14 clerk's office.  15 Q. So maybe if someone went in person to drop  16 it off?  17 A. Yes.  18 Q. But if they mailed it in, they wouldn't  19 ever have to show their face; right?  20 A. That's correct.  21 Q. So a photo ID requirement that had me mail  22 in a copy of my photograph, there would never be  23 an opportunity for anyone to look at that</p>
<p style="text-align: right;">Page 130</p> <p>1 A. I don't know any.  2 Q. Mr. Davis also asked you about the photo ID  3 requirement for absentee voting. Do you recall  4 that?  5 A. Yes.  6 Q. Do you know how someone provides photo ID  7 if they're an absentee voter?  8 A. No.  9 Q. I believe Mr. Davis said earlier, I'm sure  10 he'll correct me if he didn't, that you send in a  11 copy of your photo ID; is that right?  12 A. Yes.  13 Q. Is that your understanding?  14 A. Yes.  15 Q. Do you know if --  16 A. I assume that you wouldn't send your  17 original photo ID, but I did read the  18 instructions.  19 Q. Are you generally aware of the process by  20 which someone votes absentee in Alabama?  21 A. I was more generally aware in the past when  22 I actually helped people. I would order the  23 packets for them and stuff, but I haven't done</p>	<p style="text-align: right;">Page 132</p> <p>1 photograph and look at me and make a comparison;  2 is that right?  3 MR. DAVIS: Object to the form.  4 A. No.  5 Q. Earlier Mr. Davis was asking you about the  6 positively identify provision. Do you recall  7 that?  8 A. Yes.  9 Q. I believe you said that -- I just want to  10 clarify. I think you may have misstated. You  11 were talking about registrars being at the  12 polling place. Did you mean poll workers?  13 A. Poll workers, yes.  14 Q. Whose obligation do you think it is to  15 ensure that Alabama has a racially diverse group  16 of poll workers? Let me clarify. Is Greater  17 Birmingham Ministries obligated to ensure that  18 Alabama has racially diverse poll workers?  19 A. No.  20 Q. If GBM were to try to make sure --  21 encourage people to be poll workers, would that  22 take away resources from other work that GBM  23 does?</p>



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1 A. Yes, it would. We would be doing the  
 2 State's work.  
 3 Q. You would be doing the State's work; is  
 4 that right?  
 5 A. Yes.  
 6 Q. Do you believe it's the State's obligation  
 7 to try to make sure that the poll workers are  
 8 regionally diverse?  
 9 A. Yes, it is.  
 10 Q. And earlier Mr. Davis was asking you  
 11 whether GBM would be willing to give people rides  
 12 to the polling booth. Do you remember that?  
 13 A. Yes.  
 14 Q. Is it GBM's obligation to provide a photo  
 15 ID to everyone who doesn't have one in Alabama?  
 16 A. No, it's not their obligation.  
 17 Q. If GBM were to offer rides to people to  
 18 get -- well, strike that. To your knowledge, has  
 19 anyone from GBM ever given a ride to someone who  
 20 needed to get photo ID?  
 21 A. Yes, volunteers have.  
 22 Q. And if GBM were to take on the tasks that  
 23 Mr. Davis suggested of driving more people to get

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1 photo ID, would that take more of GBM's  
 2 resources?  
 3 A. That will take more resources, time, and  
 4 energy, yes.  
 5 Q. And it would take it away from other work  
 6 that you do?  
 7 A. Oh, yes.  
 8 Q. Further, Mr. Davis was also asking you  
 9 about meetings with the Secretary of State's  
 10 office. Do you recall that?  
 11 A. Yes.  
 12 Q. Could some of those meetings have involved  
 13 the former Secretary of State, Jim Bennett?  
 14 A. Yes. Jim Bennett preceded Merrill, and he  
 15 was there when it first got passed.  
 16 Q. So some of the meetings that folks at GBM  
 17 had may have been with Secretary Bennett; is that  
 18 right?  
 19 A. Yes.  
 20 Q. Do you recall if GBM ever offered, Greater  
 21 Birmingham Ministries -- I lost my train of  
 22 thought. Do you recall whether Greater  
 23 Birmingham Ministries ever suggested locations

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1 for mobile units to go?  
 2 A. I think it was in writing one time. It was  
 3 public housing across the state.  
 4 Q. Do you recall whether the Secretary of  
 5 State went through with that suggestion?  
 6 A. He rejected the suggestion, or denied it,  
 7 whatever you call it.  
 8 Q. Do you know whether public housing ID is  
 9 acceptable for voting?  
 10 A. It is not.  
 11 Q. How do you know that it is not?  
 12 A. Primarily because the public housing units  
 13 in -- well, what do you call it -- the Housing  
 14 Authority in Anniston had made a request that it  
 15 be used for it to the Secretary of State, and  
 16 they were denied. They were told no, they denied  
 17 it. They asked could this be a separate form of  
 18 ID.  
 19 Q. And did GBM ever make any inquiries about  
 20 that to the Secretary of State?  
 21 A. We did. We did. We heard that they had  
 22 tried.  
 23 Q. And what was the Secretary of State's

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1 response?  
 2 A. The answer was no.  
 3 Q. Do you know what racial group in Alabama  
 4 lives in public housing? You don't have to give  
 5 me a percentage; but the majority of public  
 6 housing residents in Alabama, what race do you  
 7 think they are?  
 8 A. It wasn't always this way, but in the 1930s  
 9 when public housing first came out, black folks  
 10 couldn't get in them because of discrimination.  
 11 But now it's predominantly -- I would say in  
 12 Huntsville and Mobile, for sure, it's  
 13 predominantly African-American. There are areas  
 14 in east Alabama and northwest Alabama where the  
 15 majority would be.  
 16 Q. Do you think the Secretary of State was  
 17 aware of that?  
 18 A. Yes.  
 19 Q. Why do you think he was aware of that?  
 20 MR. DAVIS: Object to the form.  
 21 Q. You can answer.  
 22 A. Oh, okay. Generally the population of  
 23 folks that live in public housing is generally

<p style="text-align: right;">Page 137</p> <p>1 aware of folks. Secretary of State's office is  2 in Montgomery, and he passes by public housing  3 going to work.  4 Q. So you think it's general knowledge?  5 A. There's people on the porch.  6 Q. You think it's general knowledge?  7 A. It's general knowledge, yes.  8 Q. What is a voter registration card?  9 A. A voter registration card in Alabama is  10 what the county office sends you once you  11 register to vote.  12 Q. Does every registered voter get it?  13 A. I don't know. I thought we were supposed  14 to, yes.  15 Q. Your understanding is that every registered  16 person is supposed to get it, right?  17 A. Every new voter gets it, right.  18 Q. So your understanding is when someone  19 registers to vote, they're supposed to get it  20 mailed?  21 A. That's right.  22 Q. So if a voter registration card were an  23 acceptable form of ID, then at least every voter</p>	<p style="text-align: right;">Page 139</p> <p>1 acceptable, would that be one option that  2 Secretary Merrill could do to make photo ID more  3 available to the poor?  4 A. Yes.  5 Q. And it's your understanding he has rejected  6 that proposal?  7 A. Yes.  8 Q. And other proposals to send mobile units to  9 public housing?  10 A. Yes.  11 Q. Do you recall that GBM signed on to a  12 series of letters about the positively identify  13 provision?  14 A. Yes.  15 Q. And you agreed with the suggestions in  16 those letters?  17 A. Yes, I did.  18 Q. Have you ever been to the Secretary of  19 State's website about the photo ID law?  20 A. Yes, I have.  21 Q. Have you ever seen it presented in Spanish?  22 A. I have not.  23 Q. Has GBM ever published any materials about</p>
<p style="text-align: right;">Page 138</p> <p>1 would have had to have been mailed a copy of  2 that, right?  3 A. Every voter who is registered would get it.  4 Q. And if Alabama allowed for a voter  5 registration card to be used to vote, instead of  6 a photo ID, would that be at least one potential  7 remedy that you would be open to in this lawsuit?  8 A. We would be.  9 Q. What about allowing people to sign an  10 affidavit testifying that they are who they say  11 they are, would that be an acceptable form of ID?  12 A. Yes, it would.  13 Q. Earlier when Mr. Davis was talking about  14 putting something on the Internet, you mentioned  15 that African-Americans are less likely to have  16 access to the Internet?  17 A. Yes.  18 Q. Do you think that's true in Alabama?  19 A. It's true, and there's been a public record  20 of it's true.  21 Q. So when Mr. Davis was asking you about what  22 else Secretary Merrill could have done, or could  23 do, would making public housing photo ID</p>	<p style="text-align: right;">Page 140</p> <p>1 the photo ID laws in Spanish?  2 A. Yes.  3 Q. Why?  4 A. One is because an increasing number of our  5 folks that come there in need, Spanish is their  6 first language, and so we publish our own voter  7 card, file card in English and in Spanish.  8 Q. Because it helped the voters; is that  9 right?  10 A. It helped the voters, and we also shared  11 the work with the blue-collar Alabama Coalition  12 for Immigrant Justice, that is primarily a  13 Spanish-speaking organization.  14 Q. What is the Alabama Coalition for Immigrant  15 Justice?  16 A. It's a 12-year-old organization dedicated  17 to improving the quality of life of primarily  18 Latino immigrants in Alabama.  19 Q. Does GBM have a relationship with the  20 Alabama Coalition for Immigrant Justice?  21 A. Yes, we do. We were actually part of their  22 founding 12 years ago, this is what supported the  23 Coalition; but in recent years, they do not have</p>

<p style="text-align: right;">Page 141</p> <p>1 their own 501(c)(3), therefore they could not                  2 accept tax deductible contributions from                  3 individuals or foundations. So they had                  4 different sponsors that didn't have the capacity                  5 to continue it, and so we agreed to -- we had to                  6 sponsor it until they get their own 501(c)(3).                  7 And for about three-years-and-a-half we were                  8 their physical sponsor, accepting grants on their                  9 behalf.                  10 Q. Why did GBM assist the ACIJ?                  11 A. We know that they are an asset to our                  12 community. They provide a much needed service.                  13 People need those services, and adopted a life                  14 here in Alabama, active life here in Alabama; and                  15 they serve our interests of helping our shared                  16 community, regardless of nationality or                  17 ethnicity.                  18 Q. So did it take away from GBM resources to                  19 assist ACIJ?                  20 A. I would say yes, it did. It was a                  21 tremendous burden on our bookkeeper. They're                  22 much better now, not being as structured. They                  23 are low income folks. They raise money by --</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. And that community that ACIJ works with is                  2 predominantly Latino?                  3 A. Correct, Spanish-speaking.                  4 Q. Does GBM have Latino constituents also?                  5 A. Yes, we do. We have maybe two to three                  6 percent, up to 2,000 families we assist -- well,                  7 a higher percentage, every week with food and                  8 free clothing. An increased number of those are                  9 Latino immigrants as well.                  10 Q. And do you try to educate those individuals                  11 about photo ID requirements?                  12 A. Yes. Tuesday and Thursdays are our                  13 clothing days, and Fridays we call food day. And                  14 so before we distribute food to anyone, we spend                  15 about five or ten minutes on some issues of the                  16 day and ask the people -- the question is, "Do                  17 you have a current photo ID" comes up in that                  18 session first. We also do a free blood pressure                  19 screening. "Well, since you're here, you know,                  20 get your blood pressure screening and see how to                  21 register to vote."                  22 Q. And if people don't have photo ID, what                  23 does GBM tell them at those kind of events?</p>
<p style="text-align: right;">Page 142</p> <p>1 with pennies, dimes, and nickels and things, and                  2 so we had to count all that and account for it.                  3 Q. And you worked with ACIJ on voting rights                  4 issues, right?                  5 A. And we worked for voting rights issues as                  6 well, yes.                  7 Q. Specific to the photo ID law, what did GBM                  8 work with ACIJ on?                  9 A. Primarily on the requirements including                  10 citizenship necessary to register to vote, and we                  11 did that in English and Spanish. We also                  12 conducted workshops with people, with members,                  13 their members, and we did the workshops. We did                  14 the printed materials after the photo ID law came                  15 into play. And we helped them with how people                  16 who couldn't vote could encourage others that                  17 could to vote.                  18 Q. So you provided some of your organizational                  19 resources to ACIJ?                  20 A. Yes.                  21 Q. To help them explain to their community                  22 about the photo ID law?                  23 A. Yes.</p>	<p style="text-align: right;">Page 144</p> <p>1 A. In addition to our cards, we have had voter                  2 registration forms that we deliver to the county                  3 courthouse. That was before voter ID.                  4 Q. But after photo ID, what would GBM do if                  5 someone came to you and said, "I don't have the                  6 photo ID needed to vote"?                  7 A. Okay. We would help them, the best we                  8 could, obtain a photo ID residence where they can                  9 go get one, and also go over with them what                  10 documentation they need to have with them.                  11 Q. Earlier Mr. Davis was also asking about                  12 sort of advertising for the photo ID law. Do you                  13 recall that?                  14 A. Advertising for the law?                  15 Q. Yes, sir. When was the photo ID law                  16 passed?                  17 A. It was passed in 2011.                  18 Q. Do you know when it was implemented?                  19 A. In 2014.                  20 Q. Do you remember, did the law require that                  21 it went into effect in 2014?                  22 A. Yes, I read it. It said it came into                  23 effect in 2014.</p>

<p style="text-align: right;">Page 145</p> <p>1 Q. And have you ever heard the court case of</p> <p>2 Shelby County versus Holder?</p> <p>3 A. Yes.</p> <p>4 Q. What do you know about that case?</p> <p>5 A. I don't know the details of it, except for</p> <p>6 the fact the Supreme Court came down with a</p> <p>7 decision. It essentially gutted parts of the '65</p> <p>8 Voting Rights Act, which in particular</p> <p>9 (unintelligible) pre-clearance.</p> <p>10 Q. What was pre-clearance?</p> <p>11 A. Pre-clearance was to cover states that it</p> <p>12 covers. It didn't cover every state. It</p> <p>13 involves that any election changes had to be put</p> <p>14 before the Justice Department to be cleared, to</p> <p>15 make sure they didn't violate the Voting Rights</p> <p>16 Act.</p> <p>17 Q. Was Alabama a covered state?</p> <p>18 A. Alabama was a covered state.</p> <p>19 Q. Do you know when the Shelby County decision</p> <p>20 came down?</p> <p>21 A. I don't know when it started. It came down</p> <p>22 in 2013.</p> <p>23 Q. Prior to this decision coming down in 2013,</p>	<p style="text-align: right;">Page 147</p> <p>1 individuals that you serve if, prior to 2013, the</p> <p>2 Secretary of State would have done voter</p> <p>3 education work?</p> <p>4 A. It would have been helpful. It would have</p> <p>5 been helpful, yes.</p> <p>6 Q. Would it have been helpful for the</p> <p>7 Secretary of State to offer photo ID cards prior</p> <p>8 to 2013 in the Shelby decision?</p> <p>9 A. Definitely free photo ID cards, yes.</p> <p>10 Q. When you talk to people about the photo ID</p> <p>11 law and people describe it to you, saying they</p> <p>12 don't have photo ID, do a lot of people know</p> <p>13 about the voter ID card as an option that's</p> <p>14 available to them?</p> <p>15 MR. DAVIS: Object to the form.</p> <p>16 A. The voter ID card?</p> <p>17 Q. The voter ID card that you can get at the</p> <p>18 Board of Registrars office, do people know about</p> <p>19 that without you telling them?</p> <p>20 A. No.</p> <p>21 Q. Most of the folks that you encounter in</p> <p>22 these conversations, at least in your experience,</p> <p>23 are most people, when they think of ID, are they</p>
<p style="text-align: right;">Page 146</p> <p>1 do you know whether the Secretary of State made</p> <p>2 any effort to educate voters about the photo ID</p> <p>3 law?</p> <p>4 A. Prior to '14?</p> <p>5 Q. Prior to '13.</p> <p>6 A. Prior to '13, I heard nothing.</p> <p>7 Q. Do you know whether the Secretary of State</p> <p>8 offered rides -- strike that. Do you know</p> <p>9 whether the Secretary of State offered mobile</p> <p>10 units prior to 2013 in the Shelby County</p> <p>11 decision?</p> <p>12 A. No.</p> <p>13 Q. No, you don't know; or no, they didn't do</p> <p>14 it?</p> <p>15 A. To my knowledge, they didn't do it.</p> <p>16 Q. Do you know whether the Secretary of State</p> <p>17 offered any kind of voter education prior to the</p> <p>18 Shelby County decision in 2013?</p> <p>19 A. To my knowledge, they didn't do it. They</p> <p>20 did not do it.</p> <p>21 Q. The law was passed in 2011, correct?</p> <p>22 A. Yes, it was.</p> <p>23 Q. Would it have been helpful to the</p>	<p style="text-align: right;">Page 148</p> <p>1 thinking of drivers license as their non-driver</p> <p>2 ID?</p> <p>3 A. Yes, that's what they tell us.</p> <p>4 Q. So if the DMV were closed, people may not</p> <p>5 know about the Board of Registrars; is that</p> <p>6 right?</p> <p>7 A. That's true.</p> <p>8 Q. Have you ever seen any advertising --</p> <p>9 Mr. Davis represented to you that the Secretary</p> <p>10 of State offers rides to people -- offers home</p> <p>11 visits to people who don't have photo ID; is that</p> <p>12 right?</p> <p>13 A. That's what I heard.</p> <p>14 Q. Had you ever heard of that before today?</p> <p>15 A. No, I haven't.</p> <p>16 Q. Have you ever seen any advertising on</p> <p>17 television for that before today?</p> <p>18 A. No, or radio.</p> <p>19 Q. You didn't hear it on radio either?</p> <p>20 A. No.</p> <p>21 Q. Have you gone on the radio to advertise the</p> <p>22 photo ID law?</p> <p>23 A. I have gone on radio talk shows to inform</p>



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1 folks about what's needed to obtain it, that they  
2 issue photo ID and other categories, but mainly  
3 that one, and let people know that plus  
4 registration deadlines. They have to obtain them  
5 before election, yes.  
6 Q. What radio stations did you go on?  
7 A. WATV, that's 900 AM in Birmingham, and  
8 WJLD, that's 1400 AM in Birmingham.  
9 Q. How much do you have to pay to become a  
10 member of GBM?  
11 A. There's no set limit. We let the people  
12 that have it pay five dollars.  
13 Q. Could someone pay a penny and become a  
14 member?  
15 A. Yes, they could.  
16 Q. The people that GBM serves, are they the  
17 same as the members in terms of the demographics?  
18 A. Some of the people we serve are members,  
19 the majority are not members. We serve up to  
20 2,000 families a year.  
21 Q. The individuals that you serve versus your  
22 constituents, as Mr. Davis raised it, and your  
23 members, are they often of a different

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1 socioeconomic class?  
2 A. Yes.  
3 Q. How so?  
4 A. Our members range from, I would call it  
5 lower-middle income to high income. Our  
6 constituency is lower-middle income to  
7 impoverished. Lower-middle income, well, they  
8 have house fires. They have disasters. Someone  
9 in the family has a major illness, and their  
10 money is depleted, that kind of thing.  
11 Q. Other than sort of what you've described in  
12 terms of individuals' time and resources,  
13 speaking in terms of donations to GBM, how did  
14 GBM being involved in the photo ID litigation,  
15 how has that affected donations to GBM?  
16 A. As far as donations to GBM, it has had some  
17 negative. For instance, there is a church that  
18 just recently had us meet with them to let us  
19 know that they could no longer continue to serve  
20 us -- support us, because we were involved with  
21 voter education and voter protection. So we had  
22 to explain what has voter protection got to do  
23 with -- they said, "We thought GBM helped the

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1 poor. What has that got to do with helping the  
2 poor?" So we had to explain that this is part of  
3 helping the poor because increasing burdens have  
4 been placed on participation. They have been  
5 discussing this for six weeks. They have held up  
6 their checks. They may return to us. Right now  
7 they've stopped until they make their final  
8 decision.  
9 Q. So in addition to time and resources, GBM's  
10 involvement in voter education work around the  
11 photo ID law has led them to getting fewer  
12 donations; is that right?  
13 MR. DAVIS: Object to the form.  
14 A. Less money, yes.  
15 Q. And the palm cards you were talking about  
16 earlier, where were those distributed?  
17 A. Oh, they're distributed at our location to  
18 which we assist over 2,000 families, more  
19 individuals than families a year. We also  
20 distribute it to congregations, hand it out to  
21 their own members. We also had canvassers take  
22 them to public housing and put on doors.  
23 Q. Does that take time out from GBM's other

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1 work?  
2 A. Yes.  
3 Q. Is it work that GBM would have done --  
4 educating voters about the photo ID law, would  
5 GBM have done that if there was no photo ID law?  
6 A. No. Because prior to the photo ID law, we  
7 did registration. People who wanted to be  
8 registered came through our doors.  
9 Q. So you weren't doing education about photo  
10 ID requirements?  
11 A. No, we did not.  
12 Q. Why did GBM do poll monitoring in 2014?  
13 A. Well, we knew the law came into effect in  
14 2014. What we wanted to know was what impact it  
15 had on those folks who went to the poll for the  
16 first time it came into effect. So we picked a  
17 few polling places and trained organized  
18 volunteers to go to those polling places, with  
19 the idea of looking out for anybody that may be  
20 turned away.  
21 Q. And what did you find?  
22 A. We found several instances of people being  
23 turned away for not having proper ID. We also

<p style="text-align: right;">Page 153</p> <p>1 found people who were told they were at the wrong  2 polling place.  3 Q. What were the costs associated with poll  4 monitoring in 2014?  5 A. Well, the human cost was in terms of staff  6 time in doing the research, so we could  7 accurately give people the right information.  8 Q. And you had to recruit volunteers; is that  9 right?  10 A. Yes. We had to recruit volunteers and  11 supervise volunteers.  12 Q. And these volunteers were your members?  13 A. Yes, what we call members.  14 Q. But they weren't members before? When did  15 GBM first have membership?  16 A. First of 2016.  17 Q. Approximately when in 2016?  18 A. Beginning January 1st.  19 Q. And volunteers are required to do a certain  20 number of hours for GBM; is that right?  21 A. There's no limit or floor.  22 Q. But if you ask a volunteer to do one thing,  23 it is sometimes harder to get them to put aside</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. So a board member who chose to do poll  2 monitoring, that would meet part of their  3 volunteer requirement?  4 A. Exactly.  5 Q. And that may take away from GBM's  6 opportunity to ask that board member to do  7 something else to meet that requirement?  8 A. And it has, yes.  9 Q. Were there any printing costs associated  10 with 2014 poll monitoring?  11 A. Yes. There were producing of the palm  12 cards in particular, we did that in the  13 thousands, and the staff labor to produce them.  14 We decided for one set to print them in-house,  15 but that's still going to put the copying on  16 them.  17 Q. What about the gas?  18 A. Gas primarily, we reimburse volunteers for  19 gas used to get to the polling sites they  20 volunteer for. They give their time, it  21 shouldn't cost them too much money. And also the  22 gas of the staff person who circulated around  23 different polling sites to check on the</p>
<p style="text-align: right;">Page 154</p> <p>1 floor time to do something else, right?  2 A. Yes, take them away from work.  3 Q. So if you had a volunteer working on poll  4 monitoring, that volunteer couldn't work on some  5 other project that GBM might need; is that right?  6 A. Most volunteers are working. Yes. We have  7 found more volunteers and supervise more  8 volunteers.  9 Q. Was there any financial costs to the poll  10 monitoring in 2014?  11 A. The staff time for the supervisor, because  12 it's one thing to have volunteers taking  13 different shifts. Nobody stays there all day  14 long, so two- or three-hour shifts. But also the  15 staff person that drives around to the polling  16 places during work time, during voting hours  17 time, to see if they have any problems or they  18 need any more resources, or they need more cards.  19 Q. Do board members have a volunteer  20 requirement?  21 A. Yes. They have to volunteer and make a  22 financial contribution. That's a requirement of  23 board members.</p>	<p style="text-align: right;">Page 156</p> <p>1 volunteers.  2 Q. Did GBM do poll monitoring after 2014?  3 A. We did a much smaller scale in 2016.  4 Q. Why on a smaller scale?  5 A. Because we didn't have as many resources as  6 we had in 2014, financially.  7 Q. Has GBM ever helped someone get a birth  8 certificate?  9 A. In our history -- not me personally, I know  10 that we have.  11 Q. Have they done it in the last three years?  12 A. No.  13 Q. If people need photo ID, where does GBM  14 tell them to go?  15 A. To the DMV or to the County or to -- in the  16 case of homeless people, to the Highlands church.  17 Q. Why does GBM tell people to go to the DMV?  18 A. It's a well-known place. People generally  19 know where it is. Most folks know where the DMV  20 is than county courthouses.  21 Q. Are there more DMVs than there are county  22 courthouses?  23 A. There are more in Jefferson County; but</p>

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1 across the state, no. Because Jefferson County  
2 has like two or three satellites.  
3 Q. And GBM works primarily in Jefferson  
4 County?  
5 A. That's right.  
6 Q. Does GBM tell people that they can get  
7 nondriver ID for free at DMVs?  
8 A. Yes.  
9 Q. Why does GBM tell them that?  
10 A. I still don't know if the qualifications  
11 are written to get them for free, but I heard  
12 that you can get them there if you qualify.  
13 Q. For voting?  
14 A. For voting purposes, yes.  
15 Q. In the past, has there been someone at GBM,  
16 prior to -- for the 2014 elections, was there  
17 someone at GBM who was primarily responsible for  
18 civic education?  
19 A. Prior to '14?  
20 Q. No, sorry, in 2014.  
21 A. Yes. Yes.  
22 Q. Who was that?  
23 A. Brandon Fountain.

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1 Q. And because of the photo ID law  
2 implementation, did Mr. Fountain have to do more  
3 work around civic education than expected?  
4 A. Yes, he did.  
5 Q. How so?  
6 A. He either brought on a staff person who was  
7 corresponding with the Secretary of State's  
8 office to begin with, and then John Merrill about  
9 clarifications we were looking for around  
10 implementation of the photo ID law. He was the  
11 one that inquired about -- suggested the public  
12 housing, focusing on public housing on our  
13 behalf. He also went to Montgomery to some  
14 meetings.  
15 Q. And did that take away from time that  
16 Mr. Fountain could be doing on other projects?  
17 A. Much so, because part of our plan was --  
18 voting just wasn't part of civic engagement. We  
19 wanted people to attend meetings, from PTA to  
20 city council to county commission, so they would  
21 have firsthand knowledge. Voting was a part of  
22 that. Having the right ID was a part of that.  
23 It became a much bigger part of that whole --

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1 bigger than the voting part because it was new,  
2 and the rollout was kind of bumpy.  
3 Q. Now in 2016, do people continue to have  
4 to -- well, who has taken over the role in 2016  
5 that Mr. Fountain had in 2014?  
6 A. Brandon left in -- Fountain left December  
7 '15, mid December '15, and we didn't start our  
8 search until January, and we hired a woman named  
9 Martha Sherer, but she came onboard in June of  
10 '16.  
11 Q. Has Martha or other individuals had to also  
12 take time away from other work to work on the  
13 photo ID, the issue of educating voters about  
14 photo ID?  
15 A. Yes, and probably -- yes, definitely --  
16 probably more time, because when that person  
17 invests time and accumulates all this knowledge  
18 and relationship, when they go, you don't start  
19 with where they left off. You kind of build back  
20 up again.  
21 Q. So GBM continues to have to use staff time  
22 on educating voters about the photo ID law; is  
23 that right?

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1 A. That's correct, because we now essentially  
2 have three staff people doing what Brandon did.  
3 Q. The list provided to -- let's go back to  
4 Exhibit 1. Do you know how this list was  
5 generated?  
6 A. Yes. It was exported from our database  
7 into an Excel spreadsheet, and the database is  
8 the one we use for people we serve.  
9 Q. So when you see the column Contact Source,  
10 it looks like most of them say either food or  
11 clothing assistance; is that right?  
12 A. Correct. Correct.  
13 Q. So these are primarily people who may have  
14 come to you about food or some other services,  
15 and you asked them about photo ID also?  
16 A. That's correct. That's correct.  
17 Q. Do you know when GBM started keeping this  
18 list, this information?  
19 A. We changed software, so this would probably  
20 be for '16 forward.  
21 Q. Could there be more people than these  
22 listed here who GBM has encountered who don't  
23 have photo ID?

<p style="text-align: right;">Page 161</p> <p>1 A. Oh, yes. Yes. This is a brand new  2 database, and the photo ID question was part of  3 this database, but not part of the ALEA database.  4 Q. So this isn't a complete list of  5 individuals GBM has encountered about the photo  6 ID?  7 A. No, it's not.  8 Q. Take a look at the other exhibits. I think  9 they were, I believe, 2, 3, and 4. In 2016, did  10 GBM keep a list of voters that attempted to  11 register?  12 A. We did not keep a separate list. Yes,  13 people came to see us, yes. They were in this  14 list.  15 Q. Did GBM do voter registration efforts in  16 2016?  17 A. Yes, we did.  18 Q. And how did GBM do those voter registration  19 efforts in 2016?  20 A. We keep a continuous supply from the county  21 office at GBM, and we help people fill out voter  22 registration forms.  23 Q. Does GBM go outside of its offices to</p>	<p style="text-align: right;">Page 163</p> <p>1 is under-inclusive of the individuals that you  2 encountered?  3 MR. DAVIS: Object to the form.  4 A. Yes.  5 Q. And why would it be under-inclusive?  6 MR. DAVIS: Object to the form.  7 Q. You can answer.  8 A. Because we were primarily interested in one  9 thing, which is registering people to vote. And  10 some of our volunteers didn't ask, "Do y'all have  11 a photo ID," so it wasn't recorded.  12 Q. But your volunteers were instructed to ask  13 about photo ID; is that right?  14 A. Yes.  15 Q. But some may just have mistakenly not  16 asked; is that right?  17 A. Right. These weren't professionals.  18 Q. They were volunteers; is that right?  19 A. Yes.  20 Q. Prior to 2016, did GBM keep any kind of  21 list of individuals that it was registering?  22 A. Prior to '16, we did not keep lists.  23 Q. And in 2017, has GBM tried to keep a list?</p>
<p style="text-align: right;">Page 162</p> <p>1 register people to vote?  2 A. Yes.  3 Q. Where does GBM go?  4 A. We go to supermarkets, we have gone to  5 public events. We've been at college campuses.  6 Q. And there does GBM register individuals?  7 A. Yes.  8 Q. And does GBM keep a list of those  9 individuals?  10 A. Yes.  11 Q. Do you know in 2016 about how many people  12 GBM registered, at least that it kept records of?  13 A. In 2016?  14 Q. Yes, sir.  15 A. That would be several hundred.  16 Q. And is it possible that this Exhibit 2, 3,  17 and 4, does that include information about some  18 of the people GBM may have encountered who don't  19 have photo ID?  20 A. Yes.  21 Q. And is it possible that -- I understand  22 that if you look at these exhibits, it looks like  23 there are only two people. Is it possible that</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Yes. We're learning.  2 Q. Is there reliable public transportation in  3 Birmingham?  4 A. Bus riders say no.  5 Q. Why would bus riders say no?  6 A. It's getting better, but there are too few  7 buses, too few routes, and too unreliable in  8 terms of getting to work on time.  9 Q. What do you mean "getting to work on time"?  10 A. Buses break down because of lack of  11 maintenance, lack of money for maintenance, and  12 so they just break down on the street, catch  13 fire. Yes, that's the primary reasons.  14 Q. So do you know the hours of the Board of  15 Registrars here in Birmingham?  16 A. I'm just assuming it's like 8:00 to 4:00 or  17 4:30.  18 Q. And for some working person, the kind that  19 GBM encounters without photo ID, would they be  20 able to go during those hours to get the ID?  21 A. Not if they had the full even six-hour day  22 job.  23 Q. Why not?</p>



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1 A. Because it can be as long as two hours to  
2 get -- largely because Birmingham is on a  
3 spoke-and-wheel type route. Wherever you go, you  
4 go to the central station first and you catch  
5 another bus. They call them transfers. That's  
6 what it is. Because you have to take a transfer  
7 to get any distance, it adds to your time, and  
8 you miss your time at central station for the bus  
9 going out to the DMV, or the county courthouse  
10 for that matter.  
11 Q. Do you believe that African-Americans in  
12 Alabama are more likely to work those kind of  
13 hourly wage jobs that you described?  
14 A. Yes, I believe, and also to ride the bus.  
15 It depends if it's bus-dependent people.  
16 Q. So you think African-Americans are both  
17 more likely to be working jobs that make it  
18 difficult for them to go somewhere during the  
19 day --  
20 A. Yes.  
21 Q. -- and more likely to be dependent on  
22 unreliable bus service?  
23 A. Yes.

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1 Q. What about Latinos, do you think the same  
2 is true for them?  
3 A. Yes.  
4 Q. Why?  
5 A. Because of the lack of automobiles in the  
6 family. Also a disproportionate dependency on  
7 service jobs, that even part-time are at hours  
8 that are available to go to the DMV during the  
9 day.  
10 Q. Mr. Davis was asking you earlier about  
11 birth certificates?  
12 A. Yes.  
13 Q. Have you ever heard of the State offering  
14 free birth certificates to anyone?  
15 A. I have not heard that.  
16 Q. Do you know anyone who has received a free  
17 birth certificate from the State?  
18 A. No.  
19 Q. How much money did GBM spend in 2016 on  
20 voter education, voter education and  
21 get-out-the-vote work?  
22 A. On everything combined?  
23 Q. Yes, voting work in general, about how much

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1 did GBM spend in 2016?  
2 A. That would be a portion of staff, part of  
3 it would be a portion of staff time and salaries,  
4 but I would say \$50,000 or \$55,000 for the year.  
5 Q. And about what percent of that do you think  
6 was spent on voter photo ID education?  
7 A. Education alone, I would say over  
8 25 percent.  
9 Q. And did that take away from the funding and  
10 other resources that could be spent elsewhere?  
11 A. Oh, yes. This is not the only work we're  
12 doing.  
13 Q. Do you know whether Alabama ever submitted  
14 the voter ID law for pre-clearance?  
15 A. It's my understanding it did not.  
16 Q. You know that GBM has filed a Complaint in  
17 this lawsuit, right?  
18 A. Oh, yes.  
19 Q. Have you reviewed that Complaint?  
20 A. Yes.  
21 Q. And the allegations in that Complaint, do  
22 you agree with them?  
23 A. I do.

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1 Q. And is it possible that some of those  
2 allegations that may support the case -- did you  
3 refer to all of them today?  
4 A. No.  
5 Q. Are you also aware there will be and have  
6 been expert reports submitted in this case?  
7 A. Oh, yes.  
8 Q. And that may also contain additional  
9 information?  
10 A. Yes.  
11 Q. You understand that may contain additional  
12 information that you may have forgotten or aren't  
13 mentioning right now, correct?  
14 A. Correct.  
15 Q. The same with the discovery responses, they  
16 may also contain additional information you  
17 forgot or didn't mention here today; is that  
18 right?  
19 A. That's correct. That is very correct.  
20 (Whereupon, at this time a short break  
21 was taken.)  
22 Q. Earlier you mentioned house fires for  
23 individuals, the assistance GBM provides them?

<p style="text-align: right;">Page 169</p> <p>1 A. Yes.</p> <p>2 Q. What kind of assistance does GBM have to</p> <p>3 provide individuals who have a house fire?</p> <p>4 A. We provide what we can. And the Red Cross</p> <p>5 does food, sometimes clothing, used, but cooking</p> <p>6 utensils and replacement cooking utensils.</p> <p>7 Q. Things like house fires and other sort of</p> <p>8 tragedies, can that affect people's access to</p> <p>9 voter ID?</p> <p>10 A. Yes. They can lose support documentation</p> <p>11 to obtain it. That's the main one. And incur</p> <p>12 other expenses as well, the financial part.</p> <p>13 Q. Do you know if there's anything in</p> <p>14 Alabama's photo ID law that allows for</p> <p>15 individuals who suffer those kind of tragedies to</p> <p>16 vote even if they don't have photo ID?</p> <p>17 A. I don't know.</p> <p>18 Q. Earlier you were sort of talking about the</p> <p>19 2010 election and the individual legislators who</p> <p>20 ran in it, right, and sort of the language they</p> <p>21 were using, do you recall that?</p> <p>22 A. Yes.</p> <p>23 Q. You mentioned that legislators were talking</p>	<p style="text-align: right;">Page 171</p> <p>1 Q. You don't remember the full title?</p> <p>2 A. No.</p> <p>3 Q. What was HB 56, though?</p> <p>4 A. HB 56 was a law modeled after Arizona's</p> <p>5 SB10, but ours is on steroids. And its primary</p> <p>6 purpose, the primary intent of it was to get</p> <p>7 immigrant families, undocumented immigrants to</p> <p>8 self-deport.</p> <p>9 Q. Do you know what the effect of the law was?</p> <p>10 A. The effect of the law was a lot of</p> <p>11 self-deportation people, and they didn't go back</p> <p>12 to south of the border; Mexico, Guatemala,</p> <p>13 Honduras. Most went to other states.</p> <p>14 Q. When you talk about self-deportation in the</p> <p>15 immigrant community, are you aware of citizens</p> <p>16 also leaving because of HB 56?</p> <p>17 A. Yes. Most families are mixed, were either</p> <p>18 born in Alabama or born in the United States. A</p> <p>19 lot of Latino immigrants don't come here from,</p> <p>20 say, Mexico; they come from California, and a</p> <p>21 member or two or more of the family can be</p> <p>22 citizens, so there's mixed-status families. But</p> <p>23 when significant parts of the family are</p>
<p style="text-align: right;">Page 170</p> <p>1 about immigrants. Do you remember that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you also recall discussions about Latino</p> <p>4 or Spanish-speaking people in particular?</p> <p>5 A. Yes.</p> <p>6 Q. What kind of things were legislators saying</p> <p>7 about Latinos?</p> <p>8 A. Taking our jobs, was one that was publicly</p> <p>9 stated. Extra burden cost to school systems,</p> <p>10 which proved to be wrong, those two; extra burden</p> <p>11 on the healthcare systems. A whole bunch of</p> <p>12 burden talk.</p> <p>13 Q. And that was about Latinos specifically?</p> <p>14 A. Latinos specifically.</p> <p>15 Q. And earlier you talked about HB 56, right?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know what the purpose of HB 56 was?</p> <p>18 MR. DAVIS: Object to the form.</p> <p>19 Q. Based on your understanding? Let me start</p> <p>20 over. What is HB 56?</p> <p>21 A. HB 56, I forgot the legal title of it</p> <p>22 because it's irrelevant. It has a real strange</p> <p>23 name.</p>	<p style="text-align: right;">Page 172</p> <p>1 affected, the whole family goes, not just the</p> <p>2 individual.</p> <p>3 Q. And could some of those individuals have</p> <p>4 been registered voters?</p> <p>5 A. Yes.</p> <p>6 Q. How did GBM select the locations for poll</p> <p>7 monitoring in 2014 and 2016?</p> <p>8 A. Being a small organization, we wanted to</p> <p>9 pick places that would have a high percentage of</p> <p>10 what we felt was the most effective, most</p> <p>11 affected, rather, constituencies. So we chose</p> <p>12 voting places, polling places that were, in</p> <p>13 large, poor areas of black neighborhoods,</p> <p>14 particularly public housing.</p> <p>15 Q. You thought those were the areas that were</p> <p>16 going to be most affected by the law; is that</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Earlier Mr. Davis was asking you if there</p> <p>20 are other laws that you think the legislature has</p> <p>21 passed that are intentionally discriminatory.</p> <p>22 Are there some laws that you may believe are</p> <p>23 discriminatory that you may have just forgotten</p>

<p style="text-align: right;">Page 173</p> <p>1 about today?</p> <p>2 A. Oh, yes. No question about the laws we've</p> <p>3 talked about today.</p> <p>4 Q. Where did you go to school, elementary</p> <p>5 school?</p> <p>6 A. Nashville, Tennessee.</p> <p>7 Q. Did you go to segregated schools?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever go to school with white</p> <p>10 people?</p> <p>11 A. Only when I went to college at UT</p> <p>12 Knoxville.</p> <p>13 Q. And was Tennessee segregated by law?</p> <p>14 A. Yes. Well, historically it was, yes.</p> <p>15 Q. Was Alabama segregated by law?</p> <p>16 A. Yes.</p> <p>17 Q. And even after you moved here to Alabama,</p> <p>18 did you see racial segregation?</p> <p>19 A. I saw -- yes, I saw racial segregation in</p> <p>20 public spaces, in doctor's offices. Separate</p> <p>21 waiting rooms still existed on into the '80s. Of</p> <p>22 course, they said it wasn't by law; it was by</p> <p>23 custom, whatever that means. It was enforced,</p>	<p style="text-align: right;">Page 175</p> <p>1 A. That was 1979. A teenage woman, girl named</p> <p>2 Bonita Carter had been shot from behind by a</p> <p>3 police officer and killed, and that led to a mass</p> <p>4 turnout of African-American voters, and the</p> <p>5 election of Birmingham's first black mayor.</p> <p>6 Q. And you think the murder of this young lady</p> <p>7 by the police, why do you think that that was an</p> <p>8 eye to the election of the first black mayor of</p> <p>9 Birmingham?</p> <p>10 A. Well, the mayor of the town was a decent</p> <p>11 man, but his response to the murder was to</p> <p>12 impanel a Blue Ribbon Commission, and</p> <p>13 African-Americans in the city were really angry</p> <p>14 that that was the most that could happen. For</p> <p>15 instance, he didn't try to pursue prosecution of</p> <p>16 the policeman, because of the Blue Ribbon</p> <p>17 Commission. The second thing that comes to mind</p> <p>18 is that Mayor Arrington, in his previous eight</p> <p>19 years with the council, had filed over 200</p> <p>20 complaints of police brutality. He was the only</p> <p>21 council person they knew they could go to if they</p> <p>22 felt that they or a member of their family had</p> <p>23 been abused by the police, so he had a record for</p>
<p style="text-align: right;">Page 174</p> <p>1 culturally enforced. I saw, I won't call it</p> <p>2 segregation, but in what areas black folks didn't</p> <p>3 have jobs or had jobs.</p> <p>4 Q. What was the effect of that racial</p> <p>5 segregation and discrimination on</p> <p>6 African-Americans?</p> <p>7 A. On one hand, it was demoralizing, but</p> <p>8 people fought back. You know, in some cases</p> <p>9 there were lawsuits. Black steelworkers got paid</p> <p>10 less than white steelworkers for the same job.</p> <p>11 It took a lawsuit to win it finally in 1977. It</p> <p>12 took a change of administration in the city of</p> <p>13 Birmingham. When I first came in '76, with the</p> <p>14 sanitation workers, all the drivers were white,</p> <p>15 and all the people on the back of the truck were</p> <p>16 black, you know.</p> <p>17 Q. Do you believe that was a result of racial</p> <p>18 discrimination?</p> <p>19 A. Yes. Some jobs weren't allowed -- weren't</p> <p>20 black jobs.</p> <p>21 Q. And you just mentioned a change in</p> <p>22 administration in Birmingham. What change in</p> <p>23 administration was that?</p>	<p style="text-align: right;">Page 176</p> <p>1 acting.</p> <p>2 Q. Do you believe there were African-Americans</p> <p>3 complaining about police brutality in Birmingham?</p> <p>4 A. Yes.</p> <p>5 Q. Earlier you mentioned the poll tax in</p> <p>6 Alabama's 1901 Constitution. Do you recall that?</p> <p>7 A. Yes.</p> <p>8 Q. What Constitution is Alabama operating</p> <p>9 under right now?</p> <p>10 A. Well, operating under a heavily amended</p> <p>11 Alabama Constitution of 1901.</p> <p>12 Q. Why was the Constitution of 1901 passed?</p> <p>13 A. According to the president of the</p> <p>14 convention, John Knox, the purpose of the</p> <p>15 convention was to establish white supremacy by</p> <p>16 law.</p> <p>17 Q. And how did they go about establishing</p> <p>18 white supremacy by law?</p> <p>19 MR. DAVIS: Object to the form.</p> <p>20 A. They were acting under the 1890 Mississippi</p> <p>21 plan, which was a strategy for getting around 13,</p> <p>22 14, 15 amendments and passing muster</p> <p>23 constitutionally; therefore, they couldn't</p>

<p style="text-align: right;">Page 177</p> <p>1 mention (unintelligible). So one of the tools of  2 that was to implement the poll tax, voter tax,  3 and grandfather clause and other mechanisms. At  4 the same time, because the populous movement  5 earlier had united poor blacks and poor whites  6 together on basic things like free public  7 education paid for by the railroads and the rich,  8 they wanted to diminish the power of counties, in  9 particular a citizen will be deputized, and  10 confiltrate (sic) power in legislation. We had  11 weak governor, weak city, weak counties, and a  12 strong, very powerful legislation.  13 Q. And you mentioned the populous. Who were  14 the populous?  15 A. Generally speaking, they were newly  16 enfranchised blacks and small farmers and  17 merchant whites who actually thought state  18 government had a role and it benefited them,  19 which was counter to the existing power structure  20 that served the agribusiness of the day, the big  21 plantations and the emerging industrial power in  22 Birmingham and Gadsden.  23 Q. Sort of the elite that you're describing,</p>	<p style="text-align: right;">Page 179</p> <p>1 of that?  2 A. Oh, me. I can't think of the particular  3 law, but I know it's around -- I'm thinking  4 criminal justice had a disproportionate effect on  5 African-Americans.  6 Q. Did Democrats who were -- do you know any  7 Democrats who are still in the legislature who,  8 you know, were in it before 2010? Can you name  9 any?  10 A. Yes.  11 Q. Name a couple for me, please.  12 A. Linda Colburn, state senator from  13 Birmingham.  14 Q. I'm sorry, non-African-American Democrats.  15 Let me strike that. Are there people in the  16 Alabama legislature now who are now Republicans  17 and were formerly Democrats?  18 A. Oh, yes.  19 Q. And those former Democrats, do you know if  20 they hold any leadership positions in the  21 Republican party?  22 A. In the legislature, yes.  23 Q. In the legislature?</p>
<p style="text-align: right;">Page 178</p> <p>1 what party were they up under?  2 A. They were Democrats.  3 Q. And when the Democrats passed the 1901  4 Constitution with the poll tax and the literacy  5 test, were they solely interested in -- well,  6 tell me more about that. No, strike that.  7 Strike that. How long were Democrats empowered  8 in Alabama after the 1901 constitution?  9 A. In the legislature, 136 years.  10 Q. So when you came to Alabama in 1976, what  11 party controlled the legislature?  12 A. Democratic party.  13 Q. And when did the Democratic party lose  14 power?  15 A. 2010 election, so in 2011 they took office.  16 Q. So Democrats were no longer in power after  17 2010; is that right?  18 A. '10.  19 Q. And during the time you've been here in  20 Alabama, did Democrats ever pass laws that you  21 consider racially discriminatory?  22 A. Yes.  23 Q. What laws? Can you give me some examples</p>	<p style="text-align: right;">Page 180</p> <p>1 A. Yes, the caucus.  2 Q. So some of those Democrats who passed  3 discriminatory laws in the past are now  4 Republicans; is that right?  5 A. That's correct.  6 Q. Why do you think Democrats passed racially  7 discriminatory laws?  8 MR. DAVIS: Object to the form.  9 A. For those who do that on either side of the  10 aisle, it's about particularly because of voting,  11 suppressing the rise of a voting block sufficient  12 to take away their power and put them out of  13 office.  14 Q. So you think --  15 A. That's true with George Wallace.  16 Q. Who is George Wallace?  17 A. George Wallace is a former governor of  18 Alabama who was governor during the '60s and into  19 the '80s.  20 Q. When did Governor Wallace get out of  21 office?  22 A. He won the '82 election, I know that.  23 Q. Do you know why some of the leaders in the</p>



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1 legislature, why they switched parties from being  
2 Democrats to being Republicans?  
3 MR. DAVIS: Object to the form.  
4 Q. Based on your understanding?  
5 A. Two things, I think. One was the rising  
6 influence of African-Americans inside the  
7 Democratic party, and the other one was the shift  
8 to the right in the Republican party,  
9 particularly as its base expanded beyond middle  
10 class into poor whites for the first time.  
11 Alabama does not have a history of having a lot  
12 of whites, working class whites, in the  
13 Republican party. That's historically recent in  
14 Alabama.  
15 Q. Can you think of examples of  
16 African-American voters supporting Republican  
17 candidates in Alabama?  
18 A. Yes, right here in Birmingham. When I  
19 first came here, the first time I got involved in  
20 the congressional election, I voted for a  
21 Republican, John McCain.  
22 Q. And why did you vote for a Republican?  
23 A. Well, he was a moderate on defense

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1 spending, but also he voted for the Civil Rights  
2 Act of 1964.  
3 Q. Do you know whether he won that election?  
4 A. He won one election. In '80, he lost.  
5 When Reagan came in, he lost. I mean, he lost  
6 his primary.  
7 Q. You've mentioned the leaders, the former  
8 Democrats who are now leaders in the  
9 Republican-controlled legislature. Do you know  
10 the names of a couple of them?  
11 A. One I remember is Gerald Dial from  
12 Lineville.  
13 Q. Do you know whether Senator Dial voted for  
14 HB 56?  
15 A. Yes.  
16 Q. Do you know whether he voted for the photo  
17 ID law?  
18 A. Yes, he did.  
19 Q. Yes, he did vote for HB 56?  
20 A. Yes.  
21 Q. HB 56, he voted for?  
22 A. Yes.  
23 MR. ROSS: Your witness.

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1 RE-EXAMINATION BY MR. DAVIS:  
2 Q. Is Gerald Dial a racist?  
3 MR. ROSS: Objection.  
4 A. I don't know if he's racist or not. I've  
5 never -- I've seen him before and had a long  
6 conversation with him.  
7 Q. Are you suggesting that Gerald Dial voted  
8 for these bills, that he did so because he  
9 doesn't like black people or Hispanics?  
10 MR. ROSS: Objection.  
11 A. No, I'm not.  
12 Q. When you talked about your son's teacher  
13 that put him in the slow section, those were your  
14 words?  
15 A. Uh-huh.  
16 Q. Are you suggesting that she did that  
17 because your son is black?  
18 MR. ROSS: Objection.  
19 A. I was saying that she did that because she  
20 was stereotyping my son. She didn't know how to  
21 experience him.  
22 Q. Were there any white students in the class?  
23 A. No.

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1 Q. So she wasn't singling him out because of  
2 his race, was she?  
3 MR. ROSS: Objection.  
4 A. That was a contributing part. Race and  
5 stereotypes about race. Like I said, he was  
6 quiet. She had not -- apparently, hadn't met a  
7 quiet black male. And, I'm sorry, I've got to  
8 add this. He asked me the first time, she had  
9 not even seen -- this was like three months into  
10 the year, or two months in the year school had  
11 started. She had not even opened his records  
12 from the school he came from. He was transferred  
13 to this school. She had not seen his records.  
14 Q. So was she insensitive as a teacher because  
15 she was white?  
16 MR. ROSS: Objection.  
17 A. Yes, I think so.  
18 Q. Did the Secretary of State accept any  
19 suggestions for mobile unit locations from you?  
20 MR. ROSS: Objection.  
21 A. None that I know of.  
22 Q. Do you know why the Secretary of State or  
23 his staff said that public housing IDs were not

<p style="text-align: right;">Page 185</p> <p>1 acceptable for voting purposes?</p> <p>2 MR. ROSS: Objection.</p> <p>3 A. I don't know the reason.</p> <p>4 Q. To be clear, then, are you suggesting that</p> <p>5 they made that decision because they didn't want</p> <p>6 black people or Hispanics to vote?</p> <p>7 MR. ROSS: Objection.</p> <p>8 A. That's my conclusion.</p> <p>9 Q. Is it your contention that John Merrill,</p> <p>10 Secretary of State, would like fewer</p> <p>11 African-Americans to vote?</p> <p>12 MR. ROSS: Objection.</p> <p>13 A. John Merrill, I don't know.</p> <p>14 Q. What about any member of his staff?</p> <p>15 MR. ROSS: Objection.</p> <p>16 A. Perhaps some members of his staff. I don't</p> <p>17 know many members of his staff.</p> <p>18 Q. You're saying it's possible; but you can't</p> <p>19 tell me a specific staff member, can you, that</p> <p>20 would like fewer black people or Hispanic people</p> <p>21 to vote?</p> <p>22 A. Correct. Communications with the office,</p> <p>23 they would be responsive on small stuff, like</p>	<p style="text-align: right;">Page 187</p> <p>1 whether the universe of government employees has</p> <p>2 a larger proportion of African-Americans in the</p> <p>3 state as a whole?</p> <p>4 MR. ROSS: Object to the form.</p> <p>5 A. I don't know about that.</p> <p>6 Q. You don't have any information, one way or</p> <p>7 the other?</p> <p>8 A. No.</p> <p>9 Q. You said to Mr. Ross that you would be okay</p> <p>10 with people coming in and signing an affidavit</p> <p>11 that they are who they say they are?</p> <p>12 A. At the voting place?</p> <p>13 Q. At the voting place, yes, sir.</p> <p>14 A. Yes.</p> <p>15 Q. Is that true even if we require them to</p> <p>16 sign under penalty of perjury?</p> <p>17 MR. ROSS: Objection.</p> <p>18 A. Signing under penalty of perjury would be a</p> <p>19 barrier.</p> <p>20 Q. So they shouldn't have to promise?</p> <p>21 A. Well, people who, as a demographic, have</p> <p>22 been incarcerated at a higher rate than other</p> <p>23 people would have a fear about that. "I'm not</p>
<p style="text-align: right;">Page 186</p> <p>1 information, but not on policy.</p> <p>2 Q. If you think of the people that are</p> <p>3 employed by the government, the State, the City,</p> <p>4 the County, do you have any feel for the</p> <p>5 demographics of that group of government</p> <p>6 employees?</p> <p>7 MR. ROSS: Objection.</p> <p>8 A. At every level?</p> <p>9 Q. At any level, at any level.</p> <p>10 A. I think like the State, it's majority white</p> <p>11 and, you know, African-Americans, as far as I</p> <p>12 know, I've seen.</p> <p>13 Q. What about military employees?</p> <p>14 MR. ROSS: Objection.</p> <p>15 A. Of the State?</p> <p>16 Q. Yes.</p> <p>17 A. Who would that be; National Guard?</p> <p>18 Q. Yes, National Guard.</p> <p>19 A. Alabama has a disproportionately high</p> <p>20 number of African-Americans in the National Guard</p> <p>21 compared to the population, like the Army.</p> <p>22 Q. Government employees, while they may be</p> <p>23 majority white, do you have any sense as to</p>	<p style="text-align: right;">Page 188</p> <p>1 going to sign anything that I've got to go to</p> <p>2 jail, even if it is," you know.</p> <p>3 Q. Look, this is fine if it is. You're</p> <p>4 entitled to your opinion. But, in your opinion,</p> <p>5 should the poll workers just take people at their</p> <p>6 word --</p> <p>7 MR. ROSS: Objection.</p> <p>8 Q. -- in terms of identity?</p> <p>9 A. Yes.</p> <p>10 Q. You talked to Mr. Ross about</p> <p>11 African-Americans being less likely to have</p> <p>12 Internet access. Did I understand that</p> <p>13 correctly?</p> <p>14 A. Yes, correct.</p> <p>15 Q. And I thought you said that that had been</p> <p>16 proven or that there was public record about</p> <p>17 that?</p> <p>18 A. Yes, research shows that.</p> <p>19 Q. Can you tell me what studies those are, or</p> <p>20 do you remember anything about them that would</p> <p>21 help me find them?</p> <p>22 A. There are two things, yes. What the</p> <p>23 studies are referring to primarily is lack of</p>

<p style="text-align: right;">Page 189</p> <p>1 Internet access in the home, and that there are  2 fewer African-American homes with Internet access  3 than homes of whites.  4 Q. Do you remember when those studies came  5 out?  6 MR. ROSS: Objection.  7 A. They're still coming out. I can Google it.  8 It's called the Digital Divide.  9 Q. That helps. I'm looking for something to  10 help me find it.  11 A. That's right.  12 Q. I interrupted you, though, and I apologize  13 for that. Did you want to say anything else  14 about it?  15 A. No. I want to Google it.  16 Q. I can't swear Google in to the deposition.  17 Are you aware of any legal requirement that the  18 State of Alabama publish information in Spanish  19 or any other language?  20 MR. ROSS: Objection.  21 A. No. I'm only aware of an earlier period  22 when they passed an English-only law.  23 Q. Do you know of anything that requires the</p>	<p style="text-align: right;">Page 191</p> <p>1 right, that you came across several people who  2 didn't have a photo ID?  3 A. Correct.  4 Q. You didn't mean you personally?  5 A. That's correct.  6 Q. You were talking about the volunteers?  7 A. That's correct.  8 Q. Now, I talked to Ms. Bender yesterday, and  9 I only have one copy of this left. I don't see  10 the need to mark it as an exhibit, although  11 you're welcome --  12 MR. ROSS: I think we should mark it as an  13 exhibit.  14 MR. DAVIS: You're free to. I am not.  15 MR. ROSS: You're going to show it to him  16 and not mark it as an exhibit?  17 MR. DAVIS: Yes.  18 Q. I'll represent to you this is what is  19 marked as Exhibit 3 to Bender's deposition. Do  20 you recognize that form at all?  21 A. Yes.  22 Q. It is Bates-numbered GBM0001132?  23 A. Correct.</p>
<p style="text-align: right;">Page 190</p> <p>1 Secretary of State to publish any information in  2 Spanish?  3 A. I don't.  4 Q. Or French?  5 A. No.  6 Q. Or Vietnamese?  7 A. No. Or Southern.  8 Q. I can't understand half of what some people  9 say, and I know it's supposed to be English.  10 A. Guy Hunt was one who passed the  11 English-only law, and I wrote a letter to the  12 editor saying "Does that mean he's got to speak  13 it now, too?"  14 Q. You said, did you not, that it would have  15 been helpful for Secretary Merrill to provide  16 free photo IDs before 2013?  17 A. Yes.  18 Q. So you agree that it's a good thing  19 Secretary Merrill is providing free IDs?  20 MR. ROSS: Objection.  21 A. It's a better thing than not.  22 Q. When you were talking about the poll  23 monitoring in 2014, you said, if I heard you</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Are these the forms that GBM uses?  2 A. Those are the forms we use.  3 Q. To the best of your knowledge --  4 A. Yes.  5 Q. To the best of your knowledge, are these  6 all the folks -- well, let me start that again.  7 To the best of your knowledge, if the folks  8 working for GBM who were out assisting voters on  9 this day, if they came across someone without a  10 photo ID, would it be reflected in these forms?  11 A. Yes. If they came across them and stopped,  12 right, we talked to them.  13 Q. Exhibit 1, that list of folks there, I  14 don't see any column that says this person does  15 or does not have a photo ID. How do they know to  16 pull these people from the database?  17 A. Every category that we use is on this  18 thing. I don't see it.  19 Q. Who did you have to pull these records for  20 you?  21 A. This is our new database, and I had someone  22 that knew how to use it better than I did.  23 Q. Sure, I understand. Who is that person?</p>

<p style="text-align: right;">Page 193</p> <p>1 A. Reverend Wright, Reverend Angie Wright.</p> <p>2 Q. So you asked Reverend Wright -- did you ask</p> <p>3 Reverend Wright to print a list of names of</p> <p>4 people in the database who didn't have an ID?</p> <p>5 A. Correct.</p> <p>6 Q. And do you know how she distinguished one</p> <p>7 person from another in the database?</p> <p>8 A. She was working off a laptop like this one,</p> <p>9 and I was standing over her, and I didn't know</p> <p>10 where her fingers were going.</p> <p>11 Q. Should I ask Reverend Wright how she</p> <p>12 knew -- is she the right person to ask?</p> <p>13 A. I asked someone else, and they weren't</p> <p>14 available, and I think she was the third person I</p> <p>15 asked.</p> <p>16 Q. Let's assume your whole staff was in the</p> <p>17 office. Who would be the first person you would</p> <p>18 go to if you wanted somebody to print a list from</p> <p>19 the database of people who didn't have an ID?</p> <p>20 A. Well, he's not in the office anymore.</p> <p>21 Brandon.</p> <p>22 Q. What about who is there now?</p> <p>23 A. It would probably still be Angie, yes.</p>	<p style="text-align: right;">Page 195</p> <p>1 contention that the right and moral thing to do</p> <p>2 is ignore immigration laws?</p> <p>3 MR. ROSS: Objection.</p> <p>4 A. I'm for fair immigration and just</p> <p>5 immigration and comprehensive immigration laws</p> <p>6 that's fair to all potential immigrants,</p> <p>7 regardless of color or national or religion.</p> <p>8 Q. Is it your position that anyone who is</p> <p>9 concerned with an impact of illegal immigration,</p> <p>10 that that person is discriminatory against</p> <p>11 Hispanics?</p> <p>12 MR. ROSS: Objection.</p> <p>13 A. I can't understand the question.</p> <p>14 Q. Let's say there's a person out there who is</p> <p>15 concerned about the impact of illegal</p> <p>16 immigration. Is it your position that that</p> <p>17 person is necessarily discriminatory against</p> <p>18 Hispanics?</p> <p>19 MR. ROSS: Objection.</p> <p>20 A. No. It could be Muslims, or both;</p> <p>21 Africans.</p> <p>22 Q. Is it your position that anyone opposed to</p> <p>23 illegal immigration is a racist?</p>
<p style="text-align: right;">Page 194</p> <p>1 Q. Do you know if the law requires the State</p> <p>2 of Alabama to provide birth certificates at no</p> <p>3 charge if people need one to get a photo ID?</p> <p>4 MR. ROSS: Objection.</p> <p>5 A. No.</p> <p>6 Q. Do you know if, instead, that's something</p> <p>7 the Secretary of State is doing above and beyond</p> <p>8 the requirements of the law?</p> <p>9 MR. ROSS: Objection.</p> <p>10 A. No. And neither do most people.</p> <p>11 Q. Look, I don't see this deposition as a</p> <p>12 memory test. It's certainly possible, as we've</p> <p>13 talked about a lot of information, that you're</p> <p>14 not able to remember everything. But I've asked</p> <p>15 you for the information that you have on things</p> <p>16 like discriminatory impact and discriminatory</p> <p>17 purpose. And I recognize that Greater Birmingham</p> <p>18 Ministries has sent some detailed written</p> <p>19 responses. But to the best of your knowledge,</p> <p>20 have you told me all the information you have</p> <p>21 that you can remember today?</p> <p>22 A. Oh, yes.</p> <p>23 Q. Now, you talked about HB 56. Is it your</p>	<p style="text-align: right;">Page 196</p> <p>1 MR. ROSS: Objection. You're</p> <p>2 mischaracterizing his testimony. You're putting</p> <p>3 words in his mouth.</p> <p>4 Q. I'm not suggesting that that is what you</p> <p>5 said at all. I want to understand what you said</p> <p>6 and understand your position on HB 56. I'm not</p> <p>7 suggesting that you have said this. I'm asking</p> <p>8 if it's true.</p> <p>9 A. My objection to HB 56? I don't think the</p> <p>10 State should have immigration laws. We should be</p> <p>11 able to declare war.</p> <p>12 Q. It should be a federal issue, is your</p> <p>13 position?</p> <p>14 A. That's correct.</p> <p>15 Q. I'm not talking about HB 56. Is it your</p> <p>16 suggestion that anyone who is opposed to illegal</p> <p>17 immigration, that that person is a racist?</p> <p>18 MR. ROSS: Objection.</p> <p>19 A. No. They could be just oppositionists,</p> <p>20 opposed to everything.</p> <p>21 Q. Is it your position that anyone who is in</p> <p>22 favor of requiring photo ID at the polls, that</p> <p>23 they want fewer African-Americans to vote?</p>



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1 MR. ROSS: Objection.

2 A. If they hold to that once they are given

3 data that it reduces voting access, if they hold

4 to it, yes. They may not know going in, but once

5 they get told and demonstrated and they still

6 hold to it.

7 Q. You talked about the prosecution of the

8 folks in Pickens County, I think Ms. Bozeman, and

9 the folks in Marion County, the Turners. Do you

10 know of anyone in either of those prosecutions

11 who voted for the photo ID law?

12 MR. ROSS: Objection.

13 A. Involved with the prosecutions?

14 Q. Yes.

15 A. No, I do not.

16 Q. Do you know of anyone who supported the

17 Constitution of 1901, that they were behind the

18 passage of the photo ID law?

19 MR. ROSS: Objection.

20 A. In spirit, but not in flesh.

21 Q. Do you know anyone who was responsible for

22 there being literacy tests in Alabama, do you

23 know any such person who voted for the photo ID

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1 law?

2 MR. ROSS: Objection.

3 A. I wish I did.

4 Q. Do you?

5 MR. ROSS: Objection.

6 A. I do not.

7 Q. Do you know of anyone who tried to block

8 school desegregation in the '70s who voted for

9 the photo ID law?

10 MR. ROSS: Objection.

11 A. No.

12 Q. Do you know of anyone involved in the

13 Bonita Carter situation who voted for the photo

14 ID law?

15 MR. ROSS: Objection.

16 A. No.

17 MR. DAVIS: Thank you. Wait, this wasn't

18 on my list. There was one more question I had.

19 Do you mind?

20 MR. ROSS: No, go ahead.

21 Q. Mr. Douglas, you're welcome to look at

22 this, and we can mark this. Why don't we mark

23 this, but I only have one copy.

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1 (Whereupon, Defendants' Exhibit Number 9

2 was marked for identification, a copy of which is

3 attached to the original of the transcript.)

4 Q. This is a document titled GBM's Response to

5 the Voting Rights Act Decision. It says Scott

6 Douglas, Executive Director. My question is, you

7 read it, and I want to talk about a section that

8 I've underlined on the second page.

9 A. On the second page?

10 Q. Yes. Did you write that?

11 A. I sure did.

12 Q. After Shelby County and Alabama was no

13 longer in pre-clearance, you said, "What in the

14 world will the (sic) attempt having been granted

15 a free pass by the Supreme Court?"

16 A. Uh-huh.

17 Q. Were you concerned about what laws, what

18 voting laws the Alabama legislature would pass

19 after Shelby County?

20 MR. ROSS: Objection.

21 A. Was I concerned about what additional

22 voting right laws -- I was.

23 Q. Have you been keeping an eye on what the

Page 200

1 Alabama legislature has done with respect to

2 voting?

3 MR. ROSS: Objection.

4 A. Not with the full attention I need to.

5 Q. Can you tell me, can you name one law that

6 has to do with voting that the legislature has

7 passed in Shelby County that has been

8 discriminatory against African-Americans or

9 Hispanics?

10 MR. ROSS: Objection.

11 A. No. The job was done.

12 MR. DAVIS: Thank you.

13

14 RE-EXAMINATION BY MR. ROSS:

15 Q. Do you know, did HB 56 contain any

16 requirements for voting?

17 A. Yes.

18 Q. What requirements did it contain?

19 A. Citizenship.

20 Q. Do you know whether that proof of

21 citizenship requirement was ever submitted for

22 pre-clearance?

23 A. No. I know that it wasn't.

<p style="text-align: right;">Page 201</p> <p>1 Q. Do you know why it was never submitted for  2 pre-clearance?  3 MR. DAVIS: Object to the form.  4 A. No, I do not know why.  5 Q. Is it your understanding that when a law --  6 strike that. You also talked about how the photo  7 ID law had a three-year rollout period?  8 A. Yes.  9 Q. So it passed in 2011 but didn't go into  10 force until 2014; is that right?  11 A. Yes.  12 Q. You've been doing voting work in Alabama  13 since you got here in the '70s?  14 A. Correct.  15 Q. Are you aware of any other law in Alabama  16 that had a three-year rollout period?  17 A. I'm not aware of any, no, I'm not.  18 (Whereupon, at this time a short break  19 was taken.)  20 Q. Do you know if there's a Puerto Rican  21 community in Alabama?  22 A. Do I know of one?  23 Q. Yes.</p>	<p style="text-align: right;">Page 203</p> <p>1 anyone alive today who voted on the 1901  2 Constitution, correct?  3 A. Yes.  4 Q. Do you think aspects of the 1901  5 Constitution still affect African-Americans in  6 Alabama?  7 A. Most definitely.  8 Q. Why?  9 A. I would say if someone filed a lawsuit  10 against the Alabama Constitution 1901 because it  11 discriminated against African-Americans  12 structurally, and of all the plaintiffs there,  13 the oldest one was 93. Even he wasn't old enough  14 for a judge to throw it out, because nobody was  15 an 18-year-old -- an 18-year-old black male in  16 1901 -- a 21-year-old black male in 1901. The  17 Alabama Constitution in 1901, in my opinion, as I  18 stated earlier, was predicated on the Mississippi  19 plan to establish white supremacy by law. And  20 another way to do that, and also against poor  21 people by law, a way to do that is to remove  22 governance as far as possible from those who  23 govern. One of the ways to do that is to</p>
<p style="text-align: right;">Page 202</p> <p>1 A. I do not.  2 Q. Earlier Mr. Davis was asking you about  3 whether you're aware of any law that requires the  4 Secretary of State to publish things in Spanish.  5 Do you remember that?  6 A. Yes.  7 Q. Would it be helpful, even if it's not  8 required, for the Secretary of State to publish  9 things in other languages like Spanish?  10 A. Yes, it would be.  11 Q. Why would it be helpful?  12 A. It would be immediately accessible to a  13 growing population if Alabama used Spanish with  14 personnel issues.  15 Q. So even if it's not required, it would be  16 helpful to voters if he did that, right?  17 A. Yes, it would.  18 Q. Just like the mobile units may not be  19 required, but it's helpful to voters -- at least  20 it's supposed to be helpful to voters, in your  21 opinion, to do it, right?  22 A. Yes.  23 Q. Mr. Davis also asked you about if there's</p>	<p style="text-align: right;">Page 204</p> <p>1 concentrate the power of the legislature.  2 Another way to do that is gerrymander the  3 legislature to further increase the power of  4 those -- towards an elect few. The repeated --  5 the failure of Alabama to adequately fund  6 everything from -- to enhance conditions in  7 prisons where African-Americans are  8 disproportionately represented compared to the  9 proportionate general population to adequate and  10 equitable funding for schools, where  11 African-Americans suffer less resources in public  12 education because of that funding discrepancy.  13 Those are two areas that I know of.  14 Q. And you think that's because of the  15 structure of the 1901 Constitution?  16 A. I think it's because of the structure of  17 the 1901 Constitution. The most relevant -- the  18 most recent evidence of that is powerful  19 legislation. A city like Birmingham can pass  20 minimum wage laws that passes constitutional  21 muster, but it gives less power to the  22 legislature to nullify African-Americans.  23 Q. And Mr. Davis also asked you if you're</p>

<p style="text-align: right;">Page 205</p> <p>1 aware of anyone who supported segregation in the  2 '70s, or fought segregation in the '70s and '80s,  3 being in the legislature. Do you remember that?  4 A. Yes.  5 Q. The effects of racial segregation in  6 Alabama, even through the '70s and '80s, do you  7 think that still has an impact on  8 African-Americans today?  9 A. Even today, in terms of education, in terms  10 of housing availability, yes.  11 Q. Today do you think that a majority of  12 African-Americans vote for a particular political  13 party in Alabama?  14 A. Yes.  15 Q. What party?  16 A. Democratic party.  17 Q. Do you think most people are aware of that?  18 A. Yes.  19 Q. Do you think legislators are aware of that?  20 A. Yes.  21 (Whereupon, at this time, the deposition  22 was concluded at 1:25 p.m.)  23 FURTHER DEPONENT SAITH NOT.</p>	
<p style="text-align: right;">Page 206</p> <p>1 C E R T I F I C A T E  2  3 STATE OF ALABAMA)  4 JEFFERSON COUNTY)  5  6 I hereby certify that the above and  7 foregoing deposition was taken down by me in  8 stenotype and the questions and answers thereto  9 were reduced to typewriting under my supervision  10 and that the foregoing represents a true and  11 correct record of the testimony/evidence given by  12 the deponent.  13 I further certify that I am neither of  14 counsel nor of kin to any of the parties to the  15 action, nor am I in anywise interested in the  16 results of said cause.  17  18  19 /s/Donna L. Winters  20 Donna L. Winters, Commissioner  21 ACCR Certificate Number: AL-373  22 Commissioner for State of Alabama  23 Notary commission expires: 10-22-2017</p>	

**Scott Douglas****1 (1 - 4)**

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF ALABAMA</p> <p>3 SOUTHERN DIVISION</p> <p>4 THE GREATER BIRMINGHAM</p> <p>5 MINISTRIES, et al.,</p> <p>6 Plaintiffs,</p> <p>7 Vs. 2:15-CV-02193-SC</p> <p>8 STATE OF ALABAMA, et al.,</p> <p>9 Defendants.</p> <p>10</p> <p>11 DEPOSITION OF SCOTT DOUGLAS</p> <p>12 JUNE 9, 2017</p> <p>13</p> <p>14 STIPULATION</p> <p>15 IT IS STIPULATED AND AGREED, by and</p> <p>16 between the parties through their respective</p> <p>17 counsel, that the deposition of SCOTT</p> <p>18 DOUGLAS, taken before Susan Masters Goldman,</p> <p>19 Alabama Certified Court Reporter, License</p> <p>20 Number 83, and Notary Public, at Wiggins,</p> <p>21 Childs, Pantazis, Fisher &amp; Goldfarb, LLC, The</p> <p>22 Kress Building, 301 19th Street North,</p> <p>23 Birmingham, Alabama 35203 on the 9th day of</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 EXAMINATION BY PAGE NO.</p> <p>3 Mr. Davis 5, 117</p> <p>4 Mr. Ross 89, 124</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 DEFENDANT'S EXHIBIT NO:</p> <p>8 1 Notice of Deposition 6</p> <p>9 2 Discovery Responses 8</p> <p>10 3 Deposition Transcript 9</p> <p>11 4 Supplemental Disclosures 27</p> <p>12 5 Flyer 27</p> <p>13 6 Survey 29</p> <p>14 7 Volunteer Request Form 31</p> <p>15 8 Flyers 32</p> <p>16 9 Flyers 32</p> <p>17 10 Spanish Translation Flyer 36</p> <p>18 11 Financial Statement 55</p> <p>19 12 Salary (Fountain) 56</p> <p>20 13 Time Allocation ('14 to '16) 59</p> <p>21 14 Second Amended Complaint 68</p> <p>22</p> <p>23</p>
<p style="text-align: right;">Page 2</p> <p>1 June, 2017, at or about 8:00 a.m.</p> <p>2 IT IS FURTHER STIPULATED AND AGREED</p> <p>3 that the signature to and the reading of the</p> <p>4 deposition by the witness is waived, the</p> <p>5 deposition to have the same force and effect</p> <p>6 as if full compliance had been had with all</p> <p>7 laws and rules of Court relating to the</p> <p>8 taking of deposition.</p> <p>9 IT IS FURTHER STIPULATED AND AGREED</p> <p>10 that it shall not be necessary for any</p> <p>11 objections to be made by counsel as to any</p> <p>12 questions, except as to form or leading</p> <p>13 questions, and that counsel for the parties</p> <p>14 may make objections and assign grounds at the</p> <p>15 time of the trial, or at the time said</p> <p>16 deposition is offered in evidence, or prior</p> <p>17 thereto.</p> <p>18 IT IS FURTHER STIPULATED AND AGREED</p> <p>19 that notice of the filing of the deposition</p> <p>20 by the Commissioner is waived.</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES</p> <p>2 BEFORE:</p> <p>3 Susan Masters Goldman, Alabama Certified</p> <p>4 Court Reporter, License Number 83, and</p> <p>5 Notary Public.</p> <p>6 APPEARING ON BEHALF OF THE PLAINTIFFS:</p> <p>7 Deuel Ross, Esq.</p> <p>8 NAACP Legal Defense and</p> <p>9 Education Fund, Inc.</p> <p>10 40 Rector Street, 5th Floor</p> <p>11 New York, New York 10006</p> <p>12 APPEARING OF BEHALF OF THE DEFENDANTS:</p> <p>13 James W. Davis, Esq.</p> <p>14 Office of the Alabama Attorney General</p> <p>15 501 Washington Avenue</p> <p>16 Montgomery, Alabama 36130</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>



<p style="text-align: right;">Page 5</p> <p>1 I, Susan Masters Goldman, Alabama  2 Certified Court Reporter, License Number 83,  3 acting as Notary Public, certify that on this  4 date as provided by the Federal Rules of  5 Civil Procedure, and the foregoing  6 stipulations of counsel, there came before me  7 at Wiggins, Childs, Pantazis, Fisher &amp;  8 Goldfarb, LLC, The Kress Building, 301 19th  9 Street North, Birmingham, Alabama 35203 on  10 the 9th day of June, 2017, at or about 8:00  11 a.m., SCOTT DOUGLAS, witness in the above  12 cause, for oral examination, whereupon, the  13 following proceedings were had:  14  15 SCOTT DOUGLAS,  16 after having been first duly sworn, testified  17 as follows:  18  19  20  21  22  23</p>	<p style="text-align: right;">Page 7</p> <p>1 A. What do you mean by topics?  2 Q. Items that I've listed that I said that  3 I want to talk about today.  4 A. Yes.  5 Q. Okay. Now, in light of the face that  6 you have testified before, we don't want to  7 make you repeat yourself.  8 A. Great.  9 Q. If at any time as we go through these  10 topics, you have the opportunity to say we  11 talked about that in the first deposition,  12 I've told you everything I know, the answer I  13 gave you that day as Scott Douglas is also  14 the answer for Greater Birmingham Ministries  15 and we will skip to another topic.  16 A. Great.  17 Q. Okay. Is that clear?  18 A. That's pretty clear.  19 Q. Okay. The point is, I'm all for  20 streamlining. If you need at any point or  21 can at any point refer to other testimony and  22 say Greater Birmingham Ministries adopts that  23 as its answer, that will be fine and we will</p>
<p style="text-align: right;">Page 6</p> <p>1 THE REPORTER: Usual stipulations?  2 MR. DAVIS: Yes.  3 MR. ROSS: Yes.  4 EXAMINATION BY MR. DAVIS:  5 Q. Good morning, Mr. Douglas.  6 A. Good morning.  7 Q. And welcome back.  8 A. Well, good to be here.  9 Q. We're are here for another deposition.  10 (Defendant's Exhibit 1 was marked and  11 attached.)  12 Q. (BY MR. DAVIS) Have you seen the  13 document that I have marked as Exhibit 1 that  14 is in front of you?  15 A. Yes, I've seen it.  16 Q. Okay. Do you understand that you are  17 here -- well, your last deposition you were  18 here in your individual capacity, now you are  19 here as a representative of Greater  20 Birmingham Ministries?  21 A. Yes, I do.  22 Q. Have you reviewed the topics on the  23 deposition notice?</p>	<p style="text-align: right;">Page 8</p> <p>1 keep going.  2 I brought some things that might be  3 useful in that regard. Exhibit 1, which you  4 looked at, is the deposition notice.  5 A. Yes.  6 (Defendant's Exhibit 2 was marked and  7 attached.)  8 Q. (BY MR. DAVIS) I have also marked as  9 Exhibit 2 the latest discovery responses  10 filed by the plaintiffs.  11 Have you seen that document before?  12 A. Yes.  13 MR. ROSS: That looks to be the first  14 supplemental and amended objections. Do you  15 have -- we filed a second supplemental.  16 MR. DAVIS: Did I bring the wrong one?  17 MR. ROSS: I have a copy of the second  18 supplemental. I don't have any notes on it,  19 so we can use them.  20 MR. DAVIS: I've got my working copy  21 which does have scribbles.  22 MR. ROSS: You can use mine.  23 MR. DAVIS: May we? So I'm just going</p>

<p style="text-align: right;">Page 9</p> <p>1 to withdraw this.                  2 (Defendant's Exhibit 2 was remarked                  3 and attached.)                  4 MR. DAVIS: Now we have the correct                  5 one.                  6 Exhibit 2 is, in fact, the second                  7 supplemental now that Mr. Ross has graciously                  8 replaced a copy.                  9 Q. (BY MR. DAVIS) That is something that                  10 you'll be free to refer to as the deposition                  11 goes along if you should feel the need.                  12 (Defendant's Exhibit 3 was marked and                  13 attached.)                  14 Q. (BY MR. DAVIS) I have also brought your                  15 deposition transcript and marked it as                  16 Exhibit 3.                  17 Have you had a chance to look at that                  18 since your deposition?                  19 A. Look, yes.                  20 Q. Okay. When you looked at it, did you                  21 happen to notice anything that you would like                  22 to change, any answer that you saw that was                  23 incomplete or that you misspoke somehow?</p>	<p style="text-align: right;">Page 11</p> <p>1 in Alabama, is it your understanding of what                  2 IDs can be used the same as the company's                  3 understanding?                  4 A. Yes.                  5 MR. ROSS: Objection. The plaintiff                  6 objects to the extent -- you know, this calls                  7 for Mr. Douglas to talk about things that,                  8 one, are already in the second amended                  9 complaint and, two, are not within Greater                  10 Birmingham Ministries' knowledge base since                  11 they are not responsible for determining                  12 which type are of phot ID are acceptable for                  13 voting.                  14 MR. DAVIS: Fair enough.                  15 Q. (BY MR. DAVIS) To the extent the                  16 company has an understanding, is it probably                  17 the same as yours?                  18 A. I would say the company's understanding                  19 is the same quality as mine.                  20 Q. Okay.                  21 MR. ROSS: And, again, the plaintiffs                  22 have laid out their understanding in the                  23 second amended complaint, which is the</p>
<p style="text-align: right;">Page 10</p> <p>1 MR. ROSS: Objection.                  2 A. No.                  3 Q. (BY MR. DAVIS) Okay. Very well.                  4 Well, with those tools in front of us,                  5 let's look at some of these topics.                  6 Now, you know that I have deposed Ms.                  7 Binder earlier in the case?                  8 A. Yes.                  9 Q. Have you seen that deposition                  10 transcript?                  11 A. No, I have not.                  12 Q. Okay. Fair enough. We talked a little                  13 bit about the corporate structure in your                  14 deposition, the descriptions. Are you the                  15 right person to talk to about Greater                  16 Birmingham Ministries' corporate structure?                  17 A. Yes.                  18 Q. Okay. You wouldn't need to go confer                  19 with others in the organization to be able to                  20 answer simple questions about the structure?                  21 A. No.                  22 Q. Okay. What about the forms of photo                  23 identification that are acceptable for voting</p>	<p style="text-align: right;">Page 12</p> <p>1 statutes.                  2 Q. (BY MR. DAVIS) Okay. Now, we talked                  3 some, Mr. Douglas, about the efforts of                  4 Greater Birmingham Ministries to monitor                  5 polling locations, that's Topic 5 on the                  6 deposition notice. Do you have anything to                  7 add to what we discussed in your deposition?                  8 A. No.                  9 Q. We talked about all Greater Birmingham                  10 Ministries' efforts to the best of your                  11 knowledge to monitor?                  12 A. Yes.                  13 Q. And there is no one you would need to                  14 go to within the company to supplement your                  15 understanding or knowledge base of that?                  16 A. No.                  17 Q. Topic 6, has Greater Birmingham                  18 Ministries made any effort, to your                  19 knowledge, to determine the racial                  20 demographics of votes cast in Alabama since                  21 2010?                  22 MR. ROSS: Objection.                  23 A. Some informal efforts.</p>

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1 Q. (BY MR. DAVIS) Such as what?

2 A. Newspaper reports on turnouts.

3 Q. Oh, okay.

4 A. Particularly, we followed -- not

5 partisan races as much, but ballot amendments

6 to see who votes for what by race and area of

7 the state.

8 Q. Okay.

9 A. Like the amendment that got written on

10 interracial of marriage in Alabama, that

11 amendment to the Constitution to get rid of

12 that right, stuff like that --

13 Q. Okay.

14 A. -- or school funding amendments, you

15 know, that kind of thing.

16 Q. I see. So would it be fair to say that

17 the organization has paid attention to

18 reports of the racial breakdown of voting,

19 but that you haven't yourself conducted

20 independent studies of the racial breakdown

21 of voting?

22 MR. ROSS: Objection.

23 A. We have seen expert analyses, but not

Page 14

1 our own.

2 Q. (BY MR. DAVIS) And of course, you have

3 hired experts in this litigation?

4 A. Yes.

5 Q. Now, we also talked about your efforts

6 to help voters get a photo ID. Have you

7 given me already in your first deposition all

8 the information you are aware of of Greater

9 Birmingham Ministries' efforts to help people

10 get a photo ID?

11 A. Yes.

12 Q. There's nothing to add and no one else

13 you would need to consult with to provide

14 complete responses for the organization?

15 MR. ROSS: Objection.

16 A. No.

17 Q. (BY MR. DAVIS) We talked a lot about

18 who your constituency is, and also I also

19 talked to Ms. Binder about that. But between

20 the two of you, the organization's

21 understanding of constituency is the same as

22 yours; is it not?

23 A. Correct.

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1 Q. What about any effort the organization

2 has made to determine who has and does not

3 have a photo ID? Now, you have hired experts

4 in this case. I'm not talking about their

5 work. But has Greater Birmingham Ministries

6 done any work that you haven't already

7 discussed with us?

8 A. Nothing we haven't already discussed.

9 Q. You provided some testimony in your

10 deposition; correct?

11 A. Right.

12 Q. And there's also some information in

13 your second supplemental interrogatory

14 responses about the efforts you made to

15 determine who has and who does not have a

16 photo ID; correct?

17 A. Correct.

18 Q. Between those, I've got what the

19 organization knows about those efforts; is

20 that fair?

21 MR. ROSS: Objection.

22 A. That's correct.

23 Q. (BY MR. DAVIS) I'm going to skip 13 and

Page 16

1 come back to it. I've circled some and we

2 will come back to a few because they may not

3 be as quick to deal with.

4 You know what, let's talk about that.

5 Your deposition, I want to look at the first

6 few exhibits. And if you will look in the

7 transcript, you have got all the testimony of

8 all the nice things you said, and then there

9 is an index and then you will find Exhibit 1,

10 2, and 3.

11 Do you remember how you brought some

12 documents with you to your first

13 deposition --

14 A. Yes.

15 Q. -- a list of names?

16 A. Yes.

17 Q. That's what I want to talk about.

18 Well, this is going to be kind of

19 pitiful because I am not sure that either one

20 of us can read it unless we find somebody

21 with longer arms.

22 Now, Mr. Douglas, it's my

23 understanding, let's look at Exhibit 1 right

<p style="text-align: right;">Page 17</p> <p>1 now, that these are people who have 2 approached Greater Birmingham Ministries 3 because of some need they have; is that 4 correct? 5 A. Correct. 6 Q. And in the course of ministering to 7 these individuals, Greater Birmingham 8 Ministries came to understand that these 9 individuals do not have a photo ID; is that 10 correct? 11 A. Yes, that's correct. 12 Q. Okay. Now, when we talked before, you 13 weren't sure how this information was stored. 14 Of all the people that Greater 15 Birmingham Ministries ministers to, how do 16 you know that these are the ones who say they 17 do not have a photo ID? 18 A. How I know it is these are the ones in 19 which our interviewers indicated it in the 20 database that we keep. 21 Q. Is there like amount column somewhere 22 in the database, like a yes or no has a photo 23 ID?</p>	<p style="text-align: right;">Page 19</p> <p>1 A. No. 2 Q. My fault. You don't know if there are 3 updates or not or there are no updates? 4 A. I don't know. 5 Q. Okay. Do you know if anyone has 6 checked whether there are additional people 7 to disclose because of this process? 8 A. I do not know. 9 MR. ROSS: Objection. 10 Q. (BY MR. DAVIS) Okay. Now, can you tell 11 me the difference between Exhibit 1 and 12 Exhibit 2 if there's any difference in what 13 database these come from? 14 A. These 2, Exhibit 2 and -- 15 Q. There is also an Exhibit 3. 16 A. Let me go to 3. 17 Q. And 4. 18 MR. ROSS: For the record, these 19 exhibits are difficult to read. I believe 20 they were originally legal size. 21 MR. DAVIS: That is entirely possible. 22 They were produced in a perfectly usable 23 fashion.</p>
<p style="text-align: right;">Page 18</p> <p>1 A. Yes, yes or no. 2 Q. Okay. And do you do that now with all 3 of the individuals who approach Greater 4 Birmingham Ministries with some need? 5 MR. ROSS: Objection. 6 A. Yes and yes. 7 Q. Let me ask that a better way. Is it 8 your intention to do that with all the people 9 who approach it? 10 A. Yes, and I'll say that we don't ask all 11 people because this is a Friday, food day, 12 and our people try to get people out as fast 13 as possible with their food and sometimes 14 they don't ask the question. 15 Q. It's certainly possible that someone 16 might forget to ask or that you're too busy 17 to ask. But is it fair to say that when you 18 can, Greater Birmingham Ministries tries to 19 determine that the people it serves has a 20 photo ID? 21 A. Correct. 22 Q. Do you know if there are any updates to 23 this information since our last deposition?</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. ROSS: And I believe in Mr. 2 Douglas' prior deposition there was an 3 explanation of these documents and that there 4 was some issue with the way in which they 5 were -- the order in which they are 6 presented. 7 Q. Now, I'm not contending that they were 8 attached to your first deposition in a 9 logical in order. 10 What I really want to know now, Mr. 11 Douglas, is to the best of your knowledge are 12 all of these pages from the same database? 13 MR. ROSS: Objection. 14 A. To the best of my knowledge, yes. It's 15 the same columns, anyway. 16 MR. ROSS: Could you clarify? Do you 17 mean Exhibits 2, 3, and 4 were all from the 18 same database? Was that your question? 19 MR. DAVIS: Well, actually, I meant to 20 include 1. I said 3, but I meant 4. 21 Q. (BY MR. DAVIS) Are we talking about 22 different databases or one database? 23 A. We're talking about two databases.</p>



<p style="text-align: right;">Page 21</p> <p>1 Q. Okay.</p> <p>2 A. Exhibit 1 is our intake database, and</p> <p>3 Exhibits 2 through 4 are essentially Excel</p> <p>4 spreadsheets that we use when we go out in</p> <p>5 the community.</p> <p>6 Q. Okay. When you go out in the community</p> <p>7 to do what kind of things?</p> <p>8 A. Voter registration or ask people do</p> <p>9 they have a photo ID. Places like Cooper</p> <p>10 Green, there likely would be people there who</p> <p>11 are low income.</p> <p>12 Q. Sure. Okay. In both situations where</p> <p>13 people come to you and when you go out into</p> <p>14 the community, you try when the opportunity</p> <p>15 presents to determine who has and has not a</p> <p>16 photo ID?</p> <p>17 A. Correct.</p> <p>18 Q. And you make note of that in your two</p> <p>19 databases?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. I understand more about how this</p> <p>22 was produced than I did before.</p> <p>23 Are those efforts ongoing?</p>	<p style="text-align: right;">Page 23</p> <p>1 Greater Birmingham Ministries has that the</p> <p>2 Act was in your contention an Act of</p> <p>3 purposeful discrimination?</p> <p>4 A. Yes, to the best of my knowledge.</p> <p>5 Q. What does Greater Birmingham Ministries</p> <p>6 contend that the legislature intended to do</p> <p>7 specifically?</p> <p>8 MR. ROSS: Objection.</p> <p>9 A. To suppress African American voter</p> <p>10 participation in elections of the state.</p> <p>11 Q. Okay. Are there any individual</p> <p>12 legislators that Greater Birmingham</p> <p>13 Ministries held that intent?</p> <p>14 MR. ROSS: Objection.</p> <p>15 A. I wouldn't speak to individuals.</p> <p>16 Q. Can you name one that Greater</p> <p>17 Birmingham Ministries says that individual in</p> <p>18 the legislature, that person passed it to try</p> <p>19 to keep black people from voting?</p> <p>20 MR. ROSS: Objection.</p> <p>21 A. Not one that stands out above some</p> <p>22 others.</p> <p>23 Q. Is there any member of the legislature</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Thank you. That's all I have</p> <p>3 got on those exhibits.</p> <p>4 Now, we've talked about your allegation</p> <p>5 in the complaint that the photo ID law as</p> <p>6 plaintiffs contend was a purposeful device to</p> <p>7 further racial discrimination.</p> <p>8 Does Greater Birmingham Ministries</p> <p>9 believe and contend that the photo ID law was</p> <p>10 passed in order to purposely discriminate</p> <p>11 against minority voters?</p> <p>12 A. Yes.</p> <p>13 Q. We've talked about different forms of</p> <p>14 evidence that you were aware of in your first</p> <p>15 deposition. Do you have anything to add? As</p> <p>16 the representative of the organization, do</p> <p>17 you have a different response than as you had</p> <p>18 as Scott Douglas, the individual?</p> <p>19 A. Only the experts' analyses.</p> <p>20 Q. You're adopting their analyses and</p> <p>21 you've already produced that in this case.</p> <p>22 But to the best of your knowledge, you</p> <p>23 have told me about all of the evidence</p>	<p style="text-align: right;">Page 24</p> <p>1 who voted on this Bill in 2011 that Greater</p> <p>2 Birmingham Ministries contends had the</p> <p>3 personal intention to discriminate against</p> <p>4 black voters?</p> <p>5 MR. ROSS: Objection.</p> <p>6 A. Scott Beason and some others.</p> <p>7 Q. (BY MR. DAVIS) What others?</p> <p>8 A. The names don't come to mind right now,</p> <p>9 but he stands out because of more than one</p> <p>10 bill.</p> <p>11 Q. Okay. How many legislators does</p> <p>12 Greater Birmingham Ministries contend had the</p> <p>13 intent to discriminate against minority</p> <p>14 voters?</p> <p>15 MR. ROSS: Objection.</p> <p>16 A. We never did that calculation. We knew</p> <p>17 it was a majority vote, no public hearings.</p> <p>18 And So who had the intent and who didn't know</p> <p>19 any better --</p> <p>20 Q. (BY MR. DAVIS) Okay. You don't know --</p> <p>21 A. -- I can't divide it.</p> <p>22 Q. Okay. You can't divide who had the</p> <p>23 intent and who was uninformed in your view?</p>

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1 MR. ROSS: Objection.  
2 A. Right.  
3 Q. (BY MR. DAVIS) And uninformed about  
4 what?  
5 MR. ROSS: Objection.  
6 A. The damage they would cause. As we  
7 said, there are people who don't care to know  
8 and those who don't know to care. So I can't  
9 say which one here.  
10 Q. (BY MR. DAVIS) In your first  
11 deposition, you said that you did not know  
12 whether John Merrill had the intent or the  
13 desire that the photo ID law prevented black  
14 people from voting. Is that still your  
15 answer today?  
16 MR. ROSS: Objection.  
17 A. Yes.  
18 Q. (BY MR. DAVIS) So you don't know one  
19 way or the other?  
20 A. Yes.  
21 Q. To the best of your knowledge, you  
22 don't have any direct evidence that John  
23 Merrill personally intends that the photo ID

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1 law prevent black people from voting?  
2 MR. ROSS: Objection.  
3 A. Yes, I don't know.  
4 Q. (BY MR. DAVIS) We talked about any  
5 information that Greater Birmingham  
6 Ministries has that minority voters are less  
7 likely than white voters to have a photo ID.  
8 So it is your contention, is it not,  
9 that minority voters are less likely than  
10 white voters to have a photo ID?  
11 MR. ROSS: Objection.  
12 A. Yes.  
13 Q. (BY MR. DAVIS) To the best of your  
14 knowledge, have you given us all the evidence  
15 that you have that that is the case?  
16 A. Yes.  
17 Q. Has Greater Birmingham Ministries done  
18 anything -- outside of what your experts may  
19 have done in this litigation, has Greater  
20 Birmingham Ministries done anything to  
21 determine what the voters have and don't  
22 have; things like birth certificates, the  
23 documents that you can use to get a photo ID?

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1 A. Yes.  
2 Q. What have you done?  
3 A. When people, clients in particular, say  
4 they don't know a photo ID, we give them  
5 information, some of the printed information  
6 I gave you --  
7 Q. Right.  
8 A. -- on what is required to obtain a  
9 photo ID. We ask them if they have that  
10 information available to them.  
11 Q. Okay. Well, let's look at that.  
12 (Defendant's Exhibit 4 was marked and  
13 attached.)  
14 Q. (BY MR. DAVIS) Just so it's done in  
15 order, I have marked Exhibit 4, which are  
16 Plaintiff's Supplemental Disclosures, and I  
17 will ask about that later.  
18 Let's talk about the documents that you  
19 brought today.  
20 (Defendant's Exhibit 5 was marked and  
21 attached.)  
22 Q. (BY MR. DAVIS) All right. Tell me if  
23 you recognize the document I have marked as

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1 Exhibit 5, and, if so, what that is.  
2 A. This is a flyer that we gave out in  
3 public and also to our clients to alert them  
4 as of '14 when the photo ID law first came  
5 into effect of the new requirements.  
6 Q. Okay. So this was part of Greater  
7 Birmingham Ministries' efforts to educate  
8 voters back when the law was first going into  
9 effect?  
10 A. Exactly.  
11 Q. Okay. It says here, soon it may be  
12 much more difficult for you to get  
13 registered.  
14 Did the photo ID law, to your  
15 knowledge, have any effect on the difficulty  
16 or ease of registering to vote?  
17 A. We put the registering and voting into  
18 one package, so yes. When the photo ID law  
19 -- this was in the early days of 2014, when  
20 it came into effect, there were disagreements  
21 of election officials in Jefferson County on  
22 what you needed to register to this vote.  
23 Q. To register to vote?

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1 A. To register to vote.  
 2 Q. Tell me about those disagreements. Do  
 3 you remember what they were.  
 4 A. I can't remember them in detail, but it  
 5 was the county clerk, Judge King, and others  
 6 who were at a workshop on the new photo ID  
 7 law and they gave presentations, and they  
 8 mildly contradicted one another about it,  
 9 that was before this.  
 10 Q. Okay. But you don't recall right now  
 11 how they were inconsistent with one another?  
 12 A. No, not now, I don't.  
 13 (Defendant's Exhibit 6 was marked and  
 14 attached.)  
 15 Q. (BY MR. DAVIS) What about the document  
 16 that I have marked as Exhibit 6, can you tell  
 17 me what that is?  
 18 A. Yeah. This is a survey, and it was to  
 19 encourage people to vote and also see what  
 20 issues they cared about like healthcare and  
 21 public transportation.  
 22 Q. You wanted to find out what was  
 23 important at the time to the people you

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1 serve?  
 2 A. That's right, because we were talking  
 3 about people being able to vote for the  
 4 issues they care about and how they related  
 5 to it. This was door to door or public  
 6 places.  
 7 Q. Did you save these?  
 8 A. I could not find the collected ones,  
 9 but I found this on the -- from where we  
 10 printed it.  
 11 Q. Do you know or would anybody at Greater  
 12 Birmingham Ministries know how people  
 13 responded to the question of photo ID whether  
 14 they know it's required and whether they have  
 15 one?  
 16 A. We had a meeting, but I can't recall  
 17 the outcome of that meeting because people  
 18 responded differently; some knew, some  
 19 didn't.  
 20 Q. Sure.  
 21 A. But I don't know what the weight was  
 22 like know and didn't know numbers.  
 23 Q. Did anyone calculate the totals?

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1 A. No. I think we -- when you calculate  
 2 the totals, we didn't put them in a  
 3 spreadsheet, we just used it as information  
 4 for us.  
 5 Q. As far as you know, no one said we got  
 6 100 back and this many knew and this many  
 7 didn't?  
 8 A. I'm quite sure they didn't, I just  
 9 don't recall what the number was.  
 10 (Defendant's Exhibit 7 was marked and  
 11 attached.)  
 12 Q. (BY MR. DAVIS) What about this document  
 13 that I'm going to mark as Exhibit 7, what can  
 14 you tell me about that?  
 15 A. Oh, yes. This was a document we  
 16 produced to recruit volunteers to help us do  
 17 neighborhood canvassing, go door to door, for  
 18 them to get involved.  
 19 Q. I see. So this document marked as 7  
 20 was part of your efforts to get volunteers --  
 21 A. Correct.  
 22 Q. -- to do the canvassing which related  
 23 to Document 6?

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1 A. That's correct.  
 2 Q. Okay. And was this largely a project  
 3 that Mr. Fountain was doing?  
 4 A. He was the lead person, yes.  
 5 Q. I don't mean to suggest he was doing it  
 6 alone, but he was spearheading the effort?  
 7 A. Yes.  
 8 Q. Do you know where the canvassing was  
 9 directed; where you focused your efforts?  
 10 A. It was partly in the East Lake  
 11 neighborhood of Birmingham and possibly a  
 12 West End neighborhood. I know more about  
 13 East Lake because they had the most  
 14 volunteers.  
 15 Q. Okay. Did you go out and do any of the  
 16 canvassing?  
 17 A. No. I was encouraged, but I had too  
 18 many other things.  
 19 Q. Okay. Let's look at 8 and 9. Let's  
 20 look at those together because they're kind  
 21 of similar and they may be part of the same  
 22 thing.  
 23 (Defendant's Exhibits 8 and 9 were

<p style="text-align: right;">Page 33</p> <p>1 marked and attached.)</p> <p>2 Q. (BY MR. DAVIS) Okay. Look at 8 and 9</p> <p>3 and tell me what they are and whether they go</p> <p>4 together.</p> <p>5 A. Yes, this is two for one.</p> <p>6 You get one sheet of paper and you get</p> <p>7 two flyers.</p> <p>8 Q. Right. Was that front and back?</p> <p>9 A. You're right, it would be front and</p> <p>10 back -- no, they weren't -- were they front</p> <p>11 or back or not? I think they could have been</p> <p>12 in sequence, a later development, because the</p> <p>13 second one has other groups that signed on</p> <p>14 with us to help us do it.</p> <p>15 Q. Okay.</p> <p>16 A. I think this came first (indicating)</p> <p>17 and we wanted other organizations to help.</p> <p>18 Q. And what is the purpose of these</p> <p>19 documents?</p> <p>20 A. To inform our constituencies of the</p> <p>21 requirements of the new photo ID law and</p> <p>22 steps they could take to get a free Alabama</p> <p>23 photo ID card.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. So when you were donating food</p> <p>2 to families, the flyers were stuck in the</p> <p>3 bag?</p> <p>4 A. Exactly. Exactly.</p> <p>5 Q. Okay. Did you ever have someone on a</p> <p>6 street corner in a public place or near the</p> <p>7 courthouse handing them out to passersby?</p> <p>8 A. Not at the courthouse, but we had them</p> <p>9 at hospitals, central stations, the bus</p> <p>10 station downtown.</p> <p>11 Q. Sure. Do you have any judgment as to</p> <p>12 how many of these flyers Greater Birmingham</p> <p>13 Ministries has passed out?</p> <p>14 A. These were pretty big. There were</p> <p>15 several thousand of them. It was over time.</p> <p>16 Q. Oh, sure. Do you still include that in</p> <p>17 grocery bags for people who come in?</p> <p>18 A. No, we don't use this anymore. Like I</p> <p>19 say, we use more of our talking to people</p> <p>20 individually in places and finding out if</p> <p>21 they have a photo ID and direct them where</p> <p>22 they can get a photo ID. It's not just the</p> <p>23 photo ID, a state-issued photo ID, sometimes</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. So this was handed out to the people</p> <p>2 that Greater Birmingham Ministries ministers</p> <p>3 to?</p> <p>4 A. Yes, and at public places, too.</p> <p>5 Q. Okay. Tell me when this was handed</p> <p>6 out. Was it handed out as part of the</p> <p>7 canvassing efforts that we talked about?</p> <p>8 A. I think this came later than that.</p> <p>9 This was closer to the deadline for</p> <p>10 registration for and upcoming election and</p> <p>11 places so people were able to register and</p> <p>12 vote and participate and go and vote before</p> <p>13 the election.</p> <p>14 It was our idea to get it out in time</p> <p>15 for the election, either primary or general</p> <p>16 election of '14.</p> <p>17 Q. Was this handed out to people that came</p> <p>18 into Greater Birmingham Ministries' offices?</p> <p>19 A. Yes, in two ways. We gave a talk on</p> <p>20 Fridays about blood pressure, voting, things</p> <p>21 that people were concerned about, and we also</p> <p>22 placed them in grocery bags. If they get</p> <p>23 food from GBM, we'd stick a flyer in it.</p>	<p style="text-align: right;">Page 36</p> <p>1 with homeless folks, they need a photo ID for</p> <p>2 other services. So we help them with that,</p> <p>3 too.</p> <p>4 Q. Right. You work with the church over</p> <p>5 at Highland with the homeless?</p> <p>6 A. Highland United Methodist, yes.</p> <p>7 Q. Is there any inaccuracy on the form, is</p> <p>8 that the reason you don't use it now or</p> <p>9 you've just redirected your efforts and</p> <p>10 changed the way you present it?</p> <p>11 A. To tell you the truth, we thought it</p> <p>12 was graphically confusing. I mean, it's hard</p> <p>13 to read.</p> <p>14 I mean, someone was very excited with</p> <p>15 the infographics at the top.</p> <p>16 Q. Fair enough. There's no inaccurate</p> <p>17 information that you are aware of?</p> <p>18 A. Not that I am aware of, especially at</p> <p>19 that time, no.</p> <p>20 Q. You just changed the way you present</p> <p>21 the information to your constituents?</p> <p>22 A. Correct.</p> <p>23 (Defendant's Exhibit 10 was marked and</p>



<p style="text-align: right;">Page 37</p> <p>1 attached.)</p> <p>2 Q. (BY MR. DAVIS) I put together as an</p> <p>3 Exhibit 10 two additional pages that you</p> <p>4 brought today. Are these Spanish language</p> <p>5 translations of the documents we looked at</p> <p>6 that are marked 8 and 9?</p> <p>7 A. Given my Spanish, to the best of my</p> <p>8 knowledge, yes.</p> <p>9 Q. It appears to be the same?</p> <p>10 A. It appears to be the same, yes.</p> <p>11 Q. In Topic 19 in your deposition notice,</p> <p>12 Mr. Douglas, are any basis for something you</p> <p>13 said in your complaint where plaintiffs claim</p> <p>14 that election officials in Alabama have</p> <p>15 selectively enforced the photo ID law.</p> <p>16 What information does Birmingham</p> <p>17 Ministries have that the law has been</p> <p>18 enforced inconsistently in different parts of</p> <p>19 the state --</p> <p>20 MR. ROSS: Objection.</p> <p>21 Q. (BY MR. DAVIS) -- or do you have any</p> <p>22 such information that you are aware of?</p> <p>23 MR. ROSS: Objection.</p>	<p style="text-align: right;">Page 39</p> <p>1 gentleman in Mobile was that the poll</p> <p>2 workers, to the best of your knowledge, did</p> <p>3 not know this person?</p> <p>4 A. That's correct, that's correct, that's</p> <p>5 correct.</p> <p>6 Q. Okay.</p> <p>7 A. And he had been voting previously,</p> <p>8 yeah.</p> <p>9 Q. Does Greater Birmingham Ministries have</p> <p>10 any evidence that poll workers in any part of</p> <p>11 Alabama that, for example, they'll ask black</p> <p>12 voters to present a photo ID, but they won't</p> <p>13 ask white voters to present a photo ID?</p> <p>14 MR. ROSS: Objection.</p> <p>15 A. Yes, from news accounts.</p> <p>16 Q. (BY MR. DAVIS) What news accounts are</p> <p>17 those?</p> <p>18 A. I mean, expert accounts.</p> <p>19 Q. Oh, expert accounts. It is your</p> <p>20 understanding experts are saying that's</p> <p>21 happening in Alabama?</p> <p>22 A. Yes.</p> <p>23 Q. Any other information you have that</p>
<p style="text-align: right;">Page 38</p> <p>1 A. I've had some information on the</p> <p>2 positive ID in case there was a disagreement</p> <p>3 a person is registered to vote to have two</p> <p>4 people vouch for them. I have information</p> <p>5 about that.</p> <p>6 Q. (BY MR. DAVIS) What information do you</p> <p>7 have?</p> <p>8 A. News accounts from Huntsville and</p> <p>9 Mobile of African Americans going to the</p> <p>10 polls. And in this case, they were white</p> <p>11 poll workers and no two people there could</p> <p>12 vouch for them even though the Mobile guy was</p> <p>13 90-something years old. He hadn't moved, but</p> <p>14 the neighborhood had changed.</p> <p>15 The old neighborhood had new people</p> <p>16 move in -- younger people move in and he's</p> <p>17 been there forever and nobody there knew him</p> <p>18 at the polls, working at the polls knew him.</p> <p>19 According to the story, he couldn't get</p> <p>20 two people there to vouch for him, and then I</p> <p>21 found out that the neighborhood had changed</p> <p>22 over time.</p> <p>23 Q. So the issue you heard about the</p>	<p style="text-align: right;">Page 40</p> <p>1 that may be going on?</p> <p>2 A. What I have heard of in Birmingham of</p> <p>3 black people not having people to recognize</p> <p>4 them.</p> <p>5 Q. Okay.</p> <p>6 A. What I didn't have here in Birmingham</p> <p>7 where I'm more familiar with of white people</p> <p>8 being recognized for the -- under the same</p> <p>9 conditions.</p> <p>10 I have a negative recollection, I don't</p> <p>11 have a positive recollection for white</p> <p>12 voters, you know, or a ratio.</p> <p>13 Q. Are you aware of any poll workers who</p> <p>14 took the position, well, I'm going to</p> <p>15 positively identify all the white voters, but</p> <p>16 I'm not going to positively identify black</p> <p>17 voters even if I know who they are because I</p> <p>18 don't want black people to vote?</p> <p>19 MR. ROSS: Objection.</p> <p>20 A. No.</p> <p>21 Q. (BY MR. DAVIS) Okay. Topic 20, any</p> <p>22 basis for your contention in the complaint</p> <p>23 that minority voters are less likely than</p>

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1 white voters to know their poll workers.  
 2 Between what we talked about in your  
 3 first deposition and what you provided in the  
 4 interrogatories responses, have you given me  
 5 a complete answer to that issue from Greater  
 6 Birmingham Ministries?  
 7 A. Yes, I have.  
 8 Q. All right. We have talked about some  
 9 of the efforts in the past. Number 23 is  
 10 your efforts to assist and educate African  
 11 Americans and the public about how to comply  
 12 with the photo ID law. We talked about your  
 13 canvassing, we talked about the flyer.  
 14 How are you doing that today; how does  
 15 Greater Birmingham Ministries educate people  
 16 about the photo ID law today?  
 17 A. Today, we talk to our clients one on  
 18 one when they come there for help. We ask  
 19 them about health issues and we also ask them  
 20 about voting; are you registered to vote. If  
 21 they say yes -- if not, why. So that's how  
 22 we do it today.  
 23 Q. Okay.

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1 A. We maintain the database of those we  
 2 refer to how to get registered to vote and to  
 3 vote and a photo ID.  
 4 Q. And you also ask them whether or not  
 5 they have a photo ID; right?  
 6 A. Yes.  
 7 Q. And if they say no, what do you do?  
 8 A. What we're supposed to do is to refer  
 9 them to the places they can get a photo ID if  
 10 they can't afford to pay for one.  
 11 Q. Do you explain to them, for example --  
 12 I'm not saying this is all you tell them, but  
 13 would you tell them, well, there is ID  
 14 available at the registrar's office?  
 15 A. Yes.  
 16 Q. And would you tell them you will need  
 17 these kinds of documents in order to do that?  
 18 A. Yes, we do.  
 19 Q. Does anybody tell you I'm not  
 20 registered and I don't want to register?  
 21 MR. ROSS: Object to form.  
 22 A. Yes.  
 23 Q. (BY MR. DAVIS) Why do people not want

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1 to register?  
 2 MR. ROSS: Objection to form.  
 3 A. I don't know.  
 4 Q. (BY MR. DAVIS) Do they offer any reason  
 5 why?  
 6 MR. ROSS: Objection.  
 7 A. In general, we have conversations and  
 8 they talk about their vote doesn't count  
 9 mostly.  
 10 And then on the other hand, there's  
 11 those that say that they can't vote because  
 12 they're a former felon.  
 13 Q. (BY MR. DAVIS) I never understood why  
 14 anybody wouldn't want to vote?  
 15 MR. ROSS: Objection.  
 16 Is that a question?  
 17 MR. DAVIS: No, that's Jim on a  
 18 soapbox.  
 19 A. We tell them you not voting counts.  
 20 Q. (BY MR. DAVIS) There's some information  
 21 about this in the interrogatory responses,  
 22 about Topic 27, communications with persons  
 23 who unsuccessfully attempted to attain a

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1 photo ID card.  
 2 To your knowledge, other than what may  
 3 be in your interrogatory responses, does  
 4 Greater Birmingham Ministries have any  
 5 information of a person who went to the  
 6 registrar's office to get a photo ID and they  
 7 were unable to get one?  
 8 A. No, we do not.  
 9 Q. Does Greater Birmingham Ministries have  
 10 any complaints with the way that registrars  
 11 are issuing photo IDs, to your knowledge?  
 12 MR. ROSS: Objection.  
 13 A. Not to my knowledge.  
 14 Q. (BY MR. DAVIS) Do you contend that  
 15 registrars are more likely to give those IDs  
 16 to white voters than black voters simply  
 17 because they're white or black?  
 18 MR. ROSS: Objection.  
 19 A. No.  
 20 Q. (BY MR. DAVIS) Number 31 is the  
 21 issuance of public statements concerning the  
 22 law challenged in this case.  
 23 Has Greater Birmingham Ministries made

<p style="text-align: right;">Page 45</p> <p>1 any public statements concerning the law</p> <p>2 challenged in this case that has not been</p> <p>3 discussed in your first deposition or in</p> <p>4 interrogatory responses or other parts of</p> <p>5 this litigation, to your knowledge?</p> <p>6 A. Since 2010, we have not made a legal</p> <p>7 statement -- not a legal statement -- we've</p> <p>8 done e-mails, a website, our interest in</p> <p>9 voting rights in newsletter, things like</p> <p>10 that. That's all.</p> <p>11 Q. All right. Anything that addressed the</p> <p>12 photo ID specifically, would that be the kind</p> <p>13 of document that you would have looked for</p> <p>14 when you responded to our request for</p> <p>15 production earlier in this litigation?</p> <p>16 A. Yes.</p> <p>17 Q. And to the best of your knowledge, were</p> <p>18 you able to locate and produce any public</p> <p>19 statements, written statements, that dealt</p> <p>20 specifically with the photo identification</p> <p>21 law?</p> <p>22 MR. ROSS: Objection.</p> <p>23 A. Well, we have a newsletter. It wasn't</p>	<p style="text-align: right;">Page 47</p> <p>1 how you contend that has happened in Alabama?</p> <p>2 A. I point to Alabama's history, the</p> <p>3 Alabama Constitution of 1901, John Knox's</p> <p>4 quote, "What we ought to do is establish</p> <p>5 rights and privileges by law." The</p> <p>6 opposition to John Knox who said that, "But,</p> <p>7 sir, if we use the poll tax, it disfranchises</p> <p>8 the Negro. It also disfranchises the poor</p> <p>9 white." The response in the transcript was</p> <p>10 "So be it."</p> <p>11 Q. Do you contend that's what happened</p> <p>12 with the photo ID law?</p> <p>13 A. Yes.</p> <p>14 Q. Do you contend that the supporters of</p> <p>15 the photo ID law were in the same category</p> <p>16 morally as the people who passed the 1901</p> <p>17 Constitution to suppress the black vote?</p> <p>18 MR. ROSS: Object to form.</p> <p>19 A. The leaders for it, yes.</p> <p>20 Q. (BY MR. DAVIS) By leaders, who do you</p> <p>21 mean?</p> <p>22 A. The legislative leaders who pushed the</p> <p>23 issue through the legislature using their</p>
<p style="text-align: right;">Page 46</p> <p>1 out when we got the interrogatories.</p> <p>2 Q. It wasn't what?</p> <p>3 A. The newsletter had not been done at</p> <p>4 that time. It's like two weeks old two weeks</p> <p>5 ago.</p> <p>6 Q. Oh, so you have a new newsletter from</p> <p>7 the last couple of weeks?</p> <p>8 A. Yes.</p> <p>9 Q. Do you talk about photo ID in that?</p> <p>10 A. We talk about voter suppression.</p> <p>11 Q. What did you say about voter</p> <p>12 suppression?</p> <p>13 A. We talk about it as a historical</p> <p>14 reflection of voter suppression because of</p> <p>15 lust for power; that is, power lust, the</p> <p>16 desire to control, to dominate.</p> <p>17 Q. And who has the power lust?</p> <p>18 A. Huh?</p> <p>19 Q. Who has the power lust, the lust for</p> <p>20 power?</p> <p>21 A. Those who use it to suppress others to</p> <p>22 advance their own interests.</p> <p>23 Q. Do you point to specific examples of</p>	<p style="text-align: right;">Page 48</p> <p>1 leadership ability, their powers, yeah, and</p> <p>2 their political persuasion.</p> <p>3 Q. To Greater Birmingham Ministries, that</p> <p>4 goes in the same category as the 1901</p> <p>5 Constitution in its efforts to suppress</p> <p>6 the black vote?</p> <p>7 A. To the extent possible by the current</p> <p>8 U.S. Constitution, yes.</p> <p>9 Remember, the 1901 Constitution came</p> <p>10 after the 1890 Mississippi plan, that they</p> <p>11 had found a way to get around the 13th, 14th,</p> <p>12 and 15th Amendments.</p> <p>13 MR. ROSS: Can we go off the record?</p> <p>14 MR. DAVIS: Yes.</p> <p>15 (OFF-THE-RECORD.)</p> <p>16 Q. (BY MR. DAVIS) Mr. Douglas, let's talk</p> <p>17 about some of the other documents you</p> <p>18 brought.</p> <p>19 A. I thought we were going to take a</p> <p>20 break.</p> <p>21 Q. Do you want to?</p> <p>22 A. Yes.</p> <p>23 (Short recess was had.)</p>

<p style="text-align: right;">Page 49</p> <p>1 Q. (BY MR. DAVIS) I don't have a copy of</p> <p>2 the newsletter to put in front of you, Mr.</p> <p>3 Douglas. But looking at it here, you talk a</p> <p>4 little bit about the vote tally for passage</p> <p>5 of the 1901 Constitution; don't you?</p> <p>6 A. Yes.</p> <p>7 Q. What did you say about that? I'm not</p> <p>8 asking you to quote yourself, but in general</p> <p>9 what were your comments about the tally to</p> <p>10 vote on whether or not to adopt the 1901</p> <p>11 Constitution?</p> <p>12 A. The intent was to show the greatest</p> <p>13 voter fraud in Alabama history was the</p> <p>14 passing of that Constitution where the</p> <p>15 majority of black counties like Dallas, there</p> <p>16 were more blacks who were counted as voting</p> <p>17 than who were registered to voter; the vote</p> <p>18 counters were white. And amazingly, they</p> <p>19 voted overwhelmingly for a Constitution that</p> <p>20 would never let them vote again. It said</p> <p>21 what a great turnout that was. Guess what,</p> <p>22 we vote this time, we never do it again.</p> <p>23 You have to believe that or believe</p>	<p style="text-align: right;">Page 51</p> <p>1 vote and it took away their right to vote.</p> <p>2 That's the ultimate misrepresentation.</p> <p>3 Q. (BY MR. DAVIS) Is it your contention or</p> <p>4 the contention of Greater Birmingham</p> <p>5 Ministries that voter fraud does not exist</p> <p>6 today?</p> <p>7 MR. ROSS: Objection. You haven't</p> <p>8 defined voter fraud.</p> <p>9 Q. (BY MR. DAVIS) Just in general, let's</p> <p>10 just say. If we need to break that down, we</p> <p>11 will do so.</p> <p>12 A. Break it down.</p> <p>13 Q. Okay. Is it your contention that voter</p> <p>14 fraud in the form of one person going to the</p> <p>15 polling place and claiming to be someone he</p> <p>16 or she is not, is it your claim that does not</p> <p>17 happen?</p> <p>18 A. It is our claim that is amazing and</p> <p>19 statistically insignificant.</p> <p>20 Q. It happens so little that we shouldn't</p> <p>21 worry about it?</p> <p>22 A. That's correct, and that the cure is</p> <p>23 worse than the alleged disease.</p>
<p style="text-align: right;">Page 50</p> <p>1 that the votes were misrepresented.</p> <p>2 MR. ROSS: I'm handing him the</p> <p>3 electronic copy of the newsletter.</p> <p>4 MR. DAVIS: Of course. Feel free to</p> <p>5 refer to it.</p> <p>6 Q. (BY MR. DAVIS) So does that suggest to</p> <p>7 you that voter fraud occurred in the passage</p> <p>8 of the 1901 Constitution?</p> <p>9 MR. ROSS: Objection.</p> <p>10 A. The inference I meant to put forth that</p> <p>11 voter fraud is a misnomer, that systems</p> <p>12 fraudulently misrepresent the votes of people</p> <p>13 in order to either maintain or increase their</p> <p>14 power. It wasn't fraud of individual voters,</p> <p>15 but the fraud of those in power.</p> <p>16 Q. Fraud in the way the vote was counted</p> <p>17 or presented or tallied?</p> <p>18 A. Yes, by those in power.</p> <p>19 Q. Okay. If that occurred, that</p> <p>20 suppressed the vote of the people whose votes</p> <p>21 were misrepresented; wouldn't you say?</p> <p>22 MR. ROSS: Objection.</p> <p>23 A. Yes, I would. It misrepresented their</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. How much fraud is okay?</p> <p>2 I mean, any instance of fraud is wrong;</p> <p>3 wouldn't you agree with that?</p> <p>4 A. Any instance of killing an innocent</p> <p>5 person on death row is wrong.</p> <p>6 Q. I'm not talking about that. I'm</p> <p>7 talking about voter fraud.</p> <p>8 A. Okay. You're talking about any</p> <p>9 instance is wrong?</p> <p>10 Q. Yes.</p> <p>11 A. Yes.</p> <p>12 Q. What about absentee voter fraud?</p> <p>13 A. What about it?</p> <p>14 MR. ROSS: Objection.</p> <p>15 Q. (BY MR. DAVIS) Does Greater Birmingham</p> <p>16 Ministries claim that that does not happen?</p> <p>17 A. We did not make that claim.</p> <p>18 Q. Okay. In fact, it does happen; doesn't</p> <p>19 it?</p> <p>20 MR. ROSS: Objection.</p> <p>21 A. It has happened in the history.</p> <p>22 Q. (BY MR. DAVIS) Okay. Do you think</p> <p>23 that's a relic of the past as opposed to</p>



<p style="text-align: right;">Page 53</p> <p>1 something that happens today?</p> <p>2 A. More so.</p> <p>3 Q. What types of absentee voter fraud are</p> <p>4 you aware of, if any?</p> <p>5 A. I'm aware of some cases from the 1980s</p> <p>6 is all.</p> <p>7 Q. Okay.</p> <p>8 A. Perry County.</p> <p>9 Q. Hypothetically, if someone wherever,</p> <p>10 whether black or white, any particular</p> <p>11 county, if someone were to falsify an</p> <p>12 absentee voter application and they got 100</p> <p>13 absentee ballots that they fraudulently</p> <p>14 committed, we all agree that would be very</p> <p>15 wrong; right?</p> <p>16 MR. ROSS: Objection.</p> <p>17 A. I would agree that fraudulent --</p> <p>18 intentionally fraudulent applications would</p> <p>19 be very wrong.</p> <p>20 Q. (BY MR. DAVIS) And if they cast those</p> <p>21 votes, those 100 votes so that one person got</p> <p>22 to vote 100 times, that would also be wrong?</p> <p>23 MR. ROSS: Objection.</p>	<p style="text-align: right;">Page 55</p> <p>1 records, Mr. Douglas. I mark those, let's</p> <p>2 flip through -- it could be that some of</p> <p>3 these are part of a set or it may be that</p> <p>4 they are all individual pages and need to be</p> <p>5 marked separately. You tell me before I</p> <p>6 start putting stickers on things.</p> <p>7 A. Okay. This is a set of our general</p> <p>8 operating financial statements from 2010</p> <p>9 through 2015.</p> <p>10 Q. Okay. So these are of a kind?</p> <p>11 A. Of a kind.</p> <p>12 Q. All right. Let's mark these</p> <p>13 collectively as Defendant's Exhibit 11.</p> <p>14 (Defendant's Exhibits 11 was marked and</p> <p>15 attached.)</p> <p>16 Q. (BY MR. DAVIS) All right. And what</p> <p>17 about these legal size pages?</p> <p>18 A. These are just the documentation of the</p> <p>19 salary of our lead person on his voting</p> <p>20 engagement from 2014 through 2015.</p> <p>21 Q. Okay. That's Mr. Fountain?</p> <p>22 A. Yes.</p> <p>23 Q. He has moved on to other things now;</p>
<p style="text-align: right;">Page 54</p> <p>1 A. According to that theory, yes.</p> <p>2 Q. (BY MR. DAVIS) Well, to any theory.</p> <p>3 Nobody should get to vote 100 times.</p> <p>4 A. It could be 50.</p> <p>5 Q. It could be 50?</p> <p>6 MR. ROSS: For the record --</p> <p>7 A. I was trying to --</p> <p>8 MR. ROSS: -- I believe he's making a</p> <p>9 joke.</p> <p>10 Q. (BY MR. DAVIS) I'm just trying to make</p> <p>11 sure I understand it. Yes, there's some</p> <p>12 levity here.</p> <p>13 A. Doing wrong is wrong.</p> <p>14 Q. Of course, it is.</p> <p>15 A. That was written by John Clare.</p> <p>16 Q. If that were to happen, that would</p> <p>17 cancel out other people's votes?</p> <p>18 A. Yes.</p> <p>19 Q. Does Greater Birmingham Ministries make</p> <p>20 any claim that absentee voter fraud, make any</p> <p>21 claim whether that still happens today?</p> <p>22 A. We do not.</p> <p>23 Q. Okay. Now, you brought some financial</p>	<p style="text-align: right;">Page 56</p> <p>1 has he not?</p> <p>2 A. Correct. He is in South Carolina.</p> <p>3 Q. Was he replaced?</p> <p>4 A. He was succeeded with a person who has</p> <p>5 part of his job description, but an</p> <p>6 additional job description. It wasn't a</p> <p>7 one-to-one replacement.</p> <p>8 Q. I am going to mark the description of</p> <p>9 Mr. Fountain's salary as Exhibit 12.</p> <p>10 (Defendant's Exhibit 12 was marked and</p> <p>11 attached.)</p> <p>12 Q. (BY MR. DAVIS) Who succeeded and</p> <p>13 assumed part of his job duties?</p> <p>14 A. A woman by the name of Marsha Shearer,</p> <p>15 S-H-E-A-R-E-R.</p> <p>16 Q. Were there some things that Mr.</p> <p>17 Fountain used to do that no one is doing</p> <p>18 today?</p> <p>19 A. Yes.</p> <p>20 Q. What would that be?</p> <p>21 A. A lot of designing of information about</p> <p>22 increasing voter participation, specific</p> <p>23 engagements, a lot of database work around</p>

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1 contacting people through social media, those  
2 kinds of things.  
3 Yes, those are the two biggest things  
4 we're lacking.  
5 Q. Have you not been able to reallocate  
6 those duties yet or are those things Greater  
7 Birmingham Ministries chooses not to do  
8 anymore?  
9 A. We haven't been able to reallocate them  
10 or afford them.  
11 Q. You want those to continue --  
12 A. Yes.  
13 Q. -- you just haven't assigned that yet?  
14 A. Right, right, right.  
15 Q. Fair enough. Now, you do civic voting  
16 engagements outside of the photo ID law; do  
17 you not?  
18 A. Correct.  
19 Q. Okay. Do you recall when Mr. Fountain  
20 began working for the Greater Birmingham  
21 Ministries roughly?  
22 A. Roughly '12, '13.  
23 Q. Was he hired because of the photo ID

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1 law or because you needed someone to talk  
2 about voting in general?  
3 A. He was hired before the photo ID law.  
4 We had been doing this work for decades,  
5 voter registration forever, but we wanted  
6 someone to kind of modernize it.  
7 Our work around voter work wasn't just  
8 about voting, it was about civic  
9 participation, going to meetings, going to  
10 PTA, meeting the child's teacher, all of  
11 those are positives, participating in the  
12 civic life.  
13 Q. Being involved in your world and  
14 community --  
15 A. Correct, and voting is one piece of  
16 that but not all of it.  
17 Q. Now, Mr. Fountain's salary was the same  
18 -- was his salary increased as a result of  
19 the photo ID law?  
20 A. No, no. His time was -- his time on it  
21 was increased, but not his salary.  
22 Q. Okay. Is it fair to say that you would  
23 have hired Mr. Fountain and he would have

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1 made his salary whether or not the photo ID  
2 law had ever existed?  
3 MR. ROSS: Objection.  
4 A. He would have made the salary whether  
5 the photo ID law existed, it's a question of  
6 what percentage of his time he spent.  
7 (Defendant's Exhibit 13 was marked and  
8 attached.)  
9 Q. (BY MR. DAVIS) All right. What about  
10 the document that I have marked as Exhibit  
11 13, can you tell me what that is?  
12 A. Sure. This is my estimate between '14  
13 and '16 of the percentage of time and other  
14 expenses, like travel and printing, that we  
15 spent on civic engagements and photo ID work.  
16 Q. Okay. So you sat down at your computer  
17 and estimated these amounts; is that correct?  
18 A. Yes, my computer and my calendar.  
19 Q. Okay. You've estimated that Brandon  
20 Fountain spent about 50 percent of his time  
21 on photo ID issues; am I reading that  
22 correctly?  
23 A. Average for the period, yes.

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1 Q. And what do I base that on?  
2 A. Well, my knowledge and recollection of  
3 the time that he spent either in researching,  
4 meetings, travel, producing materials for  
5 voter canvassing, recruiting canvassers and  
6 canvassing over those years.  
7 Q. And you wouldn't have done canvassing  
8 without the photo ID law?  
9 MR. ROSS: Objection.  
10 A. We actually only started doing  
11 canvassing and direct voter registration  
12 after the photo ID law. Yes, that caused us  
13 to do it.  
14 Q. (BY MR. DAVIS) And who is Mary?  
15 A. Mary Jones is a part-time employee who  
16 works with our direct service clients. She  
17 is one of those who interviews people that  
18 comes there for services.  
19 Q. And Martha?  
20 A. Martha is the person who succeeded  
21 Brandon's position.  
22 Q. Okay. What was her last name? You  
23 just told me.

<p style="text-align: right;">Page 61</p> <p>1 A. Shearer, S-H-E-A-R-E-R.</p> <p>2 Q. And what are these printing expenses?</p> <p>3 A. Printing expenses are copying on a</p> <p>4 color copier. For instance, those would be</p> <p>5 the examples (indicating).</p> <p>6 Q. You're pointing to Exhibit 8. So the</p> <p>7 copying expenses would be documents such as</p> <p>8 the flyers?</p> <p>9 A. Such as the surveys, the handouts we</p> <p>10 give to people who come see us, as well as</p> <p>11 the ones we take to public places like</p> <p>12 shopping malls, hospitals, Walmarts, things</p> <p>13 like that; also parades, any public</p> <p>14 gathering, like the Magic City Classic.</p> <p>15 Q. With these two documents, Mr. Douglas,</p> <p>16 what we discussed in your first deposition</p> <p>17 and what's in your interrogatory responses,</p> <p>18 has Greater Birmingham Ministries told us</p> <p>19 what there is to tell about how the photo ID</p> <p>20 law has allegedly caused you to divert</p> <p>21 resources?</p> <p>22 A. Revert?</p> <p>23 Q. Divert.</p>	<p style="text-align: right;">Page 63</p> <p>1 other people about their inquiries to clients</p> <p>2 about photo IDs.</p> <p>3 Q. Okay. Who else did you talk to about</p> <p>4 inquires to clients about photo IDs?</p> <p>5 A. I talked to Mary who's on that list.</p> <p>6 Q. Yes.</p> <p>7 A. Sara Price who is on our staff who</p> <p>8 talks to our clients about were there people</p> <p>9 who did not have photo IDs that did not make</p> <p>10 into the records.</p> <p>11 Q. Okay. And what did you learn?</p> <p>12 A. I learn there were.</p> <p>13 Q. Okay. So there's no record of any such</p> <p>14 person?</p> <p>15 A. In some cases, there's like names but</p> <p>16 no documentation.</p> <p>17 Q. Okay. To be sure I understand, Mr.</p> <p>18 Douglas, you're saying your database may not</p> <p>19 be a complete record of the information</p> <p>20 that's come into the Greater Birmingham</p> <p>21 Ministries about people who lack photo IDs?</p> <p>22 A. That's correct. It's short.</p> <p>23 Q. So there may be somebody who said I</p>
<p style="text-align: right;">Page 62</p> <p>1 A. Oh, divert. Yes. Sorry.</p> <p>2 Q. There's no other information about</p> <p>3 diversion of resources that you are aware of?</p> <p>4 A. No, there's not.</p> <p>5 Q. And you've investigated that and talked</p> <p>6 with others in Greater Birmingham Ministries</p> <p>7 as necessary to make sure we have complete</p> <p>8 responses?</p> <p>9 A. Yes, I have.</p> <p>10 Q. Who did you talk to?</p> <p>11 A. I talked to Brandon, I talked to Mary,</p> <p>12 I talked to Sara, I talk to Martha, and I</p> <p>13 talked to our bookkeeper.</p> <p>14 Q. Did you talk to them, any of them about</p> <p>15 issues other than finances?</p> <p>16 A. I talked to them about finances and</p> <p>17 time.</p> <p>18 Q. Okay. Yes. Did you talk to them about</p> <p>19 anything other than finances and time?</p> <p>20 A. No, I did not.</p> <p>21 Q. What else did you do, if anything, to</p> <p>22 get ready for this deposition?</p> <p>23 A. I talked to some of those people and</p>	<p style="text-align: right;">Page 64</p> <p>1 don't have a photo ID and they never got into</p> <p>2 the database?</p> <p>3 A. Correct.</p> <p>4 Q. Is there any way you are aware of of</p> <p>5 identifying such persons today?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. Did the people you talked to have any</p> <p>8 judgment as to how many times that might have</p> <p>9 happened?</p> <p>10 A. Vaguely, but it was like we're very</p> <p>11 busy, there's a lot of people in the room,</p> <p>12 but that's about it. One person said more</p> <p>13 than 20 and the other one didn't have a</p> <p>14 number.</p> <p>15 Q. Okay. Did you review any documents to</p> <p>16 get ready for this deposition?</p> <p>17 A. What I hadn't seen before, looked at</p> <p>18 the three experts' reports, Kourser, Siskin,</p> <p>19 and Atkeson, for the research that they had</p> <p>20 done.</p> <p>21 Q. Okay. Anything else?</p> <p>22 A. Those are the ones I looked at.</p> <p>23 Q. What does Greater Birmingham Ministries</p>

<p style="text-align: right;">Page 65</p> <p>1 want to happen as a result of this lawsuit,  2 Mr. Douglas?  3 MR. ROSS: Objection. You need to be a  4 little more specific.  5 Q. (BY MR. DAVIS) What relief do you want?  6 What do you want the Judge to do?  7 MR. ROSS: Are you asking about  8 particular claims or are you just asking --  9 Q. (BY MR. DAVIS) In general.  10 A. What I would prefer, it's not what  11 we're asking the Judge to do, things like  12 same-day voting, voting on Sundays.  13 There's nothing holy about Tuesday for  14 a voting day, but what about Saturdays,  15 Saturday voting; people can get off work  16 easier; multi-day voting. We are not asking  17 the Judge for that.  18 Q. That's a different issue; right?  19 A. Yes.  20 Q. With the photo ID law, what do you want  21 the Judge to do about the photo ID law?  22 A. It would help the people we serve to  23 return to the form of ID that existed before</p>	<p style="text-align: right;">Page 67</p> <p>1 before that, a law before that.  2 The current law, the photo ID law, is a  3 progression towards tighter -- towards more  4 strict, more suppressive procedures.  5 Q. (BY MR. DAVIS) I will represent to you  6 -- I think if you read Mr. Kourser's report,  7 he talked about this. It was in 2003; wasn't  8 it, when Alabama first adopted a vote  9 identification requirement?  10 MR. ROSS: Objection.  11 A. Yes.  12 Q. (BY MR. DAVIS) And in that law you  13 could present a driver's license, but you  14 could also present different kinds of IDs  15 that did not have a picture; correct?  16 A. That is correct.  17 Q. Okay. While you might see some  18 improvements -- might like to see some  19 improvements to that 2003 law, that's what  20 you would like to go back to as a result of  21 this lawsuit?  22 MR. ROSS: Objection.  23 A. Well, I can't answer that question</p>
<p style="text-align: right;">Page 66</p> <p>1 2014.  2 Q. Okay. Is the relief you want if for  3 Alabama to go back to the old law?  4 MR. ROSS: Objection.  5 A. That would be a relief.  6 Q. (BY MR. DAVIS) Are you okay with the  7 old law?  8 MR. ROSS: Objection.  9 A. Like I said, the old law, I would like  10 to improve it by having multi-day voting.  11 Q. (BY MR. DAVIS) Yes, I understand that.  12 I understand that you would like to see some  13 changes there. But in terms of the  14 identification requirements --  15 A. There are some changes I would make,  16 but I haven't gone -- I would prefer to the  17 old law, but I don't have the luxury.  18 Q. Was the old law passed as a result of  19 purposeful discrimination?  20 MR. ROSS: Objection.  21 A. Based on my knowledge of reading -- the  22 laws have been changing all the time. The  23 old law wasn't forever. There was a law</p>	<p style="text-align: right;">Page 68</p> <p>1 because I don't want to go back to the 2003  2 law, I want to go forward with a better law.  3 Q. (BY MR. DAVIS) I understand. But what  4 are you asking for?  5 MR. ROSS: I think if it was specific  6 in terms of what you're asking him.  7 MR. DAVIS: I don't know how to be more  8 specific.  9 MR. ROSS: You have the amended  10 complaint which has what the plaintiffs have  11 asked for. There are obviously particular  12 claims with different results.  13 MR. DAVIS: Let's mark the second  14 amended complaint as Exhibit 14.  15 (Defendant's Exhibit 14 was marked and  16 attached.)  17 Q. (BY MR. DAVIS) Okay. So Mr. Douglas,  18 I'm going to give you two scenarios and I'm  19 going to ask which one you're asking for, if  20 any.  21 Are you asking as a result of this  22 lawsuit that we go back to the law as it was  23 in 2003 before the 2011 law was passed; in</p>



<p style="text-align: right;">Page 69</p> <p>1 other words, back when you could use                  2 different kinds of IDs or are you asking to                  3 go back even before that to where they                  4 couldn't ask for any type of voter                  5 identification?                  6 A. I think 2003 and prior to.                  7 Q. Okay. You wouldn't want to do that if                  8 you thought the 2003 law was purposely                  9 discriminatory; would you?                  10 MR. ROSS: Objection.                  11 A. I wouldn't want to do that if I thought                  12 the 2003 law -- yes, not because it's                  13 purposely discriminatory, but there was a                  14 voting climate that we could work in and                  15 increase the number of people who are voting.                  16 It has since decreased.                  17 Q. (BY MR. DAVIS) Does Greater Birmingham                  18 Ministries have a position one way or another                  19 on whether the 2003 law was passed with the                  20 intention of purposely discriminating against                  21 minority voters?                  22 MR. ROSS: Objection.                  23 A. There are expert opinions on that, but</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. ROSS: Objection.                  2 A. I do know this, there were some people                  3 who had difficulty getting a voter -- being                  4 able to vote under 2003, but it wasn't                  5 massive.                  6 Q. (BY MR. DAVIS) There was some impact?                  7 A. There was some impact, yes.                  8 Q. Was the impact felt equally by white                  9 and black voters?                  10 MR. ROSS: Objection.                  11 A. We have not researched that. We know                  12 was some act on poor people.                  13 Q. (BY MR. DAVIS) What do you think?                  14 A. Huh?                  15 Q. What do you think if it affected poor                  16 people --                  17 MR. ROSS: Are you asking in his                  18 personal capacity or --                  19 Q. (BY MR. DAVIS) Either.                  20 A. In GBM, we did not -- difficulties in                  21 voting, areas of voting -- we are concerned                  22 with many things like changing polling places                  23 at the time.</p>
<p style="text-align: right;">Page 70</p> <p>1 we didn't independently have one on.                  2 Q. (BY MR. DAVIS) Okay. Do you today?                  3 A. Today, my -- I can't speak to -- I'm                  4 not sure Greater Birmingham Ministries shares                  5 this view.                  6 In Alabama, there are a few laws that                  7 are either intentionally or unintentionally                  8 discriminatory against people of color and                  9 low income people not limited to voting                  10 issues.                  11 The Alabama Constitution tilts things                  12 in that way and the politics that are bred                  13 and continues to breed tilts things that way.                  14 Q. So do you personally have a view on                  15 whether the 2003 law was passed as an act of                  16 purposeful discrimination?                  17 MR. ROSS: Object to the form.                  18 A. I don't have any independent                  19 information.                  20 Q. (BY MR. DAVIS) Do you have any position                  21 on whether -- or does Greater Birmingham                  22 Ministries have any position on whether the                  23 old law had a discriminatory impact?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Okay.                  2 A. People would go and not be informed                  3 that their polling place had changed, a big                  4 mixup of stuff.                  5 Q. Okay. Did I understand you right that                  6 you said that there were people that faced a                  7 greater burden in complying with the 2003 law                  8 than others?                  9 A. Correct, correct, correct.                  10 Q. And that was felt by low income people?                  11 A. Yes, yes, yes.                  12 Q. And you said elsewhere, haven't you,                  13 that you believe that African Americans and                  14 other minorities are disproportionately in the                  15 low income population?                  16 A. I have, yes.                  17 Q. So would it not be your position that                  18 the 2003 law that African Americans faced a                  19 disproportionately greater burden in complying                  20 with that law?                  21 MR. ROSS: Objection.                  22 A. GBM did not take a position on the 2003                  23 law, none at all.</p>

<p style="text-align: right;">Page 73</p> <p>1 Q. (BY MR. DAVIS) But you're fine with 2 that?</p> <p>3 A. I didn't say I was fine with it. I'm 4 not fine with Alabama. I'm not going to 5 object to everything that Alabama does. 6 Like I said, there was a lot of things 7 that this lawsuit does not even deal with, 8 you know, in terms of economics, housing; you 9 know, those conditions. Those are the other 10 issues we're trying to address, and this is 11 one of them.</p> <p>12 Q. But Greater Birmingham Ministries is 13 asking in this lawsuit as part of its relief 14 is to go back to the type of voter 15 identification requirements that existed in 16 2003; is that correct?</p> <p>17 MR. ROSS: Object to form.</p> <p>18 A. That's partly correct, yeah.</p> <p>19 Q. (BY MR. DAVIS) Well, is there anything 20 incorrect about that? I know that's not -- 21 you've asked for other relieve, too.</p> <p>22 A. You say go back. The way I phrase it 23 is to essentially issue an injunction against</p>	<p style="text-align: right;">Page 75</p> <p>1 A. Yes.</p> <p>2 Q. And one of the reasons you contend that 3 is because of the ALEA office hours; correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. If there was an ALEA office open 6 seven days a week 24 hours a day in every 7 county, would you contend that the law still 8 would have a discriminatory impact against 9 African American voters?</p> <p>10 A. If there was an ALEA office open would 11 it still have a discriminatory impact? Yes, 12 because of the -- you have not changed the 13 form of ID.</p> <p>14 Remember, this didn't all happen at one 15 time. The ALEA office didn't happen in 2011.</p> <p>16 Q. Okay. Other than the office hours and 17 to change the law so it existed as it did in 18 2003, is there any other relief that you want 19 from the Judge in this case?</p> <p>20 MR. ROSS: The plaintiffs are going to 21 continue to object to this line of 22 questioning to the extent you're asking very 23 broad questions when we have a document in</p>
<p style="text-align: right;">Page 74</p> <p>1 the 2014 law.</p> <p>2 Q. Okay.</p> <p>3 A. I don't know what verb to use.</p> <p>4 Q. I understand. And you understand in 5 2011, a law was passed that limited the types 6 of identification you could use to certain 7 types of photo IDs?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. What you want it to be is as if 10 that 2011 legislation never happened?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. You have asked the Judge to 13 address on the ALEA office hours; haven't 14 you?</p> <p>15 A. Yes.</p> <p>16 Q. What do you want to have happen there?</p> <p>17 A. Preferably five days -- at least five 18 days a week open.</p> <p>19 Q. Every county?</p> <p>20 A. Yes, every county.</p> <p>21 Q. Now, Greater Birmingham contends that 22 the photo ID law has a discriminatory impact; 23 correct?</p>	<p style="text-align: right;">Page 76</p> <p>1 front of us which Mr. Douglas could go over 2 paragraph by paragraph.</p> <p>3 MR. DAVIS: Well, I gave you notice 4 that I was going to ask about the relief they 5 requested.</p> <p>6 MR. ROSS: And that's fine.</p> <p>7 You are asking very broad questions, 8 you are not asking about particular claims 9 where, obviously, there are different answers 10 depending on the claim. You are solely 11 asking him, again, very broad questions that 12 I have objected to and asked you to clarify 13 and you have refused to do that. So I'm just 14 objecting to the very broad questions.</p> <p>15 MR. DAVIS: The objection is noted.</p> <p>16 Q. (BY MR. DAVIS) Other than office hours 17 and to go back to the 2003 law, is there 18 anything else that Greater Birmingham 19 Ministries is looking for in this litigation, 20 Mr. Douglas?</p> <p>21 A. That's the core of it.</p> <p>22 Q. Okay. Your complaint speaks for itself 23 --</p>

<p style="text-align: right;">Page 77</p> <p>1 A. Yes.</p> <p>2 Q. -- there is no question about that;</p> <p>3 you are not limiting the relief you're</p> <p>4 looking for in the complaint, I just want</p> <p>5 your understanding.</p> <p>6 A. I don't want to shrink it.</p> <p>7 Q. Sir?</p> <p>8 A. I don't want to shrink my complaint.</p> <p>9 Q. You're not, but it clarifies it.</p> <p>10 In your interrogatories you say at</p> <p>11 various times that your discovery and your</p> <p>12 investigations are still ongoing.</p> <p>13 Are you aware of ongoing investigations</p> <p>14 that Greater Birmingham Ministries has?</p> <p>15 We have some depositions left to take</p> <p>16 in this lawsuit --</p> <p>17 A. Okay.</p> <p>18 Q. -- discovery is still going on.</p> <p>19 A. Okay.</p> <p>20 Q. But other than that, do you know of any</p> <p>21 internal investigations that are still</p> <p>22 ongoing with Greater Birmingham Ministries?</p> <p>23 A. Internal, no.</p>	<p style="text-align: right;">Page 79</p> <p>1 Q. Are you familiar with that process?</p> <p>2 A. Yes.</p> <p>3 Q. Has that process been completed?</p> <p>4 A. It's ongoing, yeah.</p> <p>5 Q. Okay. What does it involve; what is</p> <p>6 that process?</p> <p>7 A. In terms of identifying people who are</p> <p>8 members, looking at the list of people</p> <p>9 without photo IDs who also are members of</p> <p>10 Greater Birmingham Ministries in our case.</p> <p>11 Q. Okay. What more needs to be done to</p> <p>12 complete that process?</p> <p>13 A. To get confidence that our two</p> <p>14 databases can be matched.</p> <p>15 Q. On Page 14, Mr. Douglas, the paragraph</p> <p>16 at the bottom says that documents produced by</p> <p>17 defendants demonstrate that various offices</p> <p>18 and personnel of registrar in ALEA office</p> <p>19 turned people away who were seeking a photo</p> <p>20 ID for voting.</p> <p>21 Do you have any information about why</p> <p>22 any particular person was turned away who was</p> <p>23 looking for a photo ID?</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. Has Greater Birmingham Ministries done</p> <p>2 everything that you're aware of in order to</p> <p>3 respond to our discovery requests?</p> <p>4 A. Oh, yes, yes, and talked to other</p> <p>5 people.</p> <p>6 Q. On Page 12 of your interrogatory</p> <p>7 responses, Mr. Douglas --</p> <p>8 A. I losing track of what I'm looking at.</p> <p>9 Is that 14?</p> <p>10 Q. No, that is 2.</p> <p>11 A. What page?</p> <p>12 Q. Page 12.</p> <p>13 A. Okay.</p> <p>14 Q. Do you see where it says interrogatory</p> <p>15 number 3?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. In the paragraph above that it</p> <p>18 says the plaintiffs, GBM and Alabama NAACP</p> <p>19 are in the process of determining which of</p> <p>20 those individuals identified in interrogatory</p> <p>21 number 1 might be members of the</p> <p>22 organizational plaintiffs.</p> <p>23 A. Correct.</p>	<p style="text-align: right;">Page 80</p> <p>1 A. No, I don't have any information why</p> <p>2 they were.</p> <p>3 MR. ROSS: What page were you on?</p> <p>4 MR. DAVIS: Page 14 at the bottom.</p> <p>5 Q. (BY MR. DAVIS) If they were turned away</p> <p>6 because they already had a driver's license,</p> <p>7 for example, and didn't need a photo ID from</p> <p>8 the registrar's office, you wouldn't have a</p> <p>9 problem with that; would you?</p> <p>10 MR. ROSS: Objection.</p> <p>11 A. Oh, if they had a valid current</p> <p>12 driver's license?</p> <p>13 Q. (BY MR. DAVIS) Right.</p> <p>14 A. No.</p> <p>15 Q. Hypothetically, if a person goes to a</p> <p>16 registrar's office and says, I want one of</p> <p>17 your IDs, I've have got a driver's license,</p> <p>18 it's valid, current, and they could use that</p> <p>19 for voting, you wouldn't have an issue with</p> <p>20 the registrar saying this is limited to</p> <p>21 people who need it?</p> <p>22 A. Right, that's just redundant.</p> <p>23 Q. Right.</p>

<p style="text-align: right;">Page 81</p> <p>1 A. You have surplus IDs.</p> <p>2 MR. DAVIS: Could we take another</p> <p>3 break?</p> <p>4 MR. ROSS: Yes.</p> <p>5 (Short recess was had.)</p> <p>6 Q. (BY MR. DAVIS) In your first</p> <p>7 deposition, and I can refer you to your</p> <p>8 testimony if you want to review it, Mr.</p> <p>9 Douglas, but you said generally in terms of</p> <p>10 what members of the legislature may or may</p> <p>11 not have had a discriminatory purpose, you</p> <p>12 said you don't know what is in their head.</p> <p>13 That's true for Greater Birmingham</p> <p>14 Ministries as well; correct?</p> <p>15 MR. ROSS: Objection.</p> <p>16 A. That's correct.</p> <p>17 Q. (BY MR. DAVIS) And I asked you what the</p> <p>18 legislature knew about the rates of ID</p> <p>19 possession when they were voting on the law,</p> <p>20 and you said you didn't know.</p> <p>21 A. Right.</p> <p>22 Q. Is that true for Greater Birmingham</p> <p>23 Ministries as well?</p>	<p style="text-align: right;">Page 83</p> <p>1 regular, ongoing contact with any of these</p> <p>2 individuals?</p> <p>3 A. Not regular, ongoing contact.</p> <p>4 Q. Do you know if Greater Birmingham</p> <p>5 Ministries has any other information on their</p> <p>6 current situation?</p> <p>7 A. I don't know.</p> <p>8 Q. To make sure we're on the same page</p> <p>9 I'll give you an example: There is a</p> <p>10 gentleman named Hakim Turner listed. If this</p> <p>11 came from Greater Birmingham Ministries, it</p> <p>12 would be someone who said I may not have a</p> <p>13 photo ID to the best of your knowledge?</p> <p>14 A. To the best of my knowledge, yes.</p> <p>15 Q. So would the Greater Birmingham</p> <p>16 Ministries know if Mr. Turner, again just</p> <p>17 using him as an example, would Greater</p> <p>18 Birmingham Ministries know whether person had</p> <p>19 a birth certificate?</p> <p>20 A. I would not know.</p> <p>21 Q. Okay.</p> <p>22 A. We would not know.</p> <p>23 Q. Do you know if Greater Birmingham</p>
<p style="text-align: right;">Page 82</p> <p>1 A. That is correct.</p> <p>2 Q. Do you know an official that the</p> <p>3 plaintiffs have identified as part of the</p> <p>4 initial disclosures -- a former official,</p> <p>5 actually. Do you know Ralph Ervin, Clerk of</p> <p>6 Wilcox County -- or former Clerk of Wilcox</p> <p>7 County?</p> <p>8 A. I don't know him, no.</p> <p>9 Q. Do you know of him?</p> <p>10 A. No.</p> <p>11 Q. There's some people who were disclosed</p> <p>12 who may not have a photo ID; for example,</p> <p>13 Carol Eastman, Prenie Johnson, Celestine</p> <p>14 Megginson.</p> <p>15 Do you know if Greater Birmingham</p> <p>16 Ministries has any information on those</p> <p>17 individuals?</p> <p>18 MR. ROSS: Objection. You can answer</p> <p>19 to the extent you know.</p> <p>20 A. I remember some of those names as being</p> <p>21 some of our clients, people that we came</p> <p>22 across.</p> <p>23 Q. (BY MR. DAVIS) Do you know of your</p>	<p style="text-align: right;">Page 84</p> <p>1 Ministries would know about Mr. Turner's</p> <p>2 ability to get transportation?</p> <p>3 A. No.</p> <p>4 Q. All right. These questions, I don't</p> <p>5 want to do it in any way that rushes you, but</p> <p>6 I want to ask you a series of questions now</p> <p>7 just to sort of confirm -- to tie a knot on</p> <p>8 it --</p> <p>9 A. Okay.</p> <p>10 Q. -- put a bow on it.</p> <p>11 You have given me some testimony about</p> <p>12 various issues as an individual at your first</p> <p>13 deposition and you provided interrogatory</p> <p>14 responses, and you said you reviewed both;</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. Obviously, no one is expecting you to</p> <p>18 have memorized them --</p> <p>19 A. That's correct.</p> <p>20 Q. -- but you generally know the subject</p> <p>21 of the scope of the testimony that you have</p> <p>22 given; correct?</p> <p>23 A. Yes, yes.</p>



<p style="text-align: right;">Page 85</p> <p>1 Q. I just need to make sure that it's all                  2 that you're aware of and what you said as an                  3 individual is also your response for the                  4 organization.                  5 If at any time that is it not the case,                  6 then we will park and we will talk about it                  7 briefly.                  8 A. Okay.                  9 Q. But to the best of your knowledge, have                  10 you given me all of the evidence that Greater                  11 Birmingham Ministries is aware of that the                  12 law has a discriminatory purpose as you                  13 allege?                  14 A. Yes.                  15 Q. And anything you said as an individual                  16 is also the response for the organization in                  17 terms of the evidence of discriminatory                  18 purpose?                  19 A. Yes.                  20 Q. To the best of your knowledge, have you                  21 through your deposition and interrogatory                  22 responses and other discovery responses given                  23 me all the information Greater Birmingham</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Have you given me all the information                  2 that Greater Birmingham Ministries has about                  3 whether minority voters are less likely than                  4 white voters to possess the foundational                  5 documents like birth certificates?                  6 A. Yes.                  7 Q. Have you given me all the information                  8 Greater Birmingham Ministries has about                  9 whether election officials in Alabama have                  10 selectively enforced the law?                  11 MR. ROSS: Objection.                  12 A. Yes.                  13 Q. (BY MR. DAVIS) To the best of your                  14 knowledge, Greater Birmingham Ministries is                  15 not aware of situations that you haven't                  16 disclosed about any circumstance where an                  17 official has selectively enforced the law?                  18 A. Yes, we're not aware.                  19 Q. You're not aware of any other                  20 circumstances that hasn't already been                  21 disclosed; correct?                  22 A. Correct.                  23 Q. Okay. Is there anyone within Greater</p>
<p style="text-align: right;">Page 86</p> <p>1 Ministries has about any alleged                  2 discriminatory impact of the law?                  3 A. Yes, we have.                  4 Q. And are your responses that you gave as                  5 an individual of the discriminatory impact                  6 also the responses of Greater Birmingham                  7 Ministries?                  8 A. Yes.                  9 Q. Is that also true for any efforts that                  10 Greater Birmingham Ministries has conducted                  11 to assist people in getting a photo ID?                  12 A. Oh, yes.                  13 Q. Have you told me all Greater Birmingham                  14 Ministries knows about who does and does not                  15 have a photo ID?                  16 A. All that we know, yes.                  17 Q. And have you told me through your                  18 deposition and interrogatory responses all of                  19 the information Greater Birmingham Ministries                  20 has about who does and does not have the                  21 foundation documents to get a photo ID,                  22 things like birth certificates?                  23 A. Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 Birmingham Ministries that would have that                  2 information other than you?                  3 A. No.                  4 Q. Have you given me all the information                  5 Greater Birmingham Ministries has about                  6 whether African American and Latino voters                  7 are less likely than white voters to be                  8 acquainted with election officials?                  9 A. Yes.                  10 Q. You have given me everything you know                  11 of?                  12 A. Everything that we know of, we have.                  13 Q. And to the best of your knowledge, have                  14 you provided all information that Greater                  15 Birmingham Ministries has about the way it                  16 has allegedly diverted resources as a result                  17 of the photo ID law?                  18 A. Yes.                  19 Q. The records you produced are a complete                  20 response to our requests?                  21 A. Yes, they are.                  22 Q. And the information you provided is                  23 complete and accurate to the best of your</p>

<p style="text-align: right;">Page 89</p> <p>1 knowledge?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And is what you said in the first</p> <p>4 deposition anything about diversion of</p> <p>5 resources -- you're the guy to ask about</p> <p>6 that; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Are those also responses of the</p> <p>9 organization?</p> <p>10 A. They are.</p> <p>11 Q. That does it. Those are all the</p> <p>12 questions I have, Mr. Douglas.</p> <p>13 Mr. Ross may have some questions for</p> <p>14 you.</p> <p>15 A. Thank you.</p> <p>16 MR. ROSS: Let's take just a two-minute</p> <p>17 break.</p> <p>18 MR. DAVIS: Sure, no problem.</p> <p>19 (Short recess was had.)</p> <p>20</p> <p>21 EXAMINATION BY MR. ROSS:</p> <p>22 Q. Mr. Douglas, I just have a few</p> <p>23 follow-up questions for you.</p>	<p style="text-align: right;">Page 91</p> <p>1 A. Yes, it was.</p> <p>2 Q. Mr. Douglas, you mentioned that you</p> <p>3 talked to several individuals in your office</p> <p>4 in preparing for this deposition. Do you</p> <p>5 recall that?</p> <p>6 A. Correct, yes.</p> <p>7 Q. Okay. When you talked to them, did</p> <p>8 they mention the kinds of photo IDs that</p> <p>9 people show when they come in for services at</p> <p>10 GBM?</p> <p>11 A. Yes.</p> <p>12 Q. Did they mention that individuals</p> <p>13 sometimes show things like public housing</p> <p>14 IDs?</p> <p>15 A. Correct, they do.</p> <p>16 Q. Individuals do show that?</p> <p>17 A. They show public Housing IDs.</p> <p>18 Q. Okay. And to your knowledge, is a</p> <p>19 public housing ID acceptable for voting in</p> <p>20 Alabama?</p> <p>21 A. Currently, no.</p> <p>22 Q. Okay. So some of the people who may</p> <p>23 come in and even have a photo ID, that ID may</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Okay.</p> <p>2 Q. We're looking here at Defendant's</p> <p>3 Exhibit 5. Do you recall discussing that</p> <p>4 with Mr. Davis?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember if there was a law --</p> <p>7 in your prior deposition you talked about</p> <p>8 HB56.</p> <p>9 A. Correct.</p> <p>10 Q. Do you remember if HB56 had a voter</p> <p>11 identification requirement as well?</p> <p>12 A. Yes.</p> <p>13 Q. What was that requirement?</p> <p>14 A. Positive identification or proof of</p> <p>15 citizenship.</p> <p>16 Q. Looking here at Defendant's Exhibit 5,</p> <p>17 could this flyer have been about both the</p> <p>18 photo ID and that proof of citizenship</p> <p>19 requirement?</p> <p>20 A. Yes, it was.</p> <p>21 Q. So Defendant's Exhibit 5, that poster</p> <p>22 was about both the photo ID law and the proof</p> <p>23 of citizenship requirement?</p>	<p style="text-align: right;">Page 92</p> <p>1 not be acceptable for voting; is that right?</p> <p>2 A. That's correct.</p> <p>3 Q. And when you talk to individuals in</p> <p>4 your office, I believe you said to Mr. Davis,</p> <p>5 I just want to be clear, that there is not</p> <p>6 always a record of those individuals who come</p> <p>7 in, that the data that you provided to Mr.</p> <p>8 Davis is all that you have, but it's not a</p> <p>9 complete record of everyone you talked to</p> <p>10 about a photo ID; is that right?</p> <p>11 A. That is the documentation that we have.</p> <p>12 Q. In speaking with individuals in your</p> <p>13 office, can you just say again why the record</p> <p>14 would be incomplete?</p> <p>15 A. Well, speaking with our staff about</p> <p>16 speaking with people, they are in a hurry,</p> <p>17 need to get back to work, try to get their</p> <p>18 issues addressed quickly. We have a long</p> <p>19 form, of which do you have a photo ID is one</p> <p>20 of the questions, but there's a lot of</p> <p>21 questions on there, like your income. So the</p> <p>22 way I hear from my staff is that they don't</p> <p>23 get to it.</p>

<p style="text-align: right;">Page 93</p> <p>1 Q. Okay. And even if they do get to it,                  2 is it always recorded?                  3 A. It isn't always recorded if they do get                  4 to it.                  5 Q. And if an individuals in your office                  6 asks someone do they have an ID and the                  7 person says no, what happens then? I believe                  8 you have already testified to that.                  9 A. If the person says no, they don't have                  10 a photo ID, then they are referred to or                  11 given a flyer or verbally told where to go to                  12 get one, and if they qualify they get a free                  13 one.                  14 Q. You mentioned earlier that you                  15 encountered some people who are unable to                  16 vote because they have felony convictions.                  17 Do you recall that?                  18 A. Yes, I do.                  19 Q. Did Alabama pass a new law related to                  20 individuals with felony convictions voting?                  21 A. Very recently they passed a definition                  22 of moral turpitude law, which reduced down to                  23 about 49 the types of convictions to which</p>	<p style="text-align: right;">Page 95</p> <p>1 to be African American.                  2 Q. Mr. Davis was also asking you earlier                  3 if you know of one instance of voter fraud                  4 was too many. Do you remember him asking                  5 that question?                  6 A. Yes.                  7 Q. Is any one instance of a person being                  8 denied the right to vote simply because they                  9 don't have the proper ID too many as well?                  10 A. It is too many.                  11 Q. Okay. If thousands of people in                  12 Alabama have been unable to vote because of                  13 the photo ID requirement, would that be a                  14 problem for you?                  15 A. Yes, that's a big problem.                  16 Q. And if those individuals were                  17 disproportionately African American, would                  18 that be an issue?                  19 A. That would be an issue for us.                  20 Q. And Mr. Davis also was asking you about                  21 alleged absentee voter fraud. Do you recall                  22 that discussion?                  23 A. Yes.</p>
<p style="text-align: right;">Page 94</p> <p>1 they could not -- in which moral turpitude                  2 could be invoked and they could not register                  3 to vote.                  4 Q. So is it your understanding that there                  5 are now more individuals who are able to vote                  6 in Alabama?                  7 A. Oh, yes. Oh, yes.                  8 Q. And does GBM encounters individuals who                  9 now would be eligible to vote and do not have                  10 photo IDs?                  11 A. Yes.                  12 Q. Okay. In your experience in talking to                  13 the individuals in your office, that there                  14 are now more people who are eligible to vote                  15 who no longer face the barrier of felony                  16 conviction franchasing, but now face the                  17 barrier of not having a photo ID; is that                  18 correct?                  19 A. That's correct.                  20 Q. And in your experience, are those                  21 individuals more likely to be African                  22 American or white or some other race?                  23 A. In our experience, they're more likely</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. And I believe in your prior deposition                  2 testimony, and we can find it if we need to,                  3 you talked about how Alabama has a photo ID                  4 requirement for absentee voting.                  5 A. Yes.                  6 Q. And I believe it was your understanding                  7 that there is never a point in the absentee                  8 voting process in which an individual shows                  9 both their face, they come in person and                  10 shows a photo ID?                  11 A. That's correct.                  12 Q. So given that, do you think that                  13 Alabama's photo ID requirement for absentee                  14 voting prevents absentee voter fraud?                  15 A. No.                  16 Q. I'll show you Defendant's Exhibit 12.                  17 What is Defendant's Exhibit 12?                  18 A. Exhibit 12 is the salary records of                  19 Brandon Fountain from '14 through 2015 at                  20 Greater Birmingham Ministries.                  21 Q. Can you tell me again why you pulled                  22 Brandon Fountain's financial record?                  23 A. I went to our bookkeeper and requested</p>

<p style="text-align: right;">Page 97</p> <p>1 to get information about GBM's expenditures  2 in terms of photo ID work over that time  3 period, and this is what was produced.  4 Q. And were you able to pull other  5 financial records; you know, time,  6 reimbursement, other than what was pulled  7 here from your bookkeeping system?  8 A. So I wasn't able to use this to  9 determine his salary during this period, so I  10 had to go to other information to get his  11 time and resources used in doing the work.  12 Q. Correct me if I'm wrong, are you saying  13 you tried to pull that information or did you  14 --  15 A. In my request, the way we track is that  16 this is only about the salary piece of the  17 accounting software.  18 Q. Okay. And it doesn't include  19 information though about his reimbursements?  20 A. It does not. No, it does not.  21 Q. Did you have trouble pulling that  22 additional data when you looked for it?  23 A. Yes.</p>	<p style="text-align: right;">Page 99</p> <p>1 despite the trouble that you described to  2 sort of provide a best estimate of the time  3 that was spent on the photo ID and voting  4 issues?  5 A. That's correct.  6 Q. Does GBM require individuals to do as  7 lawyers often do, you know, sort of hourly  8 timekeeping of how an individual is keeping  9 their time?  10 A. No offense to lawyers, but we don't do  11 billable hours because it would take too much  12 time. The best way to put it is that we  13 multitask all the time.  14 Q. Since Brandon is first, looking at him,  15 for 2014 you have \$22,500 of his salary going  16 to photo ID. I see here it says 50 percent  17 of the time at the end.  18 So you are estimating that about  19 50 percent of his time was spent on photo ID;  20 is that right?  21 A. Yes. That's a conservative estimate  22 for months. For weeks, it would be  23 90 percent of his time.</p>
<p style="text-align: right;">Page 98</p> <p>1 Q. Okay. Why is that?  2 A. In 2015, our long-time bookkeeper had a  3 stroke and was out for two months, and so  4 some of our records did not get either  5 appropriately entered. But more importantly,  6 we were required to change our accounting  7 system. No one was using the accounting  8 system that produced this about his salary.  9 So it's my belief that she's not able  10 to retrieve what we call cost centers, and  11 the subcategory of expenditures where  12 receipts go. That's number one.  13 And number two, we close our books  14 every two years and they are archived.  15 And all of '14 is archived. '15 is not  16 yet, but It will take a major search or  17 hiring an auditor to actually go back and get  18 those cost centers.  19 Q. Okay. So there is some financial data  20 that it would be too costly for you all to  21 pull back out; is that what you're saying?  22 A. Yes.  23 Q. Is Defendant's Exhibit 13 your attempt</p>	<p style="text-align: right;">Page 100</p> <p>1 But an average over the whole period  2 would be about 50 percent of the time.  3 Q. Was he expected to have spent  4 90 percent of his time at different points on  5 the photo ID or was it his job responsibility  6 was supposed to be inclusive of other things?  7 A. His job responsibility was to be  8 inclusive of other things, and this is much  9 higher than what it would have been.  10 He still was doing voter registration.  11 But he would have been doing the voter  12 education about photo ID, holding the  13 meeting, communicating with the Secretary of  14 State's office getting clarity of the law and  15 county elected officials to get clarity of  16 new law, going to state-wide meeting in  17 Montgomery and back.  18 Q. So I see here under travel you have  19 eight trips between Birmingham and  20 Montgomery.  21 A. Yes.  22 Q. What are those eight trips?  23 A. Those were either trips to the</p>



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1 Secretary of State's office or to meetings of  
 2 the SOS coalition, which is a voter rights  
 3 coalition in Montgomery on how to explain or  
 4 how to find out about the new photo ID law  
 5 that's going to come into effect.  
 6 Q. Okay. And would those trips have been  
 7 taken if there was no photo ID law?  
 8 A. No, not these.  
 9 Q. These eight particular trips?  
 10 A. No.  
 11 Q. And so did that take staff time for  
 12 these eight trips to be taken?  
 13 A. Yes, it did.  
 14 Q. Is that staff time that otherwise been  
 15 used doing some other project?  
 16 A. Yes, it would have.  
 17 Q. And it obviously, because it is here in  
 18 your budget, cost some money; right?  
 19 A. Yes.  
 20 Q. And is that money that would have gone  
 21 to other projects if not for needing to go to  
 22 meetings about the photo ID law?  
 23 A. Yes.

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1 Q. And I see here that there are these  
 2 printing costs as well?  
 3 A. Yes.  
 4 Q. These printing costs for, let's start  
 5 with 2014, are those solely printing costs  
 6 that were related to the photo ID law?  
 7 A. These printing costs are the copies we  
 8 made strictly to inform people about the new  
 9 photo ID law.  
 10 Q. Okay. So is the same true for 2015?  
 11 A. Correct.  
 12 Q. And for 2016?  
 13 A. Yes.  
 14 Q. Okay. And so if there were no photo ID  
 15 law, would you have incurred those printing  
 16 costs in 2014?  
 17 A. These printing costs we would not have  
 18 occurred. This is not all the printing we  
 19 did, this is the photo ID printing cost.  
 20 Q. Okay. Let's look at Defendant's  
 21 Exhibit 11. Can you look through that for  
 22 me?  
 23 Are those all the years between 2010

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1 and 2017?  
 2 A. These are Greater Birmingham  
 3 Ministries' financial statement for 2010  
 4 through 2015.  
 5 Q. Okay. It has at the top general  
 6 operating fund. Is this the actual budget,  
 7 is this the planned budget; what is this  
 8 exactly?  
 9 A. This is our annual financial statement  
 10 of income and expenses for those years.  
 11 Q. Okay.  
 12 A. Budget and performance compared to  
 13 budget.  
 14 Q. Okay. So this is the actual amounts --  
 15 a sort of estimate and the actual amount  
 16 spent; is that right?  
 17 A. That's right.  
 18 Q. Why does it only go out to 2015?  
 19 A. Once again, we had an accounting issue.  
 20 Our year '16 is still under the auditor's  
 21 review. They had to correct some problems we  
 22 had when the bookkeeper had a stroke, some  
 23 entries were misplaced or put in the wrong

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1 places.  
 2 So for small subcategories of things --  
 3 big line items like salaries we got,  
 4 utilities, those things, but some of the  
 5 subcategories were in the wrong places and  
 6 that is being corrected.  
 7 Q. So you just don't have the same  
 8 information for 2016?  
 9 A. That's correct. That's correct. They  
 10 are making audit changes.  
 11 Q. Okay. And if you did have it, you  
 12 would produce it?  
 13 A. Oh, yes.  
 14 Q. So it's not complete?  
 15 A. It's not complete.  
 16 Q. Does this break out particular  
 17 information about what was spent on voting or  
 18 even on photo ID?  
 19 A. No.  
 20 Q. Would it be possible, except for the  
 21 estimates that you've already provided, to do  
 22 that, to break that out?  
 23 A. It's possible once the auditor is

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1 finished.

2 Q. Well, I mean, look at these particular

3 documents that we have, not what the auditor

4 is doing, but looking at this --

5 A. Oh, no.

6 Q. -- what is available now, is it

7 possible to do?

8 A. No, it's not possible.

9 Q. Looking at Defendant's Exhibit 14,

10 which is the second amended complaint, Mr.

11 Davis was asking you earlier about the relief

12 that was sought by Greater Birmingham

13 Ministries in this case. Do you recall that?

14 A. Yes.

15 Q. Are you a lawyer, Mr. Douglas?

16 A. No, I'm not.

17 Q. But you have read this complaint

18 before?

19 A. Yes, I have.

20 Q. Did you agree with the relief that was

21 requested?

22 A. Yes, I did.

23 Q. So we're going to take this sort of one

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1 paragraph at a time. Looking here at

2 Paragraph 194 to 198 -- actually, to 200 of

3 the second amended complaint here, can you

4 read for me Paragraph 194 just to yourself?

5 A. Sure. (Witness complies.) Okay.

6 Q. Okay. Do you agree with the relief

7 that's requested in Paragraph 194?

8 A. Correct, I do.

9 Q. Let's look at Paragraph Number 195. Do

10 you see that?

11 A. Yes.

12 Q. Can you read that for me, please?

13 A. (Witness complies.) Okay.

14 Q. Okay. So you have reviewed Paragraph

15 195?

16 A. Right.

17 Q. And to paraphrase, Paragraph 195 says

18 that if the Court finds that the photo ID law

19 is unconstitutional because it is

20 intentionally discriminatory, that the Court

21 should enjoin the photo ID law; is that

22 right?

23 A. That's correct.

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1 Q. And so is it GBM's position that if the

2 photo ID law is unconstitutional, the Court

3 should order that Alabama should go back to

4 the non-photo ID law?

5 A. Correct.

6 Q. Do you remember some of the forms of ID

7 that were acceptable under the 2003 law?

8 A. Utility bill statements, lease, birth

9 certificate.

10 Q. Were voter registration cards accepted?

11 A. Voter registration cards as well back

12 when we had those.

13 Q. Okay. And I believe in your prior

14 deposition you testified that a voter

15 registration card is something that was

16 mailed to every voter --

17 A. Yes, it was.

18 Q. -- is that right?

19 Are photo ID cards mailed to every

20 voter in Alabama?

21 A. No, they're not.

22 Q. So given that, is it fair to say that

23 every registered voter at least had an

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1 acceptable form of ID mailed to them under

2 the 2003 law?

3 A. That's correct.

4 Q. Okay. So barring anything like the

5 state, you know, messing up the address or it

6 getting lost in the mail, every registered

7 voter in Alabama under the 2003 law in theory

8 at least would be mailed an acceptable form

9 of ID; is that your understanding?

10 A. Yes, and it was a thing of pride to get

11 one.

12 Q. Okay.

13 A. Your first one.

14 Q. And so given that, do you think that

15 would be -- I understand it may not be

16 perfect, but from your perspective it might

17 be an improvement to go back to the 2003 law

18 versus the current photo ID law?

19 A. Yes.

20 Q. Let's look at Paragraph 196.

21 A. (Witness complies.) Okay.

22 Q. Okay. So looking at Paragraph 196 --

23 again, you've testified you are not a lawyer;

Page 109

1 is that right?

2 A. Yes.

3 Q. Do you agree with the request here in

4 Paragraph 196?

5 A. Yes, I do.

6 Q. And by you, I mean GBM agrees with the

7 request for relief in Paragraph 196?

8 A. Yes.

9 Q. Mr. Davis was asking you a fairly broad

10 question in terms of what kind of relief GBM

11 seeks in this case; is that right?

12 A. That's right.

13 Q. And again, understanding that you're

14 are a lawyer, you understand that there is a

15 difference between the kind of relief that

16 GBM may be entitled to if they're able to

17 prove what's called a Section 2 claim under

18 the Voting Rights Act versus a constitutional

19 violation? Do you understand that relief may

20 be different?

21 A. Yes, yes.

22 Q. And the relief that is laid out here in

23 Paragraph 196, that's relief that you would

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1 believe would be acceptable if there was

2 solely a violation of Section 2 of the Voting

3 Rights Act?

4 A. Yes, that's correct.

5 Q. And again, looking here at Paragraph

6 197, can you review that for me?

7 A. (Witness complies.) Okay.

8 Q. Okay. And is it that relief related to

9 reopening the ALEA offices; is that relief

10 that GBM also is seeking in this case?

11 A. Yes, it is.

12 Q. And then let's look at Paragraph 198

13 also.

14 A. (Witness complies.) Okay.

15 Q. I believe in your prior testimony you

16 testified that you were familiar with the

17 pre-clearance requirement?

18 A. Oh, yes.

19 Q. Okay. And so is it fair to say that

20 Paragraph 198 is asking that Alabama be

21 placed back under pre-clearance?

22 A. Yes.

23 Q. And so, again, understanding that you

Page 111

1 are not a lawyer, is that also relief that

2 you would seek under certain circumstances

3 here in this case?

4 A. Oh, yes.

5 Q. Okay. And that GBM, in fact, is

6 seeking to the extent they are entitled in

7 putting Alabama back under pre-clearance?

8 A. Yes.

9 Q. If you will, look at Paragraph 199 for

10 me also.

11 A. (Witness complies.) Okay.

12 Q. Is that also relief that GBM is

13 seeking?

14 A. Yes.

15 Q. Paragraph 200?

16 A. Yes.

17 Q. Okay. So just to summarize, Paragraph

18 200 says that to the extent the Court thinks

19 that GBM is entitled to any other relief, you

20 are not rejecting any other relief that the

21 Court may be willing to give the plaintiffs

22 in this case; right?

23 A. No, we're not.

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1 Q. Okay. Mr. Davis was asking you about

2 whether or not someone who may come in with a

3 driver's license and is applying for a photo

4 ID card, whether or not that person should be

5 given a voter ID card. Do you remember

6 talking to Mr. Davis about that?

7 A. Yes.

8 Q. All right. Have you seen the

9 application for individuals who are wanting

10 to get a photo ID card?

11 A. I have.

12 Q. Does that application in your reading

13 of it; again, understanding that you are not

14 a lawyer, but in your reading of it, does it

15 require someone to swear under the penalty of

16 a possible felony conviction that they don't

17 have certain types of ID?

18 A. Oh, yes.

19 Q. Okay. And does that concern you, and

20 again, by you I mean GBM or you personally,

21 whichever way you feel comfortable in

22 answering it, that that will have an impact

23 on the folks that you serve?

<p style="text-align: right;">Page 113</p> <p>1 A. Yes.</p> <p>2 Q. And why is that?</p> <p>3 A. The way it's phrased, as one person</p> <p>4 told me, it's scary. The people we serve</p> <p>5 aren't lawyers either, and all they have to</p> <p>6 say is under penalty of conviction or scary</p> <p>7 language like that, frighten some people</p> <p>8 away.</p> <p>9 The literacy levels aren't the highest</p> <p>10 among the poorest, and it just looks like</p> <p>11 they are risking themselves, taking a risk.</p> <p>12 Q. Do you think that there is a racial</p> <p>13 impact as well as sort of --</p> <p>14 A. I certainly do.</p> <p>15 Q. And why is that?</p> <p>16 A. One is even illiteracy is</p> <p>17 disproportionate in the state, higher African</p> <p>18 Americans illiteracy as compared to whites,</p> <p>19 and I am not even getting into people who</p> <p>20 speak Spanish as their first language, but</p> <p>21 that is key.</p> <p>22 Q. Okay. You mentioned Spanish. I</p> <p>23 believe you testified to this in your prior</p>	<p style="text-align: right;">Page 115</p> <p>1 registered or eligible voters who might not</p> <p>2 otherwise be able to read the materials that</p> <p>3 are in English?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. And I believe you also in your</p> <p>6 prior deposition testified about sort of the</p> <p>7 history of racial discrimination in education</p> <p>8 and in other areas in Alabama. Do you</p> <p>9 remember that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Do you think that's the reason</p> <p>12 why African Americans have lower literacy</p> <p>13 rates here?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Okay. And I won't go over these names,</p> <p>16 but I believe that Mr. Davis read several</p> <p>17 names off to you about individuals who were</p> <p>18 disclosed as potential fact witnesses. Do</p> <p>19 you recall when he was reading those?</p> <p>20 A. Yes.</p> <p>21 Q. You said you recognized a couple of the</p> <p>22 names; is that right?</p> <p>23 A. Yes.</p>
<p style="text-align: right;">Page 114</p> <p>1 deposition, why did you translate materials</p> <p>2 into Spanish?</p> <p>3 A. We are having an increasing number of</p> <p>4 clients whose their first language is Spanish</p> <p>5 come to for services, and there are families</p> <p>6 of mixed documentation; citizens and</p> <p>7 non-citizens. So we wanted to be able to</p> <p>8 have information available to them who come</p> <p>9 to us.</p> <p>10 Secondly, we work with immigration</p> <p>11 groups in partnership in trying to increase</p> <p>12 civic participation among the immigrant</p> <p>13 community as well.</p> <p>14 Q. Some of the Spanish speaking people</p> <p>15 that you encounter are citizens; is that</p> <p>16 right?</p> <p>17 A. That's correct.</p> <p>18 Q. And some of those Spanish speaking</p> <p>19 citizens are eligible to vote?</p> <p>20 A. That's correct.</p> <p>21 Q. And so is the reason why, and correct</p> <p>22 me if I'm wrong, GBM provides information in</p> <p>23 Spanish is because it benefits some</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Do you recognize them as constituents</p> <p>2 of GBM?</p> <p>3 A. Yes, that's right.</p> <p>4 Q. And not to belabor the point, but</p> <p>5 again, in the second amended complaint and in</p> <p>6 your prior deposition testimony, I believe</p> <p>7 you testified that there were letters sent to</p> <p>8 the Secretary of State's office about issues</p> <p>9 with the implementation of the photo ID law?</p> <p>10 A. Yes.</p> <p>11 Q. And some of those letters, do you</p> <p>12 recall, had questions about whether the photo</p> <p>13 ID law was being enforced in certain</p> <p>14 counties --</p> <p>15 A. Yes.</p> <p>16 Q. -- and not in other counties?</p> <p>17 A. Yes.</p> <p>18 Q. So again, without belaboring the point,</p> <p>19 but you agree with those allegations --</p> <p>20 A. Oh, yes.</p> <p>21 Q. -- is that right?</p> <p>22 And the letters that were sent to the</p> <p>23 Secretary of State's office raising concerns</p>



<p style="text-align: right;">Page 117</p> <p>1 about sort of that kind of enforcement of the                  2 photo ID law?                  3 A. Yes, I do.                  4 MR. ROSS: I think that's it.                  5                  6 RE-EXAMINATION BY MR. DAVIS:                  7 Q. So Alabama passed a law defining moral                  8 turpitude?                  9 A. Recently, yes.                  10 Q. Okay. It was passed by the majority of                  11 the legislature?                  12 A. That's correct.                  13 Q. And you say that that law                  14 disproportionately helped black voters?                  15 MR. ROSS: Objection.                  16 A. I didn't say disproportionately helped,                  17 I said it helped.                  18 Q. (BY MR. DAVIS) But helped. You said it                  19 helped more blacks than it did whites; didn't                  20 you?                  21 A. No, I said -- I didn't say that. I                  22 didn't say the moral turpitude law hurt more                  23 blacks than whites. It may have helped --</p>	<p style="text-align: right;">Page 119</p> <p>1 him about any attorney/client privileged                  2 information.                  3 Does Greater Birmingham Ministries have                  4 any position on whether a law that                  5 disenfranchises certain felons would have a                  6 discriminatory impact?                  7 A. We would have to look at the law --                  8 Q. Okay.                  9 A. -- and see the impact.                  10 Q. What about Alabama's law that                  11 disenfranchised people who committed felonies                  12 involving moral turpitude?                  13 A. I would say it was discriminatory.                  14 Q. Do you think that a law that defines                  15 and narrows the categories of law that                  16 involve moral turpitude, that that would have                  17 any disproportionate effect on black than                  18 white voters?                  19 A. I think it would help a lot of people.                  20 Yeah, we like to see new -- as an                  21 improvement. And also the big thing it did                  22 was to get rid of the confusion because when                  23 things become arbitrary, that is definitely</p>
<p style="text-align: right;">Page 118</p> <p>1 given some of the laws changed -- I haven't                  2 done an analysis on that, but it help black                  3 voters.                  4 Q. Okay. Do you have any contention as to                  5 whether felon voting issues affect black                  6 voters more than white voters?                  7 A. Yes.                  8 Q. What is your contention?                  9 MR. ROSS: Objection.                  10 A. My contention --                  11 MR. ROSS: Object to the extent that                  12 GBM is involved in another lawsuit that Mr.                  13 Davis is obviously aware of. So to the                  14 extent it would require you to disclose any                  15 conversations that you've had with either                  16 myself or with any of the other attorneys who                  17 represent you, particularly in that other                  18 lawsuit, I direct you not to answer. But if                  19 you can answer just for GBM and your personal                  20 knowledge, then yes.                  21 A. What was the question now?                  22 Q. (BY MR. DAVIS) Let's start over.                  23 Yes, I certainly don't intend to ask</p>	<p style="text-align: right;">Page 120</p> <p>1 worse on the black folks, African Americans.                  2 When it's capricious, it worse on black                  3 folks.                  4 Q. Okay. Can't you give the Alabama                  5 legislature credit -- this new law, isn't                  6 this something that they did that's going to                  7 help -- it's going to help black voters more                  8 than white voters?                  9 MR. ROSS: Objection.                  10 A. I don't give people credit for doing                  11 what they ought to do. It think your praised                  12 went above and beyond.                  13 Q. (BY MR. DAVIS) They did that even                  14 though it's going to probably help more black                  15 voters than white voters; would you agree                  16 with that?                  17 MR. ROSS: Objection.                  18 A. It's going to probably help, yeah.                  19 Q. (BY MR. DAVIS) So they're not all bad?                  20 A. No.                  21 MR. ROSS: Objection.                  22 A. I know two of them who are not all bad.                  23 Q. (BY MR. DAVIS) Do you think there is a</p>

<p style="text-align: right;">Page 121</p> <p>1 burden to be required to be registered to  2 vote?  3 MR. ROSS: Objection.  4 A. I don't understand the question.  5 Q. (BY MR. DAVIS) Well, in Alabama, before  6 you can vote, you have to go through the  7 process of voter registration --  8 A. Uh-huh.  9 Q. -- correct?  10 A. Yes, that's true.  11 Q. Is there a burden to go through that  12 process?  13 MR. ROSS: Objection.  14 A. It's more of a burden than it needs to  15 be. For instance, automatic registration  16 when you turn 18.  17 Q. (BY MR. DAVIS) To the extent there is a  18 burden, do you think that burden is felt  19 equally by black voters and white voters?  20 MR. ROSS: Objection.  21 A. Voter registration?  22 Q. (BY MR. DAVIS) Right, vote  23 registration.</p>	<p style="text-align: right;">Page 123</p> <p>1 A. Yes.  2 Q. (BY MR. DAVIS) Is it not your position  3 that blacks are disproportionately poor in  4 Alabama?  5 A. Yes.  6 Q. Is it the position as Greater  7 Birmingham Ministries that when it comes to  8 voting, you shouldn't be asking people to  9 sign things under penalty of perjury?  10 MR. ROSS: Objection.  11 A. You shouldn't be scaring people away  12 from the polls for registering.  13 Q. (BY MR. DAVIS) And you're saying that  14 asking people to sign something under the  15 penalty of perjury scares people away from  16 the polls?  17 A. Some people.  18 Q. So is Greater Birmingham Ministries'  19 position that asking people to sign something  20 under penalty of perjury, that should not be  21 a step that people have to go through in  22 order to vote?  23 MR. ROSS: Objection.</p>
<p style="text-align: right;">Page 122</p> <p>1 A. It's not even. It's not felt evenly.  2 There's discrepancy in mobility,  3 there's discrepancy in locations can be  4 discriminatory.  5 Q. Wouldn't you agree, Mr. Douglas, that  6 the way that Greater Birmingham Ministries  7 looks at voting laws, that being required to  8 register to vote has a disproportionate  9 impact on black voters?  10 MR. ROSS: Objection.  11 A. I would not say the requirement to  12 register to vote does.  13 Q. Now, wait a minute. You just said  14 there is a burden; right?  15 A. There is a burden.  16 Q. And it's not felt equally?  17 A. I'll speak for myself.  18 For Greater Birmingham Ministries, I  19 would say no.  20 Q. Okay. Would you agree that it is  21 harder to go through voter registration if  22 you are poor than it is if you are rich?  23 MR. ROSS: Objection.</p>	<p style="text-align: right;">Page 124</p> <p>1 A. That's correct. They could sign an  2 affidavit without the criminalization piece.  3 Q. (BY MR. DAVIS) They should sign an  4 affidavit but they shouldn't promise?  5 A. Well, I'm Scott Douglas. I mean, I  6 sign my name.  7 Q. It doesn't mean much though without a  8 -- something that you are promising that you  9 are telling the truth?  10 MR. ROSS: Objection,  11 mischaracterization.  12 A. Like I said, the language is scary, and  13 literacy has something to do with the  14 language.  15 MR. DAVIS: That's all. Thank you.  16  17 RE-EXAMINATION MR. ROSS:  18 Q. Let me ask one very quick follow-up  19 question. To your knowledge or GBM's  20 knowledge, has Alabama ever been sued about  21 its voter registration practices?  22 A. Yes.  23 Q. Have they been sued recently about</p>

<p style="text-align: right;">Page 125</p> <p>1 their voter registration practice?</p> <p>2 A. I haven't heard of a recent voter</p> <p>3 registration practice lawsuit.</p> <p>4 Q. If they have been sued in the last</p> <p>5 couple of years about voter registration or</p> <p>6 at least threatened suit about their voter</p> <p>7 registration practices, would that surprise</p> <p>8 you?</p> <p>9 A. No.</p> <p>10 MR. ROSS: That's all.</p> <p>11 MR. DAVIS: No further questions.</p> <p>12</p> <p>13 FURTHER DEPONENT SAITH NOT</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 style="text-align: right;">Page 127</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</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 style="text-align: right;">Page 126</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I, SUSAN MASTERS GOLDMAN, Alabama</p> <p>4 Certified Court Reporter, License Number 83,</p> <p>5 and Notary Public, hereby certify that the</p> <p>6 above and foregoing deposition was taken down</p> <p>7 by me on Computerized Stenotype, and the</p> <p>8 questions and answers thereto were</p> <p>9 transcribed by me, and that the foregoing</p> <p>10 represents a true and correct transcript of</p> <p>11 the deposition given by said witness upon</p> <p>12 said hearing.</p> <p>13 I further certify that I am neither</p> <p>14 attorney or counsel for, nor related to or</p> <p>15 employed by any of the parties to the action</p> <p>16 in which this deposition is taken.</p> <p>17</p> <p>18</p> <p>19 /s/Susan Masters Goldman</p> <p>20 CCR #83, Expires 09/30/17</p> <p>21 Commissioner for the</p> <p>22 State of Alabama at Large</p> <p>23 My Commission Expires: 08-25-18</p>	

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE NORTHERN DISTRICT OF ALABAMA 3 SOUTHERN DIVISION 4 GREATER BIRMINGHAM MINISTRIES, : 5 et al., : 6 Plaintiffs, : 7 v. : Civil Action No. 8 HONORABLE JOHN MERRILL, : 2:15-cv-02193-LSC 9 SECRETARY OF STATE, in his : 10 official capacity, : 11 Defendant. : 12 Washington, D.C. 13 Monday, June 12, 2017 14 Deposition of ZOLTAN HAJNAL 15 9:00 A.M. 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S 2 ON BEHALF OF THE PLAINTIFFS: 3 JAMES M. SMITH, ESQ. 4 COVINGTON &amp; BURLING LLP 5 850 - 10th Street, N.W. 6 Washington, D.C. 20006 7 jmsmith@cov.com 8 202-662-5550 9 10 11 AND 12 13 ELIZABETH A. REESE, ESQ. (by telephone) 14 Harvard Public Interest 15 Litigation Fellow 16 1444 Eye Street, N.W. - 10th Floor 17 Washington, D.C. 20005 18 ereese@naacpldf.org 19 202-216-5563 20 21 22 ON BEHALF OF THE DEFENDANT: 23 JAMES W. DAVIS - Deputy Attorney General 24 COREY L. MAZE - Special Deputy Attorney General 25 State of Alabama 26 Office of the Attorney General 27 501 Washington Avenue 28 Montgomery, Alabama 36130-0152 29 334-242-7300 30 jimdavis@ago.state.al.us 31 cmaze@ago.state.al.us 32 33 34 35 36 37 38 39 40 41 42</p>
<p style="text-align: right;">Page 2</p> <p>1 Deposition of ZOLTAN HAJNAL 2 Held at 3 Covington &amp; Burling 4 850 - 10th Street, N.W. 5 11th Floor 6 Washington, D.C. 20006 7 8 Pursuant to notice, before Carol J. 9 Robinson, Registered Professional Reporter and Notary 10 Public in and for the District of Columbia. 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 4</p> <p>1 C O N T E N T S 2 EXAMINATION OF ZOLTON HAZNAL PAGE 3 By Mr. Davis 7 4 E X H I B I T S 5 (Attached) 6 Number Description PAGE 7 Exhibit 1 Expert report of Zoltan 7 8 Hajnal, Ph.D. 9 Exhibit 2 Document entitled Voter 7 10 Identification Laws and 11 Supression of Minority Votes 12 Exhibit 3 Document entitled Comment on 7 13 Voter Identification Laws and the 14 Supression of Minority Votes 15 Exhibit 4 Second Declaration of M.V. 7 16 Hood III 17 Exhibit 5 Set of sources for additional 56 18 variables 19 Exhibit 6 Data on individual Alabama counties 57 20 and a series of variables from the 21 regressions 22</p>



<p style="text-align: right;">Page 5</p> <p>1           E X H I B I T S (Continued)</p> <p>2                   (Attached)</p> <p>3   Number     Description                                 PAGE</p> <p>4   Exhibit 7   Data on voting age population and     59</p> <p>5               vote totals for 2010 and 2014 for</p> <p>6               Alabama counties</p> <p>7   Exhibit 8   Alabama Unemployment Rate According   60</p> <p>8               to county</p> <p>9   Exhibit 9   Data on state level variables for     62</p> <p>10              all states</p> <p>11   Exhibit 10   Chart indicating strict ID by         63</p> <p>12               state for each individual</p> <p>13               election year – 2010, 2012,</p> <p>14               2014, 2016</p> <p>15   Exhibit 11   Chart showing candidate share       66</p> <p>16               of gubernatorial and senate</p> <p>17               election</p> <p>18   Exhibit 12   Data on state electoral laws for     69</p> <p>19               each state in each election year</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 7</p> <p>1           P-R-O-C-E-E-D-I-N-G-S</p> <p>2                   (Hajnal Exhibit No. 1,</p> <p>3                   Expert report of Zoltan Hajnal,</p> <p>4                   Ph.D., was marked for</p> <p>5                   identification.)</p> <p>6                   (Hajnal Exhibit No. 2, document</p> <p>7                   entitled Voter Identification</p> <p>8                   Laws and Supression of Minority</p> <p>9                   Votes, was marked for</p> <p>10                  identification.)</p> <p>11                  (Hajnal Exhibit No. 3, document</p> <p>12                  entitled Comment on “Voter</p> <p>13                  Identification Laws and the</p> <p>14                  Supression of Minority Votes, was</p> <p>15                  marked for identification.)</p> <p>16                  (Hajnal Exhibit No. 4, Second</p> <p>17                  Declaration of M.V. Hood III, was</p> <p>18                  marked for identification.)</p> <p>19                  ZOLTAN HAJNAL</p> <p>20                  called as a witness, having been first duly sworn to</p> <p>21                  tell the truth, the whole truth, and nothing but the</p> <p>22                  truth, was examined and testified as follows:</p>
<p style="text-align: right;">Page 6</p> <p>1           E X H I B I T S (Continued)</p> <p>2                   (Attached)</p> <p>3   Number     Description                                 PAGE</p> <p>4   Exhibit 13   Chart showing data for 2016 on a     70</p> <p>5               series of variables related to</p> <p>6               state politics and state electoral</p> <p>7               laws</p> <p>8   Exhibit 14   Chart showing data from 2010 and     72</p> <p>9               2014 for each state and a list of</p> <p>10               variables</p> <p>11   Exhibit 15   Census data for the State of         76</p> <p>12               Alabama</p> <p>13   Exhibit 16   Chart showing urbanicity and         77</p> <p>14               density in population in Alabama</p> <p>15               counties</p> <p>16   Exhibit 17   South Carolina election results     98</p> <p>17               for Election Year 2016</p> <p>18   Exhibit 18   Document entitled Hood Rebuttal     126</p> <p>19               Exhibit: Responding to Dr. Hood’s</p> <p>20               Individual Voter Turnout Analysis</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 8</p> <p>1           EXAMINATION</p> <p>2   BY MR. DAVIS:</p> <p>3     Q.   Good morning.</p> <p>4     A.   Good morning.</p> <p>5     Q.   State your name, please.</p> <p>6     A.   Zoltan Hajnal.</p> <p>7     Q.   Dr. Hajnal, my name is Jim Davis. I</p> <p>8   represent the Plaintiffs in a lawsuit called Greater</p> <p>9   Birmingham Ministries vs. Secretary of State John</p> <p>10   Merrill.</p> <p>11           Have you been retained by the plaintiffs</p> <p>12   as an expert in that case?</p> <p>13     A.   I have.</p> <p>14     Q.   What do you do for a living?</p> <p>15     A.   I’m a professor of political science at</p> <p>16   the University California San Diego.</p> <p>17     Q.   You live in San Diego?</p> <p>18     A.   I do.</p> <p>19     Q.   How long have you lived in that area?</p> <p>20     A.   Twenty years.</p> <p>21     Q.   Would you take a look at the document</p> <p>22   that’s been marked as Exhibit 1? I have marked four</p>

<p style="text-align: right;">Page 9</p> <p>1 exhibits. These are identical notebooks --</p> <p>2 A. Okay.</p> <p>3 Q. -- except the rings work on the others.</p> <p>4 Do you recognize the document that's been</p> <p>5 marked as Exhibit 1?</p> <p>6 A. I do.</p> <p>7 Q. Is it the report that you filed in this</p> <p>8 case?</p> <p>9 A. It is.</p> <p>10 Q. Towards the end of that report, you have</p> <p>11 attached a CV, have you not?</p> <p>12 A. I have.</p> <p>13 Q. Appendix B.</p> <p>14 At the time that you submitted this</p> <p>15 report, was this CV complete and accurate, to the</p> <p>16 best of your knowledge?</p> <p>17 A. To the best of my knowledge.</p> <p>18 Q. Has anything changed since you submitted</p> <p>19 the report that would be reflected on an updated CV?</p> <p>20 A. I believe that I have since published</p> <p>21 some material.</p> <p>22 Q. Oh. What have you published?</p>	<p style="text-align: right;">Page 11</p> <p>1 MR. SMITH: I apologize.</p> <p>2 MR. DAVIS: I'm sorry too.</p> <p>3 MR. MAZE: And also, for the record,</p> <p>4 Mr. Davis represents the defendant, not the</p> <p>5 plaintiffs.</p> <p>6 MR. SMITH: I was going to let that slide</p> <p>7 and see what happens.</p> <p>8 MR. DAVIS: Okay.</p> <p>9 MR. SMITH: And similarly, before we</p> <p>10 start and go any further, Professor Hajnal would like</p> <p>11 to see, read, and sign the final copy of the</p> <p>12 transcript.</p> <p>13 MR. DAVIS: Sure. That's fine.</p> <p>14 So, the usual stipulations, except the</p> <p>15 witness reserves the right to read and sign.</p> <p>16 I am an attorney for the defendant and</p> <p>17 not the plaintiffs. I think that clarifies it.</p> <p>18 MR. SMITH: We're good.</p> <p>19 BY MR. DAVIS:</p> <p>20 Q. Exhibit 1, your CV, is up to date except</p> <p>21 one additional publication.</p> <p>22 By the way, what have you done to get</p>
<p style="text-align: right;">Page 10</p> <p>1 A. So, I have a -- I would have to go back</p> <p>2 and look at exactly what's on here. So, I have a</p> <p>3 piece that has been accepted for publication at the</p> <p>4 Journal of Politics -- Journal of Politics of Groups</p> <p>5 and Identities, and I think that might be the only</p> <p>6 piece.</p> <p>7 Q. What's that piece about?</p> <p>8 A. That piece is about -- let's make sure I</p> <p>9 get this accurately here. It looks at responsiveness</p> <p>10 by race on policy questions, essentially. I can give</p> <p>11 you more detail if you'd like.</p> <p>12 Q. Sure. Is it trying to measure how</p> <p>13 responsive governments are to their constituents?</p> <p>14 A. That's correct.</p> <p>15 Q. And broken down by race?</p> <p>16 A. Correct.</p> <p>17 Q. Do you have any co-authors in this study?</p> <p>18 MR. SMITH: While the question is</p> <p>19 pending, do you want to let him finish that? I just</p> <p>20 want to make sure that we have the usual stipulations</p> <p>21 on the record. We often start with that.</p> <p>22 MR. DAVIS: Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 ready for this deposition today?</p> <p>2 A. I have -- I have a sort of life-long set</p> <p>3 of research to understand politics, racial politics,</p> <p>4 minority representation, more so broadly, generally.</p> <p>5 In addition, I have done a series of</p> <p>6 analyses on county-level turnout. I have done other</p> <p>7 analyses on the effect of voter ID laws, and I have</p> <p>8 done analyses of Dr. Hood's data that was presented</p> <p>9 to me.</p> <p>10 Q. Got it. And some of that has been</p> <p>11 produced to us this morning, and we'll talk about</p> <p>12 that as we go along.</p> <p>13 I'm not going to ask, certainly, what you</p> <p>14 spoke of with counsel, but did you meet with counsel</p> <p>15 in preparation for the deposition?</p> <p>16 A. I did meet with counsel.</p> <p>17 Q. By the way, when you got here this</p> <p>18 morning to this office building, did you come alone?</p> <p>19 A. I did.</p> <p>20 Q. Did you go up to the receptions desk?</p> <p>21 A. It was a long, arduous process of getting</p> <p>22 in, but, yeah, eventually, I got up to the receptions</p>

<p style="text-align: right;">Page 13</p> <p>1 deck.</p> <p>2 Q. Were you asked for anything at the</p> <p>3 receptions desk?</p> <p>4 A. For identification.</p> <p>5 Q. A photo identification, specifically.</p> <p>6 Correct?</p> <p>7 A. Correct.</p> <p>8 Q. Did you comply?</p> <p>9 A. I complied.</p> <p>10 Q. Now, what was your assignment for the</p> <p>11 plaintiffs in this lawsuit?</p> <p>12 A. I was tasked with the job of assessing</p> <p>13 whether or not Alabama's strict voter ID law had a</p> <p>14 racial disparate impact.</p> <p>15 Q. Let's start there with "strict."</p> <p>16 What makes a voter ID law strict or</p> <p>17 non-strict, in your definition?</p> <p>18 A. "Strict" would be defined as any law that</p> <p>19 prevents a voter from participating in an election</p> <p>20 without identification and with no additional</p> <p>21 recourse -- with no additional reasonable recourse.</p> <p>22 Q. Okay. Is your definition shared by the</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. You disagree with them on that?</p> <p>2 A. Correct.</p> <p>3 Q. Why?</p> <p>4 A. Because the provision appears to be</p> <p>5 something that is rare and unusual rather than</p> <p>6 regular. So, there is likely to be a limited number</p> <p>7 of cases where a citizen of Alabama knows poll</p> <p>8 workers, knows them well enough that they are willing</p> <p>9 to swear to the identity of that individual.</p> <p>10 Q. You also say that the provision is</p> <p>11 burdensome in your report.</p> <p>12 A. That is what I conclude.</p> <p>13 Q. Okay. Why do you conclude that?</p> <p>14 A. So, I do a number of analyses that show</p> <p>15 that the law has a differential effect on racial and</p> <p>16 ethnic minorities.</p> <p>17 Q. The positively identify provision, why do</p> <p>18 you say that provision is burdensome?</p> <p>19 A. The provision makes it difficult, I</p> <p>20 believe, for an individual citizen who does not know,</p> <p>21 personally know two poll workers to effectively</p> <p>22 participate in an election.</p>
<p style="text-align: right;">Page 14</p> <p>1 National Conference of State Legislatures, which also</p> <p>2 describes voter ID laws as strict or non-strict?</p> <p>3 A. Generally speaking, yes.</p> <p>4 Q. How does it differ?</p> <p>5 A. Well, in one particular case, in the case</p> <p>6 of Alabama, the National Conferences of State</p> <p>7 Legislators highlights an ambiguity about the Alabama</p> <p>8 law and suggests that some would code it as a strict</p> <p>9 photo ID law. They determine that it's not a strict</p> <p>10 photo ID law, primarily on the basis that the law</p> <p>11 allows for two poll workers to attest to the</p> <p>12 identity, swear to the identity of a voter.</p> <p>13 Q. You agree with the classifications given</p> <p>14 by the National Conference of State Legislatures for</p> <p>15 states other than Alabama. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. You differ with them on how they describe</p> <p>18 Alabama's law?</p> <p>19 A. Correct.</p> <p>20 Q. They say it is non-strict because of this</p> <p>21 positive identify provision. Is that right?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. I don't think we've joined issue yet.</p> <p>2 In Footnote 1 on page 3 of your report,</p> <p>3 you say, do you not, at the end of the paragraph, you</p> <p>4 say, "There is an alternative to photo ID, having two</p> <p>5 election officials sign a sworn statement, but that</p> <p>6 option is so burdensome and likely to be so rarely</p> <p>7 available that the Alabama law qualifies as strict."</p> <p>8 Did I read your Footnote 1 correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. You're talking, if I understand</p> <p>11 you right, you're giving me reasons why you think the</p> <p>12 law itself is burdensome, the overall photo ID</p> <p>13 requirement. Why would the positively identify</p> <p>14 provision specifically be burdensome, in your view?</p> <p>15 A. As I said, it requires a citizen of</p> <p>16 Alabama to personally know two poll workers, and that</p> <p>17 is a difficult hurdle, in my opinion, for the average</p> <p>18 citizen to overcome.</p> <p>19 Q. What is your basis to determine that it's</p> <p>20 a difficult burden for the average citizen to</p> <p>21 overcome?</p> <p>22 A. So, one way to think about this, and I'm</p>

<p style="text-align: right;">Page 17</p> <p>1 not claiming that this is definitive, but one way to  2 think about this is to say, "How many people does the  3 average person know?" I did a quick Google, so, by  4 no means a definitive analysis of how many people,  5 but you're talking probably a thousand or so. While  6 that's very, very rough and by no means do I think  7 that's a definitive number, but we typically know a  8 certain number of people.  9       The State of Alabama is reasonably large.  10 The odds that you know the two poll workers that  11 you're assigned to at your precinct seems, in my  12 opinion, to be quite low.  13       Q. Do you have any data or personal  14 experience of voters in Alabama -- let me strike  15 that. You have lots of data on voting in general.  16       Do you have any personal experience in  17 voting in Alabama?  18       A. I do not.  19       Q. Have you ever visited Alabama?  20       A. Not to my knowledge -- not to my  21 recollection at this point. I've been a lot of  22 places over time.</p>	<p style="text-align: right;">Page 19</p> <p>1 it just wouldn't do anybody any good.  2       MR. SMITH: Objection to form.  3 BY MR. DAVIS:  4       Q. Is that true?  5       A. Could you restate the question?  6       Q. Your opinion about the positively  7 identify provision is based on your quick and dirty  8 Internet analysis of how many people the average  9 person knows.  10       MR. SMITH: Object to form.  11 BY MR. DAVIS:  12       Q. Is that right?  13       A. It is, I think, based on a broader set of  14 experiences than that.  15       Q. Well, what else?  16       A. So, among many other things, my own  17 experience at the polls.  18       Q. Okay.  19       A. Discussions with other people about  20 polling places, reports of elections and polls and  21 lines and a whole array of anecdotal and  22 non-anecdotal evidence.</p>
<p style="text-align: right;">Page 18</p> <p>1       Q. That is too bad. You will be welcome any  2 time.  3       A. Hopefully, I will get a chance to go  4 there.  5       Q. We would love to show you around.  6       You live in a fairly urban area, do you  7 not, in San Diego?  8       A. Yes.  9       Q. Have you lived in urban areas most of  10 your life?  11       A. Relatively urban. I come from Canada,  12 the prairies, but a town, a city.  13       Q. Do you have any data on how well people  14 know each other in rural areas of Alabama, small-town  15 living?  16       A. I do not.  17       Q. What is your basis for saying that the  18 provision is likely to be rarely available? Same  19 thing as what you just said?  20       A. Correct.  21       Q. You're making assumptions about how many  22 people the average person knows. From that, you say</p>	<p style="text-align: right;">Page 20</p> <p>1       Q. Did you look at how often it was actually  2 used in Alabama?  3       A. I believe I did. I believe in Dr. Hood's  4 report there is a number. It seemed relatively small  5 to me.  6       Q. Do any other states have that provision  7 or a similar provision that you're aware of?  8       A. Not that I'm aware of.  9       Q. Now, when you say voter identification  10 law is strict or non-strict, does it matter, for your  11 definition, whether the state requires a photo ID or  12 whether that state also allows types of  13 identification that does not contain a photo?  14       A. I have done the analysis in different  15 ways. And so, for the coding that you see here in  16 the report, it is based on whether there is strict,  17 and there isn't a distinction between strict photo  18 and strict non-photo. But the analysis subsequent --  19 other analyses I have done suggest it makes little  20 difference.  21       Q. Okay. So, this report and the  22 comparisons we're going to talk about today, you're</p>

<p style="text-align: right;">Page 21</p> <p>1 treating a state's laws as -- you're not drawing a  2 distinction between states that require a photo and  3 states that require non-photo ID. Is that true?  4 A. That's true.  5 Q. So, let's talk about what you did.  6 How did you get started in assessing the  7 effect of Alabama's photo ID law on turnout?  8 A. So, I acquired data on county voter  9 turnout. So, official records of county voter  10 turnout. I acquired census data that indicated the  11 race, the racial demographics of a county, and then  12 looked for relationships between the racial  13 demographics and changes in turnout in Alabama and  14 compared those to changes in turnout in other states.  15 Q. So, first you looked, did you not -- you  16 looked at the different sets of counties in the State  17 of Alabama?  18 A. Yes.  19 Q. What two types of counties did you  20 consider?  21 A. So, I began by looking at  22 majority-minority counties and contrasting them. And</p>	<p style="text-align: right;">Page 23</p> <p>1 you make a statement that -- well, when did you  2 choose presidential election years as the primary  3 comparison points?  4 A. We want to, in this sort of analysis,  5 look at two sets of elections that are similar, at  6 least broadly similar. So, it is difficult to  7 compare -- or more difficult to compare a midterm and  8 presidential election than it is to compare two  9 elections. We want an election before the  10 implementation of the law. We want an election after  11 the implementation of the law. And so, we want to,  12 again, compare two presidential elections.  13 It is also the case that there is a lot  14 of mobilizations around presidential elections that  15 is sort of national in scope, largely, although there  16 are certainly variations. So, we can assess what's  17 going on in the state by contrasting that state with  18 other states.  19 Q. You say, on page 4 of your report, that  20 turnout in presidential election years is driven  21 substantially by the presidential campaign. Why do  22 you say that?</p>
<p style="text-align: right;">Page 22</p> <p>1 there are 12 majority-minority counties, so, I  2 contrasted them with the 12 most racial homogeneous  3 counties, the whitest, essentially, counties in the  4 state.  5 Q. So, you compared counties that had the  6 most African-American voters and I guess the counties  7 that had the fewest African-American voters?  8 A. I compared counties that had the highest  9 share of racial minorities to the counties that had  10 the highest share of whites, non-Hispanic white.  11 Q. And what different elections did you use  12 as comparison points?  13 A. The primary case that I looked at was  14 between 2012 and 2016. So, looking at presidential  15 elections and the differences in change in turnout  16 crowd before and after the implementation of  17 Alabama's ID law.  18 Q. So, 2012 versus 2016.  19 You also ran some comparisons on 2010  20 versus 2014, did you not?  21 A. That's correct.  22 Q. Now, you say, focusing on the 2012-2016,</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I say that because the evidence suggests  2 that presidential turnout is much higher in election  3 years than it is in mid-term years.  4 Q. Does the presidential campaign tend to  5 eclipse local issues?  6 A. To the best of my knowledge, in general,  7 that is the case.  8 Q. Does it eliminate local issues among  9 states that also can be affecting turnout?  10 A. It does not.  11 Q. Do you know if Alabama had local offices  12 on the ballot in 2012 and 2016?  13 A. It did.  14 Q. Did the other states that you compared  15 Alabama to have local elections on the ballot in 2012  16 and 2016?  17 A. By "local," do you mean state level or do  18 you mean municipal?  19 Q. Well, let's talk about state level first.  20 A. Okay. Then, yes.  21 Q. What about municipal? Do you know if  22 municipal elections were also on the ballot in</p>



<p style="text-align: right;">Page 25</p> <p>1 different states?</p> <p>2 A. I have not considered municipal</p> <p>3 elections, although I would maintain that there is no</p> <p>4 evidence that the presence of municipal elections, to</p> <p>5 this point, has any substantial impact on turnout in</p> <p>6 presidential elections.</p> <p>7 Q. But first -- and I got a little ahead of</p> <p>8 myself -- you talk in your report about how certain</p> <p>9 counties within Alabama compare to other counties</p> <p>10 within Alabama. Correct?</p> <p>11 A. As a building block, yes.</p> <p>12 Q. Then you compare Alabama to other states.</p> <p>13 A. Yes.</p> <p>14 Q. And you saw how turnout rose or fell in</p> <p>15 Alabama compared to how turnout rose and fell in</p> <p>16 other states?</p> <p>17 A. Correct.</p> <p>18 Q. Now, you would agree with me that</p> <p>19 competitiveness of the election on the ballot can</p> <p>20 affect turnout.</p> <p>21 A. Depending on which ballot you're talking</p> <p>22 about, that statement is generally true.</p>	<p style="text-align: right;">Page 27</p> <p>1 election. It is possible to do under certain</p> <p>2 constrains when you make comparisons across elections</p> <p>3 and states.</p> <p>4 Q. What national trends have you seen, if</p> <p>5 any, in African-American voter turnout in, let's say,</p> <p>6 starting with 2004, from 2004, 2008, 2012, 2016?</p> <p>7 Have you noted any national trends in</p> <p>8 African-American turnout?</p> <p>9 A. Yes. So, there has been increases in</p> <p>10 African-American turnout associated with Barack</p> <p>11 Obama's candidacy and election, and some decline in</p> <p>12 African-American turnout post Obama.</p> <p>13 Q. And what trends, if any, have you noted</p> <p>14 in white voter turnout in the same elections, 2004,</p> <p>15 2008, 2012, 2016?</p> <p>16 A. I believe -- and I'm not certain on this</p> <p>17 fact, that white turnout increased as well early in</p> <p>18 this period. So, with competitive elections, and</p> <p>19 that was sort of flat and then declined marginally</p> <p>20 later in Obama's reelection and then increased again</p> <p>21 with -- increased marginally, although I think the</p> <p>22 data are still a little bit early in 2016 but likely</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. Well, that is probably true no matter</p> <p>2 what race it is. The more competitive it is,</p> <p>3 probably the more voters are energized. Would you</p> <p>4 agree with that?</p> <p>5 A. Again, if we're talking about state</p> <p>6 turnout, I don't think an election for dogcatcher is</p> <p>7 going to affect appreciably county turnout. So, it</p> <p>8 does depend on which turnout we are talking about,</p> <p>9 which election.</p> <p>10 Q. Well, let's say at least the state-level</p> <p>11 office.</p> <p>12 A. Again, there is a possibility that it</p> <p>13 does. I'm not even sure we have strong evidence that</p> <p>14 it appreciably impacts state-level turnout.</p> <p>15 Q. What does energize voters?</p> <p>16 A. A whole array of things, from campaigns</p> <p>17 to candidates to issues to -- yeah, an array of</p> <p>18 things.</p> <p>19 Q. Is it possible to pinpoint for any given</p> <p>20 election what it is that has energized voters and led</p> <p>21 to the turnout being the way it is?</p> <p>22 A. It's difficult to do in a single</p>	<p style="text-align: right;">Page 28</p> <p>1 increased in 2016.</p> <p>2 Q. These are national trends that you're</p> <p>3 speaking of, are they not?</p> <p>4 A. Correct.</p> <p>5 Q. You make a statement in your report, or</p> <p>6 you make an assumption that minority voters are less</p> <p>7 likely to have identification. Is that correct?</p> <p>8 A. I don't necessarily assume that. I have</p> <p>9 read a number of reports and research in the field</p> <p>10 that indicates that racial and ethnic minorities have</p> <p>11 lower ID possession rates.</p> <p>12 Q. What have you read? What reports are you</p> <p>13 basing your statement on?</p> <p>14 A. So, there's a report in this case by</p> <p>15 Dr. Siskin, for example.</p> <p>16 Q. Right.</p> <p>17 A. There is research, both published and as</p> <p>18 expert testimony, by Matt Baretto and colleagues.</p> <p>19 And then there are a number of other pieces.</p> <p>20 There is a Government Accountability</p> <p>21 Office piece of research as well as others.</p> <p>22 Q. You have not researched the issue</p>

<p style="text-align: right;">Page 29</p> <p>1 yourself. Correct?</p> <p>2 A. I do not claim to be an expert on ID</p> <p>3 possession.</p> <p>4 Q. You talked about what your assignment is,</p> <p>5 and we'll go through the opinions that you have</p> <p>6 included in your report. But just to be clear,</p> <p>7 you're not being asked to offer an opinion in this</p> <p>8 case on the rates of possession of IDs by different</p> <p>9 ethnic groups?</p> <p>10 A. No.</p> <p>11 Q. Are you being asked to express any</p> <p>12 opinion on the purpose of the law?</p> <p>13 A. No.</p> <p>14 Q. Let's talk about your logic-of-voting</p> <p>15 theory. You discuss that on page 13 of your report.</p> <p>16 And if at any time you want to say, "Hold on, I want</p> <p>17 to refresh my recollection or look at my report</p> <p>18 before I answer," you just say so. Okay?</p> <p>19 A. Thank you.</p> <p>20 Q. I just want to make sure you have it in</p> <p>21 front of you if you need to refer to it.</p> <p>22 Describe this logic-of-voting theory.</p>	<p style="text-align: right;">Page 31</p> <p>1 the day is whether turnout goes up or down.</p> <p>2 So, I can't, with the analysis I have</p> <p>3 done, know what's going on in the heads of individual</p> <p>4 voters. I just know at the end of the day: Was</p> <p>5 there an additional hurdle or burden and did that</p> <p>6 then increase or decrease or not?</p> <p>7 Q. Okay. So, you're saying that, if, in</p> <p>8 fact, assuming we can know one way or the other, if,</p> <p>9 in fact, voter identification law led to lower</p> <p>10 turnout, this logic-of-voting theory may be one</p> <p>11 explanation for why those two go together.</p> <p>12 A. Yes. It could be one explanation.</p> <p>13 Q. Okay. If this theory is correct, logic</p> <p>14 of voting, doesn't a voter registration requirement</p> <p>15 increase the cost of voting?</p> <p>16 A. Yes.</p> <p>17 Q. All voting laws would increase the cost</p> <p>18 of voting to one extent or another, wouldn't they?</p> <p>19 A. A law that expands early voting, that</p> <p>20 makes poll -- creates more polling locations, would</p> <p>21 not increase, no.</p> <p>22 Q. Voting registration would. You say voter</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Sure. So, the basic notion is that</p> <p>2 voting includes some cost. Right? So, an individual</p> <p>3 citizen has to become registered. They have to learn</p> <p>4 about the election, learn about the candidates. They</p> <p>5 have to learn where their polling booth is. And they</p> <p>6 then have to get to the polling booth, take the time</p> <p>7 and participate. So, there's a certain level of cost</p> <p>8 involved in participating.</p> <p>9 And the logic of voting is, if we</p> <p>10 increase those costs, it makes -- it's an additional</p> <p>11 burden on participating. And the core -- so, the</p> <p>12 underlying logic is people are rational, and they</p> <p>13 will likely participate less if the costs of</p> <p>14 participating increase.</p> <p>15 Q. Do you make or have you made any</p> <p>16 evaluation on how much, under this theory, the cost</p> <p>17 of voting is increased by a voter identification</p> <p>18 requirement?</p> <p>19 A. What I would say is I am testing the</p> <p>20 veracity, in some sense, of this logic by looking to</p> <p>21 see whether turnout goes up or down. In any sense,</p> <p>22 the theory is irrelevant. What matters at the end of</p>	<p style="text-align: right;">Page 32</p> <p>1 identification laws may. Okay.</p> <p>2 Now, on page 14 of your report, you say</p> <p>3 that some minority citizens who have proper</p> <p>4 identification -- I'm reading in the first full</p> <p>5 paragraph, the third sentence of the first full</p> <p>6 paragraph on page 14:</p> <p>7 "Accordingly, some minority citizens who</p> <p>8 have proper identification might still feel targeted</p> <p>9 by these laws and might, therefore, decide not to</p> <p>10 participate in elections."</p> <p>11 What are you talking about there?</p> <p>12 A. So, there's obviously lots of discussion</p> <p>13 in the media about these laws. There's lots of</p> <p>14 discussion in the media about these laws being</p> <p>15 racially targeting. And again, I'm not making any;</p> <p>16 claims as to whether -- what intent there is behind</p> <p>17 these laws, but there's lots of discussion about the</p> <p>18 intent of these laws and who they're targeting.</p> <p>19 If you are a racial ethnic minority and</p> <p>20 you feel like these laws are targeting you, it is at</p> <p>21 least conceivable that you would feel less welcomed</p> <p>22 and less likely to participate.</p>

<p style="text-align: right;">Page 33</p> <p>1           What I would say is none of the analysis  2   that I do depends on this actually happening. So,  3   again, this is a potential theory, but in no way is  4   there an assumption behind that.  5       Q. I understand.  6           It is important for this deposition for  7   me not only to know what you are giving opinions  8   about but also what you're not, so, we understand the  9   outer boundaries of your report.  10          So, you're not saying, are you, that you  11   know one way or the other whether any minority  12   voters, in fact, feel targeted by the photo ID law?  13       A. I would say I have read a quote or two  14   here or there suggesting that for those individuals.  15   But this is not, again, the larger -- I am not making  16   an empirical claim about the depth at which  17   minorities feel targeted by these laws.  18       Q. There may be some individual claims if  19   that's the case, but are you aware of any studies or  20   surveys polling the feelings of minority voters in  21   Alabama about the law?  22       A. Not to my knowledge.</p>	<p style="text-align: right;">Page 35</p> <p>1       Q. What if a survey says a majority of  2   minority voters opposed the photo ID law and did feel  3   targeted? Would you say that is reliable?  4       A. It is not reliable in terms of whether it  5   affected their turnout. And in your question you  6   added "and feel threatened." So, the first survey  7   question you asked is: Do they support or oppose the  8   law? In the second case you said: Do they oppose it  9   and feel targeted? So, you have more information if  10   the question is asked: Do you feel targeted? And  11   so, that is an expression of feeling about this  12   particular aspect of the law.  13          But even still, that doesn't tell us  14   whether or not the law impacted their turnout at the  15   end of the day.  16       Q. All right. Two hypothetical surveys, one  17   question each: Do you favor Alabama's photo ID law?  18   And they asked that survey of minority voters in  19   Alabama. In one hypothetical result, 60 percent of  20   African-American voters said, "Yes, we support it."  21   In the other, 60 percent said, "No, I oppose it."  22          Would you consider either of those</p>
<p style="text-align: right;">Page 34</p> <p>1       Q. If there were a survey that said that a  2   majority of African-American voters in Alabama  3   favored a photo ID law, would you say then that  4   either the cost of voting or the targeting theories  5   or explanations for how the photo ID law and turnout  6   were impacted?  7       A. No. So, you said a majority. Right?  8   So, if there are a number -- so, for this -- and I'm  9   not saying this phenomenon. Again, I don't know how  10   many people, but I'm also not saying it's all.  11          So, if some portion of African-Americans  12   are not supportive of this law, then presumably they  13   could be impacted.  14          Even those who in any given survey would  15   say they support this may not have thought through  16   it. So, we know from survey data that people often  17   have not thought through the questions they are  18   asked. Just because we ask them doesn't mean they  19   have a well thought-out opinion. So, that survey  20   data would not, in my opinion, be all that telling  21   one way or another about the end result of reactions  22   to this law.</p>	<p style="text-align: right;">Page 36</p> <p>1   hypothetical results to be more reliable than the  2   other?  3          MR. SMITH: Object to form.  4          THE WITNESS: I don't know what you mean  5   by reliable. Reliable as to what?  6   BY MR. DAVIS:  7       Q. If I understand, you said you can't  8   really count if the majority of African-American  9   voters say, "We favor it." You said, "Well, they may  10   not have thought about it, so, I'm not sure I put  11   much credence to that."  12          Do you have the same hesitation to accept  13   a hypothetical survey result when the majority  14   opposed the voter identification law?  15       A. So, in general, I would remain somewhat  16   skeptical of survey results.  17          In this particular case, I know this is a  18   little bit of personal opinion, but based on some  19   sort of historical knowledge, we see that, among  20   Democrats, if they are informed about the law, there  21   may be some sense that they are more opposed. So,  22   there is this notion that -- yeah, I'll leave it at</p>



<p style="text-align: right;">Page 37</p> <p>1 that.</p> <p>2       So, I might be reading between the lines</p> <p>3 of what's going on, and so, for the most part, I</p> <p>4 think the results would be comparable, although there</p> <p>5 may be some reason to believe that the second poll</p> <p>6 was asked perhaps more recently, provided for</p> <p>7 information. But again, you haven't given me this as</p> <p>8 a hypothetical. So, I'll leave it at that.</p> <p>9       Q. And that African-American voter who says,</p> <p>10 "I oppose photo ID laws," would you say that that</p> <p>11 person is more believable than an African-American</p> <p>12 voter who says, "I'm for it"?</p> <p>13       A. No, not in -- no.</p> <p>14       Q. All right. In a comparison of Alabama</p> <p>15 counties one to another, you used counties that had</p> <p>16 more minority voters than counties that had fewer</p> <p>17 minority voters and compared the results there; what</p> <p>18 were the results of your comparisons?</p> <p>19       A. So, if we look at the 2012 to 2016</p> <p>20 comparison, you see that turnout declined</p> <p>21 substantially more in majority-minority counties than</p> <p>22 it did in overwhelmingly white counties.</p>	<p style="text-align: right;">Page 39</p> <p>1 consider all counties?</p> <p>2       A. That's correct.</p> <p>3       Q. What conclusions do you draw from,</p> <p>4 looking at the top half of the chart again, the</p> <p>5 -4.7 percent?</p> <p>6       A. So, the conclusion to draw in this is</p> <p>7 that, in the 12 majority-minority counties, turnout</p> <p>8 declined relative to turnout in the 12 overwhelmingly</p> <p>9 white counties by 7.4 percent, relatively speaking.</p> <p>10       Q. Okay. It should be clear. Are you</p> <p>11 looking at turnout rates of African-American voters</p> <p>12 and Hispanic voters specifically in a particular</p> <p>13 county or are you looking at the overall turnout for</p> <p>14 the entire county?</p> <p>15       A. I'm looking at the overall turnout in the</p> <p>16 entire county.</p> <p>17       Q. How do you know if there is a rise or</p> <p>18 fall in overall turnout that is attributed to any</p> <p>19 particular race of voters?</p> <p>20       A. So, here I am -- the reason we know is</p> <p>21 Professor Hood has supplied data on -- so, we can</p> <p>22 make a strong inference here, and then we have more</p>
<p style="text-align: right;">Page 38</p> <p>1       Q. How much more? Let's refer to the chart.</p> <p>2       A. So, this would be Table 1. So, we see</p> <p>3 that, over the 2012 to 2016 period, turnout in</p> <p>4 majority-minority counties declined relative to</p> <p>5 turnout in overwhelmingly white counties by</p> <p>6 7.4 percentage points.</p> <p>7       Q. Okay. And looking at the same table,</p> <p>8 what is the comparison at the bottom where there is a</p> <p>9 difference of -4.9?</p> <p>10       A. There I'm looking at all counties in</p> <p>11 Alabama, and I'm comparing counties above and below</p> <p>12 the mean in terms of racial diversity. So, half of</p> <p>13 the counties that are more diverse, their turnout</p> <p>14 declined relative to half of the counties that are</p> <p>15 less diverse by 4.9 percentage points.</p> <p>16       Q. So, the top half of the chart are certain</p> <p>17 counties compared to certain other counties, and the</p> <p>18 bottom half includes all counties in the state?</p> <p>19       A. That's correct.</p> <p>20       Q. Okay. And your cutoff point was</p> <p>21 28.7 percent because that's the mean percentage of</p> <p>22 African-American voters or minority voters when you</p>	<p style="text-align: right;">Page 40</p> <p>1 confidence, and we know based on looking at</p> <p>2 individual-level turnout by race within these</p> <p>3 counties.</p> <p>4       Q. Okay. We'll get to Dr. Hood's stuff.</p> <p>5 We'll go back to that.</p> <p>6       At the time you did this, you had not</p> <p>7 looked at individual turnout data. Correct?</p> <p>8       A. That is correct.</p> <p>9       Q. If all you have is county-wide data, how</p> <p>10 can you say whether it is or is not attributed to any</p> <p>11 particular race of voters?</p> <p>12       A. So, what we're doing here is we are</p> <p>13 comparing counties that are, on average, 90 percent</p> <p>14 white to counties that are, on average, 70 percent</p> <p>15 racial and ethnic minority. And we are looking at</p> <p>16 the difference in behavior.</p> <p>17       And so, in the overwhelmingly white</p> <p>18 counties, we can be fairly certain that that's a</p> <p>19 reasonably good estimate of white participation in</p> <p>20 those counties. And likewise, in the</p> <p>21 majority-minority counties, we can be relatively</p> <p>22 certain that the overall county turnout reflects the</p>

<p style="text-align: right;">Page 41</p> <p>1 turnout of minorities, and we can then also contrast</p> <p>2 the two and see how the counties that had many, many</p> <p>3 more minorities differ from the counties that had</p> <p>4 almost exclusively whites. And that difference gives</p> <p>5 us a sense and an approximation of the racial</p> <p>6 difference of turnout.</p> <p>7 Q. Okay. I understand your theory. I'm not</p> <p>8 saying I agree with it, but I understand the</p> <p>9 connection you're drawing.</p> <p>10 Well, if you assume that the -7.4 percent</p> <p>11 result you are showing in Table 1, that that's --</p> <p>12 that a fall in turnout in the majority</p> <p>13 African-American county is, in fact, attributed to</p> <p>14 lower turnout of African-American voters, how do you</p> <p>15 know whether the photo ID law has anything to do with</p> <p>16 it?</p> <p>17 A. Here this is purely a building block.</p> <p>18 This Table 1 is a building block, and it is</p> <p>19 illustrative of the analysis I'm doing. And I have</p> <p>20 to then compare what's going on in Alabama to what's</p> <p>21 going on in other states to have a firmer opinion</p> <p>22 about what the effect of the ID law is.</p>	<p style="text-align: right;">Page 43</p> <p>1 So, we are calling Alabama the treated state. So, it</p> <p>2 has a new law. Whether you want to define that law</p> <p>3 as a strict ID law, as I would, or you might have</p> <p>4 another opinion on it, but that's the treatment, the</p> <p>5 imposition and the implementation of the voter ID</p> <p>6 law.</p> <p>7 And we look for change in Alabama, and we</p> <p>8 compare it to change in what I would say are -- what</p> <p>9 are actually relatively comparable southern states.</p> <p>10 So, we first look to see whether those states are</p> <p>11 comparable, and we can talk about that, but, yes.</p> <p>12 So, is the change that we see in</p> <p>13 relatively homogeneous counties in Alabama? So,</p> <p>14 looking at the majority-minority in overwhelmingly</p> <p>15 white counties. Is the change that we see before and</p> <p>16 after the implementation of the law significantly</p> <p>17 different than the change that we see in the other</p> <p>18 states? So, it is a difference-in-difference design.</p> <p>19 And we can do that for these, again,</p> <p>20 relatively homogeneous 24 counties in Alabama and</p> <p>21 similarly diverse counties in other states. We can</p> <p>22 do it for the top and bottom half of the counties in</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. Okay. And you did that. Right?</p> <p>2 A. That's correct.</p> <p>3 Q. And how did you do that? Walk me through</p> <p>4 how you compared turnout in Alabama to turnout in</p> <p>5 other states.</p> <p>6 A. There's a whole series of steps and</p> <p>7 comparisons, beginning with, again, so, you collect</p> <p>8 turnout data by county. So, rather than simply in</p> <p>9 Alabama, we're doing this now in all counties in the</p> <p>10 United States. We are getting the racial</p> <p>11 demographics of all counties in the United States.</p> <p>12 We are also getting all kinds of other information on</p> <p>13 the elections in all the other states and information</p> <p>14 on the elections in Alabama and the context of those</p> <p>15 elections, other information on the demographics of</p> <p>16 each county, other information on the electoral laws</p> <p>17 that are in place in each state. So, there is first</p> <p>18 data acquisition process.</p> <p>19 Then the first comparison that I make is</p> <p>20 between Alabama and other states that are non-strict</p> <p>21 ID states in the South. And the idea is to look to</p> <p>22 see whether it's the change in the treated state.</p>	<p style="text-align: right;">Page 44</p> <p>1 Alabama and compare it to the counties above and</p> <p>2 below that cutoff point in other states.</p> <p>3 We can -- in doing that analysis, we can</p> <p>4 look at two things. We can look at: Does turnout in</p> <p>5 majority-minority districts fall at a more pronounced</p> <p>6 rate in Alabama than it does in other non-strict</p> <p>7 southern states? And we can look to see whether the</p> <p>8 relative turnout rates in the majority-minority</p> <p>9 versus overwhelmingly white, whether the gap between</p> <p>10 those two increases at a more pronounced rate in</p> <p>11 Alabama after the implementation of the law than it</p> <p>12 does in other states, southern non-strict states,</p> <p>13 over the same time period.</p> <p>14 Q. Okay.</p> <p>15 A. And just to sort of complete the</p> <p>16 analysis, what we can then do as well, so, there is</p> <p>17 difference-in-difference design with a limited set of</p> <p>18 comparable states, we can then also compare Alabama</p> <p>19 to all other states in the United States, and we can</p> <p>20 control, for a broader analysis, all of the remaining</p> <p>21 factors that would then drive turnout so that we can</p> <p>22 isolate the effect of the voter ID law that way.</p>

<p style="text-align: right;">Page 45</p> <p>1 Q. And why is it important that you be able</p> <p>2 to isolate the effect of the voter ID law?</p> <p>3 A. I would say because we want to analyze</p> <p>4 the effect of the voter ID law.</p> <p>5 Q. If you know that -- if you measure in two</p> <p>6 different counties and you know the turnout rates</p> <p>7 differed, is it not true that you have to at least</p> <p>8 try to eliminate the possibility that other issues</p> <p>9 have affected turnout in order to measure the photo</p> <p>10 ID law's effect?</p> <p>11 A. You are trying to, yes, isolate the</p> <p>12 effect of the ID law by having, in one case, a</p> <p>13 comparable set of states and in another case by</p> <p>14 controlling for a range of factors you think affect</p> <p>15 that turnout.</p> <p>16 Q. So, if you measure a rural Alabama</p> <p>17 county's turnout in presidential election years and</p> <p>18 you compare that to some precincts in Manhattan for a</p> <p>19 city election, that would be apples and oranges.</p> <p>20 There would be too many variables there, wouldn't it,</p> <p>21 for you to isolate any particular effect on turnout?</p> <p>22 A. No, in the sense of what we are doing is</p>	<p style="text-align: right;">Page 47</p> <p>1 So, there are two methods behind the</p> <p>2 report. One is to narrow the comparison to a set of</p> <p>3 similar states on factors that we think are</p> <p>4 potentially important in explaining turnout. So, to</p> <p>5 do that, I compared Alabama to non-strict southern</p> <p>6 states.</p> <p>7 And the reason why we want to look at the</p> <p>8 South in particular is there is a long literature</p> <p>9 showing that the South is different from much of the</p> <p>10 rest of the United States on a range of different</p> <p>11 factors, so, certainly in its politics, partisanship,</p> <p>12 in many ways on its racial demographics. So, the</p> <p>13 South is more black than -- as a proportion than much</p> <p>14 of the rest of the United States.</p> <p>15 The culture and racial history, racial</p> <p>16 attitudes, lots of literature highlighting the</p> <p>17 distinctiveness of the South. So, that is one set of</p> <p>18 reasons to focus in on the South.</p> <p>19 The other is: What you can do is look at</p> <p>20 the key variables that we think drive turnout, which</p> <p>21 is incorporated into my analysis.</p> <p>22 So, are there what we would call more lax</p>
<p style="text-align: right;">Page 46</p> <p>1 we are not actually comparing Alabama to New York.</p> <p>2 We are looking at New York and seeing whether</p> <p>3 New York changes over this time period. And, again,</p> <p>4 we are controlling for the factors that we think</p> <p>5 might change in New York. So, we are comparing</p> <p>6 New York to New York, and the difference there -- and</p> <p>7 then we are comparing Alabama to Alabama, and we are</p> <p>8 looking at the relative change.</p> <p>9 So, we -- especially, if we included what</p> <p>10 I would call state fixed effects in the larger</p> <p>11 analysis, we are controlling for any factor that is</p> <p>12 constant and unique to any particular state.</p> <p>13 Q. Well, you do some analysis just limited</p> <p>14 to southern states. Correct?</p> <p>15 A. Correct.</p> <p>16 Q. So, why do it that way? Why was that</p> <p>17 part of your analysis, comparing Alabama to other</p> <p>18 southern states?</p> <p>19 A. And actually, let me add that, in</p> <p>20 addition to comparing Alabama to other southern</p> <p>21 states, I compared Alabama to South Carolina. And</p> <p>22 let me explain why I do those two comparisons.</p>	<p style="text-align: right;">Page 48</p> <p>1 state electoral law? So, is there early voting? Is</p> <p>2 there absentee voting, those sorts of things which</p> <p>3 are incorporated, and compare Alabama to the South on</p> <p>4 those, and they look pretty similar. We can compare</p> <p>5 Alabama to the South on measures of partisanship and</p> <p>6 also the context of the election. So, were these</p> <p>7 particularly competitive or not?</p> <p>8 And once when you do that, you see that</p> <p>9 Alabama is not identical to the South as a whole but</p> <p>10 is reasonably similar on these key variables that</p> <p>11 drive turnout. We look even closer at a state like</p> <p>12 South Carolina. Alabama is -- it is impossible to</p> <p>13 say it's a 100 percent perfect match to South</p> <p>14 Carolina, but it is extraordinarily similar to these</p> <p>15 key variables that we think drive turnout.</p> <p>16 So, by doing that, we are, in a sense,</p> <p>17 isolating the one difference or the major difference</p> <p>18 between the treated State of Alabama and the</p> <p>19 non-treated states, which are the non-strict southern</p> <p>20 states.</p> <p>21 So, that is the analysis where we do the</p> <p>22 focusing, or I do the focused comparison.</p>

<p style="text-align: right;">Page 49</p> <p>1 Q. Okay. I think the next thing I want to</p> <p>2 try to understand is how you're saying you're</p> <p>3 controlling the different variables.</p> <p>4 This is a pretty good stopping point to</p> <p>5 get some water and take a restroom break.</p> <p>6 Suit you, James?</p> <p>7 MR. SMITH: Yes.</p> <p>8 MR. DAVIS: Suite you, Dr. Hajnal?</p> <p>9 THE WITNESS: Sure.</p> <p>10 MR. DAVIS: Let's take a break.</p> <p>11 (Recess taken.)</p> <p>12 BY MR. DAVIS:</p> <p>13 Q. All right, Dr. Hajnal.</p> <p>14 In the beginning, you said that whether a</p> <p>15 law is strict or non-strict, under your definition,</p> <p>16 depends on whether there is a "reasonable recourse</p> <p>17 for a voter."</p> <p>18 A. Yes.</p> <p>19 Q. What do you mean by that? What is</p> <p>20 reasonable recourse?</p> <p>21 A. So, does the voter have an alternative</p> <p>22 that is readily available to presenting that</p>	<p style="text-align: right;">Page 51</p> <p>1 expert. So, again, I am just looking at the effect</p> <p>2 of this particular law and comparing it, but, yes.</p> <p>3 Q. I understand.</p> <p>4 But in terms of making sure we have the</p> <p>5 right comparisons, I think it's important that I know</p> <p>6 what you're using as strict and non-strict.</p> <p>7 Now, if someone is allowed to say, "I'm</p> <p>8 Jim Davis. Let me vote. Give me a ballot," and</p> <p>9 that's good enough, that's not really a voter</p> <p>10 identification requirement at all, is it?</p> <p>11 A. Again, that is sort of all definitional.</p> <p>12 We can say, "You are required," but if you swear on</p> <p>13 penalty of X or Y that you are who you are, that does</p> <p>14 seem like a distinction.</p> <p>15 Q. Does the number of identifications that a</p> <p>16 state would accept affect whether it is strict or</p> <p>17 non-strict, in your view?</p> <p>18 A. In my view, not. But again, I'm using</p> <p>19 sort of an accepted standard of identifying states</p> <p>20 through the National Conference of State Legislators.</p> <p>21 And as I read their coding, it is not dependent on</p> <p>22 the number of IDs.</p>
<p style="text-align: right;">Page 50</p> <p>1 particular set of forms of valid photo ID?</p> <p>2 Q. What types of alternatives exist that you</p> <p>3 can see?</p> <p>4 A. So, you can simply state that you are who</p> <p>5 you are, affirm that you are the person who's on the</p> <p>6 registration list.</p> <p>7 You can claim that it was difficult for</p> <p>8 you to -- so, South Carolina, for example, has a law</p> <p>9 where you can make a claim that you are -- I don't</p> <p>10 know the exact quote, but it is not exceedingly</p> <p>11 difficult for you to acquire the ID but difficult,</p> <p>12 and that might include not being able to find</p> <p>13 transportation and things like that. So, basically</p> <p>14 options or excuses that are readily available.</p> <p>15 Q. So, if a state says you have to show an</p> <p>16 ID, unless you say there is a reasonable impediment,</p> <p>17 that's not strict, under your definition?</p> <p>18 A. Yes. Depending on how we define</p> <p>19 reasonable impediment, yes.</p> <p>20 Q. South Carolina specifically would be</p> <p>21 non-strict today?</p> <p>22 A. Correct. I would say I'm not a legal</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Okay. Is the coding dependent on the</p> <p>2 ease or difficulty of obtaining an identification</p> <p>3 card if you do not have one?</p> <p>4 A. That is, to my knowledge, not included in</p> <p>5 the coding.</p> <p>6 Q. So, when you're comparing strict and</p> <p>7 non-strict, the number of IDs accepted and how easy</p> <p>8 or difficult it is to get an ID are not</p> <p>9 considerations at that stage?</p> <p>10 A. At that stage.</p> <p>11 Well, yes.</p> <p>12 Q. It is not relevant in picking your</p> <p>13 comparison states.</p> <p>14 A. Correct.</p> <p>15 Q. Okay. When you're comparing Alabama with</p> <p>16 other states, you say you're controlling for certain</p> <p>17 differences. Correct?</p> <p>18 A. Yes, in different ways.</p> <p>19 Q. What kinds of differences are you</p> <p>20 controlling?</p> <p>21 A. So, in the analysis that -- where we're</p> <p>22 doing difference to difference, where I'm comparing</p>

<p style="text-align: right;">Page 53</p> <p>1 Alabama to strict southern states and not explicitly  2 controlling for additional variables, the process is  3 to try to identify essentially a matching set of  4 states.  5         So, we know Alabama looks like this in  6 terms of partisanship, looks like this in terms of  7 other cultural history, racial demographics. And so,  8 we can look at the South and say, okay, yes, the  9 South is similar in terms of racial demographics,  10 roughly speaking. It's similar in terms of  11 partisanship, not too dissimilar in terms of  12 competitiveness of national elections, not too  13 dissimilar in terms of racial attitudes.  14         So, those are also in terms of electoral  15 laws and that sort of thing.  16         Q. We'll talk about this, but you single out  17 South Carolina as a comparison because of  18 similarities between South Carolina and Alabama.  19 Correct?  20         A. Correct.  21         Q. So, one of the ways you see you're  22 controlling for variables is first doing your</p>	<p style="text-align: right;">Page 55</p> <p>1 that we view or I view as particularly relevant to  2 turnout.  3         Q. So that I don't jump from talking about  4 Exhibit 1 to Exhibit 5, the notebook that is in front  5 of you has the documents we're going to refer to  6 today. We are going to skip over some of these, but  7 I'll note for the record, look at the document that's  8 been marked as Exhibit 2.  9         A. Right.  10         Q. Is this a paper that you have written  11 with colleagues titled "Voter Identification Laws and  12 Suppression of Minority Votes"?  13         A. It is. I'm not sure that this is the --  14 this is clearly not the final published version of  15 the paper, so, this is an interim draft.  16         Q. Fair enough, it is a draft. We'll talk  17 about that, and you'll have the opportunity to  18 clarify exactly what it is that we are looking at and  19 what we're not looking at.  20         Okay. Exhibit 3 we will also come back  21 to later. This is a comment on that draft, is it  22 not?</p>
<p style="text-align: right;">Page 54</p> <p>1 analysis that's limited to states that are somewhat  2 similar to Alabama?  3         A. Correct.  4         Q. That is a method of controlling for  5 differences, by choosing comparable comparisons?  6         A. Yes, different states.  7         Q. If you were to compare Alabama to  8 counties that included the Twin Cities in Minnesota,  9 what would you have to do to try to make sure that  10 comparison was apples to apples and not apples to  11 oranges?  12         A. So, again, the comparison is not one to  13 one. The comparison is we are looking at the Twin  14 Cities in Minnesota, and we're looking at how they  15 change. Right? So, we're also looking at Alabama  16 and how it changes.  17         So, the key is: Is there something that  18 changed in Minnesota that we need to consider? Is  19 there something that changed in Alabama that we need  20 to consider?  21         When I do the larger national regression,  22 I incorporate all the changes in these other states</p>	<p style="text-align: right;">Page 56</p> <p>1         A. Yes.  2         Q. Exhibit 4, I've marked the second  3 declaration of Professor Trey Hood, who was submitted  4 in this case, where he discusses your initial report  5 in this case. And we'll talk about that.  6         So, those are the first four that I've  7 marked. I did them in that order because they are  8 Tab 1, 2, 3, 4, and it would be completely confusing  9 to me if I had a different exhibit number.  10         So, now let's talk about some other  11 exhibits.  12         Let's mark this as 5, please.  13         (Hajnal Exhibit No. 5, set of  14 sources for additional variables,  15 was marked for identification.)  16 BY MR. DAVIS:  17         Q. Dr. Hajnal, along with your report,  18 counsel produced several attachments, things you had  19 developed or relied upon. So, I want to talk about  20 what these are. It is not as bad as it looks, by the  21 way, when you look at the stack.  22         Now that I've had the opportunity to talk</p>



<p style="text-align: right;">Page 57</p> <p>1 to you, if you could tell me what these are. So,  2 tell me what this is marked as Exhibit 5.  3 A. So, Exhibit No. 5 is a set of sources for  4 additional variables from the analysis, from my  5 analysis.  6 Q. Okay. Sources for different variables.  7 A. Correct.  8 Q. I think, as we go along, it will become  9 more clear what variables those are.  10 So, let's mark this as Exhibit 6, please.  11 (Hajnal Exhibit No. 6, data on  12 individual Alabama counties and a  13 series of variables from the  14 regressions, was marked for  15 identification.)  16 BY MR. DAVIS:  17 Q. Let me say, Dr. Hajnal, these may have  18 been presented to us in a particular order. I may  19 not be presenting them back to you in that order.  20 That's not on purpose. So, if it makes more sense to  21 talk about something else, certain things before  22 other things, just say so.</p>	<p style="text-align: right;">Page 59</p> <p>1 survey. It may have been adults. I can't tell you  2 for certain.  3 Q. 58 percent of the respondents to the  4 survey said they were protestants?  5 A. Correct.  6 Q. You're not certain now whether the survey  7 was of adult voters of --  8 A. I assume it is not voters. I am assuming  9 it is adults. So, I'd have to go back and look at  10 the specific universe.  11 Q. Okay. It may or may not be limited to  12 registered voters, for example.  13 A. I believe it is not limited to registered  14 voters.  15 MR. DAVIS: Let's mark this one as 7.  16 (Hajnal Exhibit No. 7, data on  17 voting age population and vote  18 totals for 2010 and 2014 for  19 Alabama counties, was marked for  20 identification.)  21 BY MR. DAVIS:  22 Q. And what do we have marked as Exhibit 7,</p>
<p style="text-align: right;">Page 58</p> <p>1 But tell me what the chart is that's  2 marked as Exhibit 6.  3 A. So, this appears to be data on individual  4 Alabama counties and a series of variables from the  5 regressions on, in this case, religion.  6 Q. I will also tell you that this one in  7 particular, I believe, included the same variables  8 for counties and other states as well. I didn't try  9 to print that out because it would have been many,  10 many thousands of pages. So, this is just  11 illustrative for you to explain to us what these are.  12 Okay. So, under Autauga County, you have  13 a number there under "Protestant" of .586849. What  14 does that number represent?  15 A. So, I believe that that is, of the  16 religious survey respondents that answered the  17 survey, 58 percent were protestant.  18 Q. So, there was a survey. 58 percent of  19 the people in Autauga County said they were  20 protestant?  21 A. Not in the entire county. So, I don't  22 know the methodology perfectly behind this particular</p>	<p style="text-align: right;">Page 60</p> <p>1 Dr. Hajnal?  2 A. So, here we have data on voting age  3 population and vote totals for 2010 and 2014 for the  4 same Alabama counties.  5 Q. Okay. So, Autauga County has a voting  6 age population, or had in 2010, a voting age  7 population of a little over 38,000.  8 A. Correct.  9 Q. A total vote turnout in 2010 was 17,982.  10 A. Correct.  11 Q. And then you have voting age population  12 in 2014 at chart -- okay, I see.  13 By the way, on 6, protestant or religious  14 references, what relevance does that have to your  15 analysis?  16 A. These are controlled variables that I  17 include in the regression analysis.  18 MR. DAVIS: Let's mark this as 8, please.  19 (Hajnal Exhibit No. 8, Alabama  20 Unemployment Rate According to  21 County, was marked for  22 identification.)</p>

<p style="text-align: right;">Page 61</p> <p>1 BY MR. DAVIS:</p> <p>2 Q. What is the document that I marked as</p> <p>3 Exhibit 8, Dr. Hajnal?</p> <p>4 A. This appears to be the unemployment rate</p> <p>5 by county.</p> <p>6 Q. Okay. And that's relevant because it is,</p> <p>7 again, one of the things that you --</p> <p>8 A. It is a control variable, yes.</p> <p>9 Q. What is your source?</p> <p>10 A. This would be census data.</p> <p>11 Q. Okay. Is that your source for -- the</p> <p>12 census data would be your source for religious survey</p> <p>13 too?</p> <p>14 A. I believe it's conducted by the Bureau of</p> <p>15 the Census, but there is probably a slight</p> <p>16 distinction there as to the -- it is not part of the</p> <p>17 actual census.</p> <p>18 Q. You picked up 5, Exhibit 5, and this</p> <p>19 lists sources for additional variables. This</p> <p>20 Exhibit 5 lists the sources for these charts that</p> <p>21 we're going through now. Correct?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 63</p> <p>1 A. They help us learn about the electoral</p> <p>2 circumstances in each state.</p> <p>3 Q. Would you repeat your answer, Dr. Hajnal,</p> <p>4 for me, please?</p> <p>5 A. Sure. They help tell us about the</p> <p>6 electoral circumstances in a state.</p> <p>7 Q. So, if there are open seats for senate in</p> <p>8 one state but not in another, what difference does</p> <p>9 that make?</p> <p>10 A. It's not clear it makes a huge difference</p> <p>11 one way or the other. I mean, I'm not sure we</p> <p>12 have -- so, these are conceivably relevant variables.</p> <p>13 I would have to sort of look at the particular --</p> <p>14 particulars of that.</p> <p>15 Q. That fact alone may not be incredibly</p> <p>16 useful, you're saying?</p> <p>17 A. It's not determinative.</p> <p>18 Q. Okay. More information would be helpful.</p> <p>19 A. Yes.</p> <p>20 MR. DAVIS: Let's mark this as</p> <p>21 Exhibit 10, please.</p> <p>22 (Hajnal Exhibit No. 10, Chart</p>
<p style="text-align: right;">Page 62</p> <p>1 MR. DAVIS: Let's mark this Exhibit 9,</p> <p>2 please.</p> <p>3 (Hajnal Exhibit No. 9, data on</p> <p>4 state level variables for all</p> <p>5 states, was marked for</p> <p>6 identification.)</p> <p>7 BY MR. DAVIS:</p> <p>8 Q. Dr. Hajnal, I believe -- you can correct</p> <p>9 me if I am wrong -- but I think the rows run across</p> <p>10 multiple pages just because of the way I was able to</p> <p>11 print these out.</p> <p>12 A. They do?</p> <p>13 Q. Or do they not?</p> <p>14 A. The rows do run across multiple pages.</p> <p>15 Q. Okay. So, what am I looking at?</p> <p>16 A. So, you are looking at data on state</p> <p>17 level variables for all states and things like: Was</p> <p>18 there a Republican or Democratic governor, senator?</p> <p>19 Was there an open-seat election for senator,</p> <p>20 governor? That sort of thing.</p> <p>21 Q. Okay. What do these things tell you</p> <p>22 about a state?</p>	<p style="text-align: right;">Page 64</p> <p>1 indicating strict ID by state for</p> <p>2 each individual election year --</p> <p>3 2010, 2012, 2014, 2016, was</p> <p>4 marked for identification.)</p> <p>5 THE WITNESS: And this is an indication</p> <p>6 of whether the state has a strict ID law or not in</p> <p>7 each individual year.</p> <p>8 BY MR. DAVIS:</p> <p>9 Q. For each state --</p> <p>10 A. It has data on whether there is strict ID</p> <p>11 in 2010, 2012, 2014, and 2016.</p> <p>12 Q. Okay. So, looking at Alabama, in 2010</p> <p>13 Alabama gets a zero because, in 2010, it did not have</p> <p>14 what you would call a strict voter identification</p> <p>15 law.</p> <p>16 A. Correct.</p> <p>17 Q. And that changed -- or is still a zero in</p> <p>18 2012.</p> <p>19 In 2014, you put a 1 because that's when</p> <p>20 Alabama's law went into effect. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you define it as a strict voter I.D.</p>

<p style="text-align: right;">Page 65</p> <p>1 law.</p> <p>2 A. Correct.</p> <p>3 Q. And you provide that for each state.</p> <p>4 A. Correct.</p> <p>5 Q. There are times in your report you say</p> <p>6 we're looking at 2012 versus 2016. You say, "Let's</p> <p>7 go ahead and look at a primary," and you compare 2010</p> <p>8 and 2014.</p> <p>9 A. Not the primary in this report.</p> <p>10 Q. But the elections in 2010 and 2014.</p> <p>11 A. Yes.</p> <p>12 Q. When you switch to 2010 and 2014, do you</p> <p>13 use the same group of states that you use when you</p> <p>14 are comparing 2012 and 2016?</p> <p>15 A. I believe that, well, certainly, Texas</p> <p>16 leaves the comparison group because Texas has a</p> <p>17 strict ID law in 2014. So, it is not the exact same</p> <p>18 comparison set.</p> <p>19 Q. Okay. So, when you go to different</p> <p>20 years, you may have to make adjustments based upon</p> <p>21 when a state's laws went into effect?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 67</p> <p>1 got 41.6 percent of the vote. Correct?</p> <p>2 A. That's what the data indicates.</p> <p>3 Q. In 2010, the Democratic candidate in the</p> <p>4 general election, the Alabama gubernatorial election,</p> <p>5 got 42.1 percent of the vote. Correct?</p> <p>6 A. That's what it indicates.</p> <p>7 Q. And how is this information useful to</p> <p>8 your analysis?</p> <p>9 A. So, this would be another -- it is useful</p> <p>10 in two ways. One, it's a controlled variable in the</p> <p>11 regression analysis, and this is also something you</p> <p>12 would look at to try and ascertain whether the South</p> <p>13 is a good match for Alabama.</p> <p>14 Q. If you know in Alabama that the</p> <p>15 Democratic candidate in the gubernatorial election</p> <p>16 for the past decade or so has been getting in the low</p> <p>17 40s and you have another state where the Democratic</p> <p>18 candidate for governor in the same time period is</p> <p>19 getting 70 percent of the vote, that tells you</p> <p>20 something about those two states, does it not?</p> <p>21 A. It tells you something about those two</p> <p>22 elections, yes, or those two -- and the candidates.</p>
<p style="text-align: right;">Page 66</p> <p>1 MR. DAVIS: Let's mark this as</p> <p>2 Exhibit 11, please.</p> <p>3 (Hajnal Exhibit No. 11, chart</p> <p>4 showing candidate share of</p> <p>5 gubernatorial and senate</p> <p>6 election, was marked for</p> <p>7 identification.)</p> <p>8 BY MR. DAVIS:</p> <p>9 Q. Tell me what this is that I've marked as</p> <p>10 Exhibit 11, Dr. Hajnal, please.</p> <p>11 A. So, here we have data on the candidate</p> <p>12 share in each gubernatorial election in each state,</p> <p>13 in each election year, as well as information on the</p> <p>14 vote, similar vote totals for senate elections</p> <p>15 whether a senate contest was uncontested or not.</p> <p>16 Q. We're looking at the first page in</p> <p>17 Alabama. What does candidate share gubernatorial.</p> <p>18 election mean?</p> <p>19 A. So, the share of the election won by the</p> <p>20 Democratic candidate.</p> <p>21 Q. Okay. So, in 2006, in the gubernatorial.</p> <p>22 general election in Alabama, the Democratic candidate</p>	<p style="text-align: right;">Page 68</p> <p>1 It doesn't necessarily, because individual elections</p> <p>2 are driven a lot by the candidates that are there,</p> <p>3 any incumbency. Those two states could actually be</p> <p>4 quite similar, but those particular elections are</p> <p>5 different.</p> <p>6 Q. I see. It could be something weird.</p> <p>7 By the way, do you know when Alabama</p> <p>8 first had a Republican governor, not counting</p> <p>9 Reconstruction, but in modern times?</p> <p>10 A. It would be -- I don't know for certain,</p> <p>11 so, maybe I'll hold off.</p> <p>12 Q. In Alabama, there was a very strange</p> <p>13 election in the Democratic primary for governor back</p> <p>14 in -- I guess this was early '90s -- late '80s, early</p> <p>15 '90s. And the two candidates had a big election</p> <p>16 contest afterwards, and to everyone's surprise a</p> <p>17 Republican got elected. Everybody was so disgusted</p> <p>18 at the time.</p> <p>19 So, something like that, it could be an</p> <p>20 unusual election in a particular state that upsets</p> <p>21 expected trends. Would you agree with that?</p> <p>22 A. That, as well as a particularly popular</p>



<p style="text-align: right;">Page 69</p> <p>1 incumbent candidate. Right.</p> <p>2 Q. Yes. You could have somebody come up who</p> <p>3 captures the imagination of voters and leads people,</p> <p>4 for at least a particular election, to abandon some</p> <p>5 of their traditional voting loyalties. Is that</p> <p>6 right?</p> <p>7 A. That is conceivable.</p> <p>8 MR. DAVIS: Let's do 12, please.</p> <p>9 (Hajnal Exhibit No. 12, data on</p> <p>10 state electoral laws for each</p> <p>11 state in each election year, was</p> <p>12 marked for identification.)</p> <p>13 BY MR. DAVIS:</p> <p>14 Q. All right. Dr. Hajnal, talk to me about</p> <p>15 the exhibit I've marked as No. 12, please.</p> <p>16 A. So, this displays data on state</p> <p>17 electoral laws for each state in each election year.</p> <p>18 It has data on things like the presence or absence of</p> <p>19 no-excuse absentee voting, vote by mail, same-day</p> <p>20 registration, early in-person state electoral laws.</p> <p>21 Q. Okay. And registration date. Obviously,</p> <p>22 there is not a single date on which you can register.</p>	<p style="text-align: right;">Page 71</p> <p>1 BY MR. DAVIS:</p> <p>2 Q. Okay. So, on the far right side of the</p> <p>3 page of Exhibit 13, you have some of the same data</p> <p>4 that we just looked at for Exhibit 12.</p> <p>5 A. Correct.</p> <p>6 Q. Looking at the first part of the data,</p> <p>7 the first column is the state, the second column is</p> <p>8 the year. In the third column, Alabama has a 1 there</p> <p>9 because Alabama has a Republican governor. Is that</p> <p>10 correct?</p> <p>11 A. You're talking about the third column,</p> <p>12 Republican governor. Yes.</p> <p>13 Q. In the next column, Alabama has a 1</p> <p>14 because it's a Republican senator.</p> <p>15 A. Correct.</p> <p>16 Q. Is it recorded different if a state has a</p> <p>17 Republican -- if one senator is Republican and one</p> <p>18 senator is Democrat?</p> <p>19 A. It is, I believe, for the -- I would have</p> <p>20 to go back and check on that.</p> <p>21 Q. Where would you go to check that?</p> <p>22 A. The original data source -- I would go to</p>
<p style="text-align: right;">Page 70</p> <p>1 What does this represent?</p> <p>2 A. The deadline by which you have to</p> <p>3 register.</p> <p>4 Q. Got it. Thank you.</p> <p>5 Let's get an explanation for the document</p> <p>6 I'll mark as Exhibit 13, please.</p> <p>7 (Hajnal Exhibit No. 13, chart</p> <p>8 showing data for 2016 on a series</p> <p>9 of variables related to state</p> <p>10 politics and state electoral</p> <p>11 laws, was marked for</p> <p>12 identification.)</p> <p>13 THE WITNESS: So, this has data for just</p> <p>14 2016 on a series of variables related to state</p> <p>15 politics and state electoral laws, including whether</p> <p>16 or not there is a Republican governor, a Republican</p> <p>17 senator, whether the senate and governor's elections</p> <p>18 are open-seat elections, the share of Democratic</p> <p>19 identifiers in the state, the margin of victory in</p> <p>20 the most recent presidential election, and some of</p> <p>21 the same electoral state laws related to voting.</p> <p>22</p>	<p style="text-align: right;">Page 72</p> <p>1 the source.</p> <p>2 Q. What was your source for that particular</p> <p>3 piece of information? And you refer to Exhibit 5</p> <p>4 there.</p> <p>5 A. So, the National Conference of State</p> <p>6 Legislatures. I believe I also checked with David</p> <p>7 Leip's Atlas of U.S. Elections. But -- yes.</p> <p>8 Q. So, you're not sure at this moment</p> <p>9 whether a state that has two Republican senators</p> <p>10 would get the same coding there as a state that had</p> <p>11 one Republican and one Democrat?</p> <p>12 A. I'm not sure, although I believe it would</p> <p>13 not.</p> <p>14 Q. And what does a zero indicate, such as</p> <p>15 for the state of California?</p> <p>16 A. So, I believe it indicates that not both</p> <p>17 senators are Republican.</p> <p>18 MR. DAVIS: Let's mark the next chart as</p> <p>19 Exhibit 14, if you would, please.</p> <p>20 (Hajnal Exhibit No. 14, chart</p> <p>21 showing data from 2010 and 2014</p> <p>22 for each state and a list of</p>

<p style="text-align: right;">Page 73</p> <p>1 variables, was marked for</p> <p>2 identification.)</p> <p>3 THE WITNESS: Here we have data from 2010</p> <p>4 and 2014 for each state and a list of variables.</p> <p>5 It's again pertaining to state electoral</p> <p>6 circumstances and outcomes, and it appears to be the</p> <p>7 similar identical set to the data from 2016.</p> <p>8 BY MR. DAVIS:</p> <p>9 Q. It looks like some of the similar data.</p> <p>10 It may have just been in a different form?</p> <p>11 A. Right.</p> <p>12 Q. Tell me about this column just past the</p> <p>13 middle of the page, D-E-M-P-M-E-W 2014.</p> <p>14 A. That is data on the share of</p> <p>15 congressional -- Cooperative Congressional Election</p> <p>16 Study survey respondents who identified as Democratic</p> <p>17 in 2014.</p> <p>18 Q. And the next column?</p> <p>19 A. The next column is the margin in the</p> <p>20 presidential election in 2014 in each state.</p> <p>21 Q. It's the margin of what?</p> <p>22 A. The margin in the presidential election</p>	<p style="text-align: right;">Page 75</p> <p>1 A. We are still on Exhibit 14.</p> <p>2 Q. I'm sorry, 13. I beg your pardon.</p> <p>3 That also has a column, DEMPNEW. Right?</p> <p>4 A. Yes.</p> <p>5 Q. And that's for 2016.</p> <p>6 A. Correct.</p> <p>7 Q. Is that the same survey?</p> <p>8 A. Yes.</p> <p>9 Q. Just done in different years.</p> <p>10 A. Correct.</p> <p>11 Q. So, it would have been designed the same</p> <p>12 way probably?</p> <p>13 A. Yes. Not identically, but, yes, roughly</p> <p>14 speaking.</p> <p>15 Q. So, in 2014 there was a survey, and</p> <p>16 38.35 percent of the respondents of that survey of</p> <p>17 Alabamians said they were Democrats. And in 2016,</p> <p>18 there was a similar survey, and 34 percent Alabamians</p> <p>19 identified as Democrat. Is that right?</p> <p>20 A. Those are what the numbers indicate, yes.</p> <p>21 Q. We're losing Democrats.</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 74</p> <p>1 in -- sorry, I misspoke. The margin in the most</p> <p>2 recent presidential election. So, that would be from</p> <p>3 2012.</p> <p>4 Q. Okay. So, 22 percent -- you say the</p> <p>5 Democratic candidate for president in Alabama got</p> <p>6 around 22 percent in 2012. Is that what that number</p> <p>7 indicates?</p> <p>8 A. Yes. And I believe that this is based</p> <p>9 on -- it could be based on -- I would have to go back</p> <p>10 and check my data whether that's official electoral</p> <p>11 outcomes or whether it's from the survey data.</p> <p>12 Q. Okay. Why would you use the survey data</p> <p>13 if you had official state returns?</p> <p>14 A. It might have been easier to do so. It</p> <p>15 might have been a practical consideration.</p> <p>16 Q. And going back to the column just before</p> <p>17 that, if I am reading this right, in 2014, around</p> <p>18 35 percent of Alabamians identified as a Democrat?</p> <p>19 A. This could be as a share of two-party</p> <p>20 identifiers. I would have to go back and check that</p> <p>21 as well.</p> <p>22 Q. And if you look back at Exhibit 14 --</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Quickly.</p> <p>2 A. Relatively quickly, yes.</p> <p>3 Q. Just a couple more of these.</p> <p>4 This one we'll mark as Exhibit 15,</p> <p>5 please.</p> <p>6 (Hajnal Exhibit No. 15, census</p> <p>7 data for the State of Alabama,</p> <p>8 was marked for identification.)</p> <p>9 BY MR. DAVIS:</p> <p>10 Q. Tell me what this is that I've marked as</p> <p>11 Exhibit 15, please, Dr. Hajnal.</p> <p>12 A. Okay. So, here we have data on Alabama</p> <p>13 counties for -- this is essentially census data, and</p> <p>14 we have data on the total population, the voting age</p> <p>15 population in 2016, the total number of votes in</p> <p>16 2012. And then later on we have a series of measured</p> <p>17 census data on gender, age, and race.</p> <p>18 Q. This is another one because the</p> <p>19 spreadsheet is bigger and can fit on a page and still</p> <p>20 be legible.</p> <p>21 The first two pages include the first</p> <p>22 seven or eight columns. Right?</p>

<p style="text-align: right;">Page 77</p> <p>1 A. Yes.</p> <p>2 Q. And then the next two pages include</p> <p>3 additional columns, and then the last two pages</p> <p>4 include additional columns.</p> <p>5 A. Yes.</p> <p>6 MR. DAVIS: We'll mark this as</p> <p>7 Exhibit 16, please, and this will be the last of your</p> <p>8 charts.</p> <p>9 (Hajnal Exhibit No. 16, chart</p> <p>10 showing urbanicity and density in</p> <p>11 population in Alabama counties,</p> <p>12 was marked for identification.)</p> <p>13 THE WITNESS: And this has data on</p> <p>14 population and urbanicity in population in Alabama</p> <p>15 counties, density of the population, area of the</p> <p>16 population in Alabama counties.</p> <p>17 BY MR. DAVIS:</p> <p>18 Q. Okay. So, this is all the data that you</p> <p>19 gathered about different counties within Alabama and</p> <p>20 other states, these various charts that we have been</p> <p>21 looking at. Is that right?</p> <p>22 A. There are -- I have personally gathered</p>	<p style="text-align: right;">Page 79</p> <p>1 So, identify and confirm a set of</p> <p>2 matching states that are different from Alabama on</p> <p>3 the ID law variable, then use that data to analyze</p> <p>4 changes in voter turnout in Alabama counties and</p> <p>5 compare those to changes in turnout in other states</p> <p>6 and look at the racial differentials and changes in</p> <p>7 county turnout in Alabama.</p> <p>8 And then finally undertake a series of</p> <p>9 progression analyses that look -- examine change in</p> <p>10 turnout between 2012 and 2016 as well as 2010 and</p> <p>11 2014 to see if the decline in turnout in racially</p> <p>12 diverse counties is more disproportionate in Alabama</p> <p>13 than it is in other counties in other states,</p> <p>14 controlling for an array of variables that impact</p> <p>15 turnout.</p> <p>16 Q. So, you can look at this type of</p> <p>17 information and see, for example, that Alabama and</p> <p>18 Mississippi have some things in common that Alabama</p> <p>19 and Massachusetts might not have in common.</p> <p>20 A. Correct.</p> <p>21 Q. That includes both socio-economic issues</p> <p>22 like poverty levels. It also includes the relative</p>
<p style="text-align: right;">Page 78</p> <p>1 more data, but this is the data for the analyses, as</p> <p>2 best as I can recollect.</p> <p>3 Q. The data that you used in this case?</p> <p>4 A. Correct.</p> <p>5 Q. What did you do with it?</p> <p>6 A. Okay. So, going back to the earlier</p> <p>7 analysis, so, one thing is identifying which states</p> <p>8 are southern states and which states are not,</p> <p>9 identifying which states are strict ID and are not.</p> <p>10 So, this data helps -- that creates a set of</p> <p>11 non-strict southern states to which I can compare</p> <p>12 Alabama.</p> <p>13 It also identifies South Carolina. I can</p> <p>14 identify counties in Alabama to South Carolina, and</p> <p>15 then I can look at the states in the South on a</p> <p>16 number of these different measures and look to see</p> <p>17 whether they are similar to Alabama to see if they</p> <p>18 are, in fact, a reasonable match. I wouldn't claim</p> <p>19 that they are identical, but a reasonable match.</p> <p>20 Look -- and again, not just primarily at</p> <p>21 one point in time, but look at changes over time and</p> <p>22 these variables as well at one point in time.</p>	<p style="text-align: right;">Page 80</p> <p>1 success of local parties.</p> <p>2 A. Correct.</p> <p>3 Q. Would you look at page 41 of your report.</p> <p>4 That is behind Tab 1 of your notebook.</p> <p>5 A. Okay.</p> <p>6 Q. What is this?</p> <p>7 A. So, this is a regression where we're</p> <p>8 looking to predict change in county turnout between</p> <p>9 2012 and 2016, and we're looking -- so, the key</p> <p>10 variable to understand is the effect of the racial</p> <p>11 demographics of the county. So, the question is:</p> <p>12 Does turnout decline more in counties that have a</p> <p>13 higher share of racial and ethnic minorities? And</p> <p>14 critically, does that relationship between racial</p> <p>15 demographics and county turnout, is it significantly</p> <p>16 more pronounced in Alabama than it is in other</p> <p>17 states, net, the range of controls that we have on</p> <p>18 the table?</p> <p>19 Q. Okay. Where does this number come from?</p> <p>20 Let's look down about the 6th or 7th row. There is a</p> <p>21 row that says "Majority Party and Senate."</p> <p>22 A. Okay.</p>

<p style="text-align: right;">Page 81</p> <p>1 Q. And over to the right, I see the numbers 2 .004, and in parentheses, .006. What do those 3 numbers mean?</p> <p>4 A. It means that change in majority party in 5 the senate did not have a significant impact on 6 turnout in -- did not have an impact on changes in 7 turnout in states in the United States, controlling 8 for other factors.</p> <p>9 Q. And "Governor's Party," a couple of rows 10 below that, if I am understanding you correctly, 11 seems to have an even less effect on turnout.</p> <p>12 A. So, change in governor's party had no 13 significant effect. We don't know whether it had 14 less or not. Neither one -- since neither 15 relationship is significant, it means that those 16 relationships could very well be meaningless or 17 random.</p> <p>18 Q. What did you do with the number .004, 19 going back to "Majority Party in Senate"?</p> <p>20 A. I don't quite understand --</p> <p>21 Q. Did you do anything to it? Like do you 22 multiply some other number by .004 if there was a</p>	<p style="text-align: right;">Page 83</p> <p>1 that's essentially a single variable, a dummy 2 variable indicating one for, say in your case, 3 Arkansas.</p> <p>4 If Arkansas is different in a unique way 5 from other states, at that point in time, that 6 essentially controls for that original difference.</p> <p>7 Q. You would agree with me, would you not, 8 that, if you were comparing the differences in 9 turnout within Arkansas between '12 and '16 to see 10 how that stacks up against the difference in turnout 11 between '12 and '16 in Alabama, if Arkansas was not 12 only electing a president in those years but was 13 also, hypothetically, electing a governor in those 14 years, that could affect turnout in Arkansas.</p> <p>15 A. Hypothetically, yes.</p> <p>16 Q. If that had happened.</p> <p>17 So, then you don't know if the change in 18 turnout in Arkansas was a result of some photo ID law 19 or whether it was the result of the presence of a 20 gubernatorial election.</p> <p>21 A. I would absolutely disagree with that in 22 the sense that we are controlling for whether</p>
<p style="text-align: right;">Page 82</p> <p>1 change in the senate, or is that just an indication 2 of the effect of these different factors?</p> <p>3 A. That is an indication of the estimated 4 effect of that variable change.</p> <p>5 Q. Let's say you're comparing Alabama and 6 South Carolina -- bad example.</p> <p>7 Let's say you are comparing Alabama and 8 Arkansas, and hypothetically Arkansas has two 9 Democratic senators whereas Alabama has two 10 Republican senators. Do you adjust Arkansas' turnout 11 numbers in any way before the comparison based on 12 that difference?</p> <p>13 A. Yes and no.</p> <p>14 So, yes, we are looking at changes in 15 turnout, right, so, we are comparing from the first 16 to the second. So, we are essentially adjusting for 17 the first number, and we're looking at change from 18 the first number.</p> <p>19 So, yes and yes in some ways. Yes in the 20 second sense of, in addition to these variables in 21 alternate analyses, which I detail in the report, I 22 include state fixed effects. And what that does,</p>	<p style="text-align: right;">Page 84</p> <p>1 Arkansas did shift from an election that didn't have 2 to one that did have a gubernatorial election. We 3 are controlling for change on each of these variables 4 that the literature sort of identified as potentially 5 important for turnout.</p> <p>6 Q. And you control for change how in that 7 instance?</p> <p>8 A. So, for example, let's go back to the 9 "Majority Party in the Senate." So, if the senate 10 shifts from Democratic to Republican, and here we 11 have a positive equals a shift to the Republican. 12 So, if it shifts to the Republican party, that would 13 be counted as a 1. If it doesn't shift, it would be 14 coded as a zero. If it shifts toward the Democratic, 15 it would be coded as a -1.</p> <p>16 Q. And if you coded it as a -1, does that 17 mean it's no longer used as a comparison or it is 18 just a number in some way?</p> <p>19 A. No. It's used as a comparison. And the 20 question is: Does shifting to a Republican majority 21 lead to a different effect than shifting to a 22 Democratic majority?</p>

<p style="text-align: right;">Page 85</p> <p>1 Q. Where did the .004 number come from for</p> <p>2 "Majority Party in the Senate"?</p> <p>3 A. So, I run in OLS regression, and that</p> <p>4 regression estimates the relationship between each of</p> <p>5 these independent variables, including the majority</p> <p>6 party, and change in turnout across all 3,000-plus</p> <p>7 counties. And the .004 is the estimated size of the</p> <p>8 effect, and the number in parentheses behind it is</p> <p>9 the error, essentially, in that estimated effect.</p> <p>10 And in this particular case, because the</p> <p>11 error is -- the standard error is larger than the</p> <p>12 estimate, we can conclude that this is not a</p> <p>13 significant relationship, and there is no -- there is</p> <p>14 nothing here indicating that change in the majority</p> <p>15 party in the senate significantly affects turnout net</p> <p>16 these other factors.</p> <p>17 Q. What process did you go through to reach</p> <p>18 the .004 estimate?</p> <p>19 A. I'm not sure I understand --</p> <p>20 Q. You did an analysis to calculate the</p> <p>21 effect the majority party in the senate has on</p> <p>22 turnout. Correct?</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Who develops that software, do you know?</p> <p>2 A. I do not know. It's a standard tool in</p> <p>3 the field.</p> <p>4 Q. Is it used in statistics generally or is</p> <p>5 this something designed for use with voter turnout</p> <p>6 analyses?</p> <p>7 A. It's both. I've seen it used for voter</p> <p>8 turnout and voter polarization as well as for</p> <p>9 statistical analysis generally.</p> <p>10 Q. Let's talk about South Carolina.</p> <p>11 After you ran some analyses that included</p> <p>12 lots of different states, you say in your report that</p> <p>13 South Carolina is a good comparison to Alabama for a</p> <p>14 lot of reasons. Right?</p> <p>15 A. Correct.</p> <p>16 Q. How are those states similar?</p> <p>17 A. So, they are similar in terms of racial</p> <p>18 demographics, so, the share of the African-American</p> <p>19 population. They are similar in terms of partisan</p> <p>20 makeup. They are similar in terms of -- so, partisan</p> <p>21 makeup of the population, partisan makeup of the</p> <p>22 legislature and the governor. They are similar in</p>
<p style="text-align: right;">Page 86</p> <p>1 A. So, I took the data that I provided and</p> <p>2 ran a regression in a software package called STATA</p> <p>3 and produced a regression table, and these are the</p> <p>4 numbers from that table.</p> <p>5 Q. You don't have to get that elementary</p> <p>6 with me. That's my fault, not yours.</p> <p>7 So, to run the regression analysis, what</p> <p>8 steps are involved in doing that?</p> <p>9 A. So, number one is collecting all the</p> <p>10 data, coding all the cases, as we've gone through to</p> <p>11 some extent here, typing in a command, "Regression,"</p> <p>12 which is an ordinary least squares regression,</p> <p>13 indicating what the dependent variable is, which is</p> <p>14 change in county turnout, and then indicating what</p> <p>15 the independent variables are, and hitting "go" or</p> <p>16 "send" or "run."</p> <p>17 Q. And the software you used is what, now?</p> <p>18 A. STATA, S-T-A-T-A.</p> <p>19 MR. SMITH: All capitals or not?</p> <p>20 THE WITNESS: Yes, I believe all</p> <p>21 capitals.</p> <p>22 BY MR. DAVIS:</p>	<p style="text-align: right;">Page 88</p> <p>1 terms of state electoral laws, and they are also</p> <p>2 similar in terms of changes on most if not all of</p> <p>3 those variables.</p> <p>4 Q. But the difference, you say, is that</p> <p>5 South Carolina did not have a strict voter</p> <p>6 identification law in 2012 and 2016. Alabama shifted</p> <p>7 between those years.</p> <p>8 A. Right. The difference is Alabama had a</p> <p>9 new law related to voter I.D., and you can define it</p> <p>10 as strict or otherwise. And South Carolina did not</p> <p>11 have a -- we can call it strict ID law.</p> <p>12 Q. It is your analysis that, if turnout in</p> <p>13 those years, if African-American turnout dropped more</p> <p>14 in Alabama than it did in South Carolina, then it</p> <p>15 must be the result of the photo identification law?</p> <p>16 A. "Must" is probably a little bit too</p> <p>17 strong. I am confident, with a high -- there is a</p> <p>18 high degree of confidence that much of that</p> <p>19 relationship is driven by the treatment, which is a</p> <p>20 new ID law in Alabama. And given that there are no</p> <p>21 other variables that I could identify that could</p> <p>22 explain that change, my conclusion is that it's</p>



<p style="text-align: right;">Page 89</p> <p>1 driven -- the difference is driven by the</p> <p>2 implementation of a strict ID law in Alabama.</p> <p>3 Q. South Carolina did have a voter</p> <p>4 identification law, did it not?</p> <p>5 A. It did.</p> <p>6 Q. But you would not define it as a strict</p> <p>7 voter identification law?</p> <p>8 A. The NCSL, which I used, did not define it</p> <p>9 as a strict voter ID.</p> <p>10 Q. Neither you nor the NCSL?</p> <p>11 A. And let me sort of add there is, in South</p> <p>12 Carolina, a change in law during this time period or</p> <p>13 there is an implementation of the law in South</p> <p>14 Carolina. So, if that law that was imposed in</p> <p>15 Alabama, which according to the NCSL coding was not</p> <p>16 strict, but if it had an effect, that would actually</p> <p>17 mean that the difference between Alabama and South</p> <p>18 Carolina is the understating -- the effect of the law</p> <p>19 would be understated in Alabama.</p> <p>20 Q. Do you know -- South Carolina's law is</p> <p>21 labeled as non-strict because they have -- I think</p> <p>22 they call it the reasonable impediment provision.</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. I'm not trying to pick on you here, but</p> <p>2 I'm making a point.</p> <p>3 Do you know who Joe Reed is?</p> <p>4 A. I do not.</p> <p>5 Q. Nancy Worley?</p> <p>6 A. No.</p> <p>7 Q. Paul Hubbard?</p> <p>8 A. No.</p> <p>9 Q. The Alabama Education Association, are</p> <p>10 you familiar with that organization at all?</p> <p>11 A. I'm not.</p> <p>12 Q. How would you describe the fate of the</p> <p>13 Democratic Party in Alabama since 2010?</p> <p>14 A. I would look at the variables that I have</p> <p>15 here and I would see that the share of Democrats in</p> <p>16 the state has declined over this time period. And I</p> <p>17 would also look at the offices that are held or not</p> <p>18 held by Democrats and see that all offices at this</p> <p>19 level are held by Republicans and that there has</p> <p>20 been -- I would also look at competition for these</p> <p>21 offices, so, a drop in even contesting elections at</p> <p>22 the state level. So, all those would indicate drops</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Correct.</p> <p>2 Q. Do you know how many people used it in</p> <p>3 South Carolina?</p> <p>4 A. I do not.</p> <p>5 Q. How does the competitiveness of the</p> <p>6 Democratic Party in Alabama compare to the</p> <p>7 competitiveness of the Democratic Party in other</p> <p>8 southern states?</p> <p>9 A. It is not identical. So, there is no</p> <p>10 claim that it's identical. Again, the key variable</p> <p>11 here, more than anything else, is the change in</p> <p>12 competitiveness. So, as you noted, Alabama is</p> <p>13 becoming less Democratic over time.</p> <p>14 The other comparable southern states are</p> <p>15 also becoming less Democratic over time. So, they</p> <p>16 are similar on that measure.</p> <p>17 Q. They are similar, but the degrees vary,</p> <p>18 do they not?</p> <p>19 A. I don't know if there is a statistically</p> <p>20 significant difference between the change in</p> <p>21 Democratic share in Alabama and the South. I would</p> <p>22 suspect not, but I haven't done that test.</p>	<p style="text-align: right;">Page 92</p> <p>1 in Alabama's Democratic party support.</p> <p>2 Q. But that type of data can't give you the</p> <p>3 whole picture, can it, of what's going on in and</p> <p>4 around the state?</p> <p>5 A. I think I have included the variables</p> <p>6 that we think drive turnout. So, it is conceivable</p> <p>7 that somebody can come up with another measure that</p> <p>8 they think is relevant. Without any data indicating</p> <p>9 that that is a factor that drives turnout, I would be</p> <p>10 skeptical.</p> <p>11 Q. Do you think that, if the leadership of a</p> <p>12 political party within a state was essentially at war</p> <p>13 with each other and they couldn't decide who was in</p> <p>14 charge, could that affect that party's ability to win</p> <p>15 elections?</p> <p>16 A. I think it would affect the party's</p> <p>17 ability to win elections, and it would be reflected</p> <p>18 in the electoral outcomes which we were controlling</p> <p>19 for.</p> <p>20 Q. If they were unable to field candidates</p> <p>21 for state offices, would that be reflected in the</p> <p>22 data that you gathered?</p>

<p style="text-align: right;">Page 93</p> <p>1 A. Yes. If there is an uncontested senate 2 or gubernatorial election, that would be reflected in 3 the data.</p> <p>4 Q. But your data would be the same if these 5 Democrats were losing by 5 or 10 percent or if they 6 were losing by 15 or 20 percent, or are you gathering 7 that data, too, the margins?</p> <p>8 A. I'm gathering that data as well.</p> <p>9 Q. What about differences in spending the 10 voter turnout?</p> <p>11 A. Well, I have spending data here, so, 12 spending data is incorporated as well.</p> <p>13 Q. What about other nongovernmental entities 14 that -- what spending are you gathering on voter 15 turnout?</p> <p>16 A. So, it is total spending in the state.</p> <p>17 Q. By whom?</p> <p>18 A. By all sides.</p> <p>19 Q. Who is reporting that?</p> <p>20 A. The FEC is reporting that.</p> <p>21 Q. If South Carolina was electing state 22 legislators in 2016 but Alabama was not, then how can</p>	<p style="text-align: right;">Page 95</p> <p>1 A. As in any hypothetical situation, there 2 are lots of reasons why voters do not vote, yes.</p> <p>3 Q. But in South Carolina, a similarly 4 situated voter who is ho-hum about the presidential 5 race might be excited about an election for a state 6 legislator and get out and vote, and while they're 7 there, go ahead and register to vote in the 8 presidential election.</p> <p>9 A. Again, I know of no analysis that has 10 shown that the presence or competition at the state 11 legislative level substantially affects turnout in 12 presidential elections.</p> <p>13 Q. Okay. And that's true no matter how 14 competitive or uncompetitive the presidential race 15 is?</p> <p>16 A. Again, since there's no data showing it 17 exists, I don't know what the conceivable parameters 18 of a test -- you are suggesting a hypothetical -- a 19 test hasn't essentially shown a relationship. So, I 20 don't know if, under some extreme circumstances, 21 there is not a relationship.</p> <p>22 Q. Okay. So, there is no test or data for</p>
<p style="text-align: right;">Page 94</p> <p>1 you say whether there were differences -- whether 2 differences in turnout are a result of the voter 3 identification law or the presence or absence of 4 these state legislative races?</p> <p>5 A. I would say we have no data whatsoever 6 indicating that the partisan shift of state 7 legislators is related to changes in voter turnout. 8 So, I wouldn't consider that a factor to control 9 for -- a necessary factor to control for.</p> <p>10 Q. Now, wait a minute. All right. An 11 African-American voter in Alabama getting ready for 12 the 2016 presidential election, let's say that person 13 is less enthusiastic about Hillary Clinton's 14 candidacy than they were about Barack Obama's 15 candidacy. How competitive would you say that the 16 presidential races have been in Alabama in recent 17 elections?</p> <p>18 A. Noncompetitive.</p> <p>19 Q. So, that voter, there might be a lot of 20 reasons why that voter can say, "I really don't want 21 to bother to vote in the presidential election." 22 Would you agree with that?</p>	<p style="text-align: right;">Page 96</p> <p>1 you to rely on in determining whether the presence of 2 state legislative races can affect turnout in 3 presidential years.</p> <p>4 A. We know that other factors drive turnout. 5 We don't know that state legislative elections 6 significantly drive turnout, in particular the 7 partisanship of those state legislative elections.</p> <p>8 We haven't talked about the 9 competitiveness, and again, presumably, the 10 competitiveness of those would be correlated with the 11 competitiveness of other elections in the state.</p> <p>12 Q. Although the tests have been run, would 13 you expect, if the state was electing -- was not only 14 voting for president, was also electing the state 15 legislature, that that would affect turnout?</p> <p>16 MR. SMITH: Objection to form.</p> <p>17 THE WITNESS: Again, I don't know. I 18 would probably not expect it, but that analysis, to 19 my knowledge, hasn't been done.</p> <p>20 BY MR. DAVIS:</p> <p>21 Q. Even if everybody knew who was going to 22 win the presidency in Alabama, there was no surprise</p>

<p style="text-align: right;">Page 97</p> <p>1 there, not by the voters, not by the media, not by</p> <p>2 the public, not by the candidates, you don't think</p> <p>3 that, if we added state legislative races to Alabama,</p> <p>4 if we could do that, that that would affect turnout?</p> <p>5 A. It is conceivable.</p> <p>6 Q. Do you have any way of measuring whether</p> <p>7 Democratic voters in Alabama felt the same about</p> <p>8 Hillary Clinton's campaign as Democratic voters in</p> <p>9 South Carolina felt about Hillary Clinton's campaign?</p> <p>10 A. We can look at the extent to which they</p> <p>11 voted for her as a measure.</p> <p>12 Q. What effect, if any, do you think the Tim</p> <p>13 Scott election had on voter turnout in the senate --</p> <p>14 in South Carolina, when Tim Scott ran for and was</p> <p>15 elected as an African-American Republican senator in</p> <p>16 South Carolina?</p> <p>17 A. I don't know what the effect was. It's</p> <p>18 hard to analyze a single case to determine -- again,</p> <p>19 that's why I would do all these comparisons.</p> <p>20 MR. DAVIS: I apologize. I want to mark</p> <p>21 a document as an exhibit, and I only have two copies.</p> <p>22 Do you want to pause and make a copy or can you all</p>	<p style="text-align: right;">Page 99</p> <p>1 races for president and U.S. Senate.</p> <p>2 You see Hillary Clinton got 40.67 percent</p> <p>3 of the vote and Donald Trump a 54.94 percent.</p> <p>4 Am I reading that correctly?</p> <p>5 A. That's my reading of the table as well.</p> <p>6 Q. When you look at the votes for senator,</p> <p>7 Tim Scott, the Republican, received 60.57 percent of</p> <p>8 the vote, and Thomas Dixon, the Democrat, received</p> <p>9 34.37 percent of the vote. Am I reading that</p> <p>10 correctly?</p> <p>11 A. Correct, yes.</p> <p>12 Q. According to the South Carolina website.</p> <p>13 So, judging from this, who would you say</p> <p>14 got more support in South Carolina, at least more</p> <p>15 electoral support, Tim Scott, the Republican for</p> <p>16 senate, or Donald Trump, the Republican for</p> <p>17 president?</p> <p>18 A. Almost certainly Tim Scott. Although, if</p> <p>19 you're saying who got more support, you'll have to</p> <p>20 adjust for turnout figures, and turnout was lower in</p> <p>21 the U.S. Senate marginally, but even with that</p> <p>22 proviso, Tim Scott got more support than Donald</p>
<p style="text-align: right;">Page 98</p> <p>1 look on --</p> <p>2 MR. SMITH: Do you want to take a break,</p> <p>3 and I'll make a copy.</p> <p>4 MR. DAVIS: Sure. Do you mind? I'm</p> <p>5 sorry to ask this of you.</p> <p>6 MR. SMITH: That's okay.</p> <p>7 MR. DAVIS: Is this a good time for a</p> <p>8 break?</p> <p>9 MR. SMITH: It looks like a ten-minute</p> <p>10 break, and the next break will be lunch.</p> <p>11 (Recess taken.)</p> <p>12 (Hajnal Exhibit No. 17, South</p> <p>13 Carolina election results for</p> <p>14 Election Year 2016, was</p> <p>15 marked for identification.)</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. Dr. Hajnal, we have marked as Exhibit 17</p> <p>18 a printout from South Carolina's website where they</p> <p>19 show the election results from the 2016 election. I</p> <p>20 represent to you this is the first page of that</p> <p>21 website, so, it's the first few offices, including</p> <p>22 what you see on the first page, the turnout and the</p>	<p style="text-align: right;">Page 100</p> <p>1 Trump.</p> <p>2 Q. It was a little lower.</p> <p>3 A. Yes, pretty close.</p> <p>4 Q. Tim Scott is an African-American</p> <p>5 Republican who was elected senator, and Thomas Dixon,</p> <p>6 his opponent, was also African-American.</p> <p>7 Do you think that a race between two</p> <p>8 African-Americans for U.S. Senate in South Carolina</p> <p>9 could affect an increased turnout in that state?</p> <p>10 A. Well, it's conceivable, although we have</p> <p>11 a series of studies of the effect of having a</p> <p>12 co-ethnic in office, and they are mixed in their</p> <p>13 results.</p> <p>14 There's some -- also some mixed results</p> <p>15 in having co-ethnics on the ballot.</p> <p>16 In this case, this is pure conjecture on</p> <p>17 my part at this point, but you have a clearly</p> <p>18 noncompetitive election, and it is clear that a</p> <p>19 Republican was going to win. And so, I don't know --</p> <p>20 Q. Which election are you talking about?</p> <p>21 A. The Tim Scott election.</p> <p>22 Q. Okay.</p>



<p style="text-align: right;">Page 101</p> <p>1 A. So, it is clear who is going to win in</p> <p>2 both elections in South Carolina before the contest</p> <p>3 begins.</p> <p>4 So, given that in both cases it's pretty</p> <p>5 clear that a Republican is going to win, I don't know</p> <p>6 if the presence of an African-American, Tim Scott, on</p> <p>7 the ballot in particular is going to change the</p> <p>8 turnout of African-Americans.</p> <p>9 Q. Would you agree, looking at the raw vote</p> <p>10 totals, if you look at Hillary Clinton's, Donald</p> <p>11 Trump's, Thomas Dixon's and Tim Scott, would you</p> <p>12 agree that it appears that some people who voted for</p> <p>13 Hillary Clinton must have also voted for Tim Scott,</p> <p>14 the Republican, for senate?</p> <p>15 A. Yes.</p> <p>16 Q. Can we surmise that some of those were</p> <p>17 African-American voters who voted for Hillary Clinton</p> <p>18 for president and Tim Scott for senate?</p> <p>19 A. We cannot, based on this data.</p> <p>20 Q. Do you recall, in the overall population,</p> <p>21 what percentage of South Carolina citizens are</p> <p>22 African-American?</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. Take me to that portion of your report.</p> <p>2 A. Okay. So, that analysis of South</p> <p>3 Carolina begins on page 21, I believe, where we</p> <p>4 talked about the similarities between South Carolina</p> <p>5 and Alabama. And then the results for the first test</p> <p>6 are on page 22. So, yes.</p> <p>7 Q. So, in Alabama, between those two</p> <p>8 elections, the turnout in majority-minority counties</p> <p>9 in Alabama dropped 4.9 percentage points, whereas the</p> <p>10 turnout in South Carolina's majority-minority</p> <p>11 counties dropped only 2.5 percentage points.</p> <p>12 A. Correct.</p> <p>13 Q. And you say that the reason that</p> <p>14 Alabama's turnout dropped more is because of the</p> <p>15 photo ID law.</p> <p>16 A. That is the inference, yes.</p> <p>17 Q. In fact, you had a pretty historic</p> <p>18 election with an African-American running as a</p> <p>19 Republican as a viable candidate for a southern</p> <p>20 state. That's not relevant?</p> <p>21 A. I have not looked at the vote exit poll</p> <p>22 data specifically in South Carolina, but I do know</p>
<p style="text-align: right;">Page 102</p> <p>1 A. I don't have the citizen number offhand,</p> <p>2 but I'd say roughly 20 percent is in the ballpark.</p> <p>3 Q. That wasn't a memory test.</p> <p>4 Is that on one of your charts?</p> <p>5 A. We can probably find that if we dig</p> <p>6 around.</p> <p>7 Q. Let's not do that now. Over lunch, I</p> <p>8 might find it.</p> <p>9 A. Okay.</p> <p>10 Q. We can make better use of our time.</p> <p>11 Okay. Where in your report do you show</p> <p>12 the difference between turnout in Alabama and turnout</p> <p>13 in South Carolina?</p> <p>14 A. It would be in the tables. I didn't</p> <p>15 report the results -- oh, sorry. You're talking</p> <p>16 about the difference-in-difference test between</p> <p>17 Alabama and South Carolina? Is that what you're</p> <p>18 doing?</p> <p>19 Q. Yes.</p> <p>20 A. So, it is not reporting actual turnout in</p> <p>21 a given election, it is reporting changes in turnout</p> <p>22 from one election to the next.</p>	<p style="text-align: right;">Page 104</p> <p>1 that the overwhelming majority of African-Americans</p> <p>2 don't support Republicans, and they typically don't</p> <p>3 support African-American Republican candidates. So,</p> <p>4 I don't see how the presence of a successful</p> <p>5 Republican African-American candidate would motivate</p> <p>6 African-Americans. I'm not saying it's not</p> <p>7 inconceivable.</p> <p>8 Q. And if Alabama's Democratic party has</p> <p>9 just all but collapsed since 2010, dysfunctional</p> <p>10 leadership, not able to build candidates, you are</p> <p>11 saying all of that is gathered.</p> <p>12 A. What I'm saying is Alabama is</p> <p>13 declining -- so, on the measurables that I have that</p> <p>14 I have looked at, the declines in Alabama are similar</p> <p>15 to the declines in South Carolina. So, it could be</p> <p>16 that, on some other metric that we don't know impact</p> <p>17 turnout or not, that Alabama looks different.</p> <p>18 But from what I'm able to look at and the</p> <p>19 key variables that we think drive turnout, I don't</p> <p>20 see substantially greater changes in South Carolina</p> <p>21 than in Alabama.</p> <p>22 Q. If the executive director of the state</p>

<p style="text-align: right;">Page 105</p> <p>1 Democratic party expressed theories about why turnout</p> <p>2 is what it is in Alabama, would that person be a</p> <p>3 pretty reliable source, in your view?</p> <p>4 A. Not really, no.</p> <p>5 Q. Is there any reason why a voter</p> <p>6 identification law would increase turnout for white</p> <p>7 voters that you can think of?</p> <p>8 A. Yes. Conceivably it could energize white</p> <p>9 voters. They could feel emboldened.</p> <p>10 Q. Do you think that likely?</p> <p>11 A. None of the tests I have conducted can</p> <p>12 directly measure that.</p> <p>13 Q. If African-American voters in Alabama</p> <p>14 were being told by certain people that the photo ID</p> <p>15 law is an attack on your voting rights, might that</p> <p>16 also energize and embolden African-American voters?</p> <p>17 A. So, there are different theories on that.</p> <p>18 One theory is that it would embolden and energize.</p> <p>19 Another would be that they would feel targeted and</p> <p>20 not turn out to vote. So, ultimately, we have to</p> <p>21 look to see whether they did turn out or not.</p> <p>22 Q. Let's look at Exhibit 2 in your notebook.</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. Sure.</p> <p>2 A. Because I don't know which draft this is.</p> <p>3 So, the overall conclusion of the</p> <p>4 research is that the implementation of strict voter</p> <p>5 ID laws has increased the racial gap in turnout.</p> <p>6 Q. What did you look at to make that</p> <p>7 determination?</p> <p>8 A. So, this is an entirely different</p> <p>9 analysis from what I've done in Alabama. This was --</p> <p>10 Alabama was looking at county turnout. This is now</p> <p>11 looking at a survey, a nationally representative</p> <p>12 survey called the Cooperative Congressional Election</p> <p>13 Study. It is undertaken every election year from</p> <p>14 2006 to 2014, has about 40,000, 50,000 respondents</p> <p>15 per year, and then it asks these individuals a whole</p> <p>16 series of questions, but one of them which is, "Did</p> <p>17 you vote in the most recent election," and then</p> <p>18 verifies that vote with lists, individual voter file</p> <p>19 lists.</p> <p>20 Q. Who conducts this survey that you're</p> <p>21 speaking of?</p> <p>22 A. So, the survey, I believe, is done by --</p>
<p style="text-align: right;">Page 106</p> <p>1 (Discussion held off the record.)</p> <p>2 BY MR. DAVIS:</p> <p>3 Q. Dr. Hajnal, Exhibit 2, what is this?</p> <p>4 A. This is a draft of an article that I</p> <p>5 wrote with two coauthors that has since -- a revised</p> <p>6 version of it has since been published in the Journal</p> <p>7 of Politics.</p> <p>8 Q. I apologize. I was not aware of the</p> <p>9 revised version.</p> <p>10 A. I would have to read through this and</p> <p>11 confirm, but just looking at it, it seems that this</p> <p>12 is not the final version.</p> <p>13 Q. That's probably true.</p> <p>14 Were there substantive changes that would</p> <p>15 have altered your conclusions and theories expressed?</p> <p>16 A. There were absolutely substantive</p> <p>17 changes. They didn't alter the conclusions, but they</p> <p>18 were substantive changes.</p> <p>19 Q. What is your overall conclusion of the</p> <p>20 analysis that is expressed in this draft?</p> <p>21 A. Right. This -- well, can I talk about</p> <p>22 the conclusions based on the article?</p>	<p style="text-align: right;">Page 108</p> <p>1 so, it is a conglomerate of academics, and the actual</p> <p>2 survey is conducted by the YouGov organization.</p> <p>3 Q. This is the Cooperative Congressional</p> <p>4 Election Study.</p> <p>5 A. Yes.</p> <p>6 Q. On page 5 of Exhibit 2, I don't have the</p> <p>7 published version, so, if you see something you</p> <p>8 believe isn't the same as the published version, just</p> <p>9 say so.</p> <p>10 Down at Footnote 3, you say, "The 2011</p> <p>11 legislators in 34 states introduced bills requiring</p> <p>12 voters to show photo I.D."</p> <p>13 That doesn't mean that they passed in all</p> <p>14 cases.</p> <p>15 A. Right.</p> <p>16 Q. When you look at this, what trends do you</p> <p>17 see nationally in terms of voter identification laws?</p> <p>18 A. Certainly, there is an increase in the</p> <p>19 use or the passage and use of strict voter</p> <p>20 identification laws over time.</p> <p>21 Q. Now I can't find it.</p> <p>22 Here it is.</p>

<p style="text-align: right;">Page 109</p> <p>1 Under "The Growing Presence of Voter</p> <p>2 Identification Laws," do you see the heading?</p> <p>3 A. Uh-huh.</p> <p>4 Q. The second sentence there says, "As late</p> <p>5 at 2008, no state required identification to vote."</p> <p>6 Alabama has required -- I don't know how</p> <p>7 long in 2003, but they required voter identification,</p> <p>8 but it didn't have to be a photo.</p> <p>9 A. This is photo identification.</p> <p>10 Q. So, this sentence is talking only about</p> <p>11 photo ID laws.</p> <p>12 A. I believe so.</p> <p>13 Q. Okay, fair enough. And I know I'm asking</p> <p>14 about it out of context.</p> <p>15 Page 14. You looked at some previous</p> <p>16 studies that talked about whether there was an effect</p> <p>17 on overall turnout. Correct?</p> <p>18 A. Correct.</p> <p>19 Q. And those studies have shown there is</p> <p>20 really not an effect on overall turnout between voter</p> <p>21 identification laws.</p> <p>22 A. So, I would add sort of an addendum here.</p>	<p style="text-align: right;">Page 111</p> <p>1 A. Correct.</p> <p>2 Q. -- than what you have in this case.</p> <p>3 A. Right.</p> <p>4 Q. In this case, are you measuring the</p> <p>5 effect -- or attempting to measure the effect of</p> <p>6 voter identification laws in general, whether they be</p> <p>7 photo or non-photo, or were you limiting your</p> <p>8 analysis to photo identification laws?</p> <p>9 A. So, in the -- I would have to go through</p> <p>10 this version, but in the published article, I looked</p> <p>11 at both.</p> <p>12 So, the main test is an analysis of</p> <p>13 strict voter I.D. laws, be they strict photo or</p> <p>14 strict non-photo. And then, in a section of the</p> <p>15 article, I assess, in particular, strict photo ID</p> <p>16 laws and whether they are different from strict</p> <p>17 non-photo ID laws and find a similar pattern for</p> <p>18 strict photo ID laws.</p> <p>19 Q. What did you conclude when you looked at</p> <p>20 strict photo IDs and compared those to strict</p> <p>21 non-photo IDs?</p> <p>22 A. That there wasn't a significant</p>
<p style="text-align: right;">Page 110</p> <p>1 So, after this earlier version, I was</p> <p>2 made aware of more recent studies which I do think</p> <p>3 show effects on turnout among racial and ethnic</p> <p>4 minorities and, to a certain extent, on overall</p> <p>5 turnout.</p> <p>6 Q. Overall turnout? Okay.</p> <p>7 So, the data you had, earlier drafts</p> <p>8 suggested that there were no studies that showed a</p> <p>9 link between voter identification laws and total</p> <p>10 turnout in the state.</p> <p>11 A. And even that, I think the best</p> <p>12 characterization of the literature is it's mixed, and</p> <p>13 different studies are measuring voter I.D. laws in</p> <p>14 different ways. Most of them are not -- the studies</p> <p>15 that existed previous to this are not singling out</p> <p>16 strict ID laws. So, it is hard to learn much from</p> <p>17 the studies that have been done because they are not</p> <p>18 actually assessing the phenomenon that we are talking</p> <p>19 about today, but they were certainly mixed in their</p> <p>20 results.</p> <p>21 Q. And I recognize you had a different task</p> <p>22 at hand when you were writing this article --</p>	<p style="text-align: right;">Page 112</p> <p>1 difference.</p> <p>2 Now, there you're talking about a smaller</p> <p>3 number of cases, and so, I'm not concluding that</p> <p>4 there is no difference between the two. I'm</p> <p>5 concluding that I couldn't find a significant</p> <p>6 difference between the two.</p> <p>7 Q. So, from your -- the analysis you did for</p> <p>8 the paper in the version that was published, you</p> <p>9 looked at survey data on turnout and concluded that</p> <p>10 strict voter identification laws have a negative</p> <p>11 effect on the turnout of minority voters.</p> <p>12 A. Relative to white turnout, racially</p> <p>13 disproportionate.</p> <p>14 Q. Racially disproportionate.</p> <p>15 When you tried to isolate those states</p> <p>16 that had photo ID, you were unable to find any</p> <p>17 appreciable difference?</p> <p>18 A. With -- yes. They appeared to be similar</p> <p>19 in their effects is what I'm saying.</p> <p>20 Q. Okay. But whether a state has an ID law</p> <p>21 that requires identification that can be either photo</p> <p>22 or non-photo, or on the other hand, if the state says</p>

<p style="text-align: right;">Page 113</p> <p>1 it must include a photo, your research didn't show</p> <p>2 any appreciable difference on the law's likely effect</p> <p>3 on turnout?</p> <p>4 A. Correct.</p> <p>5 Q. On the bottom of page 14, you say, when</p> <p>6 you were reviewing studies that showed or suggested</p> <p>7 there was no appreciable effect on total turnout by</p> <p>8 photo identification laws, you said, "That conclusion</p> <p>9 is hardly surprising if this were the bulk of</p> <p>10 existing studies. It is also exactly what one should</p> <p>11 expect given only a tiny fraction of all Americans</p> <p>12 lack the identification to vote and could be directly</p> <p>13 affected by these laws."</p> <p>14 What did you mean by that?</p> <p>15 A. So, this is just purely theoretical. So,</p> <p>16 there is no data behind this -- well, I am not</p> <p>17 providing or presenting any data that I have put</p> <p>18 forward on the share of Americans who have or don't</p> <p>19 have IDs. This is saying that, number one, the</p> <p>20 majority of existing studies have not found an effect</p> <p>21 on overall turnout, although, if asked, I would talk</p> <p>22 about a lot of flaws with those studies, mainly that</p>	<p style="text-align: right;">Page 115</p> <p>1 strict voter I.D. laws in place, finding the effects</p> <p>2 on voter turnout.</p> <p>3 So, the characterization of the existing</p> <p>4 literature would shift and the expectations would</p> <p>5 shift a little.</p> <p>6 Q. Have you seen Dr. Siskin's study in this</p> <p>7 case?</p> <p>8 A. I have looked at it, yes.</p> <p>9 Q. Do you know of any other recent studies</p> <p>10 on ID possession?</p> <p>11 A. Well, the Matt Barreto, David Sanchez</p> <p>12 work in particular.</p> <p>13 Q. Barreto?</p> <p>14 A. Yes, and David Sanchez.</p> <p>15 I think there are one or two more that I</p> <p>16 am not remembering, but those are the ones that come</p> <p>17 to mind.</p> <p>18 Q. Page 19, still on Exhibit 2, the draft of</p> <p>19 your article.</p> <p>20 Starting on page 18, you look at what</p> <p>21 effect voter ID laws may have on class.</p> <p>22 A. Uh-huh.</p>
<p style="text-align: right;">Page 114</p> <p>1 they are not actually studying the same phenomenon.</p> <p>2 And number two, that there is a direct</p> <p>3 effect of a voter I.D. law on voters who don't</p> <p>4 have -- on potential voters who don't have ID, and it</p> <p>5 is sort of implying that they are -- I don't know if</p> <p>6 it is implying -- it would add that there is</p> <p>7 potential effect on those who do have IDs, which we</p> <p>8 have talked about already.</p> <p>9 So, the threat or mobilization factor.</p> <p>10 Q. Okay. Is your view the same today as it</p> <p>11 was when this statement was made?</p> <p>12 A. I think we have gotten more data</p> <p>13 suggesting that the share of Americans without</p> <p>14 identification is larger, and so, more conclusive</p> <p>15 evidence to that effect, especially in the states</p> <p>16 where some of these laws have been passed.</p> <p>17 So, I would take out the word "tiny." I</p> <p>18 would also change the existing sense that you now</p> <p>19 have, for example, a Government Accountability Office</p> <p>20 study looking at differences and differences in voter</p> <p>21 turnout, which I think is a very good method, looking</p> <p>22 at most recent elections, which is when we have more</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. And you conclude that paragraph saying:</p> <p>2 "We suspect that the least advantaged Americans are</p> <p>3 hurt most by these laws, but we are far from certain</p> <p>4 that this is the case."</p> <p>5 Is that still your view?</p> <p>6 A. So, the Government Accountability Office</p> <p>7 also looked at class. So, there is slightly more</p> <p>8 evidence that there may be class effects. I have</p> <p>9 analyzed this data that we are talking about here in</p> <p>10 a little bit more depth in a few more tests. So, I</p> <p>11 could not, with this data, present a case that I am</p> <p>12 confident shows that there are effects by class.</p> <p>13 My personal opinion, based upon all the</p> <p>14 data, adding it all together, is that they probably</p> <p>15 are. But again, I do not have the data to present</p> <p>16 that in a compelling way. I have the data to present</p> <p>17 that in a suggestive way.</p> <p>18 Q. It is inconclusive at this stage?</p> <p>19 A. It is not -- I'm not confident in that</p> <p>20 conclusion.</p> <p>21 Q. Looking at Exhibit 3, I know you used</p> <p>22 different data for the research presented in this</p>

<p style="text-align: right;">Page 117</p> <p>1 paper than the kind of data you used in the Alabama  2 analysis. Right?  3 A. Correct.  4 Q. Okay. The authors of this comment, as  5 published, did you respond in any way to the comment  6 that's presented as Exhibit 3?  7 A. Other than a short email, we have not put  8 forward a public response. That email was not --  9 other than the short email, we have not responded to  10 them.  11 Q. Okay. These authors, if I'm reading them  12 correctly, suggest that the survey data that you used  13 for the paper is not reliable because, when they  14 compare the survey results to actual turnout results,  15 they differ greatly.  16 A. That is their claim. I totally disagree  17 with it.  18 Q. Why do you disagree?  19 A. So, a number of factors. One, they are  20 looking, comparing turnout of registered voters in  21 the CCS, and they are comparing it to turnout of the  22 voting eligible population. Those are two different</p>	<p style="text-align: right;">Page 119</p> <p>1 in registered voter turnout are correlated with  2 changes in the voting eligible population turnout  3 with their data, and they are.  4 So, that's why there are -- now, there  5 are other elements of their conclusion. So, they  6 identify a particular year and a particular state  7 where the data in the CCS appear to be inaccurate,  8 and that's a -- I think they have actually identified  9 a problem with the matching procedure in that  10 particular year and in Virginia in 2008. So,  11 2006-2008.  12 That makes no difference if you take that  13 data out. So, the questionable data, if you take the  14 data out and rerun the analysis, you get exactly the  15 same result. So, the critique is inaccurate and  16 irrelevant to the core finding of the paper.  17 Q. Why would you use the survey data when  18 you could get the real turnout data from the states?  19 A. You cannot get turnout data by race from  20 the states.  21 Q. By race?  22 A. Yes.</p>
<p style="text-align: right;">Page 118</p> <p>1 animals, and they should not be the same.  2 There are many, many more people in the  3 denominator in the turnout of voter eligible  4 population than there are in the turnout of  5 registered voters. So, you should see the turnout of  6 registered voters is higher than the turnout of the  7 voting eligible population, which, using their data,  8 is absolutely true.  9 And if we look at the correlation between  10 the CCS registration turnout data and their official  11 records, we find that their changes in those are  12 highly correlated, which they should be.  13 So, shifting to higher turnout among the  14 voting eligible population, you probably would see a  15 higher turnout among the registered population, which  16 you in fact do.  17 So, they are comparing apples and  18 oranges, finding a difference, finding that one is  19 inflated, and that's exactly what you should expect  20 to find.  21 We are then going back and also looking  22 to see whether the changes from one time to another</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. You can get overall turnout data?  2 A. You can get aggregate turnout data, yes.  3 Q. But you're saying you can't get it by  4 race except for the survey in the case of some  5 states?  6 A. In the vast majority of states, you  7 cannot get turnout by race.  8 Q. You can for Alabama?  9 A. You can for Alabama, yes.  10 Q. Everything you just told me, did you tell  11 these guys who wrote Exhibit 3?  12 A. There has been no need to respond. This  13 is unpublished, unverified. It is a document that is  14 largely irrelevant to the world. So, I'm not going  15 to spend my time responding to them until there is  16 some reason to do so.  17 Q. How much did the work you did on this  18 paper, if any, influence the work you did in Alabama?  19 A. I would say not at all. They are both  20 sort of independent studies. They're both based on  21 my expertise on American politics, racial politics,  22 and my ability to design a research design to get at</p>



<p style="text-align: right;">Page 121</p> <p>1 the question. So, they are both derived from that</p> <p>2 sort of core knowledge.</p> <p>3 Q. Did you approach your work in Alabama</p> <p>4 expecting to find certain relationships between photo</p> <p>5 ID and turnout?</p> <p>6 A. I went into it with an open mind to try</p> <p>7 to create a test as best I could to determine whether</p> <p>8 or not it had an effect.</p> <p>9 Q. What is your response -- I'm looking at</p> <p>10 page 4 of the comment, which has been marked as</p> <p>11 Exhibit 3.</p> <p>12 A. So, in general, what is my response to</p> <p>13 this?</p> <p>14 Q. I was going to try to narrow it for you a</p> <p>15 little more.</p> <p>16 A. That would be great.</p> <p>17 Q. We have been discussing omitted variable</p> <p>18 bias. These aren't the same in the second paragraph</p> <p>19 that says, "The main weakness of this approach is</p> <p>20 well known. States that did or did not adopt photo</p> <p>21 ID laws systematically differ on unobservable</p> <p>22 dimensions that also affect turnout."</p>	<p style="text-align: right;">Page 123</p> <p>1 state. We control for anything that's different</p> <p>2 about that state or unique about that state.</p> <p>3 In the -- both in the robustness checks</p> <p>4 in this paper, we do that. And when you do that, you</p> <p>5 are essentially dealing with the omitted variable</p> <p>6 bias problem.</p> <p>7 I'll leave it at that.</p> <p>8 Q. Okay. The robustness test that you did</p> <p>9 for your paper in your analysis, was any such test</p> <p>10 done on your Alabama analysis?</p> <p>11 A. Yes. Once I do the regression in</p> <p>12 Alabama, control for all the factors that I think are</p> <p>13 relevant, then, as I note in the report, I run a</p> <p>14 state fixed effects analysis, which again has all</p> <p>15 these dummy variables for each state. That does not</p> <p>16 alter the core results.</p> <p>17 MR. DAVIS: I know it is not 12:15, but</p> <p>18 I'm at a pretty major turning point. I think it</p> <p>19 makes sense, instead of trying to do a few minutes of</p> <p>20 something else, I'll just stop.</p> <p>21 MR. SMITH: That's fine.</p> <p>22 THE WITNESS: That's great.</p>
<p style="text-align: right;">Page 122</p> <p>1 It sounds to me like these authors are</p> <p>2 saying it's just hard to compare one state to another</p> <p>3 because there are so many differences that are</p> <p>4 difficult to measure.</p> <p>5 Is that the way you interpret their</p> <p>6 critique?</p> <p>7 A. No. They are saying you need to control</p> <p>8 for the key variables. You need to have them there.</p> <p>9 So, you cannot do a naive comparison from one state</p> <p>10 to another, you have to do an informed comparison</p> <p>11 where you are either, as we have done in Alabama and</p> <p>12 South Carolina or Alabama itself, trying to match and</p> <p>13 compare comparable states, or you're doing an</p> <p>14 analysis where you're controlling for the key sets of</p> <p>15 variables.</p> <p>16 In this particular case, I'm looking at</p> <p>17 turnout in a given year. In the Alabama case, I am</p> <p>18 looking at differences in differences. So, we are</p> <p>19 looking at changes in turnout.</p> <p>20 But just more on their admitted various</p> <p>21 points, one of the solutions is to run state fixed</p> <p>22 effects, which is to say a dummy variable for every</p>	<p style="text-align: right;">Page 124</p> <p>1 (Recess taken.)</p> <p>2 BY MR. DAVIS:</p> <p>3 Q. Hi, Dr. Hajnal. I want to turn now to</p> <p>4 the document that's in your notebook behind Tab 4</p> <p>5 that's been marked as Exhibit 4, which is the second</p> <p>6 declaration of M.B. Hood, III, the expert for the</p> <p>7 defendant in this case.</p> <p>8 Have you had the opportunity to read</p> <p>9 Dr. Hood's report?</p> <p>10 A. I have.</p> <p>11 Q. And what is your response?</p> <p>12 A. So, a number of things.</p> <p>13 So, one is -- well, could you clarify as</p> <p>14 to what part of the report you want me to respond to?</p> <p>15 Q. Yes, I can, because he responded -- he</p> <p>16 had some comments, not only about your report, but he</p> <p>17 talked about some of the work done by other experts</p> <p>18 as well. So, I'd like to direct my questions to his</p> <p>19 comments concerning your report, the one we have been</p> <p>20 talking about marked as Exhibit 1.</p> <p>21 A. Okay. So, what I read is his primary</p> <p>22 critique of my report is that it focuses on aggregate</p>

<p style="text-align: right;">Page 125</p> <p>1 county data rather than individual racial data, and  2 that it is difficult to infer voting patterns by race  3 using county data.  4 And I would respond to that in the  5 following ways: First, thankfully, Dr. Hood provided  6 data on individual voter turnout by race. I was able  7 to analyze his data and see whether, in fact, that  8 critique had any basis.  9 So, is the turnout of, say, racial  10 minorities in majority-minority districts similar to  11 the overall turnout? Likewise, is the turnout in  12 whites in majority or overwhelmingly white counties  13 similar to the overall turnout?  14 When I did that analysis, which is  15 Exhibit 1, I think, I looked to see again whether  16 there is a close correlation between aggregate county  17 turnout and turnout by race in these relatively  18 racially homogeneous districts. And that analysis  19 shows an almost one-to-one correlation, an  20 extraordinarily high correlation between racially  21 ethnic turnout in majority-minority districts and  22 overall turnout on one hand and between overall</p>	<p style="text-align: right;">Page 127</p> <p>1 identification.)  2 BY MR. DAVIS:  3 Q. Let me see if I understand you.  4 You said one of Dr. Hood's critiques was,  5 if you look at aggregate data within a county, it's  6 hard to tell, if there is fluctuation in turnout,  7 which voters were affected.  8 A. Correct.  9 Q. You say, "I've done the analysis, though,  10 and that critique doesn't hold water."  11 A. Yes.  12 So, again, using the data from Dr. Hood's  13 files, what I did was I compiled turnout by race in  14 each county.  15 So, for example, on the first table, we  16 are looking at white voter turnout and aggregate  17 voter turnout in overwhelmingly white counties in  18 2010. And the first column is the share of  19 self-identified white -- or identified in the  20 registration, the individual voter registration file,  21 as white voters, the share of those individual white  22 voters who turned out to vote in 2010 who were white.</p>
<p style="text-align: right;">Page 126</p> <p>1 turnout and white turnout in predominantly white  2 districts on the other hand. And that tight  3 relationship exists across all the electoral years  4 that we are looking at here.  5 Q. For all counties?  6 A. Yes. The correlation is across counties,  7 right? So, there are counties that diverge, but  8 almost -- not imperceptibly, but there are -- I show  9 in the analysis the difference between aggregate and  10 turnout by race, and those differences are generally  11 small, in the order of 0.12 percent.  12 MR. DAVIS: I think this is going to be  13 hard for us to follow until we get some charts in  14 front of us.  15 Do you have any objection to me going  16 ahead and attaching and discussing those?  17 Can we mark this as Exhibit 18, please?  18 (Hajnal Exhibit No. 18, document  19 entitled Hood Rebuttal Exhibit:  20 Responding to Dr. Hood's  21 Individual Voter Turnout  22 Analysis, was marked for</p>	<p style="text-align: right;">Page 128</p> <p>1 In the second column we have the share of  2 all registered voters in that county who turned out  3 to vote.  4 And what the analysis is doing is to say,  5 if we look only at aggregate turnout, would we  6 essentially have a close approximation or a very good  7 prediction for white turnout in these overwhelmingly  8 white districts? And as you see, the white turnout  9 in column 1 is almost identical to overall county  10 turnout.  11 In many ways, that's expected because the  12 white counties are, on average, 90 percent. So,  13 these overwhelmingly white counties are, on average,  14 90 percent white.  15 And we see in the last column the  16 difference in turnout between whites in these  17 counties and total county turnout. And you see, in  18 this particular case, all of them are 1 percentage  19 point or small.  20 The other way to think about this or look  21 at this is to look at it in a -- visually. So,  22 Figure 1 has the same data, and it's just plotting it</p>

<p style="text-align: right;">Page 129</p> <p>1 visually. And so, here we have each of these dots in  2 the figure. Each of the green dots is turnout in the  3 county. So, it is all-voter county turnout and white  4 turnout. And it has a regression line.  5       So, can we predict white turnout based on  6 all-voter turnout and a confidence interval around  7 that estimation? So, it is a regression. One  8 variable can predict the other, and how confident are  9 we in the relationship?  10       Here we see the confidence interval is  11 extraordinarily thin. We are quite confident that  12 there is a strong relationship between white turnout  13 and all-voter turnout. In fact, it is almost  14 essentially, for every 1 percentage point increase in  15 white turnout, there is about a -- for every  16 1 percent increase in voter turnout, a county with  17 higher turnout also has higher white turnout.  18       And finally we see that in the  19 correlation which is highlighted at the bottom of the  20 table on page 1 here. The correlation between white  21 voter turnout and all-voter turnout in these 12  22 overwhelming white counties is 1.0. It is actually</p>	<p style="text-align: right;">Page 131</p> <p>1 to isolate these relatively racial homogeneous  2 counties, so that you have a very good sense of what  3 whites are doing in this case, or if we look at the  4 majority-minority counties, what racial minorities  5 are doing.  6       Q. But 1 percent, I think you are  7 overstating the homogeneity of these counties.  8       Lamar is my home county. It is 10 or  9 11 percent African-American, I would guess -- that's  10 what it was when I was growing up -- probably 12,000,  11 13,000 voters.  12       There aren't that many counties that  13 would only have like 5 percent or fewer or less  14 African-American voters, are there?  15       A. I wasn't making a statement about these  16 counties. I was making -- if that number is  17 correct -- these counties average 90 percent white.  18 So, 90 percent on average of the voters in these  19 counties are white. And so, there are a small number  20 of nonwhites in these counties, and their voting  21 behavior would be reflected here.  22       But if they're a small percentage, it's</p>
<p style="text-align: right;">Page 130</p> <p>1 .998, but it rounds up to 1.  2       So, we have an over 99 percent confidence  3 that that relationship exists. And visually you can  4 see that the line goes almost at a 45-degree angle or  5 essentially 45-degree angle. So, where we have  6 almost a perfect determinant of white turnout in  7 these districts -- or in these counties.  8       Q. Okay. Looking at Figure 1, do I  9 understand you right that you say that, because this  10 line -- they are so tightly connected, that shows  11 that whatever fluctuation occurred in the turnout of  12 white voters is the same as the fluctuation that  13 occurred for all voters in that particular county?  14       A. Not really. What this is showing is the  15 turnout of white -- the overall turnout in the county  16 is a very close approximation of white turnout in the  17 county.  18       So, from aggregate county turnout we can  19 infer -- we can't infer too much about the other  20 racial group here because, if they are 1 or 2 percent  21 of the population, they are going to have essentially  22 no impact on results, which is exactly why you want</p>	<p style="text-align: right;">Page 132</p> <p>1 going to have a small impact.  2       Again, we're not trying to infer anything  3 about their behavior. We are trying to infer whether  4 aggregate and white voter turnout are predictive of  5 each other.  6       Q. Okay. That's the point for Table 1 and  7 Figure 1. Give me just a second.  8       (Pause.)  9       Okay. What else did you do, then, in  10 response to Dr. Hood's report?  11       A. So, we are done with -- I can go through  12 the rest of the figures here or --  13       Q. Oh, yes, please.  14       A. Okay. So, that was just looking at white  15 voters in 2010. I have then looked at, if we move on  16 to the next page, page 2, we are looking here at  17 minority turnout in majority-minority counties in  18 2010. So, we are looking at the 12 majority-minority  19 counties, and we are looking at -- so, going back to  20 Dr. Hood's data file and looking at all of the  21 racially ethnic minorities who are registered, what  22 proportion of those turned out to vote.</p>



<p style="text-align: right;">Page 133</p> <p>1 So, we have here in the first column the</p> <p>2 proportion of racial ethnic minority voters who</p> <p>3 turned out to vote in 2010. And in the second column</p> <p>4 we have then added up all of the registered voters</p> <p>5 from that file. I have done that. And you have the</p> <p>6 proportion of all registered voters in that county</p> <p>7 that turned out to vote.</p> <p>8 And in the third column you have the</p> <p>9 difference between minority voter turnout and</p> <p>10 all-voter turnout. And again, we see that the</p> <p>11 differences are quite small.</p> <p>12 So, again, from the table, we can offer a</p> <p>13 preliminary conclusion that all-voter turnout in</p> <p>14 majority-minority counties is a close approximation</p> <p>15 of minority turnout in those counties.</p> <p>16 If we shift down to the bottom half of</p> <p>17 the table, we have the same information displayed</p> <p>18 visually again.</p> <p>19 So, each of the dots represent an</p> <p>20 individual county. And we see again an</p> <p>21 upward-sloping line indicating that there is a</p> <p>22 relationship. We see a relatively thin confidence</p>	<p style="text-align: right;">Page 135</p> <p>1 A. And then, as we move through the exhibit,</p> <p>2 I can walk us through each of them, but essentially</p> <p>3 what we're doing is using the same methods, the same</p> <p>4 analysis, looking at turnouts in 2012 in</p> <p>5 overwhelmingly white counties, and showing again that</p> <p>6 overall turnout in overwhelmingly white counties is</p> <p>7 very -- almost perfectly predictive of white turnout</p> <p>8 based on individual voter files.</p> <p>9 So, the difference here is also</p> <p>10 1 percentage point or less in this particular case.</p> <p>11 And the correlation is 1 or as close to 1, rounds up</p> <p>12 to 1.</p> <p>13 We have this very tight relationship in</p> <p>14 the graph, counties that have higher overall turnout.</p> <p>15 And I'm noticing actually a typo here.</p> <p>16 So, the -- I apologize. So, the --</p> <p>17 Q. That's okay. What do we have?</p> <p>18 A. On the Y Axis, the vertical axis, we</p> <p>19 should have white voter turnout rather than all-voter</p> <p>20 turnout on page 3.</p> <p>21 Q. Figure 3, Y Axis should say "white</p> <p>22 turnout" instead of "all-voter"?</p>
<p style="text-align: right;">Page 134</p> <p>1 interval, indicating we have strong confidence that</p> <p>2 there is this relationship that, if overall turnout</p> <p>3 in the county is higher, then minority turnout in</p> <p>4 that county is higher.</p> <p>5 And then finally we see the correlation</p> <p>6 between overall voter turnout and minority voter</p> <p>7 turnout is .92. And again, that is close to the</p> <p>8 maximum of 1.0, and it's significance would -- at</p> <p>9 .01, which means we are more than 99 percent</p> <p>10 confident that you have this relationship.</p> <p>11 And again, what this is showing us is,</p> <p>12 when we are looking at aggregate county turnout, we</p> <p>13 have a very good approximation of racial and ethnic</p> <p>14 minority turnout in majority-minority counties in</p> <p>15 2010.</p> <p>16 Q. For these counties that you looked at,</p> <p>17 whether you looked at white voters in these counties</p> <p>18 or African-American voters in these counties, you</p> <p>19 find a correlation between their voter turnout and</p> <p>20 the county turnout as a whole?</p> <p>21 A. Correct.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 136</p> <p>1 A. Yes.</p> <p>2 And then we can go on and look at</p> <p>3 minority turnout in 2012, and then the same sets of</p> <p>4 comparisons in 2014, the same sets of analyses and</p> <p>5 comparisons in 2016 as well.</p> <p>6 Q. You repeated the same analysis just using</p> <p>7 turnout data from different elections.</p> <p>8 A. Correct.</p> <p>9 Q. And based upon this, it is your position</p> <p>10 that, if you look at overall turnout in the</p> <p>11 majority-minor county, that gives you a pretty good</p> <p>12 indication of what the African-American voter turnout</p> <p>13 has been in that county?</p> <p>14 A. Not African-American but racial ethnic</p> <p>15 minority turnout.</p> <p>16 Q. Okay. Now, Dr. Hood's criticism of your</p> <p>17 use of county aggregate data, that was only part of</p> <p>18 what he said. He also says that, if you're right</p> <p>19 that this turnout, any falling African-American voter</p> <p>20 turnout is due to the photo ID law, the change would</p> <p>21 have been a lot greater.</p> <p>22 In other words, you say turnout of</p>

<p style="text-align: right;">Page 137</p> <p>1 African-American voters fell by how much between 2012  2 and 2016?</p> <p>3 A. So, again, we are dealing with counties  4 in the analysis. So, what I'm doing is I'm looking  5 at the county turnout decline or increases. And  6 again, the key comparison is not did  7 majority-minority county turnout decline, but did it  8 decline more than turnout in predominantly white  9 counties. And then as well, were those changes in  10 Alabama more pronounced than they were in other  11 states, in other non-strict southern states.</p> <p>12 Q. I understand the point you're making  13 about what your claim is in your report, but we do  14 know that turnout of African-American voters fell in  15 Alabama between 2012 and 2016.</p> <p>16 A. Yes.</p> <p>17 Q. Do we know how much?</p> <p>18 A. I think Professor Hood has that in -- he  19 has an analysis of that in his --</p> <p>20 Q. He has that. Let's refer to that.</p> <p>21 A. So, it would be Figure 1, "Alabama  22 Turnout by Race" on my page 13.</p>	<p style="text-align: right;">Page 139</p> <p>1 of the people who he could not match with an ID.  2 Did you read that portion of Dr. Hood's  3 analysis?</p> <p>4 A. I did.</p> <p>5 Q. Do you have a response to that?</p> <p>6 A. Yes, I do.</p> <p>7 So, one of the concerns I have with that  8 analysis, in fact, one that I think makes that  9 analysis fundamentally flawed is, as I read his  10 analysis and as I read his report, his measure of the  11 no-match list occurs at one point in time. So, I  12 believe in 2016 -- and again, I'm not going to  13 comment on the veracity of that match, but he has a  14 set of individuals who he claims are on the no-match  15 list in 2016. He is then using that to try and infer  16 changes in behavior over time, and that's impossible  17 to do unless you know who was in the no-match --  18 unless you can actually follow people over time.</p> <p>19 And there is a number of problems, issues  20 with the fact there are people moving into and out of  21 the no-match category over time. So, someone who is  22 on the no-match, for example.</p>
<p style="text-align: right;">Page 138</p> <p>1 Q. Yes, page 13 of Exhibit 4 to this  2 deposition.</p> <p>3 You understand Dr. Hood's point is that,  4 even if he took all of the African-American voters  5 who are on what is alleged to be a no-match list,  6 people who don't have IDs, even if they all stayed  7 home as a result of the photo ID law, you wouldn't  8 see these kinds of -- this kind of a drop in turnout.</p> <p>9 A. Well, a couple of things: First, again,  10 I would state I'm not an expert on possession rates,  11 and so, I don't know the veracity of Dr. Hood's  12 possession rates. I do know, having read his report,  13 that his assumptions about how many people turned out  14 to vote before among different groups and how many  15 people turned out to vote afterwards, it is not only  16 questions about the data itself, there's questions  17 about the assumptions behind the analysis. So, I  18 wouldn't -- I'll leave it at that point.</p> <p>19 Q. Now, Dr. Hood compares turnout of two  20 different groups. He took Dr. Siskin's no-match list  21 and he compared turnout of the people that Dr. Siskin  22 could match with an ID. He compared that to turnout</p>	<p style="text-align: right;">Page 140</p> <p>1 So, one of the big issues is you can have  2 an ID, and it be valid, and then at some point you  3 can lose it. It can expire. And then people who had  4 IDs in 2016, we don't know whether they had them in  5 2012 or 2010. They could have acquired an ID at any  6 point in time.</p> <p>7 So, there is a real fundamental problem.  8 We don't know who has IDs when, and so, we don't  9 know -- we can't track how their behavior changes.  10 That's number one.</p> <p>11 Number two, we don't even know who is  12 moving from -- into and out of the pools more  13 generally.</p> <p>14 So, you told me Alabama is a wonderful  15 place to live. I can move to Alabama. I would be in  16 his -- or if I had moved prior to 2016, I would be  17 either in the no-match -- I would be in his data set.  18 If I moved in 2015, I would not have been around  19 earlier. He does not know about my behavior. I  20 could also just move into or out of Alabama. I could  21 become a registrant or not be a registrant. So, I  22 can be in the file at one point and not in the file</p>

<p style="text-align: right;">Page 141</p> <p>1 at another if I register to vote.</p> <p>2       So, we just can't infer anything about</p> <p>3 changes in behavior in the universe of cases because</p> <p>4 we can't track people over time.</p> <p>5       Q. Okay.</p> <p>6       A. So, one is the timing issue. And again,</p> <p>7 I think that, in and of itself, makes the inference</p> <p>8 impossible to make.</p> <p>9       A second issue is that -- let me think</p> <p>10 through this.</p> <p>11       We have some issues with whether the</p> <p>12 folks in the no-match list and the folks in the match</p> <p>13 list, whether in fact those are perfect</p> <p>14 representations of who has an ID and who doesn't have</p> <p>15 an ID.</p> <p>16       So, for example, in the no-match A group,</p> <p>17 we can probably go to the tables here --</p> <p>18       Q. Looking at 16 and 17?</p> <p>19       A. Yes.</p> <p>20       Okay. So, again, I'm not saying I'm an</p> <p>21 expert on ID possession, but from my read of</p> <p>22 Dr. Siskin's report, the no-match A group inherently,</p>	<p style="text-align: right;">Page 143</p> <p>1       A. Right. I am talking about how their</p> <p>2 behavior might or might not be affected by the law.</p> <p>3       Q. The law applies to all voters.</p> <p>4       A. Absolutely, it does.</p> <p>5       Q. It would apply in a different way, you</p> <p>6 would say, to someone who has a photo ID and someone</p> <p>7 who does not.</p> <p>8       A. Right.</p> <p>9       Q. Okay. You said a lot. First, you said</p> <p>10 the no-match list is sort of a snapshot of a point in</p> <p>11 time.</p> <p>12       A. Correct.</p> <p>13       Q. Whereas Dr. Hood is looking at two</p> <p>14 different points in time.</p> <p>15       A. Several points in time.</p> <p>16       Q. You are saying people can go on and off</p> <p>17 the no-match list.</p> <p>18       A. Correct.</p> <p>19       Q. Just because you don't have an ID today</p> <p>20 doesn't mean you're not going to have one tomorrow.</p> <p>21       A. Correct.</p> <p>22       Q. But if you represent to me that an</p>
<p style="text-align: right;">Page 142</p> <p>1 by definition, has -- so, in the no-ID group in match</p> <p>2 A, there are a number of people who have no IDs and</p> <p>3 there is also an unknown number of people who</p> <p>4 actually do have IDs that are in the no-ID group. We</p> <p>5 can see that by just looking at turnout in that</p> <p>6 group, and 10, 20 percent in some cases after the ID</p> <p>7 law is in place.</p> <p>8       So, the no-ID group is very clearly a mix</p> <p>9 of ID holders and no-ID holders. The test that</p> <p>10 Dr. Hood is doing relies on the fact that the ID</p> <p>11 group is not subject to the ID law and that the folks</p> <p>12 in the no-ID group are all subject to the ID law.</p> <p>13       Once you break down that, then, again,</p> <p>14 it's impossible to make inferences about the effect</p> <p>15 of the ID law.</p> <p>16       Q. What do you mean that the first group is</p> <p>17 not subject to the photo ID law?</p> <p>18       A. Some of them are. The ID holders are not</p> <p>19 being -- their behavior is not changing as a result</p> <p>20 of the ID law.</p> <p>21       Q. You're not talking about the law's</p> <p>22 application, whether the law applies.</p>	<p style="text-align: right;">Page 144</p> <p>1 argument has been made by the plaintiffs in this case</p> <p>2 that there is a universe of some number of people</p> <p>3 that do not have an ID, cannot get one, would you</p> <p>4 agree with me that, to the extent that the universe</p> <p>5 of people exist, whatever the size is, they are</p> <p>6 unlikely to be moving in and out of the state?</p> <p>7       A. I don't know if they are -- that, I</p> <p>8 absolutely have no idea. I mean, these are</p> <p>9 relatively probably disadvantaged folks. I don't</p> <p>10 know their intrastate movement is greater or lesser</p> <p>11 than anybody else. I have absolutely no idea.</p> <p>12       Q. Okay. Would you agree with me that,</p> <p>13 under that theory, the status of those voters as</p> <p>14 whether they possess an ID and whether they are on or</p> <p>15 off the no-match list is likely to remain constant?</p> <p>16       A. Under the assumption that you are saying,</p> <p>17 if they can't get an ID, they are unlikely to get an</p> <p>18 ID.</p> <p>19       Q. Yes. I have stated the obvious, I know.</p> <p>20 I want to make sure we are on the same page.</p> <p>21       A. Yes.</p> <p>22       Q. So, if you take the no-match list that</p>

<p style="text-align: right;">Page 145</p> <p>1 Dr. Siskin did, is there any accuracy to that at all?</p> <p>2 If that universe of people exist, it is going to be</p> <p>3 captured in the group of people he could not match.</p> <p>4 Would you agree with that?</p> <p>5 A. To the extent that the lists are</p> <p>6 100 percent accurate and include all the no-match,</p> <p>7 that should very much be true.</p> <p>8 Q. If he found 350,000 to 400,000 people who</p> <p>9 he could not match, that doesn't mean there's</p> <p>10 350,000, 400,000 people without an ID. He used</p> <p>11 surveys and other things to try to estimate the</p> <p>12 portion of that group that truly lacks an ID. Would</p> <p>13 you agree that that's what he did?</p> <p>14 A. Again, I'm not going to comment on the</p> <p>15 veracity of his -- his report looks like an excellent</p> <p>16 analysis, but again, I'm not claiming to be an expert</p> <p>17 on that. So, I'm not sure my opinion matters too</p> <p>18 much.</p> <p>19 Q. No, it's not your report. But is that</p> <p>20 the types of analysis you understood Dr. Siskin to</p> <p>21 have performed?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 147</p> <p>1 treated and how that changes over time. And</p> <p>2 therefore, you really can't make any inference based</p> <p>3 on this data because both these issues, it is one</p> <p>4 match at a time, and at least in no-match A, this</p> <p>5 imperfect assignment to ID or no ID.</p> <p>6 Q. Did you run the numbers that Dr. Hood</p> <p>7 ran? Do you agree with his math?</p> <p>8 A. I have not run the numbers that he ran.</p> <p>9 Q. Did you have all the information you</p> <p>10 needed to run it if you had chosen to do so?</p> <p>11 A. No.</p> <p>12 Q. What else did you need?</p> <p>13 A. I didn't have any of the no-match lists.</p> <p>14 Let me -- I would have to think about</p> <p>15 that.</p> <p>16 I did not even attempt to redo the</p> <p>17 analysis because it was fundamentally flawed and</p> <p>18 didn't make sense to do so.</p> <p>19 Q. That may not be the best question I could</p> <p>20 have asked.</p> <p>21 Do you have any reason to believe that</p> <p>22 Dr. Hood's math is wrong when he compares these two</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. So, if that universe, to the extent it</p> <p>2 exists, the people who do not have one and cannot get</p> <p>3 one, if that is on the no-match list somewhere, then</p> <p>4 isn't there value in comparing turnout between those</p> <p>5 two groups? Because you know you've captured those</p> <p>6 people who do not have an ID. They cannot get one.</p> <p>7 A. Well, again, I don't know for certain</p> <p>8 whether they're in the no-ID or ID list. I don't</p> <p>9 know whether they were -- I certainly don't know</p> <p>10 where they were two, four, or six years ago, so, I</p> <p>11 can't track their behavior.</p> <p>12 This difference-in-difference test, which</p> <p>13 is theoretically an excellent test, in many ways is</p> <p>14 similar to the kind of test that I'm doing,</p> <p>15 theoretically a critical test. But you have to know</p> <p>16 the underlying design of a difference-in-difference</p> <p>17 test.</p> <p>18 You have a treated group, so, they are</p> <p>19 affected in one way, and then you have a non-treated</p> <p>20 group. And here those two are melding together, and</p> <p>21 so, we don't know who is treated and not treated and</p> <p>22 what the proportions are of who are treated and not</p>	<p style="text-align: right;">Page 148</p> <p>1 groups off the no-match list?</p> <p>2 A. I have no reason to believe that.</p> <p>3 Q. You didn't look at it one way or the</p> <p>4 other?</p> <p>5 A. Right.</p> <p>6 Q. You said it's a nonstarter because he</p> <p>7 makes a flawed approach. I'm not going to try.</p> <p>8 A. I certainly glanced at it and tried to</p> <p>9 understand what he was doing, but I did not think</p> <p>10 about adding the numbers together to see if the</p> <p>11 percentages add up.</p> <p>12 Q. Look at page 10 of Dr. Hood's report.</p> <p>13 Around the middle of the page, there is a block quote</p> <p>14 where Dr. Hood quotes Professor Highton.</p> <p>15 Professor Highton says: "The fact that</p> <p>16 states with strict identification laws differ from</p> <p>17 states without them in other ways that may be related</p> <p>18 to turnout complicates the causal inference process."</p> <p>19 Do you agree with that?</p> <p>20 A. Yes.</p> <p>21 Q. "Further, where some of the way states</p> <p>22 differ may be non-measurable, there may be other</p>

<p style="text-align: right;">Page 149</p> <p>1 unknown or known but difficult-to-measure ways in  2 which they differ."  3       Do you agree with Dr. Highton on that  4 point?  5       A. Yes.  6       Q. Some things are just hard to measure and  7 some things you can't see. Those differences can  8 also affect turnout. Correct?  9       A. Correct.  10      Q. And he says at the end, "Research designs  11 that account for the differences observed and not  12 observed should be employed."  13      Is it your contention that your research  14 design accounts for these unobservable differences?  15      A. Well, unobservable differences I can't  16 account for, but what Dr. Highton recommends -- so,  17 this is a critique of a naive cross-section model,  18 which is a one-point-in-time analysis. His solution  19 and recommendation in this article is to do a  20 difference-in-difference design. So, his solution is  21 to do exactly what I've done with Alabama, which is  22 to compare Alabama with South Carolina and Alabama</p>	<p style="text-align: right;">Page 151</p> <p>1 You're saying that is a response to -- that is in  2 compliance with what Professor Highton is suggesting  3 in this article.  4       A. Yes. I had not read this when I did my  5 analysis, but it very much agrees with it.  6       Q. It is consistent with Highton's cautions?  7       A. Yes.  8       Q. When you do that, when you compare South  9 Carolina and Alabama turnout differences or rates of  10 decline, you have a theory and understanding, don't  11 you, that the collapse of the Democratic party in  12 Alabama, whatever impact that has on voter  13 enthusiasm, that that's not a factor that can explain  14 the difference in Alabama and South Carolina turnout  15 rates?  16      A. Again, I am assessing South Carolina and  17 Alabama on an array of indicators of partisan  18 competition. So, I look at South Carolina in terms  19 of changes in partisan competition over this time  20 period. Actually quite similar to changes that  21 occurred in Alabama over this time period. So, on  22 the measurable indicators, I would say, on the key</p>
<p style="text-align: right;">Page 150</p> <p>1 with southern states and do that.  2       So, his solution, he identifies his  3 problems. I agree with him. Social scientists have  4 recognized for a long time there is a readymade  5 solution, which is look at the difference in  6 difference, which is again what I'm doing in the  7 comparisons to southern states and to South Carolina.  8 And it is essentially what I'm doing in the  9 regression because I'm looking at changes over time  10 in Alabama versus changes in other states.  11      And so, he identifies the problem, which  12 I very much agree with. He identifies his solution  13 to that problem, and throughout the article cites  14 pieces that do the difference-in-difference approach  15 as being predictive.  16      So, in this case, I'm doing exactly what  17 is recommended and what is sort of the gold standard  18 for analysis of this sort.  19      Q. So, you can take turnout data in South  20 Carolina and measure how white turnout and black  21 turnout differ over the course of elections and  22 compare that to the same data points in Alabama.</p>	<p style="text-align: right;">Page 152</p> <p>1 indicators that we think drive turnout, Alabama is a  2 good match case with South Carolina.  3      Q. Does it matter when the state legislature  4 switched parties? In Alabama, the Republicans  5 obtained a majority of both houses and the state  6 legislature in 2010. Does it matter if the same  7 thing occurred in South Carolina 5 years later or 15  8 years earlier?  9      A. Again, you would expect that, if that  10 matters, it would be reflective in the electoral  11 totals in each state. Right? So, if South Carolina  12 is becoming more competitive, relatively speaking, to  13 Alabama, over time, you would see that in election  14 outcomes in South Carolina and Alabama, and it  15 doesn't appear that you see that.  16      Q. Have you been asked to express any  17 opinion on whether voter fraud or concern about voter  18 fraud is a real phenomenon?  19      A. I have not been asked to express an  20 opinion, no.  21      Q. Have you expressed an opinion on that  22 issue?</p>



<p style="text-align: right;">Page 153</p> <p>1 A. Not in -- well, I have reviewed the</p> <p>2 literature in my, for example, general politics</p> <p>3 article, and the literature seems to indicate that</p> <p>4 there are few documented cases of voter fraud.</p> <p>5 Q. Have you done any analysis yourself on</p> <p>6 that point?</p> <p>7 A. None whatsoever.</p> <p>8 Q. And in this case, am I correct that</p> <p>9 you've not been asked to offer an opinion on that</p> <p>10 issue?</p> <p>11 A. That's correct.</p> <p>12 Q. Have you seen the report by Dr. William</p> <p>13 Stewart in this case?</p> <p>14 A. I have seen, I think, a paragraph of that</p> <p>15 report.</p> <p>16 Q. Can you describe the gist of the</p> <p>17 paragraph that you saw from that report?</p> <p>18 A. I believe it was a comment that voter</p> <p>19 turnout trends are driven primarily by national</p> <p>20 electoral circumstances.</p> <p>21 Q. Okay. Did you agree or disagree with him</p> <p>22 on that point?</p>	<p style="text-align: right;">Page 155</p> <p>1 A. They cannot.</p> <p>2 Q. Again, just so I can understand the</p> <p>3 boundaries of your report, your analysis doesn't tell</p> <p>4 us whether that voter, assuming he or she does not</p> <p>5 have an ID, your analysis does not tell us whether</p> <p>6 they could get one if they wanted to?</p> <p>7 A. That's correct.</p> <p>8 MR. DAVIS: I think, with your</p> <p>9 permission, James, it would be a good use of our time</p> <p>10 if I could take five minute to organize.</p> <p>11 (Recess taken.)</p> <p>12 BY MR. SMITH:</p> <p>13 Q. Professor Hajnal, I'd like to ask you a</p> <p>14 couple of follow-up questions. I don't have very</p> <p>15 many.</p> <p>16 First, I'd like to call your attention to</p> <p>17 defendant's Exhibit 18, if you have that before you.</p> <p>18 A. I do.</p> <p>19 Q. This is what is titled your rebuttal</p> <p>20 exhibit. Is that right?</p> <p>21 A. That's correct, my rebuttal exhibit.</p> <p>22 Q. And this is the exhibit that you</p>
<p style="text-align: right;">Page 154</p> <p>1 A. I didn't fully agree with him. I think</p> <p>2 there was a number there, a percentage. I don't</p> <p>3 think there is data that gives us a percentage. But</p> <p>4 certainly, in presidential years, as I said earlier,</p> <p>5 a good portion of the change in turnout in a given</p> <p>6 locale is related to what is going on with the</p> <p>7 presidential election. And that's why it's important</p> <p>8 to do this difference-in-difference test.</p> <p>9 So, we look at not just Alabama where</p> <p>10 turnout can be driven by Obama not being on the</p> <p>11 ballot and Trump being on the ballot and compare</p> <p>12 Alabama to other non-strict southern states and South</p> <p>13 Carolina where Obama is also no longer on the ballot</p> <p>14 and Trump is on the ballot.</p> <p>15 Q. Under the analysis that you've done, say</p> <p>16 a hypothetical African-American voter voted in the</p> <p>17 presidential election in 2012 and did not vote in</p> <p>18 2016. Can your numbers tell us why any particular</p> <p>19 voter may have not voted in 2016?</p> <p>20 A. They cannot.</p> <p>21 Q. Can your numbers tell us whether that</p> <p>22 voter has a photo ID?</p>	<p style="text-align: right;">Page 156</p> <p>1 discussed in some detail earlier with counsel for the</p> <p>2 secretary of state. Correct?</p> <p>3 A. That's correct.</p> <p>4 Q. For the record, this exhibit was provided</p> <p>5 to counsel for secretary of state just before the</p> <p>6 deposition began today, and the questions -- I'm not</p> <p>7 going to ask you to revise your analysis of what you</p> <p>8 did here, but I do want to talk about a couple of</p> <p>9 discrete points and make a couple of discrete</p> <p>10 corrections.</p> <p>11 First, I'd like to ask you what data it</p> <p>12 was you relied on in doing this analysis.</p> <p>13 A. So, the primary data, as I indicated</p> <p>14 before, is what I'm calling Hood-reliance materials.</p> <p>15 So, it would be the individual voter file that was</p> <p>16 provided by Hood to counsel, which counsel gave to</p> <p>17 me, that in addition to each individual voter was</p> <p>18 matched to the county residence by the secretary of</p> <p>19 state. And so, that's part of the data set as well,</p> <p>20 the data from the secretary of state.</p> <p>21 Q. So, part of the data is the data that</p> <p>22 Dr. Hood used to analyze turnout and race, and that's</p>

<p style="text-align: right;">Page 157</p> <p>1 the bulk of it. Is that right?</p> <p>2 A. Yes.</p> <p>3 Q. But there was also a county field</p> <p>4 included in the data set. Is that right?</p> <p>5 A. That's correct.</p> <p>6 Q. And that county field was not part of</p> <p>7 Dr. Hood's analysis. It came separately from the</p> <p>8 secretary of state's office.</p> <p>9 A. That's correct.</p> <p>10 Q. And this data was provided to you by</p> <p>11 whom?</p> <p>12 A. By my counsel -- by the counsel -- by</p> <p>13 you.</p> <p>14 Q. Fair enough.</p> <p>15 A. Whatever you are called.</p> <p>16 Q. Let's turn now to a couple of specific</p> <p>17 points on these tables.</p> <p>18 On page 2 of Defendant's Exhibit 18,</p> <p>19 they're the same pair of graphics here, the table and</p> <p>20 the figure that you have described earlier, but I</p> <p>21 want to call your attention to a footnote on Table 2.</p> <p>22 Could you please explain why that</p>	<p style="text-align: right;">Page 159</p> <p>1 should have been labeled "White Turnout." Is that</p> <p>2 right?</p> <p>3 A. That's correct.</p> <p>4 Q. That would have to correspond to the data</p> <p>5 above in Table 3.</p> <p>6 A. That's correct.</p> <p>7 Q. I notice that same mistake was made on</p> <p>8 page 5 in Figure 5. Is that right?</p> <p>9 A. That's correct.</p> <p>10 Q. So, on the Y axis, where it says</p> <p>11 "All-voter Turnout" in Figure 5, it should read</p> <p>12 "White Turnout"?</p> <p>13 A. Correct.</p> <p>14 Q. The source information for each of these</p> <p>15 tables and figures is the same apart from the year in</p> <p>16 terms of the file from Professor Hood, it appears,</p> <p>17 but on page 7, in Table 7, it appears there the</p> <p>18 source is identified solely as "Hood-reliance</p> <p>19 materials 2016, T-O times race." Is that a mistake?</p> <p>20 A. That is a typo. The source material</p> <p>21 there is exactly the same as in all the other tables</p> <p>22 and figures. It's the Hood-reliance material as well</p>
<p style="text-align: right;">Page 158</p> <p>1 footnote is there and what it means?</p> <p>2 A. Yes. The footnote relates to Dallas</p> <p>3 County, one of the 12 majority-minority counties, and</p> <p>4 the turnout in Dallas County in 2010.</p> <p>5 When I analyzed the data provided by</p> <p>6 Dr. Hood and the secretary of state, the data</p> <p>7 indicated that the turnout rate in Dallas was</p> <p>8 approximately 1 percent among minorities and</p> <p>9 1 percent among all voters. So, it is clear that</p> <p>10 there was an error either in the matching of the two</p> <p>11 different data sets or elsewhere.</p> <p>12 I endeavored to see whether that made any</p> <p>13 difference in the analysis, so, I ran the analysis</p> <p>14 including the Dallas County data, so, basically all</p> <p>15 the data as provided, and ran it after dropping</p> <p>16 Dallas County, and the results are -- the pattern is</p> <p>17 essentially identical in terms of the conclusion,</p> <p>18 which is that, in these majority-minority counties in</p> <p>19 2010, overall turnout is an excellent predictor of</p> <p>20 racial and ethnic minority turnout in these counties.</p> <p>21 Q. On page 3, you noted a typo in Figure 3</p> <p>22 where, on the Y Axis labeled "All-voter Turnout," it</p>	<p style="text-align: right;">Page 160</p> <p>1 as all the county data identifiers from the secretary</p> <p>2 of state.</p> <p>3 Q. You can set that aside. I don't have</p> <p>4 anything else on that exhibit.</p> <p>5 If you could please turn to your report,</p> <p>6 which is Defendant's Exhibit 1.</p> <p>7 On page 16, earlier today you were</p> <p>8 talking to Mr. Davis about Table 1 and about your</p> <p>9 analysis of these counties, and I believe there's a</p> <p>10 reference here in Table 1 to more diverse and less</p> <p>11 diverse counties, is that right, in the bottom half</p> <p>12 of the table?</p> <p>13 A. That's correct.</p> <p>14 Q. And it says over 28.7 percent minority,</p> <p>15 more diverse, under 28.7 percent minority, less</p> <p>16 diverse. Is that right?</p> <p>17 A. Correct.</p> <p>18 Q. And I believe when asked about this</p> <p>19 earlier, you suggested that that line, 28.7 percent</p> <p>20 was the mean or average diversity or minority</p> <p>21 population size for Alabama counties as a whole. Is</p> <p>22 that correct?</p>

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1 A. That is what I indicated. In this  
2 particular case, I misspoke.  
3 So, the cutoff is actually the median for  
4 the county. So, that would have an equal number on  
5 each side now with 67 counties. There's 33 of the  
6 more diverse counties and 34 of the less diverse, but  
7 the cutoff, 28 percent minority, is the median  
8 minority, not the mean.  
9 Q. And that median is what divides the 67  
10 counties in Alabama in half?  
11 A. Yes.  
12 Q. If you could look at Defendant's  
13 Exhibit 13.  
14 In discussing this with Mr. Davis, you  
15 were asked what it means, the variable in the fourth  
16 column, "Republican\_Senate." Is that right?  
17 A. That's correct.  
18 Q. And your discussion was about how --  
19 basically about the partisan affiliation of U.S.  
20 senators for each state. Is that right?  
21 A. Yes.  
22 Q. Is that what this variable represents?

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1 A. No.  
2 So, in the analysis, I am controlling  
3 both for factors at the federal, state level, and  
4 also at the state legislative level. And this  
5 particular variable is whether or not the state --  
6 the senate legislature in Alabama or in any given  
7 state is majority Republican or not.  
8 And so, here the data is indicating that,  
9 for example, in Alabama, the state senate is, in  
10 fact, majority Republican. And the same would be  
11 true for the House here. So, we are looking at the  
12 state House and whether it is majority Republican or  
13 minority Republican.  
14 Q. And I believe there was another exhibit  
15 that had a similar heading, DX-14, for example.  
16 And the same would be true for DX-14. Is  
17 that correct?  
18 A. Yes.  
19 Q. If we turn to your report again, back to  
20 Exhibit 1, and look at page 41, where is that  
21 variable represented in this table or is it  
22 represented in this table?

Page 163

1 A. Yes. So, it would be six rows down. We  
2 have majority party in the senate, which is the  
3 majority party in the state senate. And we have  
4 majority party in the House, which is majority party  
5 in the state House.  
6 Q. If we could briefly take a look at  
7 defendant's Exhibit 5. This was the first exhibit  
8 after the binder, and it was a list of sources for  
9 additional variables. Do you have that?  
10 A. I do.  
11 Q. This is labeled "Sources for Additional  
12 Variables."  
13 Does this list encompass every variable  
14 that you include in any of your analyses?  
15 A. No. This is not a complete list. As it  
16 says, it is a set of additional variables. There are  
17 other variables for which there are websites  
18 provided. So, that publicly accessible data.  
19 So, in order to reconstruct the entire  
20 data set, there would have to be the materials in  
21 these exhibits and other additional materials.  
22 Q. Back to your report, Defendant's

Page 164

1 Exhibit 1, in your conversation with Mr. Davis, you  
2 were asked where in your report the comparative  
3 analysis of Alabama and South Carolina appeared.  
4 A. That's correct.  
5 Q. Where did you look in your report when  
6 discussing that?  
7 A. I believe I looked at page 21 and 22 in  
8 reference to the analysis done there.  
9 Q. On pages 21 and 22, the analysis done  
10 there is focused just on changes within  
11 majority-minority counties in those states. Is that  
12 correct?  
13 A. That's correct. I'm comparing change in  
14 Alabama's majority-minority counties between 2012 and  
15 2016 with change in South Carolina's  
16 majority-minority counties. So, it is all in the  
17 same period.  
18 Q. Is it on the basis of that comparison  
19 that you offered your opinion about the effect of the  
20 photo ID law in Alabama?  
21 A. No, it's not. So, that is an important  
22 data point. It's a building block. But one of the



<p style="text-align: right;">Page 165</p> <p>1 critical pieces of analysis comes later where I talk  2 about, on page 25, a comparison between Alabama and  3 South Carolina, looking at, in this case, not simply  4 the change in minority turnout but the relative  5 change between majority-minority counties and  6 overwhelmingly white counties.</p> <p>7 And in that analysis, I show that  8 essentially the relative racial gap increases in a  9 more pronounced fashion in Alabama than it does in  10 South Carolina. This is also a critical data point  11 for the larger analysis, the larger comparison of  12 Alabama to South Carolina.</p> <p>13 So, we see the same more pronounced  14 racial effect in Alabama over this time period than  15 we do in other southern states over the same time  16 period. And that would be -- that particular  17 analysis is highlighted in Table 3 on page 23.</p> <p>18 Q. So, Table 3 goes with a larger group of  19 southern states that do not have strict ID  20 requirements, the same type of analysis of a relative  21 change in turnout that you were just discussing with  22 respect to South Carolina specifically?</p>	<p style="text-align: right;">Page 167</p> <p>1 drops among African-Americans who have no ID.  2 That's a way of thinking about it, but a  3 better way of thinking about it is to think about how  4 this affects the group as a whole -- it affects the  5 share of each group that's not going to be  6 participating.</p> <p>7 So, let me explain that a little bit more  8 clearly. So, let's take a hypothetical case. So,  9 let's say the effect of the voter ID law was the same  10 on whites as it is on blacks. In order to have  11 assessed the overall effect, we need to know what  12 share of each population was participating before the  13 law. So, is this a big hit on their participation or  14 is it a small hit? So, for example, if 30 percent of  15 whites without an ID were participating in an  16 election prior to the implementation of strict voter  17 ID law and the effect of a strict voter ID law is 10  18 percentage points, turnout drops from 30 to 20  19 percent. Whites lose a third of the voters who don't  20 have ID laws.</p> <p>21 By contrast, African-Americans who didn't  22 have an ID, their baseline participation was much</p>
<p style="text-align: right;">Page 166</p> <p>1 A. That's correct.</p> <p>2 Q. You were asked by Mr. Davis about your  3 response to Dr. Hood's report, which is Defendant's  4 Exhibit 4, Tab 4 in the binder. And you offered  5 several responses, you know, or analyses of  6 Dr. Hood's methodology in response to his question.  7 Did you have any other criticisms of  8 Dr. Hood's report or methodology that you did not  9 identify in responding to Mr. Davis?</p> <p>10 A. Yes. I had two other -- at least two  11 other main criticisms.</p> <p>12 Q. What was the first of those two?</p> <p>13 A. So, the first criticism is that Dr. Hood,  14 in his analysis of strict voter ID laws, even if we  15 believe his results, as I noted, I think the test is  16 fundamentally flawed. But even if you were to  17 believe the results, they are misrepresentative of  18 the relative impact on whites and blacks for one  19 particular reason, which is he is showing in his  20 analysis the percentage point drop in turnout for  21 each racial group. So, the percentage point drop  22 among whites who have no ID, the percentage point</p>	<p style="text-align: right;">Page 168</p> <p>1 lower, close to 15 percentage points, and you have a  2 10 percentage point drop. That means that two-thirds  3 of the African-Americans who don't have an ID are --  4 essentially their turnout is impacted by the law.</p> <p>5 So, that's just a hypothetical, but if we  6 look at Table 8 in Dr. Hood's report, for example, if  7 you look at the no-match B list, roughly about  8 30 percent of whites who don't have an ID are  9 participating before the election; roughly, in this  10 case, 18.5 percent of African-Americans. So, the  11 same percentage point drop will be much more  12 significant for African-Americans than it would be  13 for white no-ID holders.</p> <p>14 Q. And you said you had a second additional  15 reaction or criticism of Dr. Hood's report as well?</p> <p>16 A. Yes. So, this criticism is essentially  17 that Dr. Hood has -- the simplest way of saying it is  18 he has failed to do half the math here.</p> <p>19 So, again, assuming these results are  20 accurate, what Dr. Hood has measured here is the --  21 or purported to measure is the effect of a strict  22 voter ID law on the population that doesn't have an</p>

<p style="text-align: right;">Page 169</p> <p>1 ID. So, among whites who don't have an ID, it has  2 this effect. Among African-American who don't have  3 IDs, it has this effect.  4 If you want to get at the net effect of  5 the law, you then have to consider what share of each  6 group has no IDs in the first place. So, if there  7 are almost no whites without IDs, that's going to  8 have a relatively small impact on the share of whites  9 who participated at the end of the day. If  10 relatively more blacks don't have an ID, the net  11 effect is going to be larger.  12 So, if we were to take the case where --  13 and again, I'm not claiming to be an expert on  14 possession rates, but if we were to take the case  15 where African-Americans are twice as likely to have  16 an ID as whites, an equal effect among non-ID holders  17 across the two races would lead to a twice-as-large  18 effect on the share of African-Americans who are  19 participating.  20 Q. I believe you just said in your  21 hypothetical, if we assume the share of  22 African-Americans who have an ID is twice as large.</p>	<p style="text-align: right;">Page 171</p> <p>1 Zoltan Hajnal concluded.)  2  3 CERTIFICATE OF NOTARY PUBLIC  4 I, Carol J. Robinson, RPR the officer  5 before whom the foregoing cause was taken, do hereby  6 certify that the witness whose testimony appears in  7 the foregoing transcript was taken by me in shorthand  8 at the time mentioned in the caption hereof and  9 thereafter transcribed by me; that said transcript is  10 a record of the testimony given by said witness to  11 the best of my ability; that I am neither counsel  12 for, related to, nor employed by any parties to the  13 action; and further, that I am not a relative or  14 employee of any counsel or attorney employed by the  15 parties hereto, nor financially or otherwise  16 interested in the outcome of this action.  17  18 CAROL J. ROBINSON  19 Notary Public in and for the  20 District of Columbia  21 My commission expires:  22 May 13, 2019</p>
<p style="text-align: right;">Page 170</p> <p>1 Did you mean to say the share of African-Americans  2 who lack an ID?  3 A. Yes, sorry.  4 Yeah. If the share included -- if the  5 share of African-Americans who lack an ID is twice as  6 large than the share of whites who lack an ID, if the  7 ID law has the same effect by race on non-ID holders,  8 the net impact of that is going to be twice as large  9 for African-Americans because there are more people  10 who could have been affected by the law,  11 proportionally speaking.  12 MR. SMITH: I have no other questions.  13 MR. DAVIS: Give me just a couple of  14 minutes.  15 MR. SMITH: That's fine.  16 (Recess taken.)  17 MR. DAVIS: I have no further questions,  18 Dr. Hajnal. I appreciate you being here.  19 Thank you for your time and for helping  20 me understand your report.  21 THE WITNESS: Thank you very much.  22 (WHEREUPON, at 2:41 the deposition of</p>	<p style="text-align: right;">Page 172</p> <p>1  2 ACKNOWLEDGEMENT OF  3 DEPONENT  4 I, ZOLTAN HAZNAL, do hereby acknowledge I have read  5 and examined the foregoing pages of testimony, and  6 the same is a true, correct and complete  7 transcription of the testimony given by me, and any  8 changes or corrections, if any, appear in the  9 attached errata sheet signed by me.  10  11  12  13  14  15  16  17  18  19  20 _____  21 ZOLTAN HAZNAL DATE  22</p>

**HOOD REBUTTAL EXHIBIT:**

**Responding to Dr. Hood's Individual Voter Turnout Analysis**

**Zoltan Hajnal**

**June 12, 2017**

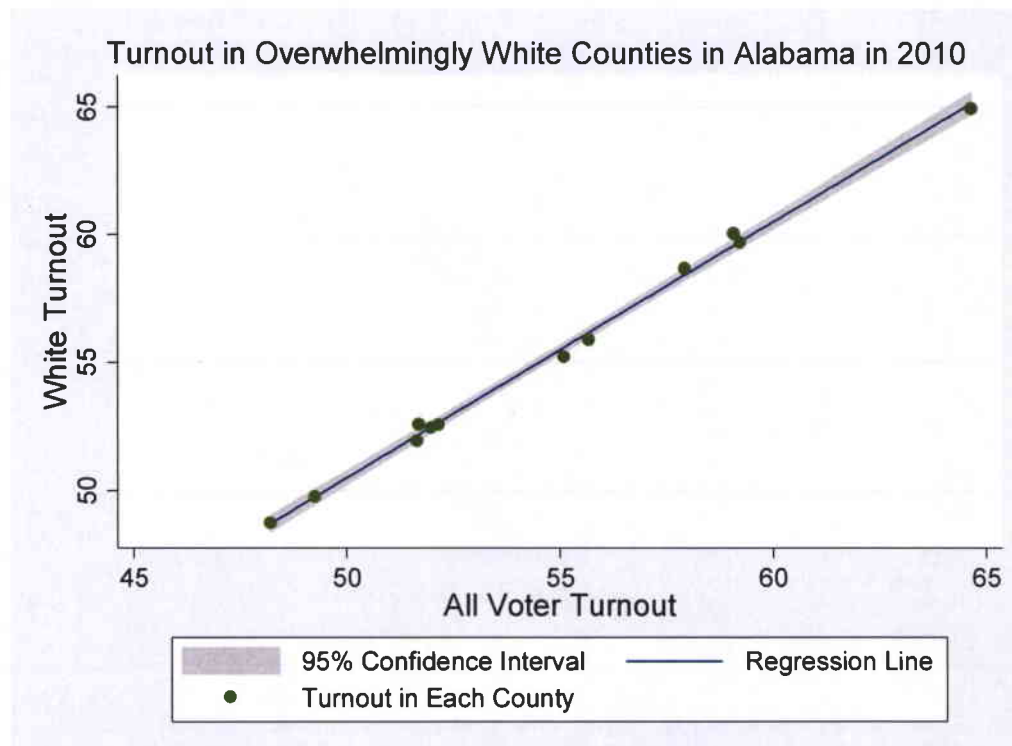


**TABLE 1. WHITE TURNOUT V. ALL VOTER TURNOUT IN OVERWHELMINGLY WHITE COUNTIES IN 2010**  
*(Percentages from Individual Registered Voter File)*

County	White Turnout (As a Share of White Registered Voters)	All Voter Turnout (As a Share of All Registered Voters)	Difference Between White and All Voter Turnout
BLOUNT	48.7	48.2	0.5
CHEROKEE	55.2	55.1	0.1
CLEBURNE	59.7	59.2	0.5
CULLMAN	65.0	64.7	0.3
FAYETTE	60.1	59.1	1.0
JACKSON	49.8	49.3	0.5
LAMAR	52.6	51.7	0.9
LAUDERDALE	58.7	57.9	0.7
MARION	51.9	51.6	0.3
ST_CLAIR	52.5	52.0	0.5
WALKER	52.6	52.2	0.4
WINSTON	55.9	55.7	0.2

Source: Hood Reliance Materials (2010 TO x Race) and County of Residence Data from Secretary of State

**Figure 1.**



The correlation in 2010 is 1.0 and is significant at  $p < .001$ . The maximum correlation for any two variables is 1.0.

Source: Hood Reliance Materials (2010 TO x Race) and County of Residence Data from Secretary of State

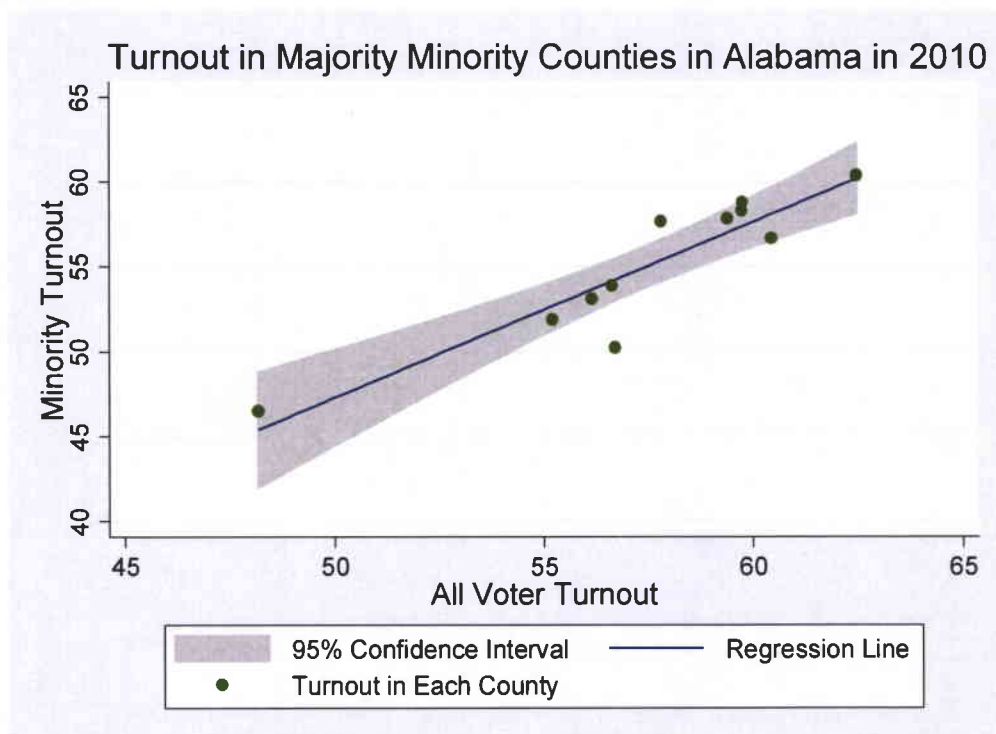
**TABLE 2. MINORITY TURNOUT V. ALL VOTER TURNOUT IN MAJORITY-MINORITY COUNTIES IN 2010**  
*(Percentages from Individual Registered Voter File)*

County	Minority Turnout (As a Share of Minority Registered Voters)	All Voter Turnout (As a Share of All Registered Voters)	Difference Between Minority and All Voter Turnout
BARBOUR	53.1	56.1	-3.0
BULLOCK	53.9	56.6	-2.7
DALLAS <sup>1</sup>	--	--	--
GREENE	57.9	59.4	-1.5
HALE	58.3	59.7	-1.4
LOWNDES	51.9	55.2	-3.3
MACON	46.5	48.2	-1.7
MARENGO	56.7	60.4	-3.8
MONTGOMERY	50.2	56.7	-6.5
PERRY	57.7	57.8	-0.1
SUMTER	60.4	62.5	-2.1
WILCOX	58.8	59.7	-1.0

Source: Hood Reliance Materials (2010 TO x Race) and County of Residence Data from Secretary of State

<sup>1</sup> The data from Dr. Hood and the Secretary of State indicate turnout of 1 percent in Dallas County in 2010. Because this is implausibly low and indicates a data error, Dallas County has been dropped from the 2010 analysis.

**Figure 2.**



The correlation in 2010 is .92 and is significant at  $p < .001$ . The maximum correlation for any two variables is 1.0.

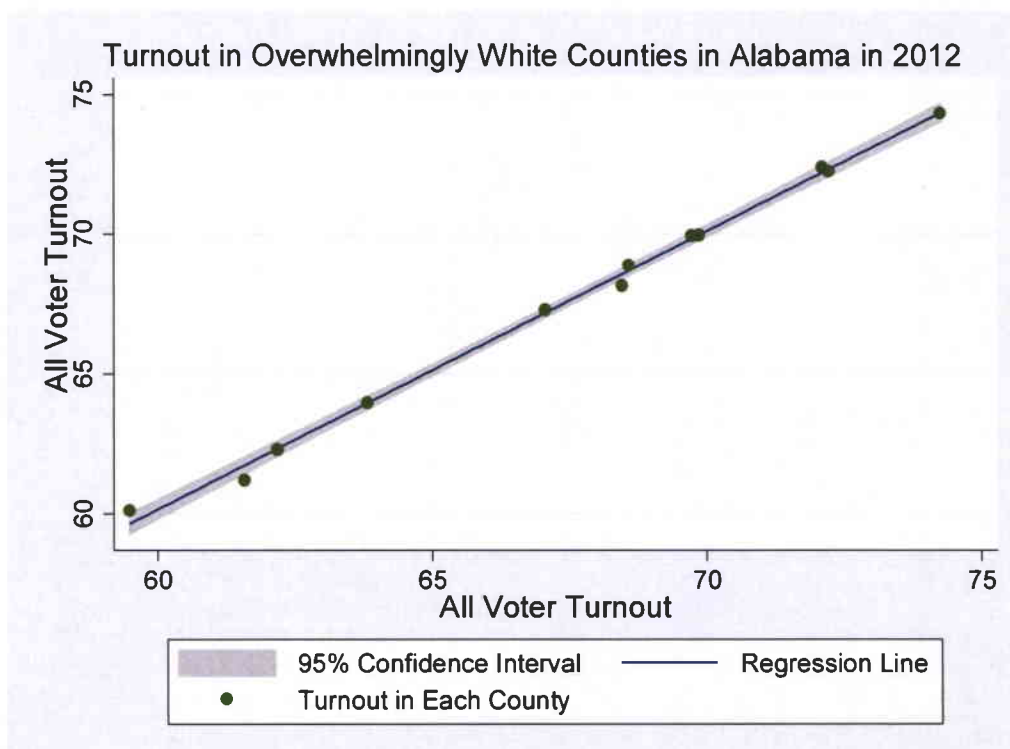
Source: Hood Reliance Materials (2010 TO x Race) and County of Residence Data from Secretary of State

**TABLE 3. WHITE TURNOUT V. ALL VOTER TURNOUT IN OVERWHELMINGLY WHITE COUNTIES IN 2012**  
*(Percentages from Individual Registered Voter File)*

County	White Turnout (As a Share of White Registered Voters)	All Voter Turnout (As a Share of All Registered Voters)	Difference Between White and All Voter Turnout
BLOUNT	60.1	59.5	0.6%
CHEROKEE	70.0	69.9	0.1
CLEBURNE	68.9	68.6	0.3
CULLMAN	69.9	69.7	0.2
FAYETTE	74.3	74.3	0.1
JACKSON	62.3	62.2	0.1
LAMAR	72.4	72.1	0.3
LAUDERDALE	72.2	72.2	0.0
MARION	67.3	67.1	0.2
ST_CLAIR	68.2	68.5	-0.3
WALKER	61.2	61.6	-0.4
WINSTON	64.0	63.8	0.1

Source: Hood Reliance Materials (2012 TO x Race) and County of Residence Data from Secretary of State

**Figure 3.**



The correlation in 2012 is 1.0 and is significant at  $p < .001$ . The maximum correlation for any two variables is 10.

Source: Hood Reliance Materials (2012 TO x Race) and County of Residence Data from Secretary of State

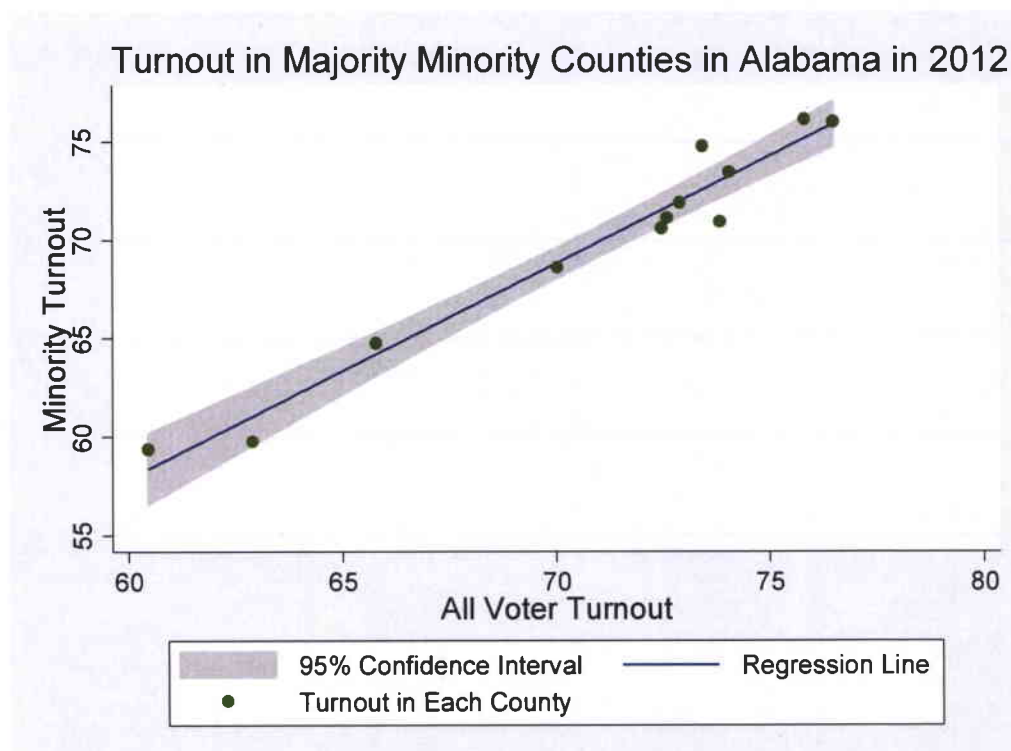


**TABLE 4. MINORITY TURNOUT V. ALL VOTER TURNOUT IN MAJORITY-MINORITY COUNTIES IN 2012**  
*(Percentages from Individual Registered Voter File)*

County	Minority Turnout (As a Share of Minority Registered Voters)	All Voter Turnout (As a Share of All Registered Voters)	Difference Between Minority and All Voter Turnout
BARBOUR	71.1	72.6	-1.5
BULLOCK	68.6	70.0	-1.4
DALLAS	64.8	65.8	-1.0
GREENE	76.2	75.8	0.3
HALE	59.8	62.9	-3.1
LOWNDES	73.5	74.1	-0.6
MACON	59.4	60.5	-1.1
MARENGO	70.9	73.8	-2.9
MONTGOMERY	70.6	72.5	-1.9
PERRY	74.8	73.4	1.3
SUMTER	71.9	72.9	-1.0
WILCOX	76.0	76.5	-0.5

Source: Hood Reliance Materials (2012 TO x Race) and County of Residence Data from Secretary of State

**Figure 4.**



The correlation in 2012 is .98 and is significant at  $p < .001$ . The maximum correlation for any two variables is 1.0.

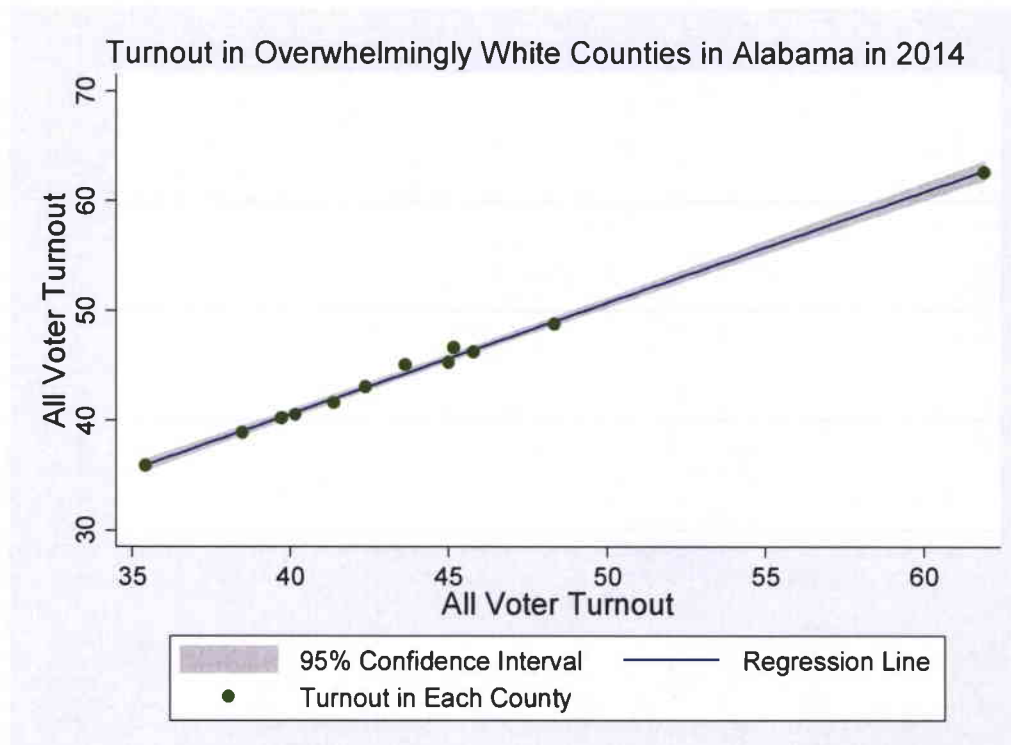
Source: Hood Reliance Materials (2012 TO x Race) and County of Residence Data from Secretary of State

**TABLE 5. WHITE TURNOUT V. ALL VOTER TURNOUT IN OVERWHELMINGLY WHITE COUNTIES IN 2014**  
*(Percentages from Individual Registered Voter File)*

County	White Turnout (As a Share of White Registered Voters)	All Voter Turnout (As a Share of All Registered Voters)	Difference Between White and All Voter Turnout
BLOUNT	43.0	42.4	0.7
CHEROKEE	48.8	48.4	0.4
CLEBURNE	40.5	40.2	0.3
CULLMAN	41.6	41.4	0.2
FAYETTE	62.6	61.9	0.7
JACKSON	35.9	35.4	0.5
LAMAR	45.1	43.6	1.4
LAUDERDALE	46.6	45.2	1.5
MARION	46.2	45.8	0.4
ST_CLAIR	38.9	38.5	0.4
WALKER	40.2	39.7	0.5
WINSTON	45.3	45.0	0.3

Source: Hood Reliance Materials (2014 TO x Race) and County of Residence Data from Secretary of State

**Figure 5.**



The correlation in 2014 is 1.0 and is significant at  $p < .001$ . The maximum correlation for any two variables is 1.0.

Source: Hood Reliance Materials (2014 TO x Race) and County of Residence Data from Secretary of State

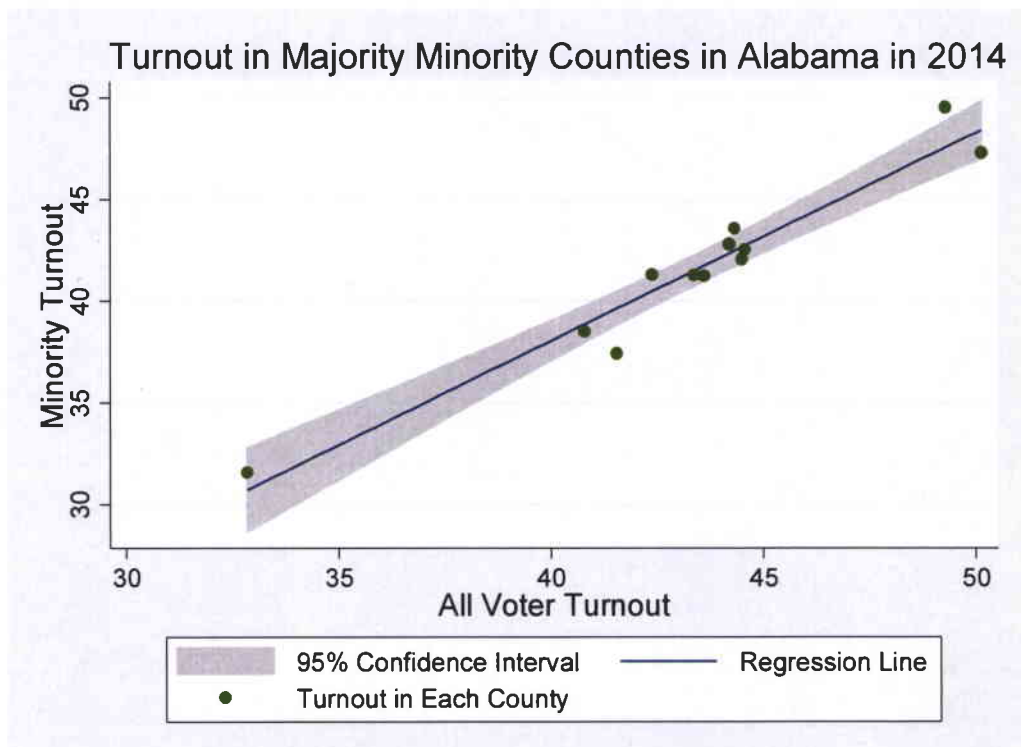


**TABLE 6. MINORITY TURNOUT V. ALL VOTER TURNOUT IN MAJORITY-MINORITY COUNTIES IN 2014**  
*(Percentages from Individual Registered Voter File)*

County	Minority Turnout (As a Share of Minority Registered Voters)	All Voter Turnout (As a Share of All Registered Voters)	Difference Between Minority and All Voter Turnout
BARBOUR	41.2	43.6	-2.4
BULLOCK	41.3	42.4	-1.1
DALLAS	38.5	40.8	-2.3
GREENE	49.5	49.3	0.2
HALE	42.5	44.6	-2.1
LOWNDES	41.3	43.4	-2.1
MACON	31.5	32.9	-1.3
MARENGO	42.1	44.5	-2.4
MONTGOMERY	37.4	41.6	-4.2
PERRY	43.6	44.3	-0.8
SUMTER	42.8	44.2	-1.4
WILCOX	47.3	50.1	-2.8

Source: Hood Reliance Materials (2014 TO x Race) and County of Residence Data from Secretary of State

**Figure 6:**



The correlation in 2014 is .97 and is significant at  $p < .001$ . The maximum correlation for any two variables is 1.0.

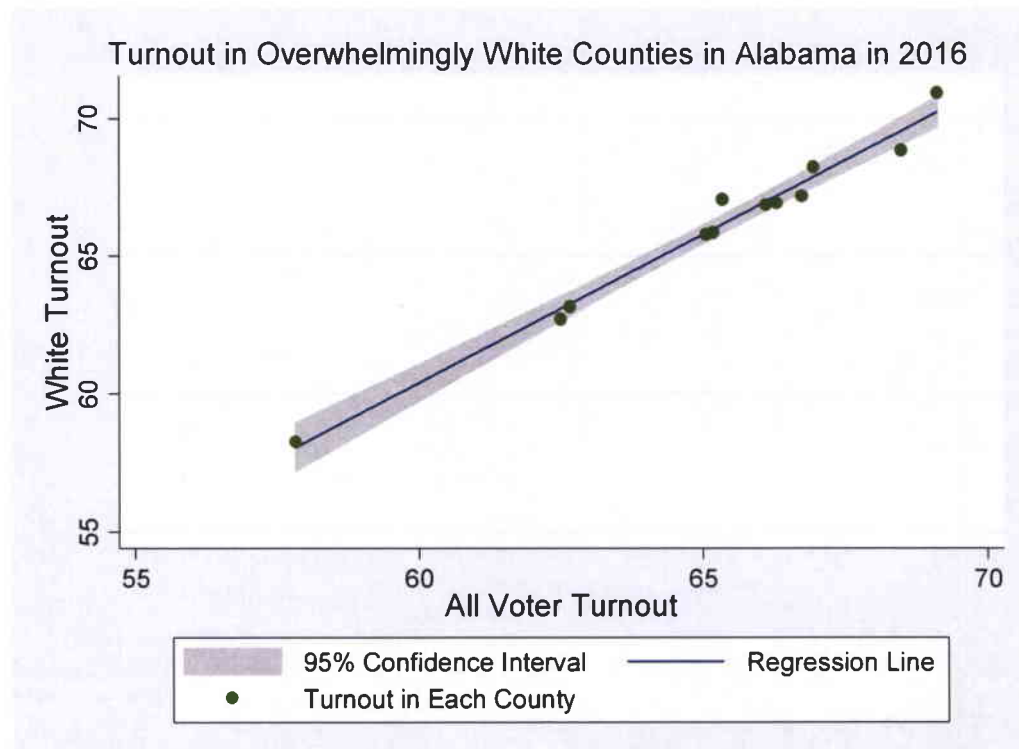
Source: Hood Reliance Materials (2014 TO x Race) and County of Residence Data from Secretary of State

**TABLE 7. WHITE TURNOUT V. ALL VOTER TURNOUT IN OVERWHELMINGLY WHITE COUNTIES IN 2016**  
*(Percentages from Individual Registered Voter File)*

County	White Turnout (As a Share of White Registered Voters)	All Voter Turnout (As a Share of All Registered Voters)	Difference Between Minority and All Voter Turnout
BLOUNT	66.9	66.1	0.7
CHEROKEE	65.9	65.2	0.7
CLEBURNE	63.2	62.7	0.5
CULLMAN	68.9	68.5	0.4
FAYETTE	70.9	69.1	1.8
JACKSON	58.3	57.8	0.4
LAMAR	67.1	65.3	1.7
LAUDERDALE	68.3	67.0	1.3
MARION	65.8	65.1	0.7
ST_CLAIR	67.2	66.7	0.4
WALKER	66.9	66.3	0.6
WINSTON	62.7	62.5	0.2

Source: Hood Reliance Materials (2016 TO x Race)

**Figure 7.**



The correlation in 2016 is .99 and is significant at  $p < .001$ . The maximum correlation for any two variables is 1.0.

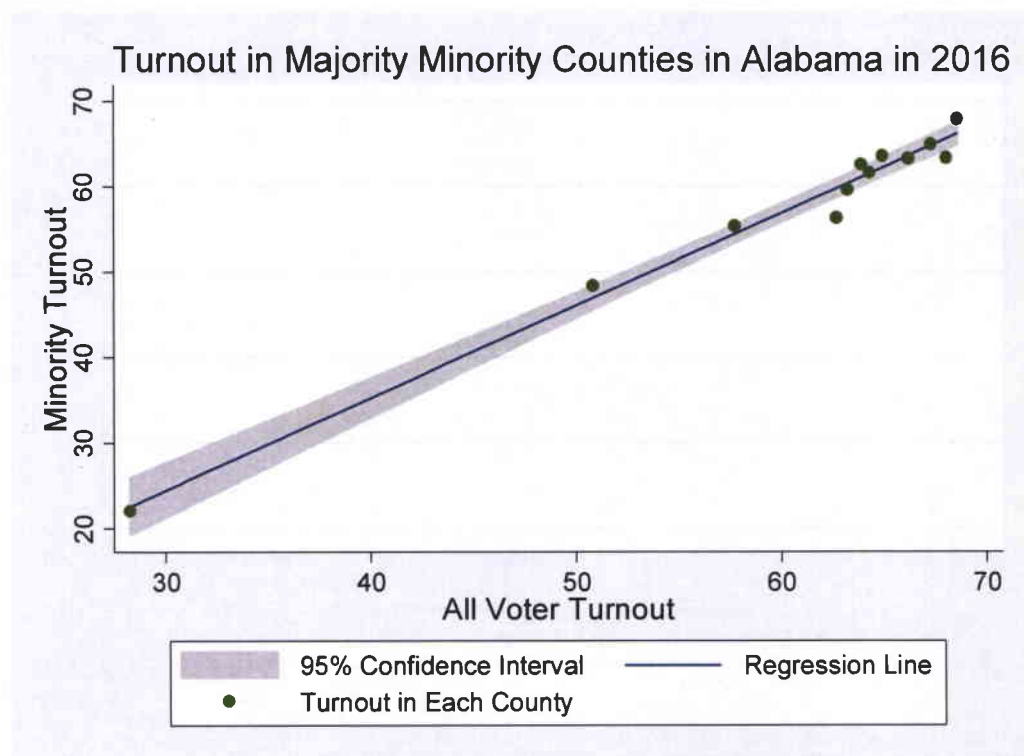
Source: Hood Reliance Materials (2016 TO x Race) and County of Residence Data from Secretary of State

**TABLE 8. MINORITY TURNOUT V. ALL VOTER TURNOUT IN MAJORITY-MINORITY COUNTIES IN 2016**  
*(Percentages from Individual Registered Voter File)*

County	Minority Turnout (As a Share of Minority Registered Voters)	All Voter Turnout (As a Share of All Registered Voters)	Difference Between Minority and All Voter Turnout
BARBOUR	56.3	62.7	-6.4
BULLOCK	63.6	65.0	-1.4
DALLAS	55.4	57.8	-2.4
GREENE	67.9	68.6	-0.7
HALE	63.3	66.2	-2.9
LOWNDES	22.0	28.3	-6.2
MACON	48.4	50.8	-2.4
MARENGO	63.4	68.1	-4.7
MONTGOMERY	59.6	63.3	-3.6
PERRY	62.5	63.9	-1.4
SUMTER	61.6	64.3	-2.7
WILCOX	65.0	67.3	-2.3

Source: Hood Reliance Materials (2016 TO x Race) and County of Residence Data from Secretary of State

**Figure 8.**



The correlation between minority turnout and all voter turnout in 2016 is .99 and is significant at  $p < .001$ . The maximum correlation for any two variables is 1.0.

Source: Hood Reliance Materials (2016 TO x Race) and County of Residence Data from Secretary of State

1 UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF ALABAMA

3 SOUTHERN DIVISION

4 -----X

5 GREATER BIRMINGHAM :  
MINISTRIES, et al., :  
: Civil Action No:  
6 Plaintiffs : 2:15-cv-02193-LSC  
:   
7 -vs- : Pages 1 - 255  
:   
8 JOHN H. MERRILL, in his :  
official capacity as :  
9 Secretary of State, :  
:   
10 Defendant :  
-----X

11

12

13 Deposition of J. Morgan Kousser, Ph.D.

14 Washington, D.C.

15 Tuesday, June 13, 2017

16

17

18

19

20

21

22 Reported by: Kathleen M. Vaglica, RPR, RMR

1

2

3

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5

6

7

Tuesday, June 13, 2017

8

(9:08 a.m.)

9

10 Deposition of J. Morgan Kousser, Ph.D., held at the  
11 offices of:

12

13 Covington & Burling LLP

14 850 10th Street, N.W.

15 Washington, D.C. 20001-4956

16

17

18 Pursuant to notice, before Kathleen M. Vaglica, RPR,  
19 RMR, a Notary Public in and for the District of  
20 Columbia.

21

22

1 A P P E A R A N C E S

2

3

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8 ALSO PRESENT

9 STEVEN PALMER (BY TELEPHONE)  
10 CALVIN BURROUGHS (BY TELEPHONE)  
11 JACKSON BRANNON (BY TELEPHONE)  
12 MICHELLE MUSIELEWICZ  
13 NICOLE ANTOINE  
14 JACOB STEINER  
15 YASMIN DAGNE  
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1 P R O C E E D I N G S

2 Thereupon,

3 J. Morgan Kousser, Ph.D.,

4 a witness, called for examination by counsel for the

5 Defendant and, after having been sworn by the

6 notary, was examined and testified as follows:

09:08:03 7 BY MR. MAZE: Usual stipulations?

09:08:03 8 MR. ROSS: Yes.

09:08:04 9 MR. MAZE: Yes. First question for Deuel.

09:08:07 10 He's going to want to read and sign?

09:08:10 11 MR. ROSS: Yes.

09:08:12 12 EXAMINATION BY COUNSEL FOR THE DEFENDANT

09:08:12 13 BY MR. MAZE:

09:08:13 14 Q. Good morning, sir.

09:08:14 15 A. Good morning.

09:08:15 16 Q. Please state your name for the record.

09:08:17 17 A. Initial J, middle name Morgan,

09:08:21 18 M-O-R-G-A-N, last name Kousser, K-O-U-S-S-E-R.

09:08:24 19 Q. I'm going to hand you a document that I

09:08:27 20 have marked Deposition Exhibit Number 1.

09:08:30 21 (Deposition Exhibit No. 1, Expert Report

22 of J. Morgan Kousser, was marked for

09:08:31 1 identification.)

09:08:31 2 BY MR. MAZE:

09:08:32 3 Q. I ask you if this is the report that you  
09:08:34 4 have written for this case?

09:08:35 5 A. It is.

09:08:36 6 Q. Can you please turn to page 86? I want to  
09:08:48 7 read the first three sentences of paragraph 181.

09:08:53 8 "A white, retired professor of American  
09:08:56 9 history at Birmingham Southern College, housebound  
09:08:59 10 with cancer, had to go to so much trouble trying to  
09:09:02 11 vote in 2016 that a radio station did a feature  
09:09:06 12 story on him. As his state representative  
09:09:09 13 commented, 'He's a real hero for doing for doing  
09:09:11 14 what he did.' Apparently, the necessity of a heroic  
09:09:15 15 quest to be able to vote did not bother the  
09:09:18 16 Secretary of State, John Merrill, who succeeded  
09:09:20 17 Bennett." Did I read that correctly?

09:09:23 18 A. Yes.

09:09:24 19 Q. You wrote that; correct?

09:09:25 20 A. Yes.

09:09:26 21 Q. Do you know the name of the white, retired  
09:09:29 22 professor who is housebound with cancer?

09:09:32 1 A. It was in the article, but I did not put  
09:09:34 2 it in the report.

09:09:35 3 Q. Do you know whether or not that person got  
09:09:38 4 a voter ID card?

09:09:40 5 A. Yes, I believe he did.

09:09:41 6 Q. And he got that because Secretary Merrill  
09:09:44 7 talked to him on multiple occasions on his personal  
09:09:47 8 cell phone; correct?

09:09:48 9 MR. ROSS: Objection.

09:09:50 10 THE WITNESS: I know what was in the  
09:09:53 11 article, and, if that was in the article, then  
09:10:00 12 that's true, but I do not remember the details of  
09:10:03 13 it. I do not remember whether your statement is a  
09:10:06 14 correct summary of the article.

09:10:07 15 BY MR. MAZE:

09:10:07 16 Q. Did you talk to Mr. Stayer?

09:10:09 17 A. No.

09:10:10 18 Q. Did you talk to Secretary Merrill?

09:10:11 19 A. No.

09:10:12 20 Q. Have you read Secretary Merrill's  
09:10:14 21 deposition?

09:10:14 22 A. No.

09:10:15 1 Q. Do you know anything about this incident

09:10:16 2 other than what you read in that article?

09:10:18 3 A. No.

09:10:19 4 Q. Can you name one person in this state that

09:10:29 5 Secretary of State Merrill has refused to give a

09:10:32 6 voter ID card?

09:10:33 7 MR. ROSS: Objection.

09:10:33 8 THE WITNESS: The state meaning Alabama?

09:10:36 9 BY MR. MAZE:

09:10:36 10 Q. Correct.

09:10:36 11 A. No.

09:10:37 12 Q. Can you name one black or white legislator

09:10:41 13 who has been critical of the Secretary of State for

09:10:43 14 failing to give someone a voter ID card?

09:10:46 15 MR. ROSS: Objection.

09:10:48 16 THE WITNESS: I have not examined that.

09:10:51 17 That's outside what I looked at.

09:10:54 18 BY MR. MAZE:

09:10:54 19 Q. So the answer is no?

09:10:57 20 A. I can't name anybody, but I have no

09:10:59 21 knowledge one way or another.

09:11:01 22 Q. Can you name one article that says that

09:11:04 1 Secretary of State Merrill doesn't care about  
09:11:09 2 ensuring that people get voter ID cards?

09:11:11 3 MR. ROSS: Objection.

09:11:12 4 THE WITNESS: That's a matter of  
09:11:17 5 interpretation. He has said some things that  
09:11:21 6 certainly indicate that he does not care,  
09:11:27 7 particularly in the indented paragraph of 181. I go  
09:11:31 8 on to quote Mr. Merrill. Let me read it into the  
09:11:36 9 record.

09:11:37 10 "These people fought. Some of them were  
09:11:39 11 beaten. Some of them were killed because of their  
09:11:42 12 desire to ensure that everybody that wanted to had  
09:11:46 13 the right to register to vote and participate in the  
09:11:49 14 process. I'm not going to cheapen the work that  
09:11:52 15 they did. I'm not going to embarrass them by  
09:11:54 16 allowing somebody that's too sorry to get up off  
09:11:57 17 their rear end to go register to vote because they  
09:12:00 18 think they deserve the right because they've turned  
09:12:03 19 18. To me that's no different than giving them a  
09:12:07 20 trophy because they played on the ball team. I'm  
09:12:09 21 not attracted to lazy people or sorry people or  
09:12:11 22 people who don't want to get involved."

09:12:13 1 That is an indication to me that

09:12:17 2 Mr. Merrill does not care about making it harder for

09:12:21 3 some people to vote than others.

09:12:23 4 BY MR. MAZE:

09:12:23 5 Q. Did you watch the entire 60-minute

09:12:26 6 interview from which that excerpt was taken?

09:12:28 7 MR. ROSS: Objection.

09:12:29 8 THE WITNESS: No.

09:12:29 9 BY MR. MAZE:

09:12:29 10 Q. Have you talked to the persons who did

09:12:31 11 that documentary?

09:12:31 12 A. No.

09:12:32 13 Q. Have you read Secretary Merrill's

09:12:34 14 deposition where he talks about that documentary?

09:12:35 15 A. No.

09:12:36 16 Q. Do you have any idea what the context of

09:12:38 17 that statement was in the ten minutes leading up to

09:12:41 18 when he made it?

09:12:42 19 A. No. The statement speaks for itself.

09:12:45 20 Q. How does the statement speak for itself if

09:12:48 21 you don't know, admittedly, the context of what he

09:12:51 22 was talking about?

09:12:51 1 A. Because it does speak for itself. It is  
09:12:54 2 an indication that he is unconcerned about trying to  
09:12:58 3 help people register to vote if they don't, in his  
09:13:05 4 view, take an initiative to do so. It doesn't say  
09:13:08 5 anything at all about the difficulties that people  
09:13:11 6 might have.

09:13:13 7 For example, if one were retired, one were  
09:13:23 8 disabled, one were living in various sorts of  
09:13:26 9 facilities, one were in a rural area with no access  
09:13:30 10 to automobiles, one were, diminished capacity,  
09:13:39 11 somewhat diminished capacity, losing memories -- you  
09:13:45 12 probably don't, aren't as worried about that as I am  
09:13:50 13 because you're so much younger, but someone my age  
09:13:54 14 would be worried about that sort of thing.

09:13:57 15 If you are black in a state that has  
09:14:00 16 discriminated against blacks since before 1819 when  
09:14:05 17 it came into the union, you might have difficulties  
09:14:12 18 registering to vote, trying to get a voter ID card.  
09:14:19 19 He doesn't indicate any sympathy with the problems  
09:14:23 20 that such people might have.

09:14:25 21 Q. I'm going to hand you what I've marked  
09:14:28 22 Deposition Exhibit Number 3.



09:14:29 1 (Deposition Exhibit No. 3, Voter ID Law

2 Creates Hurdles for Homebound Man Article, was

09:14:33 3 marked for identification.)

09:14:33 4 BY MR. MAZE:

09:14:33 5 Q. This is the article that you referenced

09:14:36 6 has a picture of Mr. Stayer at the top. Is this the

09:14:39 7 article that you pulled this story from?

09:14:46 8 A. Yes.

09:14:46 9 Q. Secretary Merrill, according to the story,

09:14:54 10 added language regarding persons who are unable to

09:15:01 11 go to the polls due to infirmities on his absentee

09:15:07 12 application; do you remember that?

09:15:08 13 MR. ROSS: Objection.

09:15:09 14 THE WITNESS: Let me read the article.

09:15:10 15 BY MR. MAZE:

09:15:10 16 Q. Sure.

09:15:11 17 A. (Witness reviews document.) Yes, it says,

09:16:08 18 "Todd," referring to State Representative Patricia

09:16:11 19 Todd, "contacted Alabama Secretary of State John

09:16:15 20 Merrill. After several phone calls from her and

09:16:18 21 Stayer, Merrill changed Alabama's absentee ballot

09:16:24 22 application to make it clear physically disabled

09:16:26 1 people can vote absentee."

09:16:28 2 Q. Let me ask you a question about the

09:16:30 3 statement you just read. Is that evidence of a

09:16:33 4 person who, in your words, did not bother about

09:16:40 5 Mr. Stayer and his infirmity? He was not bothered

09:16:44 6 by Mr. Stayer's infirmity?

09:16:47 7 MR. ROSS: Objection.

09:16:48 8 THE WITNESS: The statement says that it

09:16:50 9 took several phone calls from a state

09:16:53 10 representative.

09:16:55 11 BY MR. MAZE:

09:16:55 12 Q. Have you --

09:16:56 13 A. -- to, to, from her and from Stayer to

09:17:01 14 Merrill before any action was taken.

09:17:05 15 Q. Have you read Secretary of State Merrill's

09:17:10 16 deposition about this incident?

09:17:12 17 A. No.

09:17:13 18 Q. So you're going to believe this newspaper

09:17:15 19 article over the sworn testimony of Mr. Merrill

09:17:17 20 about how many times he was contacted?

09:17:19 21 MR. ROSS: Objection. That's not his

09:17:20 22 testimony. He's just read --

09:17:24 1 MR. MAZE: Deuel, we will not have

09:17:25 2 speaking objections. You can object to form.

3 BY MR. MAZE:

09:17:29 4 Q. You can answer.

09:17:30 5 MR. ROSS: I'm surprised that you're the

09:17:32 6 judge, but you can answer. Go ahead.

09:17:35 7 THE WITNESS: I based what I wrote on this

09:17:38 8 article. That's all I had access to at the time. I

09:17:42 9 do not know when Mr. Merrill's, Secretary Merrill's

09:17:47 10 deposition was taken. I have not seen it. I don't

09:17:50 11 know whether it had been taken by the time that I

09:17:52 12 wrote this, so I based it on that.

09:17:58 13 BY MR. MAZE:

09:17:58 14 Q. I want to read the next sentence. "In

09:18:00 15 November 2015, he mailed the new ballot to Stayer

09:18:03 16 along with a letter promising to send a state

09:18:07 17 photographer to homebound voters." Did I read that

09:18:09 18 correctly?

09:18:10 19 A. You did.

09:18:11 20 Q. Have you read the letter that Secretary of

09:18:13 21 State Merrill sent to Mr. Stayer?

09:18:15 22 A. I have not.

09:18:16 1 Q. Do you know whether or not Secretary

09:18:18 2 Merrill has offered to send a state photographer to

09:18:20 3 homebound voters to give them free ID cards?

09:18:24 4 A. Apart from the sentence that you read, no,

09:18:27 5 I do not know.

09:18:28 6 Q. So you made the statement that this

09:18:30 7 incident did not bother Secretary Merrill without

09:18:33 8 following up to determine whether or not he has sent

09:18:36 9 a photographer to other homebound voters since this

09:18:39 10 time?

09:18:39 11 MR. ROSS: Objection.

09:18:40 12 THE WITNESS: That is actually not what I

09:18:42 13 said.

09:18:43 14 BY MR. MAZE:

09:18:43 15 Q. Well, how --

09:18:44 16 A. I did not say that about this particular

09:18:47 17 incident. I said --

09:18:51 18 Q. Let me read your quote. "Apparently, the

09:18:53 19 necessity of a heroic quest," and I assume heroic

09:18:57 20 quest talks about Mr. Stayer.

09:18:58 21 A. Yes.

09:18:58 22 Q. The necessity of Mr. Stayer's heroic quest

09:19:01 1 to be able to vote did not bother the Secretary of  
09:19:04 2 State John Merrill. Is that not what you said?

09:19:07 3 A. Yes.

09:19:08 4 Q. And since that time -- I'm going to hand  
09:19:11 5 you Deposition Exhibit Number 2.

09:19:19 6 (Deposition Exhibit No. 2, Photo Voter ID  
7 Mobile Unit Request Form, was marked for  
8 identification.)

09:19:19 9 BY MR. MAZE:

09:19:19 10 Q. Have you ever looked at Secretary of  
09:19:22 11 State's website?

09:19:22 12 A. I think I have.

09:19:23 13 Q. Have you, in preparation of your report  
09:19:27 14 and deposition today, noticed that he offers in-home  
09:19:30 15 visits to persons who are homebound?

09:19:35 16 A. I did not notice this before you said it.

09:19:38 17 Q. This is in line with his promise to  
09:19:40 18 Mr. Stayer; correct?

09:19:41 19 MR. ROSS: Objection.

09:19:51 20 THE WITNESS: I presume so, yes.

09:19:53 21 BY MR. MAZE:

09:19:54 22 Q. Do you know how many people Secretary

09:19:55 1 Merrill has now had personal visits to their homes?

09:19:58 2 A. No.

09:19:58 3 Q. Can you name one other state in this

09:20:04 4 country that sends a mobile unit to a person's home

09:20:09 5 upon request to give them a free voter ID card?

09:20:12 6 MR. ROSS: Objection.

09:20:13 7 THE WITNESS: I believe Indiana did for a

09:20:16 8 while after the Crawford litigation.

09:20:19 9 BY MR. MAZE:

09:20:19 10 Q. Do they currently?

09:20:21 11 A. I do not know.

09:20:22 12 Q. As of this moment, can you name a single

09:20:24 13 state that offers free in-home visits for persons

09:20:28 14 who are homebound?

09:20:29 15 A. No, but there are an increasing number of

09:20:32 16 states that offer registration online, and that

09:20:38 17 would provide similar sorts of access.

09:20:41 18 Q. Alabama also offers registration online;

09:20:45 19 correct?

09:20:45 20 A. I do not know.

09:20:46 21 Q. Because you haven't checked the website;

09:20:48 22 correct?

09:20:48 1 MR. ROSS: Objection.

09:20:49 2 THE WITNESS: I had looked at the website,  
09:20:50 3 but I do not remember that now.

09:20:52 4 BY MR. MAZE:

09:20:52 5 Q. It's on the front page of

09:20:53 6 AlabamaVotes.gov. Do you doubt that?

09:20:56 7 A. I have no reason to doubt it.

09:20:58 8 Q. Do you stand by the statement that the

09:21:01 9 necessity of a heroic quest to be able to vote did

09:21:05 10 not bother Secretary of State Merrill now knowing

09:21:07 11 that he has changed Alabama's absentee ballot and

09:21:11 12 has been offering personal in-home visits to

09:21:13 13 homebound voters, black and white?

09:21:16 14 MR. ROSS: Objection.

09:21:17 15 THE WITNESS: The use of that for at least

09:21:32 16 some homebound voters who presumably have to go

09:21:36 17 through various procedures to initiate this activity

09:21:46 18 does not change my view that he is, Secretary

09:21:54 19 Merrill is, has shown by the statement quoted in

09:22:01 20 paragraph 181 an indifference to the struggles that

09:22:06 21 lots of people have had to go through under the

09:22:11 22 voter ID law.

09:22:13 1 BY MR. MAZE:

09:22:13 2 Q. And that, again, is a statement that you  
09:22:15 3 have not actually seen the video to see the context  
09:22:17 4 of what he was talking about; correct?

09:22:20 5 MR. ROSS: Objection.

09:22:21 6 THE WITNESS: But the statement speaks for  
09:22:22 7 itself, I think.

09:22:23 8 BY MR. MAZE:

09:22:23 9 Q. In your opinion; correct?

09:22:24 10 A. Of course it's my opinion.

09:22:26 11 Q. So you stand by your assessment that  
09:22:32 12 Secretary of State John Merrill is not bothered by  
09:22:37 13 the necessity of homebound voters to get ID cards?

09:22:40 14 MR. ROSS: Objection.

09:22:41 15 THE WITNESS: I take it from the statement  
09:22:43 16 that's in the indented block quote that I read  
09:22:48 17 earlier.

09:22:49 18 BY MR. MAZE:

09:22:49 19 Q. So you give that stated block quote from a  
09:22:52 20 newspaper article -- strike that. That's not even a  
09:22:56 21 newspaper article.

09:22:57 22 You base your entire assessment of



09:23:01 1 Secretary of State's intent and purpose on a block  
09:23:04 2 quote from an article on Slate, despite the fact  
09:23:09 3 that you have now seen evidence that Secretary of  
09:23:12 4 State Merrill has changed the absentee process and  
09:23:14 5 has gone to multiple persons for in-home visits and  
09:23:18 6 offers them on his website for free?

09:23:20 7 MR. ROSS: Objection.

09:23:21 8 BY MR. MAZE:

09:23:21 9 Q. You give the newspaper snippet greater  
09:23:24 10 weight than all of the other evidence that you've  
09:23:27 11 seen today; is that correct?

09:23:28 12 MR. ROSS: Objection.

09:23:28 13 BY MR. MAZE:

09:23:29 14 Q. Yes or no. Which one has more weight?

09:23:32 15 MR. ROSS: Objection.

09:23:34 16 THE WITNESS: The statement that was  
09:23:39 17 quoted in the indented block quote is, I would give  
09:23:44 18 more weight. I have not read his deposition. I  
09:23:49 19 have not seen the context of that particular quote,  
09:23:52 20 but the statement is a very provocative quotation  
09:24:00 21 about people having to go to considerable pains to  
09:24:06 22 be registered, and it goes out of the way to indict

09:24:13 1 people for being lazy and sorry if they are  
09:24:20 2 unwilling to go through what John Lewis and other  
09:24:24 3 people had to go through in the Civil Rights  
09:24:26 4 Movement.

09:24:27 5 It offends me that he, in fact, used the  
09:24:33 6 struggles in the Civil Rights Movement to get the  
09:24:36 7 vote, which were difficult, particularly in Alabama  
09:24:39 8 and Mississippi, to justify an imposition making it  
09:24:46 9 harder for people to vote. And so that particular  
09:24:52 10 quotation in the context of saying, in context of  
09:24:59 11 talking about the Civil Rights Movement, that  
09:25:01 12 particular quotation is particularly important in  
09:25:09 13 framing my view of what Secretary Merrill believes.

09:25:14 14 BY MR. MAZE:

09:25:14 15 Q. Is there any action -- I'm not talking  
09:25:17 16 about words. Is there any action that Secretary of  
09:25:20 17 State Merrill can take that will change your opinion  
09:25:24 18 of his heart? Is there anything you can -- I mean,  
09:25:28 19 you just said that he has a discriminatory purpose  
09:25:30 20 in implementing the law.

09:25:32 21 MR. ROSS: Objection. That's not what he  
09:25:33 22 said.

09:25:34 1 BY MR. MAZE:

09:25:34 2 Q. All right. Tell me what is your personal  
09:25:36 3 opinion of Secretary of State Merrill's reasons  
09:25:39 4 behind implementing this law. Are they racial?

09:25:43 5 A. The law is racial.

09:25:46 6 Q. Is Secretary of State Merrill's  
09:25:48 7 implementation of the law racial?

09:25:51 8 MR. ROSS: Objection.

09:25:51 9 THE WITNESS: The law itself is racial.

09:25:53 10 BY MR. MAZE:

09:25:53 11 Q. That's not my question.

09:25:54 12 A. He is implementing the law as presumably  
09:26:00 13 it was intended to be implemented. That's what he  
09:26:04 14 has to do as Secretary of State. The law makes it  
09:26:07 15 more difficult for, particularly for African  
09:26:14 16 Americans to vote, and in implementing that law in  
09:26:22 17 straight forward fashion he is, his implementation  
09:26:29 18 is infected by the original intent of the law.

09:26:32 19 Q. So the discriminatory intent that you  
09:26:35 20 allege is part of this law is, therefore, imputed on  
09:26:40 21 the Secretary of State's enforcement of that law;  
09:26:42 22 correct?

09:26:42 1 MR. ROSS: Objection.

09:26:45 2 THE WITNESS: To the extent that he is

09:26:48 3 trying to enforce the will of the legislators, his

09:26:57 4 will is infected by the discriminatory intent of

09:27:01 5 their will.

09:27:02 6 BY MR. MAZE:

09:27:02 7 Q. To the extent that Mr. Davis and I are

09:27:04 8 here on behalf of the state defending this

09:27:07 9 litigation, is that discriminatory purpose imputed

09:27:11 10 on the two of us?

09:27:11 11 MR. ROSS: Objection.

09:27:21 12 THE WITNESS: If you are making it

09:27:24 13 possible for the continuation of a law which has a

09:27:27 14 discriminatory intent and a discriminatory effect,

09:27:32 15 you are carrying out that, that purpose of the

09:27:38 16 legislature.

09:27:39 17 BY MR. MAZE:

09:27:39 18 Q. If the district court in this case writes

09:27:41 19 an opinion that affirms the law as written, is the

09:27:45 20 court acting with the imputed discriminatory intent

09:27:50 21 or purpose?

09:27:50 22 MR. ROSS: Objection.

09:27:53 1 THE WITNESS: The district court will make  
09:27:59 2 a decision on -- it is not, the district court is  
09:28:05 3 not an employee of the legislature. The district  
09:28:13 4 court is not, has a purpose not to carry out the  
09:28:17 5 will of the legislature, but to interpret the law  
09:28:22 6 and see whether the law is constitutional or not,  
09:28:25 7 see whether the law is violative of Section 2 of the  
09:28:30 8 Voting Rights Act or not. So it's not in the same  
09:28:32 9 position that you are in. It's in an objective  
09:28:35 10 position outside of all of this.

09:28:38 11 BY MR. MAZE:

09:28:38 12 Q. So that's where you draw the line of  
09:28:40 13 imputation. All state employees who have to do  
09:28:44 14 anything to enforce Alabama's laws are, therefore,  
09:28:47 15 imputed with any discriminatory intent of the  
09:28:50 16 legislature, but federal courts are not because they  
09:28:53 17 are outside the state system; is that a fair summary  
09:28:55 18 of what you've just said?

09:28:57 19 MR. ROSS: Objection.

09:28:59 20 THE WITNESS: The federal court has other  
09:29:02 21 responsibilities and responsibilities to other,  
09:29:06 22 other bodies and to other purposes, and, therefore,

09:29:12 1 it is not exact exactly the same as the, as an  
09:29:17 2 employee of the state.

09:29:18 3 Employees of the state may not want to do  
09:29:25 4 anything that is discriminatory. You may not want  
09:29:30 5 to do anything that is discriminatory, but  
09:29:32 6 objectively, if you are making it possible for the  
09:29:40 7 discrimination intent and effect that I find in the  
09:29:45 8 voter ID law, then you, as a part of your  
09:29:51 9 responsibilities, are carrying out that law.

09:29:57 10 BY MR. MAZE:

09:29:57 11 Q. You grew up in the South; correct?

09:29:59 12 A. Yes.

09:30:00 13 Q. In Tennessee?

09:30:02 14 A. I consider that the South, yes.

09:30:04 15 Q. What year did you leave?

09:30:06 16 A. Well, I was in graduate school, I was in  
09:30:12 17 undergraduate school at Princeton and graduate  
09:30:14 18 school at Yale. I spent summers in Tennessee  
09:30:19 19 until -- I don't know -- 1967 or '68.

09:30:23 20 Q. Do you still have family that lives in  
09:30:26 21 Tennessee?

09:30:27 22 A. My brother died this year.

09:30:29 1 Q. Sorry. How often do you visit? How often  
09:30:33 2 did you visit him?  
09:30:34 3 A. Not very often later in his life. My  
09:30:38 4 mother died in 1976.  
09:30:40 5 Q. When was the last time that you physically  
09:30:42 6 lived in a southern state?  
09:30:47 7 A. Probably 1967.  
09:30:50 8 Q. You are registered to vote as a Democrat;  
09:30:56 9 correct?  
09:30:56 10 A. Yes.  
09:30:57 11 Q. You vote Democrat typically; correct?  
09:30:59 12 A. Yes.  
09:31:00 13 Q. You have described yourself as generally  
09:31:03 14 liberal in your political thought; yes?  
09:31:06 15 A. Yes.  
09:31:06 16 Q. And environmentalist; correct?  
09:31:08 17 A. Yes.  
09:31:09 18 Q. You have made political donations to  
09:31:14 19 President Obama?  
09:31:15 20 A. Yes.  
09:31:16 21 Q. And did you donate to either Hillary  
09:31:20 22 Clinton or Bernie Sanders in the last election?

09:31:23 1 A. I did to Hillary Clinton.

09:31:24 2 Q. You have made donations to the Democratic  
09:31:27 3 Congressional Committee; correct?

09:31:29 4 A. Democratic Congressional Campaign  
09:31:31 5 Committee, yes.

09:31:32 6 Q. Same for the Senate Campaign Committee?

09:31:35 7 A. Senate -- what's it called? Yes, the  
09:31:41 8 Senate Democratic Committee.

09:31:42 9 Q. You've also made donations to Democratic  
09:31:45 10 candidates across the country in lower level races;  
09:31:50 11 correct?

09:31:50 12 A. Some candidates, yes.

09:31:51 13 Q. How many Republican candidates have you  
09:31:53 14 financially supported in the last five years?

09:31:55 15 A. I don't think I've supported any.

09:32:02 16 Q. When you watch your news on television,  
09:32:05 17 what network do you watch?

09:32:06 18 A. I actually watch three networks. I watch  
09:32:10 19 MSNBC, CNN and Fox.

09:32:13 20 Q. Do you notice any difference in their  
09:32:18 21 political leanings?

09:32:21 22 A. I actually don't usually watch Fox at



09:32:24 1 night, and I find that the people -- I watch in the  
09:32:29 2 morning when I'm doing exercises, and I find that  
09:32:32 3 the people in the morning typically are not as  
09:32:37 4 conservative as I understand Sean Hannity to be.

09:32:41 5 Q. You wrote your dissertation on minority  
09:32:52 6 voting discrimination; correct?

09:32:54 7 A. Not entirely correct.

09:32:56 8 Q. What was it about?

09:32:57 9 A. The shaping of southern politics is about  
09:33:00 10 the disfranchisement of blacks and poor whites in  
09:33:05 11 the South in late 19th and early 20th Centuries.

09:33:09 12 Q. Are you generally in favor or against  
09:33:26 13 voter ID laws in general?

09:33:27 14 MR. ROSS: Objection.

09:33:33 15 THE WITNESS: I actually think that that's  
09:33:35 16 probably not a well-formed question.

09:33:37 17 BY MR. MAZE:

09:33:37 18 Q. Okay. Tell me your opinion of requiring  
09:33:41 19 someone to show an identification -- take photo out  
09:33:45 20 of it for the time being. What is your opinion of  
09:33:48 21 requiring someone to show some form of  
09:33:51 22 identification before they are allowed to vote?

09:33:53 1           A.    It depends on what form of identification  
09:33:57 2    is required, how restrictive those are.   In  
09:34:05 3    California your form of identification in effect is  
09:34:08 4    your signature, and that certainly is a form of  
09:34:11 5    identification.   And for a great many people a  
09:34:14 6    signature is quite an individual thing.

09:34:19 7                   It's compared with your signature that is  
09:34:23 8    on, on record with the Board of Registrars, and  
09:34:29 9    that's a good form of identification.   There are  
09:34:33 10   other forms of identification which can range from  
09:34:38 11   library cards.   It turns out 60 percent of the  
09:34:42 12   people in Pasadena have a Pasadena library card.

09:34:46 13                   You have to show some form of  
09:34:49 14   identification.   You got one, so that's one of the  
09:34:52 15   things people sometimes do, and it's proposed in  
09:34:54 16   some of the Alabama voter identification laws.  
09:34:58 17   Utility bills, identification cards that are used to  
09:35:06 18   get federal benefits, Social Security cards,  
09:35:11 19   Medicare cards, welfare benefit cards.   There are  
09:35:16 20   lots of different sorts of things that might be  
09:35:18 21   required.

09:35:20 22                   It does not seem to me to be completely

09:35:22 1 outrageous to require something, but a signature  
09:35:27 2 seems to be as individual a thing as you can  
09:35:33 3 possibly use.

09:35:36 4 Q. Let me ask you a question --

09:35:38 5 A. With regard to photo IDs, during the  
09:35:42 6 debates in Texas on the photo ID law, one of the  
09:35:49 7 Democratic representatives put a picture up on a  
09:35:58 8 screen taken from a person's driver's license and  
09:36:06 9 said can anybody in the legislature identify who  
09:36:11 10 this person is.

09:36:14 11 The person was a long-term aide who was  
09:36:18 12 well known in the legislature. He was, in fact,  
09:36:21 13 standing by the representative at the time that this  
09:36:27 14 event took place, and nobody identified him because  
09:36:31 15 in the picture he had hair. Ten years later when he  
09:36:41 16 was standing there he had much less hair. So photo  
09:36:45 17 identifications are often not as useful for really  
09:36:50 18 identifying people.

09:36:51 19 Q. How is that any different than signatures?  
09:36:53 20 Someone can change their signature over a ten-year  
09:36:55 21 period, too; correct?

09:36:57 22 MR. ROSS: Objection.

09:36:59 1 THE WITNESS: There usually is a great  
09:37:03 2 deal of continuity in signatures.

09:37:05 3 BY MR. MAZE:

09:37:05 4 Q. Well, let me ask you this. What do you  
09:37:07 5 think that the average poll worker would have a  
09:37:11 6 better ability to distinguish between, a person's  
09:37:14 7 photograph and their face or a signature that is  
09:37:18 8 given on the scene and some other signature that  
09:37:21 9 they look at later? What's the easier one to tell  
09:37:27 10 the difference between?

09:37:28 11 MR. ROSS: Objection.

09:37:30 12 THE WITNESS: I actually don't know. I  
09:37:33 13 don't know the answer to that question. I think  
09:37:35 14 that signatures might be as easy as a photograph. I  
09:37:39 15 don't know.

09:37:39 16 BY MR. MAZE:

09:37:39 17 Q. But in California do they check the  
09:37:42 18 signatures against a preexisting signature  
09:37:44 19 immediately or is it done only if there's a  
09:37:47 20 challenge at some point?

09:37:48 21 A. I believe it's checked immediately.

09:37:51 22 Q. Well, where do they keep a register of all

09:37:53 1 of the signatures? Do they have, like, a poll book  
09:37:55 2 that has a the signature of every person on the roll  
09:37:59 3 so they can immediately compare signatures?

09:38:01 4 A. It depends upon whether the person is  
09:38:06 5 voting by mail or not.

09:38:08 6 Q. Let's talk about in person first.

09:38:11 7 A. An increasing proportion of people in  
09:38:14 8 California vote by mail. I am a permanent mail  
09:38:17 9 voter, M-A-I-L voter. In some elections it's been  
09:38:23 10 70 percent of the people vote by mail. In those  
09:38:28 11 cases, a signature is immediately compared to the  
09:38:32 12 signature that they have on record, and they are  
09:38:37 13 increasingly digitizing this sort of thing and we'll  
09:38:41 14 be more able to do that immediately in the future.

09:38:47 15 Right now in California I think is,  
09:38:50 16 generally the poll workers do not have a signature  
09:38:53 17 to compare. It is done later.

09:38:55 18 Q. Okay. So it's not done there. Do you  
09:39:07 19 think that it is ever appropriate for a state to  
09:39:09 20 require a photo identification card?

09:39:12 21 MR. ROSS: Objection.

09:39:23 22 THE WITNESS: "Ever" is a big word here.

09:39:27 1 There might be circumstances in which you would want  
09:39:35 2 to require such a thing.

09:39:37 3 BY MR. MAZE:

09:39:37 4 Q. Does the state of Rhode Island require  
09:39:41 5 photo identification?

09:39:44 6 A. I don't know the exact requirements in  
09:39:50 7 Rhode Island. I think Rhode Island has a larger  
09:39:53 8 number of identification documents than Alabama  
09:39:59 9 does.

09:40:00 10 Q. Are there any states currently in the  
09:40:02 11 country that require photo identification that you  
09:40:05 12 don't believe passed that law with a discriminatory  
09:40:08 13 purpose?

09:40:10 14 MR. ROSS: Objection.

09:40:10 15 THE WITNESS: I have not examined them  
09:40:12 16 all. I've examined closely North Carolina, Texas,  
09:40:15 17 and Alabama, and I can't speak to the others.

09:40:19 18 BY MR. MAZE:

09:40:19 19 Q. And all three you have determined that  
09:40:21 20 they were passed with discriminatory intent or  
09:40:24 21 purpose; correct?

09:40:24 22 A. Correct.

09:40:25 1 Q. If you'll turn to page five of your  
09:40:31 2 report -- before I ask you that question, do you  
09:40:38 3 know of any cases in California in which they have  
09:40:42 4 determined someone had forged a signature?

09:40:48 5 A. No, I don't.

09:40:48 6 Q. Have you ever heard of an allegation of  
09:40:50 7 someone forging a signature?

09:40:52 8 A. There may be some absentee ballot cases in  
09:41:01 9 which that is the case, but I do not know of them  
09:41:03 10 offhand.

09:41:05 11 Q. You're recalling that from television  
09:41:07 12 reports or actual court cases?

09:41:10 13 A. I do not have strong memory, but there  
09:41:16 14 have been some allegations of absentee ballot fraud  
09:41:25 15 in virtually every state.

09:41:26 16 Q. What has the state of California done  
09:41:28 17 about the absentee voter fraud allegations?

09:41:31 18 MR. ROSS: Objection.

09:41:33 19 THE WITNESS: I do not remember  
09:41:35 20 specifically.

09:41:35 21 BY MR. MAZE:

09:41:35 22 Q. On page five you say that you have served

09:41:38 1 as an expert witness in four federal cases in  
09:41:41 2 Alabama. Generally, what was your opinion in Hunter  
09:41:49 3 v Underwood?

09:41:50 4 A. I believed that Section 182, I think it's  
09:41:56 5 in the Alabama constitution of 1901, was adopted  
09:42:00 6 with a racially discriminatory purpose. There was  
09:42:03 7 one piece of smoking gun evidence besides the  
09:42:09 8 objective evidence of the exact requirements.

09:42:14 9 The piece of smoking gun evidence was that  
09:42:16 10 the framer in the Alabama constitution of 1901,  
09:42:21 11 framed that section of the constitution, told a  
09:42:28 12 newspaper that the wife beating provision by itself  
09:42:36 13 would disfranchise 60 percent of the black adult  
09:42:40 14 males in the state.

09:42:42 15 There was also an invalidation of voting  
09:42:49 16 disfranchisement for engaging in miscegenation,  
09:42:54 17 which was a racial crime for which whites were  
09:42:56 18 generally not convicted and certainly a racial  
09:43:00 19 crime. So the presence of the two objective  
09:43:06 20 factors, wife beating with the person's opinion  
09:43:12 21 about the effect of that and then miscegenation  
09:43:16 22 provision, those, within the context of the 1901



09:43:24 1 constitution that then Justice Rehnquist talked  
09:43:32 2 about in his opinion for unanimous court, convinced  
09:43:35 3 me that the provision had been adopted with racially  
09:43:40 4 discriminatory purpose.

09:43:41 5 Q. Same question for Mobile versus Bolden, a  
09:43:44 6 general summary of your expert opinion in this case.

09:43:47 7 A. In the Bolden case, as you no doubt are  
09:43:53 8 aware, when it first went up to the U.S. Supreme  
09:43:57 9 Court decided April 22, 1980, I think, there was not  
09:44:04 10 only no intent evidence or intent allegation; they  
09:44:12 11 didn't really understand when at-large elections had  
09:44:17 12 been adopted.

09:44:20 13 They believed, the plaintiffs and the  
09:44:23 14 defendants believed that the City Commission's  
09:44:27 15 establishment in 1911, and just to jump ahead, the  
09:44:32 16 Brown versus Commissioners School Board election  
09:44:37 17 that had been established in 1919, that these were  
09:44:41 18 the operative times when an at-large election had  
09:44:45 19 been set up in Mobile.

09:44:49 20 Peyton McCrary, P-E-Y-T-O-N,  
09:44:55 21 M-C-C-R-A-R-Y, and I looked at, looked further at  
09:45:00 22 the history of the, Mobile's local governments, both

09:45:08 1 the City Council or County, City Commission and then  
09:45:13 2 the Board of School Commissioners, and found that  
09:45:17 3 the real operative dates for the establishment of  
09:45:21 4 the at-large elections were 1874 and 1876. And  
09:45:29 5 there was direct and indirect evidence from those  
09:45:34 6 earlier dates that the change from district  
09:45:39 7 elections to at-large elections had been adopted  
09:45:42 8 with racially discriminatory purpose.

09:45:45 9 This was in the remand cases in both  
09:45:48 10 cases, and in both cases the district court judge  
09:45:53 11 ruled that there was a discriminatory purpose, and  
09:45:59 12 he was sustained by the circuit court, and the  
09:46:05 13 Supreme Court did not take cert.

09:46:08 14 Q. Same question for U.S. v Dallas County  
09:46:11 15 Commission.

09:46:12 16 A. U.S. v Dallas County Commission was an  
09:46:16 17 interesting case. The state of Alabama had  
09:46:21 18 abolished elections for the local county commission  
09:46:29 19 in, I believe, 1879 because Dallas County was  
09:46:36 20 irredeemably black. It was about 80 percent black,  
09:46:42 21 and it was difficult to stuff the ballot box in each  
09:46:49 22 election or use violence and intimidation to ensure

09:46:53 1 that African Americans would not control elections,  
09:46:57 2 so they abolished them.

09:46:59 3 They reestablished them in 1901. They had  
09:47:04 4 always had district elections, I believe, before  
09:47:10 5 1879, and they reestablished them with a fairly  
09:47:17 6 interestingly drawn law. At the end of the law,  
09:47:22 7 they seemed to establish districts. The county had  
09:47:30 8 always interpreted those as residency districts, but  
09:47:33 9 I well remember Judge Hand, who was the lawyer, the  
09:47:38 10 judge, district court judge in the case, saying I'm  
09:47:43 11 not sure that this law does establish an at-large  
09:47:46 12 system. Maybe somebody ought to go to court and  
09:47:50 13 challenge it.

09:47:54 14 And the attorney for the Justice  
09:47:56 15 Department, Gerry Hebert, H-E-B-E-R-T, Gerry,  
09:48:00 16 G-E-R-R-Y, said, Judge Hand, I think that's quite  
09:48:09 17 what we're looking for.

09:48:11 18 In any case, the facts were that in the  
09:48:15 19 interim between the calling of the Constitutional  
09:48:19 20 Convention of 1901 and the passage of the new  
09:48:25 21 constitution this law went into force came up. At  
09:48:33 22 the beginning of the Constitutional Convention and,

09:48:37 1 indeed, for the first year or so of the constitution  
09:48:41 2 in 1901, the white supremacists who fostered that  
09:48:48 3 constitution were not absolutely sure of whether it  
09:48:53 4 would disfranchise enough African Americans so that  
09:48:58 5 they wouldn't be able to elect officers,  
09:49:02 6 particularly in a county like Dallas that was about  
09:49:05 7 80 percent black.

09:49:08 8 If you looked at the districts that were  
09:49:10 9 drawn, the residency districts, it was possible to  
09:49:16 10 go back to the census, the original census and take  
09:49:21 11 a sample of people in each of the census districts  
09:49:28 12 and each of the residency districts drawn for the  
09:49:32 13 Dallas County Commission, and, as I recall, if you  
09:49:36 14 looked at that, there were three districts that were  
09:49:41 15 majority black.

09:49:43 16 Q. Can I ask you a question? What year was  
09:49:45 17 that drawn?

09:49:47 18 A. 1901.

09:49:48 19 Q. Okay. Sorry.

09:49:53 20 A. And so they, if they had had to face  
09:50:01 21 elections in those districts, they would have had  
09:50:06 22 some difficulty. Dallas County was one of the most

09:50:12 1 infamous counties, I-N famous counties, for ballot  
09:50:19 2 box stuffing. So there were two districts that were  
09:50:23 3 maybe 55 percent black that would have created no  
09:50:27 4 difficulty for them. They could have stuffed the  
09:50:29 5 ballot box easily on that or intimidated enough  
09:50:33 6 people so that they would have a white majority, but  
09:50:35 7 there was one district, I think, was something like  
09:50:38 8 80 percent black, and so they would have had the  
09:50:43 9 possibility that they might have had a black county  
09:50:46 10 commissioner.

09:50:46 11 So they made sure that it was at large.  
09:50:50 12 That was a fail safe in case the 1901 constitution  
09:50:57 13 was not fully effective in disfranchising blacks.  
09:51:01 14 That's what I found. That was what I found to be  
09:51:05 15 the intent of the passage of the law, and that  
09:51:13 16 eventually was what the courts decided.

09:51:14 17 Q. Okay. We spent the last 12 minutes  
09:51:17 18 talking about these cases, and I want to read to you  
09:51:20 19 the dates that you said during your answers that I  
09:51:24 20 at least saw. 1919, 1874, 1876, 1919, 1901, 1901,  
09:51:33 21 1901, 1879 and 1901. Have you ever given an opinion  
09:51:38 22 in an Alabama case about anything that was written

09:51:41 1 after 1920?

09:51:44 2 A. Not previous to this case.

09:51:46 3 Q. And your general focus has been racial

09:51:51 4 politics in the late 18th and early -- excuse me --

09:51:54 5 the late 19th and early 20th Century; correct?

09:51:57 6 A. No.

09:51:58 7 Q. Okay. What has been your focus?

09:52:00 8 A. That was the focus of my dissertation and

09:52:04 9 first book, but Colorblind Injustice has five

09:52:09 10 chapters that were based on testimony about

09:52:14 11 elections in the 20th Century.

09:52:18 12 Q. What years?

09:52:19 13 A. Well, let me go through it. The Garza

09:52:29 14 case in Los Angeles, Garza, G-A-R-Z-A, versus Los

09:52:36 15 Angeles County Board of Supervisors concerned

09:52:44 16 redistrictings from the 19, late 1960s through 1981.

09:52:50 17 It was a case that was litigated in 1989, 1990.

09:53:01 18 Okay.

09:53:03 19 Then Georgia, the Georgia chapter of that

09:53:11 20 book was based upon testimony about the majority

09:53:17 21 vote requirement in Georgia that was adopted in

09:53:22 22 1963, '64. Then North Carolina, North Carolina I

09:53:35 1 did a paper called something like 100 years of  
09:53:38 2 redistricting in North Carolina that went from the  
09:53:44 3 1870s or '80s through the early 1990s. So the  
09:53:52 4 redistricting that was particularly at issue was,  
09:53:56 5 the plan was passed in 1981, '82.

09:54:02 6 Q. Let me ask you this.

09:54:03 7 A. The Memphis case, just to finish up, the  
09:54:06 8 Memphis case was based on laws that were passed, the  
09:54:14 9 ones that were particularly focused on were in the  
09:54:20 10 late 1960s, though I treated Memphis laws from the  
09:54:26 11 1880s, 1879, I guess, through the 1960s.

09:54:33 12 There was one other state that I'm  
09:54:35 13 forgetting right now, but I've looked at things well  
09:54:40 14 into the, into the 1990s and then into the 2000s.  
09:54:48 15 I've dealt with redistricting in California, Texas,  
09:54:54 16 and other places in redistricting cases besides the  
09:55:00 17 federal ID cases. I've looked at redistricting  
09:55:04 18 cases as late as 2011.

09:55:06 19 Q. My question was specifically about  
09:55:08 20 Alabama, but we'll drop that for a second. With as  
09:55:15 21 much history as you have working on Alabama cases  
09:55:18 22 looking at language from 1901 to 1960 -- strike

09:55:22 1 that. We can both agree that in 1901 Alabama had

09:55:28 2 white supremacist racist legislators; correct?

09:55:31 3 MR. ROSS: Objection.

09:55:33 4 BY MR. MAZE:

09:55:34 5 Q. At least some of them.

09:55:35 6 A. I would certainly agree with that. I hope  
09:55:37 7 you would as well.

09:55:38 8 Q. And we can both agree that the same is  
09:55:41 9 true in the 1960s; correct?

09:55:43 10 MR. ROSS: Objection.

09:55:44 11 THE WITNESS: I certainly would agree with  
09:55:45 12 that.

09:55:45 13 BY MR. MAZE:

09:55:45 14 Q. How can you, with that knowledge and basis  
09:55:51 15 of all that you've done and all that you've seen and  
09:55:54 16 all that you've testified -- first of all, do you  
09:55:57 17 even think that it's appropriate or possible to set  
09:56:02 18 your view of Alabama in 1901 and 1965 aside when you  
09:56:07 19 are judging Alabama in 2011 and 2017?

09:56:13 20 MR. ROSS: Objection.

09:56:18 21 THE WITNESS: It would not be appropriate  
09:56:19 22 to do that.



09:56:20 1 BY MR. MAZE:

09:56:20 2 Q. Why?

09:56:21 3 A. Because there is a historical context that  
09:56:29 4 affects the political leanings and the political  
09:56:35 5 understandings of people for a long period of time.  
09:56:40 6 A good example of this, I think, is the recent law  
09:56:44 7 that was passed in Alabama, I think, sponsored by  
09:56:49 8 Mr. Allen, had something to do with the voter ID  
09:56:53 9 law, which prohibits localities from removing, in  
09:56:59 10 effect, Confederate monuments in Alabama.

09:57:02 11 There have been, as you know, major  
09:57:05 12 efforts to remove the Confederate flags from state  
09:57:11 13 capitals across the South. Some have succeeded.  
09:57:16 14 Most interestingly, recently there were four major  
09:57:20 15 Confederate monuments in New Orleans that were  
09:57:25 16 removed.

09:57:28 17 Many of the people in the South have been  
09:57:32 18 responsive to the desire to escape the racist  
09:57:37 19 history that's symbolized by those movements, those  
09:57:43 20 monuments. Alabama seems much less willing to  
09:57:46 21 escape its history.

09:57:47 22 Q. What must Alabama do to escape that

09:57:50 1 history to the point where you can set aside 1901,  
09:57:55 2 1965 when you're judging the intent of present day  
09:58:00 3 Alabama?

09:58:02 4 A. Nothing can entirely erase it. There  
09:58:05 5 could be measures that move towards it. Alabama  
09:58:08 6 could elect an African American to a statewide  
09:58:15 7 office who was supported by African-American voters.  
09:58:20 8 That would start -- that would be a movement.  
09:58:26 9 Alabama could abolish its voter ID law. That would  
09:58:29 10 be a good start.

09:58:32 11 Q. When I was asking you about donations  
09:58:36 12 earlier, I forgot to ask you have in the past  
09:58:40 13 donated to the Alabama -- strike that -- to the  
09:58:44 14 NAACP Legal Defense Fund; correct?

09:58:46 15 A. I actually don't think I have.

09:58:48 16 Q. You testified in the Texas case that you  
09:58:51 17 had, and then you stopped about 30 years ago when  
09:58:53 18 they told you you might be working for them in the  
09:58:56 19 future?

09:58:56 20 A. I think that was the ACLU.

09:58:59 21 Q. Okay. I'll pull that deposition at the  
09:59:02 22 break.

09:59:02 1 A. Okay.

09:59:03 2 Q. But let me ask you this. How many times  
09:59:05 3 have you testified in a case in which you were, in  
09:59:11 4 which the attorneys were from NAACP Legal Defense  
09:59:15 5 Fund as they are in this case?

09:59:16 6 A. I can't recall for sure.

09:59:17 7 Q. Has there ever been a case in which they  
09:59:20 8 asked you to give expert testimony that you said,  
09:59:22 9 no, that you wouldn't?

09:59:26 10 A. I don't think for LDF. I have the same  
09:59:30 11 thing for -- I have said to MALDEF, M-A-L-D-E-F,  
09:59:39 12 Mexican American Legal Defense and Education Fund,  
09:59:42 13 they have come to me in cases and said would you  
09:59:47 14 evaluate whether there is a racially discriminatory  
09:59:51 15 intent case that's possible, should we pursue this,  
09:59:56 16 and I've looked at evidence for, some scattered  
10:00:03 17 evidence that they've given me and said I don't  
10:00:05 18 think that you should pursue this, and so they said  
10:00:12 19 thank you very much and didn't hire me to work on  
10:00:15 20 the case.

10:00:15 21 Q. But, again, my question was specifically  
10:00:18 22 targeted at the NAACP Legal Defense Fund. Have you

10:00:21 1 ever had an instance where they asked you to give an  
10:00:24 2 expert opinion and you said no?

10:00:29 3 A. I don't think that I have, no.

10:00:32 4 Q. Have you ever turned down a request to  
10:00:34 5 give an expert opinion in a case involving Alabama,  
10:00:37 6 whether it be the state or a local government?

10:00:45 7 A. There have been cases in Alabama that I  
10:00:48 8 haven't just had time to work on or cases where I've  
10:00:53 9 sort of started, but didn't -- the case didn't  
10:00:59 10 proceed by the time that I would have started  
10:01:03 11 working on it.

10:01:04 12 Q. So there's never --

10:01:05 13 A. Birmingham minimum wage case that I would  
10:01:09 14 have liked to have done some research on. I have a  
10:01:14 15 day job, and I still have exams to correct, if I  
10:01:21 16 ever get out of here, and so I just didn't have time  
10:01:26 17 to work on that.

10:01:27 18 Q. So there's never been a case from Alabama  
10:01:29 19 in which you said I can't take that case because I  
10:01:32 20 disagree with the opinion you would like me to give?

10:01:37 21 MR. ROSS: Objection.

10:01:40 22 THE WITNESS: People don't ask me at the

10:01:46 1 beginning of a case to give particular opinions.

10:01:51 2 They typically say, will you examine the evidence

10:01:55 3 and see whether you think that such and such is

10:01:59 4 true? That's been my experience. They don't say,

10:02:06 5 can I hire you as a hired gun to give such and such

10:02:11 6 an opinion?

10:02:11 7 BY MR. MAZE:

10:02:11 8 Q. Has there ever been an instance where

10:02:13 9 somebody called and asked you to give a preliminary

10:02:16 10 look at whether or not there was a discriminatory

10:02:18 11 intent in Alabama, and you said I'm not going to

10:02:22 12 take this case because my preliminary look says

10:02:24 13 that, no, there wasn't?

10:02:25 14 MR. ROSS: Objection. I'm also going to

10:02:27 15 just object to this line of questioning to the

10:02:29 16 extent it calls for him to discuss both our work

10:02:32 17 product and the work product of other attorneys.

18 BY MR. MAZE:

10:02:34 19 Q. It's just a yes or no question, whether

10:02:36 20 it's happened or not. I'm not asking you to tell me

10:02:39 21 what counsel said.

10:02:42 22 A. I have not been approached to work in a

10:02:46 1 case in Alabama and said I would not do the case  
10:02:54 2 because I disagree with a conclusion that is in your  
10:03:02 3 apparent interest, no. I haven't been approached to  
10:03:05 4 do very many cases in Alabama.

10:03:09 5 MR. MAZE: Let's take a break.

10:03:11 6 (Whereupon, a short recess was taken from  
10:18:25 7 10:03 to 10:19 a.m.)

10:19:45 8 BY MR. MAZE:

10:19:46 9 Q. In the last hour, we discussed whether or  
10:19:50 10 not the discriminatory intent of the state  
10:19:53 11 legislature is imputed to other state employees and  
10:19:57 12 federal judges, and correct me if I'm wrong, but you  
10:20:01 13 said that the enforcement by state employees such as  
10:20:05 14 attorneys and the Secretary of State is imputed, but  
10:20:09 15 it is not imputed to federal judges because they are  
10:20:12 16 outside of the state system; correct?

10:20:15 17 MR. ROSS: Objection.

10:20:18 18 THE WITNESS: Because they are outside of  
10:20:19 19 the state system and they have other  
10:20:22 20 responsibilities, particularly responsibilities to  
10:20:25 21 the federal constitution.

10:20:27 22 BY MR. MAZE:

10:20:27 1 Q. Okay. What is your opinion on imputation  
10:20:31 2 to state judges who enforce the state constitution  
10:20:34 3 and state laws?

10:20:36 4 A. Well, again, they have to enforce the  
10:20:38 5 state constitution, and that may be, require  
10:20:44 6 different sorts of considerations than state  
10:20:48 7 employees.

10:20:49 8 Q. So I'm trying to understand. You're  
10:20:53 9 saying it depends on the question of whether or not  
10:20:56 10 discriminatory purpose can be imputed to a state  
10:20:59 11 court judge?

10:21:00 12 MR. ROSS: Objection.

10:21:04 13 THE WITNESS: State constitutions  
10:21:06 14 generally have, for example, equal protection  
10:21:10 15 clauses. In California the state supreme court  
10:21:15 16 sometimes declares a state law unconstitutional  
10:21:18 17 according to the equal protection clause of the  
10:21:22 18 California constitution.

10:21:25 19 They have responsibilities to different  
10:21:28 20 people and different ideals and different rules, and  
10:21:34 21 the same would be true of any judge.

10:21:36 22 BY MR. MAZE:

10:21:36 1 Q. Can you at least agree with me that, when  
10:21:38 2 a judge writes a decision that you don't agree with  
10:21:44 3 because it forwards a particular law that you might  
10:21:47 4 believe has a discriminatory purpose or effect, the  
10:21:51 5 judge didn't do so with a discriminatory purpose or  
10:21:54 6 intent? That was not his purpose or intent was to  
10:21:58 7 perpetuate that discriminatory law?

10:22:02 8 A. There are cases --

10:22:03 9 MR. ROSS: Objection.

10:22:03 10 THE WITNESS: -- cases in which that is

10:22:04 11 true. There are cases in which that is not true.

10:22:07 12 Generally, we don't find out, but sometimes,

10:22:10 13 sometimes we do. Sometimes a judge says something

10:22:12 14 that indicates agreement with a discriminatory

10:22:17 15 intent. That's certainly been the case in the past

10:22:22 16 in some southern decisions.

10:22:27 17 Notoriously, in Alabama in the run up to

10:22:36 18 the Voting Rights Act after the passage of the '57

10:22:42 19 Civil Rights Act and the 1960 Civil Rights Act,

10:22:46 20 there was a lot of litigation in which even federal

10:22:51 21 district court judges engaged in delays and

10:22:59 22 decisions and parts of decisions that indicated a



10:23:06 1 desire to uphold discriminatory election laws and  
10:23:11 2 other places discriminatory segregation laws for  
10:23:16 3 schools or places of public accommodation.

10:23:24 4 And in the case of the election laws, one  
10:23:27 5 of the reasons that Section 5 was set up to allow  
10:23:33 6 the Justice Department and the district court of the  
10:23:37 7 District of Columbia to have jurisdiction over  
10:23:40 8 Section 5 decisions was that they wanted to take it  
10:23:43 9 away from southern judges that the Congress decided  
10:23:49 10 had been discriminatory in some of their decisions.

10:23:53 11 BY MR. MAZE:

10:23:53 12 Q. Let's talk about Section 5 for a second.  
10:23:55 13 You have written articles about it; correct?

10:23:57 14 A. Yes.

10:23:58 15 Q. Is it your opinion that the Supreme Court  
10:24:01 16 was wrong in striking down the Section 4 formula in  
10:24:06 17 Shelby County?

10:24:07 18 MR. ROSS: Objection.

10:24:08 19 THE WITNESS: I believe that the empirical  
10:24:13 20 bases that were assumed by Chief Justice Roberts in  
10:24:20 21 Shelby County were incorrect. I have created a  
10:24:28 22 database, which is the largest database of voting

10:24:33 1 rights events that's ever been created, and in  
10:24:40 2 particular I display the locus of cases by county on  
10:24:49 3 maps along with the coverage scheme.

10:24:56 4 And, if you look at that, you find that  
10:25:02 5 between 93 and 94 percent of the voting rights  
10:25:08 6 events, and I can define those specifically, but I  
10:25:12 7 defined them, I think, in this report at some point,  
10:25:17 8 93 or 94 percent of those events came from covered  
10:25:22 9 jurisdictions so in -- there were two basic  
10:25:28 10 empirical propositions that underlay the decision in  
10:25:31 11 Shelby County.

10:25:32 12 One was the cover scheme, Section 4, was  
10:25:37 13 inadequate because it did not affect, it did not  
10:25:41 14 reflect the reality of where cases had come from,  
10:25:48 15 but that, although Chief Justice did not have my  
10:25:54 16 research available to make the decision, the  
10:25:59 17 research shows that that empirical proposition is  
10:26:02 18 wrong.

10:26:02 19 The second empirical proposition is that  
10:26:06 20 voting rights, essentially, is no longer a problem,  
10:26:12 21 and my argument there was that, if you look at cases  
10:26:17 22 over time and over places and particularly if you

10:26:23 1 compare them with Supreme Court decisions, you find  
10:26:28 2 that, when there are, when there have been favorable  
10:26:34 3 Supreme Court decisions to minority plaintiffs,  
10:26:37 4 there are subsequently a lot of cases filed and won.  
10:26:44 5 When, on the other hand, you find decisions by the  
10:26:47 6 Supreme Court which are adverse to minority  
10:26:50 7 plaintiffs, the number of cases goes down.

10:26:57 8 If you look at a different law, the  
10:27:00 9 California Voting Rights Act, which is an easier law  
10:27:05 10 to litigate because, instead of seven or nine Senate  
10:27:12 11 Factors, you have, essentially, racially polarized  
10:27:15 12 voting, and it really only applies to at-large  
10:27:18 13 elections in local jurisdictions, you find a huge  
10:27:22 14 number of cases filed and won.

10:27:29 15 So the conclusion of those two sets of  
10:27:35 16 empirical findings, that, if you have favorable  
10:27:40 17 decisions, you get a lot of subsequent cases filed  
10:27:44 18 and won; if you have unfavorable decisions, you get  
10:27:47 19 a lot fewer cases filed and won, and, when you look  
10:27:51 20 at a law that's written that's favorable to, more  
10:27:57 21 favorable to minority plaintiffs, you get a huge  
10:28:00 22 number of cases filed and won or jurisdictions

10:28:05 1 changing their method of election because they know  
10:28:12 2 that they are going to lose a case, then you find a  
10:28:17 3 lot of voting rights activity.

10:28:19 4 So voting rights activity is dependent  
10:28:21 5 upon what the Supreme Court does. The Supreme Court  
10:28:24 6 can create its own reality, unlike the rest of us.  
10:28:30 7 And so the decline in the number of Section 5  
10:28:37 8 unfavorable rulings by either the Department of  
10:28:41 9 Justice or the District of Columbia district court  
10:28:46 10 is, I argue, not supportive of the proposition that  
10:28:53 11 there has been a decline in voting discrimination  
10:28:56 12 because the Supreme Court created its own reality  
10:29:00 13 and then reacted to it, so on those two bases --

10:29:05 14 BY MR. MAZE:

10:29:05 15 Q. Let me ask you a question, though --

10:29:07 16 A. -- empirical bases I concluded that, to  
10:29:10 17 the extent that the Shelby County opinion rests on  
10:29:14 18 those two empirical bases -- and I do think they are  
10:29:17 19 the most important parts of the decision -- then it  
10:29:22 20 is incorrect.

10:29:23 21 Q. If you're basing an opinion on the number  
10:29:27 22 of objections or if you think the factual basis of

10:29:30 1 number of objections matters and the only states  
10:29:34 2 that have to seek preclearance are those who are  
10:29:37 3 already covered, then don't the same states remain  
10:29:40 4 covered in perpetuity? I mean, you never add new  
10:29:45 5 states because only the states being covered can  
10:29:47 6 remain; correct?

10:29:49 7 MR. ROSS: Objection.

10:29:51 8 THE WITNESS: Have you read that article?

10:29:53 9 BY MR. MAZE:

10:29:53 10 Q. No. I'm asking you a question. I'm  
10:29:55 11 asking how do you get new states?

10:29:57 12 A. I have answered that. I have answered  
10:29:59 13 that in the article.

10:30:00 14 Q. Then give it here.

10:30:02 15 A. Certainly. The answer is that, if you  
10:30:06 16 look at non-Section 5 violations, look at only  
10:30:12 17 Section 2 violations or violations of the 14th or  
10:30:17 18 15th Amendment, you find the same pattern. It is  
10:30:21 19 not so overwhelming, but is still overwhelming. I  
10:30:26 20 believe it is over 80 percent of the Section 2  
10:30:29 21 either settlements or decided cases in which  
10:30:36 22 minority plaintiffs won came from covered

10:30:40 1 jurisdictions, so the pattern is exactly the same or  
10:30:44 2 substantially enough the same so that it's, the  
10:30:51 3 coverage scheme comes out to be very accurate.

10:30:58 4 Furthermore -- excuse me. Furthermore,  
10:31:02 5 some of the cases that might have been filed under  
10:31:06 6 Section 2 didn't have to be filed under Section 2 or  
10:31:09 7 the constitution because Section 5 existed, so that,  
10:31:14 8 if you are using only Section 2 cases as an index of  
10:31:21 9 whether, of the incidents of discriminatory events,  
10:31:26 10 you're going to underestimate the proportion in  
10:31:29 11 Section 5 covered jurisdictions because Section 5  
10:31:33 12 has already precluded the necessity for filing  
10:31:38 13 Section 2 cases.

10:31:39 14 Q. Would you agree that each time Section 5  
10:31:44 15 comes up for renewal that it is incumbent upon  
10:31:49 16 Congress to determine the appropriate states to put  
10:31:52 17 under it? And what I mean by that is you don't  
10:31:55 18 continue just recovering the same states, but you  
10:31:58 19 look at modern evidence to see who the biggest  
10:32:01 20 trouble states are.

10:32:04 21 MR. ROSS: Objection.

10:32:08 22 THE WITNESS: I think that there was

10:32:11 1 considerable evidence presented in the run up to the  
10:32:14 2 2006 renewal. A lot of that evidence I was able to  
10:32:19 3 draw on in my, in creating the database that  
10:32:27 4 indicated that the coverage scheme was adequate and  
10:32:32 5 that Congress did take that into account.

10:32:35 6 BY MR. ROSS:

10:32:35 7 Q. That's not my question.

10:32:36 8 A. It was specifically directed to the  
10:32:40 9 question that you're asking, whether the coverage  
10:32:43 10 scheme was still adequate. If you look at my  
10:32:49 11 database, there's a graph in which I do this and  
10:32:58 12 maps, and you look at -- if you break down the cases  
10:33:04 13 and other events, including Section 5 cases and  
10:33:08 14 Section 2 cases and all the rest, and, if you look  
10:33:13 15 for a 25-year period from 1965 -- sorry -- from 1957  
10:33:19 16 to 1982 and then a period from 1982 to 2005 -- these  
10:33:25 17 are similar periods -- and you see where the cases  
10:33:31 18 come from in both of those periods, two things stand  
10:33:35 19 out.

10:33:36 20 One, there are more cases after 1982 in  
10:33:40 21 the 25-year period than there were in the period  
10:33:43 22 from 1957, the first Civil Rights Act, to 1982.

10:33:49 1 And, secondly, that they come overwhelmingly from  
10:33:51 2 the covered jurisdictions.

10:33:54 3 So Congress did look at exactly what  
10:33:57 4 you're asking for. It did, according to the  
10:34:04 5 database, instructed partially of what Congress  
10:34:08 6 looked at and partially what I've been able to find  
10:34:11 7 other, in other ways, they did come to the correct  
10:34:15 8 decision that these were still covered.

10:34:17 9 Let me say further that, when I started  
10:34:21 10 constructing this database, I was skeptical of the  
10:34:26 11 covered jurisdictions. There certainly are areas  
10:34:29 12 that were covered that had not had very much recent  
10:34:34 13 activity in where there had not been very many  
10:34:38 14 proven voter ID -- I'm sorry -- voter violations.  
10:34:43 15 Not voter ID, but voter, VRA cases.

10:34:48 16 And I thought that perhaps northern  
10:34:54 17 Georgia and northern Alabama, some places in  
10:34:59 18 Florida, etc., it made sense to figure out some sort  
10:35:03 19 of different index that would capture the coverage,  
10:35:10 20 would capture the incidents of voter rights cases  
10:35:14 21 better than the coverage scheme. So I tried various  
10:35:18 22 other indexes like 20 percent of the population were



10:35:23 1 registered voters or citizen voting age population,  
10:35:27 2 minority, 25 percent, 30 percent, etc., etc. Nothing  
10:35:32 3 did better than the coverage scheme.

10:35:34 4 Q. I'm going to ask my question again as a  
10:35:37 5 simple yes or no question. Do you, personally,  
10:35:41 6 believe that it's necessary and appropriate to take  
10:35:45 7 a new fresh look at who should be covered each time  
10:35:50 8 Section 5 comes up for reenactment?

10:35:53 9 MR. ROSS: Objection.

10:35:57 10 THE WITNESS: I'm not sure what you mean  
10:35:59 11 by new fresh. It particularly depends upon what you  
10:36:02 12 mean about the time period and how it interrelates  
10:36:08 13 with Supreme Court cases.

10:36:09 14 BY MR. MAZE:

10:36:09 15 Q. I'll give you an example. Let's say in  
10:36:12 16 2006 the evidence showed that there were more racial  
10:36:16 17 voting problems in Ohio than Alabama over the last  
10:36:21 18 15 years. Would you agree with me that Ohio should  
10:36:25 19 have been put under Section 5 and Alabama taken off  
10:36:29 20 because of the difference in records in the  
10:36:31 21 intervening 15 years?

10:36:34 22 A. That's an untrue hypothetical. I know

10:36:36 1 about cases in Ohio, and it's simply not so.

10:36:39 2 Q. I'm just asking you, if there were a state  
10:36:42 3 that had a worse record than a covered state, would  
10:36:45 4 it have been appropriate to put that state under  
10:36:48 5 coverage and taking the state that had proved itself  
10:36:51 6 off of coverage?

10:36:53 7 MR. ROSS: Objection.

10:36:53 8 THE WITNESS: First, it's my view that  
10:36:59 9 state, that we may -- if Section 5, Section 4 comes  
10:37:04 10 back into force and effect, we may want to move away  
10:37:09 11 from states and move towards counties as in North  
10:37:14 12 Carolina, for example. It may make a lot more sense  
10:37:16 13 to do that.

10:37:17 14 So, for state redistrictings or something  
10:37:23 15 like that, it may be adequate to cover them under  
10:37:26 16 Section 2, but it may well be that certain counties  
10:37:33 17 in your example, Ohio, I think Ohio would probably  
10:37:37 18 not be covered or any parts of Ohio might not be  
10:37:43 19 covered, but it's quite possible that certain  
10:37:46 20 counties in states that are now not covered should  
10:37:51 21 be covered if something like a renewed Voting Rights  
10:37:56 22 Act is put into force, and certain areas in states

10:38:01 1 that are now covered may be exempt.

10:38:04 2 BY MR. MAZE:

10:38:04 3 Q. What localities in the state of Alabama

10:38:07 4 would you agree should have been taken off in 2006?

10:38:14 5 A. I would just have to look at the database

10:38:18 6 more closely. I have a paragraph in here someplace

10:38:23 7 in this report.

10:38:24 8 Q. And in that report do you name locations

10:38:27 9 within Alabama that could have been taken off?

10:38:29 10 A. No.

10:38:29 11 Q. Do you believe that any of them could

10:38:32 12 have?

10:38:32 13 A. There probably are some places that could

10:38:35 14 have been taken off. Probably northern, probably in

10:38:39 15 northern Alabama. That wasn't the purpose in this

10:38:43 16 report.

10:38:44 17 Q. The purpose of the report was to show why,

10:38:49 18 in your opinion, the Supreme Court got it wrong?

10:38:51 19 MR. ROSS: Objection.

10:38:52 20 THE WITNESS: I'm sorry.

10:38:53 21 MR. ROSS: The report, obviously, speaks

10:38:54 22 for itself.

10:38:55 1 THE WITNESS: By "this report," do you  
10:38:59 2 refer to my paper?

10:39:01 3 BY MR. MAZE:

10:39:01 4 Q. I'm talking about the paper. We haven't  
10:39:03 5 gotten back to this yet.

10:39:05 6 A. The paper was to, the purpose of the paper  
10:39:13 7 was not to show that the Supreme Court got it wrong.  
10:39:16 8 That was the conclusion of the paper. The purpose  
10:39:18 9 of the paper was to evaluate the empirical evidence  
10:39:22 10 for those two propositions about the adequacy of the  
10:39:28 11 coverage scheme and the, what the temporal pattern  
10:39:39 12 of violations actually meant. The conclusion was  
10:39:42 13 that the Supreme Court had gotten it wrong.

10:39:55 14 Q. Now I want to turn to voter ID cases, and  
10:40:00 15 I'm not talking about a specific case or state at  
10:40:03 16 this point. I know this is your third. I want to  
10:40:06 17 talk about your method generally. Please describe  
10:40:10 18 to me your method for determining whether a state  
10:40:14 19 legislature passed a voter ID law with a  
10:40:17 20 discriminatory intent or purpose.

10:40:19 21 A. With respect to voter ID laws or other  
10:40:27 22 voting laws, I set out in the pages in which I cite,

10:40:36 1 which I cite in this report in Colorblind Injustice,  
10:40:42 2 a scheme for organizing the evidence of racially  
10:40:47 3 discriminatory intent.

10:40:50 4 That scheme draws first from the Arlington  
10:40:54 5 Heights decision by the Supreme Court, by Justice  
10:40:57 6 Powell and from other federal district and appeals  
10:41:03 7 court cases, from my own experience as a historian  
10:41:09 8 in trying to determine the intent of the passage of  
10:41:15 9 particular laws. That was an experience that  
10:41:22 10 started when I was a junior in high school when I  
10:41:25 11 did my first paper on racially discriminatory intent  
10:41:29 12 of the passage of a particular, particular, the  
10:41:34 13 defeat of a particular law in a referendum and  
10:41:39 14 something I've been developing ever since, but it's  
10:41:42 15 described in considerable detail about 10 or 11  
10:41:47 16 pages of Colorblind Injustice.

10:41:49 17 Q. Describe your fact-gathering process.

10:41:57 18 A. I read materials about the law, just  
10:42:15 19 description of the law, things that were -- any  
10:42:26 20 legislative documents that would have been made  
10:42:28 21 available, and I started looking at, at newspapers.  
10:42:38 22 I used, I used an aggregator, News Bank; I can't

10:42:48 1 remember for sure, and I first looked at -- I used  
10:42:53 2 dates from 2011 and tried to get all of the news  
10:42:59 3 articles from Alabama newspapers that were covered  
10:43:04 4 in this particular database about 2011.

10:43:11 5               Pretty soon I found out, though, that I  
10:43:15 6 had not been aware of it before that there had been  
10:43:18 7 earlier considerations of voter ID laws, and so I  
10:43:23 8 started tracing them back, I believe, a news article  
10:43:27 9 from 2003. I knew that there had been a law passed  
10:43:33 10 in 2003, and I would see references to earlier,  
10:43:39 11 earlier laws. And so I would, I would change the  
10:43:44 12 dates on the articles, and I would simply start  
10:43:48 13 downloading articles from earlier places, earlier  
10:43:52 14 times. I would read them, follow them through, look  
10:43:57 15 with different search terms about the Alabama  
10:44:04 16 legislature, eventually about felon disfranchisement  
10:44:08 17 laws, which I knew of otherwise, and so on and so  
10:44:13 18 on.

10:44:13 19               I should say that I put this in the  
10:44:16 20 context of having been looking at voter ID and other  
10:44:21 21 such laws for a long time. There is an election law  
10:44:28 22 blog that's run by Rick Hasen, H-A-S-E-N, at the

10:44:37 1 University of California, Irvine, which I suspect  
10:44:43 2 that you guys look at as well, on election laws, and  
10:44:47 3 it has all sorts of references every day to what's  
10:44:51 4 going on in Alabama, what's going on in Oregon,  
10:44:55 5 what's going on elsewhere, and so I've been  
10:44:59 6 downloading stuff from that for years.

10:45:03 7 And so I was aware of some things or at  
10:45:07 8 least I could go back and check some articles that I  
10:45:12 9 had downloaded earlier and look at those, too, and  
10:45:17 10 follow them up.

10:45:18 11 Q. Describe to me the process, when you get  
10:45:21 12 into News Bank, the literal process of how you  
10:45:24 13 search for relevant articles. How do you ensure  
10:45:28 14 that you're finding everything you need?

10:45:31 15 A. Well, that's a problem. I'm not sure that  
10:45:34 16 I find everything that I need, but I try. I  
10:45:42 17 constrain it to be Alabama newspapers, and I  
10:45:46 18 constrain it by years, and I try to take small  
10:45:52 19 periods, as small a period of time as I think is  
10:45:57 20 relevant, and look for everything under voter ID or  
10:46:04 21 look for everything under felon disfranchisement or  
10:46:08 22 criminal disfranchisement or election laws.

10:46:15 1 I don't remember all of the tags that I  
10:46:17 2 have used in order to look for things, but I try to  
10:46:20 3 be as comprehensive one way or another as I can.  
10:46:27 4 It's often a difficult process to try to guess how  
10:46:31 5 something would be characterized, and each sort of  
10:46:36 6 database probably works a little differently, so I  
10:46:42 7 almost always over download and over search for fear  
10:46:49 8 that I will miss something.

10:46:51 9 Q. What is your process for determining what  
10:46:53 10 is not a relevant article? Or on the flip side how  
10:46:59 11 do you determine that something is relevant?

10:47:03 12 A. Well, if it had to do with the  
10:47:07 13 consideration of voter ID or later on the  
10:47:10 14 consideration of criminal disfranchisement or  
10:47:16 15 similar things in Alabama, I think it's relevant to  
10:47:21 16 read. It may or may not have any new information.

10:47:25 17 Sometimes in Alabama, particularly more  
10:47:27 18 recently, same article, basically, the same article  
10:47:31 19 gets carried in a bunch of newspapers. A lot of  
10:47:34 20 newspapers take an AP article and they may run some  
10:47:37 21 of it and not other parts of it, so you read each of  
10:47:44 22 the articles and see whether it's entirely



10:47:45 1 overlapping or not.

10:47:49 2 Q. Is there anything, other than reading the  
10:47:52 3 laws and newspapers of the state in which you are  
10:47:56 4 giving your opinion, that you rely on in your fact  
10:47:59 5 gathering other than newspapers and laws? What else  
10:48:03 6 do you look at?

10:48:04 7 A. Depositions, reports, monographs,  
10:48:09 8 articles, if there are any. Certainly my general  
10:48:14 9 knowledge of voter IDs and other election laws  
10:48:24 10 affects what I write. Everything that I have read  
10:48:28 11 and written certainly has some effect on what I  
10:48:34 12 write.

10:48:35 13 Q. Have you ever conducted an interview in  
10:48:39 14 one of your three voter ID cases where you actually  
10:48:42 15 talked to someone about what was going on other than  
10:48:45 16 attorneys?

10:48:47 17 A. I actually don't think it's interviews  
10:48:54 18 with attorneys. I'm not sure what to call them, but  
10:48:57 19 interviews is the wrong word. No, I have not.

10:49:00 20 Q. Well, let's go back to the very beginning  
10:49:02 21 of the day. What is your thought process -- strike  
10:49:07 22 that.

10:49:07 1                   Why do you think that it's scientifically  
10:49:10 2   or historically valid to base your opinion that  
10:49:16 3   Secretary of State Merrill isn't affected by  
10:49:20 4   homebound voters based on an article more than  
10:49:24 5   actually calling Secretary of State Merrill or  
10:49:28 6   Mr. Stayer or the representative and asking them how  
10:49:33 7   did Secretary of State Merrill act in this  
10:49:35 8   situation? Why is that news snippet more valid to  
10:49:39 9   you scientifically than actually talking to the  
10:49:42 10   people involved? Because they are still alive, they  
10:49:45 11   are still available, and can give you those answers?  
10:49:48 12                   MR. ROSS: Objection.  
10:49:56 13                   THE WITNESS: In the context of a legal  
10:49:57 14   case, when the person that you would have me  
10:50:06 15   interview is part of the legal case or is aware of  
10:50:12 16   the legal case and may have, particularly if the  
10:50:17 17   person may have a stake in the legal case, to expect  
10:50:23 18   the statements, particularly in unsworn  
10:50:29 19   statements -- I can't swear anybody whom I interview  
10:50:32 20   to tell the truth with the possibility of perjury if  
10:50:37 21   they don't tell the truth -- in the context of a  
10:50:42 22   legal case, there's no particular reason to believe

10:50:46 1 that anybody would tell me the whole truth, nothing  
10:50:50 2 but the truth.

10:50:52 3 BY MR. MAZE:

10:50:52 4 Q. All right.

10:50:52 5 A. If you look -- excuse me. I do talk about  
10:50:56 6 this at the beginning of my report, and I talk about  
10:50:59 7 the use of newspaper sources and contemporaneous  
10:51:02 8 sources. A newspaper reporter writing about an  
10:51:07 9 event that happened in 1995 in the legislature  
10:51:12 10 cannot possibly know that in 2017 there would be a  
10:51:19 11 legal case which would challenge the  
10:51:25 12 constitutionality or the violation of Section 2 of a  
10:51:28 13 particular law.

10:51:30 14 It's just a newspaper reporter trying to  
10:51:33 15 figure out what's going on in the legislature. This  
10:51:38 16 person has no ax to grind with respect to that  
10:51:40 17 litigation, and they can't know the parameters of  
10:51:47 18 that litigation.

10:51:48 19 Q. Let me -- you don't, you don't believe  
10:51:50 20 that Sean Hannity has an ax to grind in the Russia  
10:51:54 21 investigation or in whether or not President Trump  
10:51:59 22 wins or loses the litigation that was filed against

10:52:01 1 him yesterday? You don't think he has any opinion  
10:52:04 2 on that that shapes the way that he talks at night?

10:52:06 3 MR. ROSS: Objection.

10:52:08 4 THE WITNESS: I'm sure that he does.

10:52:09 5 BY MR. MAZE:

10:52:09 6 Q. Well, if you're sure than he does, then  
10:52:12 7 you have to acknowledge that the media can be biased  
10:52:14 8 in the way that they write. You already told me  
10:52:17 9 that you won't watch him at night because of that  
10:52:19 10 bias. How do you know who in Alabama is biased or  
10:52:23 11 not?

10:52:23 12 A. I didn't tell you I wouldn't watch him --

10:52:25 13 MR. ROSS: Objection.

10:52:25 14 THE WITNESS: -- because of the bias. I  
10:52:26 15 told you that he, the times that I have watched him,  
10:52:31 16 he seems more biased than the Fox News people who  
10:52:34 17 work in the morning. That was what the statement  
10:52:37 18 was. With respect to -- I'm not saying that  
10:52:41 19 newspaper reporters don't have bias.

10:52:43 20 They may well have bias, but they don't  
10:52:46 21 know the specific of litigation that might take  
10:52:49 22 place 20 years, 22 years later. They can't tailor

10:52:53 1 their remarks to that sort of litigation. They may  
10:52:59 2 be biased, and you have to try to gain, to consider  
10:53:05 3 that bias of news reporters.

10:53:09 4 BY MR. MAZE:

10:53:09 5 Q. How can you, personally, determine --

10:53:10 6 A. Excuse me.

10:53:11 7 Q. -- whether or not the reporter is biased?

10:53:13 8 MR. ROSS: Objection. And you should let  
10:53:15 9 him finish his answer to your question. You can  
10:53:19 10 answer --

10:53:21 11 THE WITNESS: Okay.

10:53:22 12 MR. ROSS: -- to the extent you can based  
10:53:24 13 on him interrupting you, but go ahead.

10:53:27 14 THE WITNESS: I apologize if I talked over  
10:53:31 15 you. That's something I should not do. Let me tell  
10:53:36 16 you how I first determined to be a historian.

10:53:47 17 When I grew up in Nashville, there were  
10:53:51 18 two newspapers. There was The Nashville Banner,  
10:53:53 19 which was conservative, not yet Republican, but  
10:53:57 20 eventually became Republican in 1964; The National  
10:54:00 21 Tennessean, which was a liberal, Democratic  
10:54:04 22 newspaper. Their reports on events were

10:54:08 1 diametrically opposed to each other.

10:54:13 2 I read them both every day from the age of  
10:54:16 3 eight. I had to try to determine what was going on,  
10:54:21 4 who was going to win an election, what positions did  
10:54:25 5 they take on particular issues, and sometimes it was  
10:54:29 6 difficult, but I cut my teeth on trying to decide  
10:54:39 7 what the reality was in biased sources, and I have  
10:54:45 8 been doing that ever since.

10:54:47 9 When I have read newspapers from the 1870s  
10:54:54 10 or the 1850s or the 1950s or the 2000s, I've done  
10:55:03 11 the same thing. I approach everything skeptically.  
10:55:07 12 I look to see what's there, what's not there, and I  
10:55:12 13 try to figure out what the proper interpretation of  
10:55:16 14 this is, but I've been trying to do that for a very  
10:55:22 15 long time, and I do that with some confidence now.

10:55:27 16 Compared to looking at what people say in  
10:55:32 17 the context of litigation, the newspaper reports at  
10:55:39 18 least have the virtue that they are done without  
10:55:45 19 that litigation in mind. I give an example of a  
10:55:51 20 contemporaneous deposition from Texas from now  
10:55:56 21 Lieutenant Governor Dan Patrick who was one of the  
10:56:01 22 sponsors of the SV-14, the voter ID law in Texas,

10:56:09 1 and he was being deposed, and he said again and  
10:56:14 2 again and again the same formulaic sentence about  
10:56:17 3 the purposes of the legislature. That's what you  
10:56:20 4 can expect in the context of litigation from people  
10:56:24 5 on either side.

10:56:25 6 BY MR. MAZE:

10:56:25 7 Q. Okay. Whose side of the litigation is  
10:56:28 8 Samuel Stayer on in this case?

10:56:30 9 MR. ROSS: Objection.

10:56:31 10 BY MR. MAZE:

10:56:31 11 Q. Not the Secretary of State, but the actual  
10:56:33 12 person that he helped. How is he influenced or how  
10:56:37 13 has his life changed by how this case comes out?

10:56:40 14 MR. ROSS: Objection.

10:56:43 15 THE WITNESS: I don't know. I mean,  
10:56:44 16 you've said that he's been -- I actually don't know  
10:56:49 17 whether he's still alive, but you said that he,  
10:56:54 18 Secretary Merrill has gotten him the proper ID, and  
10:56:59 19 so he's not affected by the litigation.

10:57:01 20 BY MR. MAZE:

10:57:01 21 Q. Right. And you said that you didn't want  
10:57:03 22 to talk to people who were affected by litigation,

10:57:06 1 but you just said Mr. Stayer is not affected by  
10:57:09 2 litigation. So why is his opinion of Secretary of  
10:57:13 3 State Merrill's, as you put it, did not bother, he  
10:57:17 4 was not bothered by his situation, why is talking to  
10:57:22 5 Mr. Stayer not more telling than taking a quote from  
10:57:27 6 another article on another thing that you said you  
10:57:29 7 didn't even get the context to? Why is that article  
10:57:32 8 better evidence than talking to the person who you  
10:57:34 9 said has absolutely no stake in this case and who  
10:57:37 10 met Secretary of State Merrill personally on the  
10:57:40 11 very issue we're talking about?

10:57:41 12 MR. ROSS: Objection.

10:57:42 13 THE WITNESS: Well, I don't conduct  
10:57:44 14 interviews, I don't conduct interviews with people  
10:57:47 15 for reasons that I've said, but also I don't conduct  
10:57:52 16 interviews because I have the news article. I can  
10:57:56 17 see that. I can't conduct interviews with  
10:57:59 18 everybody. I can't go to Alabama and conduct  
10:58:01 19 interviews with everybody. I got to teach courses.

10:58:03 20 BY MR. MAZE:

10:58:03 21 Q. So your opinion, after reading this  
10:58:05 22 article and the other one, is that Secretary of



10:58:07 1 State Merrill doesn't care about homebound voters

10:58:11 2 based on those articles?

10:58:12 3 MR. ROSS: Objection.

10:58:13 4 THE WITNESS: The statement, that indented

10:58:18 5 quote from Secretary Merrill doesn't involve

10:58:21 6 homebound voters itself particularly.

10:58:26 7 BY MR. MAZE:

10:58:26 8 Q. Then why did you write the sentence,

9 "Apparently, the necessity of the heroic quest to be

10:58:31 10 able to vote did not bother the Secretary of State

10:58:33 11 John Merrill"? The sentence you wrote was this

10:58:35 12 man's tribulations didn't bother John Merrill in any

10:58:39 13 way.

10:58:39 14 MR. ROSS: Objection.

10:58:40 15 BY MR. MAZE:

10:58:41 16 Q. How can you say that after knowing the

10:58:43 17 full story, reading this story? How can you say

10:58:46 18 that it didn't bother the Secretary of State knowing

10:58:48 19 that not only that he got him a card, but has set up

10:58:52 20 home visits for persons of all races and has been

10:58:54 21 doing so for a year?

10:58:56 22 MR. ROSS: Objection. Assuming facts that

10:59:00 1 are not in evidence, and all we have is this news  
10:59:02 2 article and what you've said, but you can answer.

10:59:05 3 MR. MAZE: In response to your speaking  
10:59:07 4 objection, the only way we have just this news  
10:59:09 5 article is because that's all he looked at.

10:59:12 6 BY MR. MAZE:

10:59:12 7 Q. My question is why is this all you look at  
10:59:14 8 when you have better information?

10:59:16 9 MR. ROSS: Objection.

10:59:16 10 THE WITNESS: It's not better information  
10:59:18 11 for the reasons that I've said, and the statement  
10:59:21 12 that you quoted about Secretary Merrill is based  
10:59:29 13 upon the indented quote on pages 86, 87.

10:59:32 14 BY MR. MAZE:

10:59:32 15 Q. Do you believe that it is possible to  
10:59:46 16 determine the reliability of your opinion? In other  
10:59:52 17 words, how can we tell that you are correct?

10:59:58 18 A. You can read all of the evidence that I've  
11:00:00 19 presented and look at the reasoning which I tried to  
11:00:03 20 outline in as clear terms as I possibly can. You  
11:00:09 21 can look at the scheme that I have used and see  
11:00:13 22 where it's derived from, and you can determine

11:00:19 1 whether, if you look at this fairly and objectively,  
11:00:24 2 whether this is more reliable than opposing views.

11:00:30 3 Q. So you believe that your process is  
11:00:33 4 objective and not subjective?

11:00:36 5 MR. ROSS: Objection.

11:00:37 6 THE WITNESS: There are certainly  
11:00:38 7 subjective elements in it. There are matters of  
11:00:43 8 interpretation that, always matters of  
11:00:47 9 interpretation when it comes to evidence, but I have  
11:00:51 10 tried to set out those matters, the interpretive  
11:00:54 11 lines that I have used in as clear a fashion as  
11:00:57 12 possible, and I think you can evaluate because I've  
11:01:01 13 put all the evidence here, all the footnotes; you  
11:01:04 14 can go back and look at the articles, if you wish,  
11:01:07 15 and see whether I've distorted what's in the  
11:01:09 16 articles.

11:01:10 17 You can bring, as you have, other evidence  
11:01:13 18 to bear, which I haven't had a chance to look at,  
11:01:18 19 and see whether they are reliable pieces of evidence  
11:01:24 20 and whether they undercut my conclusions, and you  
11:01:29 21 can evaluate this in the same way that you would  
11:01:31 22 evaluate any evidence or interpretation offered in a

11:01:36 1 book, a journal article, a report in an expert, by  
11:01:41 2 an expert witness.

11:01:42 3 BY MR. MAZE:

11:01:42 4 Q. I want to get into that. My background is  
11:01:44 5 a criminal prosecutor, and I've had cases in which  
11:01:48 6 we put on DNA evidence. And DNA evidence we know is  
11:01:55 7 correct or incorrect because we've gone through a  
11:01:57 8 scientific study of how to determine specific genes  
11:02:02 9 and, etc., and it's been peer tested; and, if I hand  
11:02:06 10 it to another DNA expert, every single one is going  
11:02:09 11 to come up with the same answer. You generally  
11:02:11 12 understand how DNA evidence works; correct?

11:02:13 13 MR. ROSS: Objection.

11:02:15 14 THE WITNESS: I generally understand it.  
11:02:17 15 I also understand that there have been cases in  
11:02:20 16 which the DNA evidence has been tainted.

11:02:23 17 BY MR. MAZE:

11:02:23 18 Q. I'm not asking about tainting. I'm not  
11:02:26 19 talking about the scientific process. How do we  
11:02:29 20 determine that your process of coming to the  
11:02:32 21 divination of legislature's intent is correct? How  
11:02:36 22 do we know, how can we prove that your opinion is

11:02:39 1 correct scientifically?

11:02:41 2 MR. ROSS: Objection.

11:02:42 3 BY MR. MAZE:

11:02:42 4 Q. Is it possible?

11:02:43 5 A. Yes, it's possible and exactly the same

11:02:46 6 way. I work with scientists. I teach at Cal Tech.

11:02:53 7 You have this view of science which is a sort of

11:02:58 8 romantic view of science, guys in white lab coats

11:03:04 9 doing experiments that everybody agrees upon are the

11:03:07 10 right experiments and forming conclusions of them

11:03:09 11 that are, that are the right conclusions.

11:03:13 12 They try to do this as much as they can,

11:03:16 13 but the process of deciding what the right

11:03:21 14 experiments are to run are, deciding the right

11:03:24 15 techniques are, criticizing those techniques, those

11:03:30 16 all involve aspects of subjectivity.

11:03:33 17 Q. Okay. Who has criticized your techniques?

11:03:39 18 Name them. Other than attorneys, who has published

11:03:45 19 a critique of your ability to determine intent?

11:03:54 20 A. I don't think that there have been any,

11:03:57 21 any sustained objections to any of this.

11:04:01 22 Q. I'm not asking about sustained objections.

11:04:04 1 You just said we know scientific principles can be  
11:04:07 2 valid because they are subject to critique. I want  
11:04:09 3 to know who has critiqued your method for  
11:04:12 4 determining intent.

11:04:17 5 A. So far as I know, there has been no  
11:04:24 6 evaluation of this which has been critical in any of  
11:04:29 7 the literature that I know about.

11:04:30 8 Q. You wrote an article called How to  
11:04:32 9 Determine Intent, Lessons from LA; correct?

11:04:34 10 A. Yes.

11:04:35 11 Q. Were there any critical articles or any  
11:04:37 12 articles that critiqued that particular article?

11:04:41 13 A. I don't think so.

11:04:42 14 Q. So, to your knowledge, no one has ever  
11:04:45 15 done a critique of the principles you used to  
11:04:49 16 determine a legislature's intent?

11:04:53 17 MR. ROSS: Objection.

11:04:56 18 THE WITNESS: To my knowledge, that's  
11:04:58 19 correct. Lots of the, lots of them are drawn from  
11:05:02 20 things that the Supreme Court has said and other  
11:05:05 21 courts have said. There have been criticisms of  
11:05:10 22 some of the Supreme Court evaluative methods and

11:05:21 1 formulations of things, but they haven't been

11:05:25 2 directed at me.

11:05:26 3 BY MR. MAZE:

11:05:26 4 Q. What makes you able to determine intent

11:05:30 5 better than a federal court judge?

11:05:32 6 MR. ROSS: Objection.

11:05:34 7 BY MR. MAZE:

11:05:35 8 Q. Why are you better suited to give an

11:05:37 9 opinion about the Alabama legislature's intent than

11:05:40 10 the federal district judge in this case?

11:05:42 11 MR. ROSS: Objection.

11:05:43 12 THE WITNESS: I'm not claiming that I have

11:05:46 13 a better ability to do that. I'm presenting a large

11:05:54 14 amount of evidence with the interpretative scheme

11:05:58 15 laid out and the reasoning laid out. The judge will

11:06:02 16 consider that. The judge will consider other things

11:06:07 17 that are presented by other people, will consider

11:06:13 18 what you have to say about what I have to say and

11:06:17 19 make up his own mind.

11:06:18 20 BY MR. MAZE:

11:06:18 21 Q. So let me see if I get this straight, and

11:06:20 22 tell me where I'm wrong, if I am. Once the judge

11:06:23 1 reads your report and all of the facts and the  
11:06:25 2 articles contained in it, then he is in just as good  
11:06:29 3 a situation to make a decision on the legislative  
11:06:32 4 intent as you are?

11:06:33 5 MR. ROSS: Objection.

11:06:34 6 THE WITNESS: There is some advantages  
11:06:36 7 that I have over a judge and some advantages that a  
11:06:41 8 judge has over me. Most judges have not spent their  
11:06:46 9 lives dealing with the intent of legislatures with  
11:06:51 10 regard to election laws, so I have more experience  
11:06:54 11 in looking at that particular kind of data.

11:06:57 12 The judge has a lot more experience with  
11:06:59 13 the law, and he has law clerks available to him to  
11:07:02 14 find things that he may not know about or may not  
11:07:06 15 absolutely remember correctly. The judge has also  
11:07:11 16 authority that I don't have.

11:07:13 17 I can only say here's what I think that  
11:07:17 18 the evidence shows and here's why I think the  
11:07:20 19 evidence shows that, and the judge makes the  
11:07:22 20 decision. So I'm not final. The judge, the  
11:07:27 21 district court judge is probably not final either,  
11:07:29 22 but some judge is final, but they have to evaluate



11:07:34 1 what I said.

11:07:35 2 That's why I present it in such detail.

11:07:38 3 That's what I try so hard to be so clear about

11:07:40 4 exactly what I've done and why I've done it. That's

11:07:43 5 why I try so hard to be clear about the form of

11:07:48 6 reasoning so the judge can evaluate it. If the

11:07:51 7 judge says you misstated or misrepresented what

11:07:57 8 Arlington Heights says and I am bound by what

11:08:00 9 Arlington Heights says and, therefore, I disagree

11:08:02 10 with you, that's fine. All I can do is present it

11:08:06 11 in as clear a fashion as possible and let the judge

11:08:09 12 make up his mind.

11:08:10 13 BY MR. MAZE:

11:08:10 14 Q. How many other persons that you know have

11:08:13 15 been qualified as an intent expert in a federal

11:08:17 16 court?

11:08:21 17 A. Intent? I only know about voting rights

11:08:27 18 cases.

11:08:27 19 Q. How many other persons do you know besides

11:08:30 20 yourself that has ever given opinion on a

11:08:32 21 legislature's intent in any kind of voting case?

11:08:35 22 A. It's probably five to ten.

11:08:42 1 Q. Can you name them?

11:08:44 2 A. I can name some of them.

11:08:45 3 Q. Please do.

11:08:46 4 A. Vernon Burton.

11:08:48 5 Q. Can you spell it?

11:08:49 6 A. V-E-R-N-O-N, Burton, B-U-R-T-O-N; Allan

11:08:55 7 Lichtman, A-L-L-A-N, L-I-C-H-T-M-A-N; Steve Lawson,

11:09:03 8 L-A-W-S-O-N; Dan Carter, C-A-R-T-E-R; Peyton

11:09:12 9 McCrary, P-E-Y-T-O-N, M-C-C-R-A-R-Y; I think before

11:09:23 10 he died Howard Rabinowitz, R-A-B-I-N-O-W-I-T-Z.

11:09:34 11 There are other people, but I can't remember

11:09:36 12 immediately.

11:09:37 13 Q. Have you ever testified on behalf of a

11:09:41 14 state or local government?

11:09:42 15 A. Yes.

11:09:43 16 Q. Which ones?

11:09:44 17 A. In California the cities of Seaside and

11:09:52 18 Marina.

11:09:53 19 Q. What was that case about?

11:09:54 20 A. S-E-A-S-I-D-E, Marina, M-A-R-I-N-A. They

11:10:02 21 are both small towns in Monterey, M-O-N-T-E-R-A-Y,

11:10:08 22 County, California. That was a racial

11:10:15 1 gerrymandering case. Both of those jurisdictions  
11:10:19 2 had substantial populations that were African  
11:10:26 3 American or Asian, and they, in addition to Latinos  
11:10:35 4 in the county, which is fairly more substantial  
11:10:39 5 proportion of the population in the county,  
11:10:43 6 challenged the redistricting that the county had  
11:10:47 7 used for its County Commission, County Board of  
11:10:51 8 Supervisors, rather, and I testified for Seaside and  
11:10:55 9 Marina.

11:10:56 10 I have been a consultant to a city called  
11:11:02 11 Lancaster, California, L-A-N-C-A-S-T-E-R, which was  
11:11:08 12 considering whether it had potential liability under  
11:11:15 13 the California Voting Rights Act and should shift  
11:11:21 14 from at-large elections to districts. And I  
11:11:29 15 concluded that they probably did not face  
11:11:36 16 overwhelming legal jeopardy. They didn't have to  
11:11:41 17 shift to districts, although I thought -- in general  
11:11:46 18 I'm in favor of districts, so I thought that they  
11:11:50 19 should as a matter of good public policy, but that  
11:11:52 20 they were not likely to lose a California Voting  
11:11:56 21 Rights Act case if one were brought.

11:11:59 22 There are probably some other local

11:12:01 1 jurisdictions, but those are the ones that I  
11:12:03 2 remember.

11:12:03 3 Q. Have you ever assisted a government in a  
11:12:05 4 voting case that was not in California?

11:12:18 5 A. I can't recall one.

11:12:19 6 Q. Have you ever been contacted by a  
11:12:22 7 government outside of California and have them  
11:12:27 8 request your assistance?

11:12:28 9 A. I can't recall right now.

11:12:29 10 Q. Going back to what we were talking about  
11:12:31 11 with the federal judges earlier, do you claim that  
11:12:35 12 you're more qualified than the federal judge to look  
11:12:39 13 at this particular evidence, evaluate it, and then  
11:12:44 14 lead to the conclusion of whether or not Alabama's  
11:12:47 15 legislature acted with a discriminatory intent?

11:12:49 16 MR. ROSS: Objection.

11:12:51 17 THE WITNESS: I don't claim, as I said, to  
11:12:53 18 be more qualified than a federal judge, but I do  
11:12:56 19 have some experiences that make me, put me in a  
11:13:05 20 better situation than many judges who have not  
11:13:08 21 looked at election laws for a period of time. But  
11:13:13 22 the judge has advantages over me, and the judge has

11:13:16 1 the final authority so all I can do is present the  
11:13:21 2 evidence, my conclusions, and let the judge decide.  
11:13:26 3 He has the authority.

11:13:28 4 MR. MAZE: I think it's a good break time.  
11:13:31 5 It's been about an hour.

11:13:34 6 (Whereupon, a short recess was taken from  
11:13:35 7 11:13 to 11:36 a.m.)

11:36:18 8 BY MR. MAZE:

11:36:20 9 Q. I want to go back a little bit to where we  
11:36:23 10 left off. Do you know who Hank Sanders is?

11:36:28 11 A. Yes, he's a state senator.

11:36:29 12 Q. You ever talk to Mr. Sanders or Senator  
11:36:33 13 Sanders?

11:36:33 14 A. No.

11:36:34 15 Q. Do you know who Nancy Worley is?

11:36:36 16 A. Yes, she's the Secretary of State.

11:36:39 17 Q. Do you know what her current position is?

11:36:41 18 A. Head of the Democratic Party, I think, in  
11:36:43 19 the state of Alabama.

11:36:45 20 Q. Artur Davis?

11:36:48 21 A. He's a former Congressman, now a  
11:36:51 22 Republican.

11:36:52 1 Q. Do you think that these persons who are in  
11:37:04 2 Alabama and have been part of this process are  
11:37:09 3 better positioned than you to opine on the  
11:37:13 4 legislature's intent in this case?

11:37:16 5 MR. ROSS: Objection.

11:37:17 6 THE WITNESS: I think I take into account  
11:37:23 7 what I know about what they said at the time and, if  
11:37:27 8 they had depositions, about the depositions, but I  
11:37:31 9 think that I have looked at things in a more  
11:37:34 10 comprehensive way than they have.

11:37:37 11 I will tell you a self-serving story.

11:37:44 12 When I testified in the Texas redistricting case, I  
11:37:55 13 was testifying for the Mexican American Legislative  
11:37:59 14 Caucus, MALC, M-A-L-C, and the head of the MALC was  
11:38:04 15 a state representative named Tres, T-R-E-S,  
11:38:08 16 Martinez, M-A-R-T-I-N-E-Z, dash, Fischer, I think  
11:38:14 17 it's F-I-S-C-H-E-R; and, during a break, Fischer,  
11:38:22 18 who had been ultimately involved in the  
11:38:24 19 redistricting process, said to me that he had read  
11:38:29 20 my paper the night before and that he had finally  
11:38:35 21 understood what had gone on.

11:38:37 22 He had been in the midst of the process,

11:38:42 1 but he had not had the ability to see everything

11:38:48 2 that I had seen because he had only seen partial,

11:38:53 3 partially what was going on and that my more

11:38:57 4 comprehensive view made him finally understand what

11:39:01 5 had gone on.

11:39:02 6 BY MR. MAZE:

11:39:02 7 Q. And by the same token, because a federal

11:39:07 8 district judge is outside of the process and will

11:39:09 9 have the benefit of all of the evidence and articles

11:39:12 10 that you put forth, plus everything that we give

11:39:16 11 him, he would be in a better position to give an

11:39:21 12 opinion on intent than a Hank Sanders or a Nancy

11:39:24 13 Worley, somebody who was in the midst of the battle;

11:39:27 14 correct?

11:39:28 15 MR. ROSS: Objection.

11:39:28 16 THE WITNESS: He should be able to for

11:39:31 17 exactly the reason I just said because he's seen

11:39:34 18 much more evidence and been able to weigh what

11:39:38 19 everyone says.

11:39:40 20 BY MR. MAZE:

11:39:40 21 Q. I'm going to hand you what I have marked

11:39:43 22 as Deposition Exhibit 6, and also what I have marked

11:39:56 1 Deposition Exhibit 7.

11:39:57 2 (Deposition Exhibit No. 6, Voter

3 Identification in Texas: What was the Purpose of

11:40:01 4 S.B. 14?, was marked for identification.)

5 (Deposition Exhibit No. 7, Deposition

6 Transcript of J. Morgan Kousser, was marked for

11:40:03 7 identification.)

11:40:03 8 BY MR. MAZE:

11:40:04 9 Q. And, while you flip through them, if you

11:40:06 10 want, I'll just for the record say that Number 6 is

11:40:09 11 an Expert Report entitled "Voter Identification in

11:40:13 12 Texas: What Was the Purpose of S.B. 14?", and

11:40:16 13 Number 7 is a deposition transcript of yourself in

11:40:20 14 the Texas case.

11:40:23 15 First of all, is Number 6, in fact, the

11:40:25 16 report you wrote in the Texas case?

11:40:32 17 A. Yes.

11:40:33 18 Q. And, in fact, is the Deposition Number 7

11:40:39 19 the deposition that you gave in the Texas case?

11:40:42 20 Noting for the record that for some reason pages 25

11:40:45 21 and 35 are missing and, as soon as I can get my

11:40:49 22 hands on them, we'll supplement with those pages.



11:40:52 1 MR. ROSS: Can you clarify which Texas  
11:40:54 2 case you're talking about?

11:40:55 3 MR. MAZE: Well, it should be titled on  
11:40:58 4 the inside cover.

11:40:59 5 MR. ROSS: For the record, it appears  
11:41:01 6 Texas v Holder.

11:41:03 7 MR. MAZE: Correct.

11:41:03 8 MR. ROSS: Which I assume this is the  
11:41:08 9 photo ID, the Texas photo ID Section 5 case; is that  
11:41:12 10 right? Well, you were the one who entered it and  
11:41:18 11 said the Texas case, so that's my clarifying it for  
11:41:21 12 the record.

11:41:21 13 BY MR. MAZE:

11:41:22 14 Q. Would you agree that Deposition Exhibit 7  
11:41:28 15 is regarding Texas photo ID law?

11:41:39 16 A. Yes, it is.

11:41:40 17 Q. Okay. I know in this case we have said  
11:41:44 18 that you wanted to review your transcript in this  
11:41:47 19 case. Did you, in fact, review your deposition  
11:41:50 20 transcript in Texas after you had given it?

11:41:54 21 A. I think so.

11:41:55 22 Q. Do you remember having any objections or

11:41:59 1 feeling that anything in it was inaccurate?

11:42:04 2 A. I don't remember. I generally review

11:42:09 3 deposition transcripts and, if there is anything

11:42:12 4 substantially inaccurate, I make some amendments or

11:42:19 5 suggestions or whatever one would call it. I do not

11:42:22 6 remember whether I did that in this case, and I

11:42:25 7 don't remember whether I had any substantial

11:42:29 8 changes. I apologize.

11:42:30 9 Q. It's okay. Do you have any reason to

11:42:32 10 believe that there is anything that you would change

11:42:36 11 from your report or your deposition in the Texas ID

11:42:39 12 case?

11:42:44 13 A. I don't think so.

11:42:47 14 Q. I want to talk about some things that came

11:42:49 15 up in the Texas case. Is it still your opinion that

11:42:57 16 promoting confidence in the voting process can be a

11:43:02 17 legitimate goal in passing a voter ID law? I'm not

11:43:07 18 asking whether it was in the Alabama case. I'm just

11:43:09 19 saying, as a general prospect, is the promotion of

11:43:13 20 public confidence in the voting in that state a

11:43:18 21 legitimate goal that a legislature can seek?

11:43:23 22 A. Yes, but there are various ways that the

11:43:27 1 legislature could promote that confidence, and some  
11:43:29 2 of the ways I think are likely to promote that  
11:43:37 3 confidence and others I think are subterfuges.

11:43:42 4 Q. So, while you think there may be better  
11:43:45 5 ways to do so, you at least agree that promoting  
11:43:48 6 public confidence is a legitimate goal of the  
11:43:50 7 legislature?

11:43:52 8 A. It can be. It depends upon whether the --  
11:43:58 9 in evaluating whether that was, in fact, the goal of  
11:44:02 10 the legislature, one has to consider other things.

11:44:07 11 Q. I want to go through some of the problems  
11:44:13 12 that you identified in the Texas case. One of them  
11:44:18 13 was the fact that in certain instances persons would  
11:44:22 14 have to drive over 200 miles to the closest Board of  
11:44:28 15 Registrars' office to get an ID card; correct?

11:44:30 16 A. I think it's 200 miles round trip, but  
11:44:33 17 yes.

11:44:33 18 Q. Why did you find that problematic?

11:44:37 19 A. That's particularly hard for people who  
11:44:39 20 don't have cars and/or who are particularly poor.

11:44:45 21 Q. What do you find to be an acceptable  
11:44:49 22 amount of round-trip travel? What would you say, if

11:44:54 1 it's only this amount, then I believe that it's okay  
11:44:57 2 or not evidence of discriminatory intent?

11:45:00 3 MR. ROSS: Objection.

11:45:03 4 THE WITNESS: If they have to -- for  
11:45:07 5 someone who is relatively poor and has limited  
11:45:10 6 access to transportation, almost anything can be too  
11:45:16 7 far. But, and it certainly can be evidence of a  
11:45:23 8 discriminatory intent because they are less likely  
11:45:29 9 to have the usual means of identification, driver's  
11:45:36 10 licenses, and they have less access to  
11:45:40 11 transportation.

11:45:43 12 And, as I pointed out in the Alabama  
11:45:46 13 report, there is decreasing ability, public  
11:45:50 14 transportation available particularly in rural areas  
11:45:53 15 in Alabama, so even that ability seems to be  
11:45:58 16 decreasingly available.

11:46:00 17 BY MR. MAZE:

11:46:00 18 Q. Would you say --

11:46:01 19 A. I was not -- excuse me. I would not say  
11:46:05 20 that there is a particular cut-off point which is  
11:46:08 21 reasonable about the number of miles, and on the  
11:46:15 22 other side of it it was unreasonable, but certainly

11:46:18 1 a 200-mile round trip falls well outside of any  
11:46:23 2 reasonable amount of travel.

11:46:27 3 Q. What about a 20-mile round trip?

11:46:30 4 A. For someone who is relatively poor and has  
11:46:35 5 difficult, difficulty with access to transportation,  
11:46:41 6 even a five-mile round trip might be too far.

11:46:44 7 Q. You do realize that it's impossible, it's  
11:46:47 8 literally impossible to put a Board of Registrars'  
11:46:50 9 office within five miles of every house in the state  
11:46:54 10 of Alabama; correct?

11:46:55 11 MR. ROSS: Objection.

11:46:55 12 THE WITNESS: Certainly.

11:46:58 13 BY MR. MAZE:

11:46:59 14 Q. How would you remedy, you, personally,  
11:47:02 15 assuming that a voter ID law is in effect, how would  
11:47:08 16 you, personally, overcome the fact that someone  
11:47:11 17 lives ten miles away? What could a state  
11:47:13 18 legislature do that would make you feel as though  
11:47:17 19 this was not a discriminatory intent to harm persons  
11:47:21 20 who have problems driving five miles each way?

11:47:24 21 MR. ROSS: Objection.

11:47:27 22 THE WITNESS: The presupposition of the

11:47:28 1 question is wrong because you force me to assume  
11:47:31 2 that there is a voter ID law where someone has to  
11:47:35 3 get a voter ID card even if one doesn't have other  
11:47:41 4 forms of identification, and I'm unwilling to accept  
11:47:45 5 that premise.

11:47:46 6 BY MR. MAZE:

11:47:46 7 Q. You're unwilling to accept the premise  
11:47:48 8 that a state can ever require someone to get a free  
11:47:52 9 photo ID card to show at the polls if they have no  
11:47:56 10 other type of card?

11:47:57 11 MR. ROSS: Objection.

11:47:58 12 THE WITNESS: I think that that is  
11:47:59 13 discriminatory against people who are relatively  
11:48:02 14 poor, who are disabled, who are older, who may have  
11:48:08 15 less form, less easy access to transportation.

11:48:11 16 BY MR. MAZE:

11:48:11 17 Q. So, in your opinion, any state that passes  
11:48:15 18 a law that requires a photo identification is  
11:48:20 19 passing it with a discriminatory purpose because  
11:48:24 20 minorities have additional burdens to get that card?

11:48:29 21 MR. ROSS: Objection.

11:48:30 22 THE WITNESS: No. As I said in the past

11:48:34 1 in this deposition, I have a whole series of  
11:48:40 2 questions that I ask about discriminatory intent,  
11:48:45 3 and the questions that are asked are very specific  
11:48:48 4 to a particular instance. So I would not be willing  
11:48:52 5 to make a blanket statement about that.

11:48:54 6 I would want to see, conduct an inquiry  
11:48:59 7 similar to the inquiries that I conducted in Texas,  
11:49:04 8 North Carolina, and Alabama before finding there was  
11:49:07 9 discriminatory intent on the part of the  
11:49:09 10 legislature.

11:49:10 11 MR. MAZE: Can I ask the court reporter to  
11:49:12 12 go back and read about two or three questions ago?  
11:49:15 13 Read the questions and answers.

11:49:17 14 (The reporter read back as requested.)

11:50:33 15 BY MR. MAZE:

11:50:33 16 Q. Having heard that answer back, is it your  
11:50:37 17 opinion that a state cannot pass a photo ID law  
11:50:45 18 without having a discriminatory intent or purpose?

11:50:49 19 MR. ROSS: Objection. You're  
11:50:50 20 mischaracterizing his testimony.

11:50:52 21 MR. MAZE: I'm not characterizing it at  
11:50:53 22 all. I'm asking if what I just asked is his

11:50:56 1 opinion, and I'll ask it.

11:50:57 2 MR. ROSS: Asked and answered is my  
11:50:59 3 objection.

11:50:59 4 MR. MAZE: Well, that's a speaking  
11:51:00 5 objection. I'm going to get an answer from him.

11:51:02 6 BY MR. MAZE:

11:51:02 7 Q. I'm asking the question again this way.

11:51:05 8 Is it your opinion that a state cannot pass a photo  
11:51:11 9 ID law without discriminating against minorities  
11:51:19 10 with intent or purpose?

11:51:23 11 A. And I think that I said in, and I've said  
11:51:31 12 before in this deposition, that with respect to  
11:51:37 13 every concern about the intent the framers of a  
11:51:42 14 particular law, I try to follow the outline of  
11:51:48 15 evidence that I presented here and I presented in  
11:51:53 16 Colorblind Injustice and make a comprehensive  
11:51:56 17 evaluation, but the requirement that people obtain  
11:52:07 18 by themselves, for themselves a photo voter ID is in  
11:52:20 19 itself inherently discriminatory against minorities.

11:52:23 20 Q. So the answer to me --

11:52:25 21 A. And inherently discriminatory against poor  
11:52:28 22 people. If there are ways to ensure that that is



11:52:35 1 very much easier for people and that people have  
11:52:39 2 that available to them in a way that counteracts  
11:52:44 3 their circumstances in regard to poverty,  
11:52:49 4 transportation, and so on, then the law and the way  
11:52:57 5 that it is administered would be certainly less  
11:53:03 6 discriminatory.

11:53:04 7 Q. Less, but you're still saying it is  
11:53:06 8 discriminatory? In other words, you still haven't  
11:53:09 9 answered my yes-or-no question. Yes or no. Is it  
11:53:13 10 possible to pass a photo ID law without having a  
11:53:19 11 discriminatory intent or purpose? Yes or no. Is it  
11:53:23 12 possible?

11:53:24 13 MR. ROSS: Objection.

11:53:26 14 THE WITNESS: It depends upon the other  
11:53:28 15 provisions of the law, and it depends upon the  
11:53:31 16 comprehensive evidence as to the intent of the law.  
11:53:36 17 You can make it a lot easier for people to get a  
11:53:41 18 photo ID. You can make it harder for people to get  
11:53:45 19 a photo ID. Eliminating the offices where you could  
11:53:53 20 easily get a photo ID in a series of counties,  
11:53:57 21 particularly black belt counties in Alabama as the  
11:54:00 22 state did, makes it much harder and makes the case

11:54:07 1 for discriminatory intent stronger. Making it

11:54:12 2 easier can make the case for discriminatory intent

11:54:18 3 less convincing.

11:54:20 4 BY MR. MAZE:

11:54:20 5 Q. By saying that it depends, then aren't you

11:54:24 6 necessarily saying, yes, it is possible to pass the

11:54:27 7 law without a discriminatory intent?

11:54:31 8 MR. ROSS: Objection.

11:54:33 9 THE WITNESS: If it is harder for someone,

11:54:35 10 if you make it harder for someone to vote because

11:54:39 11 they have to do something which is harder for them

11:54:43 12 to do than it is for a lot of other people to do,

11:54:48 13 people who have driver's licenses, people who have

11:54:52 14 cars, people who have more physical mobility, then

11:55:01 15 it is discriminatory by definition.

11:55:04 16 BY MR. MAZE:

11:55:04 17 Q. So now you're saying, no, it is not

11:55:07 18 possible to pass a photo ID law without having a

11:55:12 19 discriminatory intent or purpose?

11:55:14 20 MR. ROSS: Objection.

11:55:14 21 THE WITNESS: I'm saying objectionably --

11:55:18 22 objectively it is discriminatory against people who

11:55:22 1 have that particular characteristic. It may not be  
11:55:26 2 racially discriminatory. It may be discriminatory  
11:55:34 3 because of age. It may be discriminatory because of  
11:55:38 4 people who live in one sort of area with one sort of  
11:55:46 5 public transportation against another area with  
11:55:48 6 another style of public transportation or  
11:55:51 7 availability of public transportation, but, if it  
11:55:55 8 discriminates between people on their ability to get  
11:56:00 9 such identification, it's by definition  
11:56:06 10 discriminatory.

11:56:06 11 BY MR. MAZE:

11:56:06 12 Q. Why are you uncomfortable answering yes or  
11:56:09 13 no to a yes-or-no question of whether it's possible?  
11:56:14 14 Can you literally just not say, yes, it is possible  
11:56:17 15 or, no, it is impossible?

11:56:18 16 MR. ROSS: Objection.

11:56:21 17 THE WITNESS: I've said, if it  
11:56:22 18 discriminates, it is in that sense discriminatory.  
11:56:28 19 That's not necessarily to say it is discriminatory  
11:56:31 20 against people because of their race. It's not  
11:56:34 21 necessarily to say that it's discriminating because  
11:56:39 22 of their disability. It depends on other factors

11:56:43 1 how it's discriminating, but, if it makes it harder,  
11:56:46 2 it is by definition discriminatory.

11:56:48 3 BY MR. MAZE:

11:56:48 4 Q. Sir, I mean, I can ask the question all  
11:56:50 5 day for seven hours, and I'm going to continue to do  
11:56:53 6 so until I get a yes-or-no answer to a very simple  
11:56:58 7 question of is it possible for a state to pass a  
11:57:04 8 photo ID law that would not have a discriminatory  
11:57:09 9 intent or purpose?

11:57:12 10 MR. ROSS: Objection.

11:57:15 11 THE WITNESS: The answer is it depends  
11:57:18 12 upon the provisions of the law.

11:57:20 13 BY MR. MAZE:

11:57:21 14 Q. So, if it depends --

11:57:22 15 A. Every -- if the state, as many European  
11:57:27 16 states, had an affirmative duty to provide everyone  
11:57:33 17 with an ID, then it would not be discriminatory.

11:57:37 18 Q. Okay. So the answer is yes. Let me ask  
11:57:39 19 you this. What consideration do you give to the  
11:57:48 20 fact that in Alabama you can request a photo ID for  
11:57:54 21 free to be brought to your house so that you don't  
11:57:58 22 even have to leave? Does that not eliminate the

11:58:02 1 discriminatory effect and purpose that you've been  
11:58:04 2 talking about?

11:58:05 3 MR. ROSS: Objection.

11:58:07 4 THE WITNESS: It depends upon how easy it  
11:58:10 5 is to do that and what publicity has been made, how  
11:58:17 6 publicly available the knowledge of that.

11:58:21 7 BY MR. MAZE:

11:58:21 8 Q. But you got Exhibit 2 in front of you.

11:58:24 9 You can see how easy it is to request. What about  
11:58:27 10 Exhibit 2 makes it too difficult for someone to have  
11:58:31 11 a van drive to their house and create a photo ID  
11:58:35 12 card for free and they don't even have to leave?  
11:58:40 13 What makes that so discriminatory as to not change  
11:58:43 14 your answer that that's no discriminatory intent or  
11:58:45 15 effect in Alabama's law?

11:58:47 16 MR. ROSS: Objection.

11:58:49 17 THE WITNESS: This appears -- you can  
11:58:51 18 correct me if I'm wrong -- this appears to be  
11:58:53 19 something from a website and, if you don't have  
11:58:57 20 access to or you're unused to using the Internet to  
11:59:05 21 do this, then you may not find the website.  
11:59:10 22 Depending upon the degree to which Alabama has made

11:59:14 1 information available about the website, you may not  
11:59:19 2 know of the website.

11:59:20 3                   You may not have a computer that will give  
11:59:22 4 you access to the website. All sorts of things  
11:59:25 5 about this that are different from the affirmative  
11:59:28 6 obligation that a local government, a government  
11:59:32 7 usually, I think of local government in Europe has  
11:59:35 8 to register voters.

11:59:37 9 BY MR. MAZE:

11:59:37 10           Q. How does Europe get the ID cards in the  
11:59:39 11 hands of the voters?

11:59:40 12           A. I think they give it to them.

11:59:42 13           Q. When? How?

11:59:43 14           A. I do not know the details of every law.

11:59:45 15           Q. How does the person get to the place where  
11:59:47 16 they are handed the card?

11:59:49 17           A. I think they are registered in general for  
11:59:54 18 things that include voting, but include other  
11:59:58 19 things.

11:59:58 20           Q. Where do they get their cards from?

12:00:00 21           A. The details of European laws differ from  
12:00:04 22 place to place.

12:00:05 1 Q. But you're okay with the Europeans doing  
12:00:07 2 it. What about the way that they do is it better  
12:00:11 3 than the fact that Alabama will literally drive to  
12:00:13 4 your house and hand you a free card?

12:00:15 5 MR. ROSS: Objection.

12:00:17 6 THE WITNESS: The government has an  
12:00:19 7 obligation to register everybody in the European  
12:00:24 8 countries as to the extent that I know about them.

12:00:29 9 BY MR. MAZE:

12:00:29 10 Q. And the Secretaries of State in Alabama  
12:00:32 11 starting in, since the law has passed through today  
12:00:36 12 have taken it upon themselves to make sure that  
12:00:38 13 every single person has a card just in the same way,  
12:00:42 14 haven't they?

12:00:42 15 MR. ROSS: Objection.

12:00:43 16 THE WITNESS: That I do not know about,  
12:00:45 17 and I don't think that that's part of the law, that  
12:00:47 18 the Secretary of State has the obligation to  
12:00:49 19 register every voter. If the Secretary of State had  
12:00:52 20 the obligation to register every voter and provide  
12:00:59 21 them with an ID card and that ID card would be able  
12:01:04 22 to be presented in voting in person and he had the

12:01:14 1 obligation to provide photocopying equipment so that  
12:01:18 2 the person could include that with an absentee  
12:01:24 3 ballot, then I think it would be considerably less  
12:01:29 4 discriminatory.

12:01:29 5 BY MR. MAZE:

12:01:29 6 Q. So, if Alabama law and the statute itself  
12:01:32 7 said the state is under an obligation to provide a  
12:01:36 8 free photo ID card to all registered voters and then  
12:01:40 9 the Secretary of State went to everyone's house that  
12:01:43 10 asked for it to give them that statutorily required  
12:01:46 11 identification card, you would agree, based on your  
12:01:50 12 last answer, that that would eliminate or at least  
12:01:53 13 seriously decrease the discrimination; correct?

12:01:56 14 MR. ROSS: Objection.

12:01:57 15 THE WITNESS: In Europe the obligation is  
12:02:00 16 also to register the voters as well, and so the  
12:02:04 17 obligation would be to register voters, as well as  
12:02:09 18 to provide them with IDs.

12:02:11 19 BY MR. MAZE:

12:02:11 20 Q. Is this case about registration?

12:02:12 21 A. No, but that would be what would be,  
12:02:16 22 eliminate the discrimination.



12:02:18 1 Q. Oh, we have to register and give the ID at  
12:02:22 2 the same time now to eliminate the discrimination?

12:02:23 3 MR. ROSS: Objection. You asked him about  
12:02:25 4 Europe. He's talking about Europe.

12:02:26 5 BY MR. MAZE:

12:02:26 6 Q. And I'm asking how he's applying Europe to  
12:02:29 7 Alabama. He said Europe is okay. I want to know  
12:02:31 8 what we're doing differently that makes it okay in  
12:02:35 9 Europe, but bad in Alabama.

12:02:37 10 A. If there were still discrimination in  
12:02:42 11 registration in the sense that relatively poorer  
12:02:46 12 people are less likely to register to vote, there  
12:02:50 13 would still be discrimination in the general laws of  
12:02:55 14 Alabama, not necessarily in the photo ID part of it,  
12:03:01 15 but in the general laws of Alabama, and that might  
12:03:04 16 make it harder for people to engage in the whole  
12:03:09 17 political process.

12:03:10 18 Q. So you're saying, if we eliminated all of  
12:03:13 19 the discrimination from the photo ID law, you still  
12:03:16 20 would have a problem with Alabama because they have  
12:03:19 21 discrimination in other aspects of the law?

12:03:21 22 A. I was comparing --

12:03:22 1 MR. ROSS: Objection.

12:03:22 2 THE WITNESS: I was comparing it to

12:03:25 3 registration in Europe where the registration is the

12:03:28 4 affirmative duty of the state and saying that that

12:03:35 5 is a situation which is less discriminatory than the

12:03:39 6 situation here. I would like that to take place in

12:03:43 7 California as well, and registration laws can be

12:03:48 8 discriminatory. I think there probably should be

12:03:52 9 more litigation challenging registration laws as

12:03:57 10 discriminatory.

12:03:58 11 We are going through in California an

12:04:02 12 attempt to increase voter registration and a whole

12:04:06 13 series of measures, and we don't know whether that's

12:04:10 14 going to work and increased turnout and make turnout

12:04:14 15 more equal across classes and races, and so we've

12:04:20 16 got a lot to do on that as well. And we have failed

12:04:24 17 in the past in California.

12:04:25 18 BY MR. MAZE:

12:04:25 19 Q. Is there anything that Alabama can do,

12:04:30 20 understanding that the ability to have the ID card

12:04:33 21 brought to your house for free exists, is there

12:04:36 22 anything that Alabama can do to assist persons get

12:04:40 1 photo ID cards that would eliminate your conclusion  
12:04:46 2 that there is a discriminatory purpose, intent or  
12:04:49 3 effect of this law?

12:04:50 4 MR. ROSS: Objection.

12:04:51 5 BY MR. MAZE:

12:04:51 6 Q. What can we do?

12:04:54 7 A. Well, my evaluation of the discriminatory  
12:05:03 8 intent of the law is based primarily on things that  
12:05:07 9 happened up to 2011.

12:05:13 10 Q. Okay.

12:05:13 11 A. There is evidence after 2011 which adds to  
12:05:17 12 that conclusion, but it is based primarily on things  
12:05:22 13 that happened before.

12:05:25 14 Q. Okay.

12:05:25 15 A. If Alabama were to change the law to make  
12:05:28 16 it the affirmative obligation of the Secretary of  
12:05:32 17 State to provide IDs to every registered voter,  
12:05:37 18 that, I think as I said, would eliminate a lot of  
12:05:45 19 the discriminatory effect of the law, just the voter  
12:05:50 20 ID law by itself.

12:05:52 21 There would still be discrimination in  
12:05:54 22 regard to the political process in general, but that

12:05:58 1 would obviate a lot of that. But I do not know of  
12:06:04 2 any state in which a voter ID law has passed in  
12:06:08 3 which it has become the state's obligation to give  
12:06:13 4 everybody an ID, not just to provide it if they ask  
12:06:17 5 for it, but an affirmative obligation to give it to  
12:06:20 6 them.

12:06:20 7 Q. Okay. So let's take your hypothetical  
12:06:23 8 now. Let's assume that either this case settles or  
12:06:28 9 Plaintiffs win and the photo ID law is enjoined.  
12:06:35 10 The Alabama legislature in 2018 then passes a new  
12:06:40 11 law that says we are going to require photo  
12:06:44 12 identification, but we are making a statutory  
12:06:49 13 requirement that the Secretary of State  
12:06:52 14 affirmatively give every registered voter a free  
12:06:57 15 identification card.

12:06:59 16 If Alabama wrote that law in 2018 in  
12:07:04 17 response to losing or settling this case, would you  
12:07:07 18 say that that is done without a discriminatory  
12:07:11 19 intent, purpose or effect?

12:07:13 20 MR. ROSS: Objection.

12:07:15 21 THE WITNESS: Well, I'd have to look at  
12:07:17 22 more evidence of that, but it certainly would weigh

12:07:20 1 in favor of saying that there was not a

12:07:23 2 discriminatory intent if those were the amendments

12:07:25 3 to the law.

12:07:27 4 BY MR. MAZE:

12:07:28 5 Q. Okay. Let's go back to Texas, then.

12:07:32 6 Another problem that you had in Texas was the fact

12:07:36 7 that many counties didn't have an office where an ID

12:07:40 8 could be obtained; correct?

12:07:42 9 A. Yes.

12:07:42 10 Q. That is different in Alabama; correct?

12:07:45 11 All counties offer it at the Board of Registrars;

12:07:48 12 correct?

12:07:49 13 A. I think that is correct.

12:07:53 14 Q. I think one of the problems you had with

12:07:57 15 Texas is the fact that they did not allow for

12:08:02 16 Internet-based registration or ID request; correct?

12:08:08 17 You couldn't go on the Internet and register to vote

12:08:12 18 or get an ID card?

12:08:16 19 A. I don't really remember whether I pointed

12:08:19 20 that out. There was less talk about Internet

12:08:23 21 registration by, or IDs at that point. I'm not sure

12:08:27 22 that that was an issue.

12:08:28 1 Q. Well, the fact that Alabama offers  
12:08:31 2 registration and ID cards via the Internet and, in  
12:08:35 3 fact, offers free visits to your home via the  
12:08:38 4 Internet, that is something that would cut against  
12:08:44 5 discrimination; correct?

12:08:45 6 MR. ROSS: Objection.

12:08:47 7 THE WITNESS: Not necessarily for the  
12:08:50 8 reasons that I said before. Access to the Internet  
12:08:54 9 is correlated with income, education, and race.

12:08:59 10 BY MR. MAZE:

12:08:59 11 Q. So you chastised Texas for not doing it,  
12:09:03 12 but you won't give Alabama credit for doing it?

12:09:06 13 MR. ROSS: Objection.

12:09:06 14 THE WITNESS: I don't remember whether I  
12:09:07 15 chastised Texas. I don't remember whether that was  
12:09:10 16 an issue.

12:09:11 17 BY MR. MAZE:

12:09:11 18 Q. Okay. I'm going to hand you what I've  
12:09:13 19 marked Deposition Exhibit 4.

12:09:15 20 (Deposition Exhibit No. 4, A Report for  
21 League of Women Voters v. North Carolina by J.  
12:09:20 22 Morgan Kousser, was marked for identification.)

12:09:20 1 MR. MAZE: And Deposition Exhibit

12:09:21 2 Number 5.

12:09:21 3 (Deposition Exhibit No. 5, Complete

4 Deposition Transcript of J. Morgan Kousser, Ph.D.,

12:09:26 5 was marked for identification.)

12:09:26 6 BY MR. MAZE:

12:09:32 7 Q. And just generally ask you if Deposition

12:09:36 8 Exhibit Number 4 is your report in the North

12:09:38 9 Carolina voter ID case and Number 5 is your

12:09:41 10 deposition in the North Carolina voter ID case?

12:09:45 11 A. Yes to both questions.

12:09:49 12 Q. Same thing I asked you earlier. Do you

12:09:51 13 have any reason to disagree with anything you said

12:09:55 14 in your report or in your deposition in the North

12:09:58 15 Carolina case?

12:09:58 16 A. I may have had some corrections to the

12:10:02 17 deposition in North Carolina, but I don't remember

12:10:05 18 now what they were.

12:10:07 19 Q. I'm going to ask you some questions about

12:10:10 20 North Carolina. One of the things that you brought

12:10:12 21 up in North Carolina as further proving

12:10:17 22 discrimination was the fact that they didn't allow

12:10:20 1 college ID cards as a form of identification;

12:10:24 2 correct?

12:10:24 3 A. Yes.

12:10:25 4 Q. That is something that Alabama does;

12:10:27 5 correct?

12:10:27 6 A. Correct.

12:10:27 7 Q. So that would cut a little more in

12:10:30 8 Alabama's favor than North Carolina; correct?

12:10:32 9 A. On college students, yes.

12:10:35 10 Q. I want you to turn to page 58 of the

12:10:38 11 report, which is -- I think you got it, page 58.

12:10:49 12 A. Okay.

12:10:49 13 Q. I'm going to read from the last paragraph

12:10:54 14 with the name Rick Glazier. "Rick Glazier proposed

12:10:58 15 an amendment allowing someone who did not bring a

12:11:00 16 photo ID to the polls to vote if a polling place

12:11:04 17 official knew them. The defeat of this amendment

12:11:07 18 weakened the case for those who contend that the law

12:11:11 19 was about stopping fraud." Did I read that

12:11:13 20 correctly?

12:11:14 21 A. Yes.

12:11:14 22 Q. So it was your opinion in the North



12:11:17 1 Carolina case that the failure to -- well, strike  
12:11:21 2 that. Tell me what your opinion was in North  
12:11:24 3 Carolina regarding the failure to allow positive  
12:11:27 4 identification at the polling place.

12:11:29 5 A. Just what I said. It weakened, the defeat  
12:11:35 6 of the amendment weakened the case for those who  
12:11:41 7 contend that the law was about stopping fraud.

12:11:43 8 Q. So by the same token or the flip side the  
12:11:47 9 fact that Alabama has included a provision allowing  
12:11:50 10 persons to be positively identified without  
12:11:53 11 identification card strengthens Alabama's case or  
12:11:57 12 its contention that the law is about stopping fraud;  
12:12:00 13 correct?

12:12:02 14 MR. ROSS: Objection.

12:12:04 15 THE WITNESS: Yes.

12:12:04 16 BY MR. MAZE:

12:12:05 17 Q. Okay.

12:12:05 18 A. Just that -- but the case in Alabama that  
12:12:12 19 it was about stopping fraud is overwhelmingly  
12:12:15 20 negative.

12:12:16 21 Q. But the answer to the question is yes?

12:12:18 22 A. Yes.

12:12:19 1 Q. That strengthens Alabama's case?

12:12:21 2 A. That is correct.

12:12:25 3 MR. MAZE: Deuel, I'm about to shift. You  
12:12:28 4 want to do lunch?

12:12:30 5 MR. ROSS: A lunch break?

12:12:31 6 MR. MAZE: Let's do lunch.

12:12:33 7 (Whereupon, a lunch recess was taken from  
13:34:38 8 12:12 to 1:34 p.m.)

13:34:38 9 BY MR. MAZE:

13:34:45 10 Q. All right. Dr. Kousser, I want to turn

13:34:48 11 now to the report you did in this case, so

13:34:51 12 everything you got in front of you, other than your

13:34:54 13 report, which is Exhibit 1, you can go ahead and put

13:34:57 14 away.

13:35:03 15 First thing I want to do is sort of define

13:35:06 16 the scope of your report. First of all, what is

13:35:10 17 your expert opinion? How would you describe what

13:35:13 18 your opinion in this report is?

13:35:16 19 A. I think that the photo ID law H.B. 19 was

13:35:25 20 passed with a discriminatory intent and had a

13:35:29 21 discriminatory effect.

13:35:31 22 Q. Okay. Point to me where in your report

13:35:38 1 you discuss the post-2011 discriminatory effects of  
13:35:43 2 this bill.

13:35:51 3 A. I only discuss the effects in regard to  
13:35:58 4 the Senate Factors.

13:35:59 5 Q. Okay. What page are we talking about?

13:36:02 6 A. It's in Section VIII, pages 112 to 126 I  
13:36:19 7 discuss the Senate Factors.

13:36:21 8 Q. Okay. My -- let me be clear on my  
13:36:25 9 question. Are you -- first of all, have you been  
13:36:28 10 asked to possibly testify at trial?

13:36:30 11 A. Yes.

13:36:31 12 Q. Have you been asked to give an opinion at  
13:36:34 13 trial that the effect of H.B. 19 has been to  
13:36:42 14 disproportionately cause minority voters not to  
13:36:47 15 vote?

13:36:49 16 MR. ROSS: Objection. It's unclear to me  
13:36:52 17 what you're asking him.

13:36:53 18 MR. MAZE: Here's my problem. I don't  
13:36:55 19 understand what his discriminatory effect opinion  
13:36:58 20 is. I understand that this report says that the  
13:37:01 21 legislature in 2011 acted with a discriminatory  
13:37:05 22 purpose, but he just answered a few minutes ago that

13:37:08 1 he's also offering an opinion on the discriminatory  
13:37:11 2 effect of the law, and I'm trying to have him point  
13:37:14 3 to me where in the four corners of this report he  
13:37:17 4 shows me what the effects of the law are.

13:37:22 5 THE WITNESS: Well, what I mean by the  
13:37:26 6 effects of the law in that sense is what are covered  
13:37:30 7 in the Senate Factors. I am not currently going to  
13:37:36 8 offer an opinion about whether there was a  
13:37:39 9 disproportionate effect on turnout of blacks.  
13:37:44 10 Somebody else is doing that.

13:37:46 11 BY MR. MAZE:

13:37:46 12 Q. Okay. And you're not going to offer any  
13:37:49 13 evidence or an opinion on who in Alabama does or  
13:37:55 14 does not have identification cards by race?

13:37:58 15 MR. ROSS: Objection.

13:38:00 16 THE WITNESS: That's correct, I am not  
13:38:01 17 going to do that.

13:38:02 18 BY MR. MAZE:

13:38:02 19 Q. Okay. All right. As far as  
13:38:06 20 discriminatory intent and purpose goes, are you  
13:38:09 21 going to offer an expert opinion on whether the  
13:38:13 22 Secretary of State is implementing H.B. 19 with a

13:38:17 1 discriminatory purpose or intent?

13:38:25 2 A. I do not think that I am, but I'm not  
13:38:27 3 sure.

13:38:27 4 MR. ROSS: What report -- before he  
13:38:30 5 answers, I also want to object to the extent that it  
13:38:32 6 requires any attorney work product.

13:38:36 7 MR. MAZE: Yeah.

8 BY MR. MAZE:

13:38:36 9 Q. I'm only asking within the four corners of  
13:38:39 10 this report and thus, when you take the stand, are  
13:38:41 11 you going to have an opinion that the Defendant  
13:38:46 12 Secretary of State John Merrill, is implementing  
13:38:49 13 H.B. 19 in a way that discriminates against minority  
13:38:54 14 voters?

13:38:54 15 MR. ROSS: To clarify, your question is  
13:38:56 16 does this -- and I don't mean to rewrite your  
13:39:00 17 question for you, but does this report talk about  
13:39:03 18 those issues? Is that your question?

13:39:04 19 BY MR. MAZE:

13:39:04 20 Q. I'll ask it in two ways. First of all,  
13:39:07 21 does the report give an opinion as to whether in  
13:39:10 22 2017 Secretary of State John Merrill is implementing

13:39:13 1 H.B. 19 in a way that discriminates against any  
13:39:17 2 particular race?

13:39:18 3 A. There is nothing in this report about  
13:39:20 4 that.

13:39:20 5 Q. Okay. Do you intend at trial to give an  
13:39:26 6 opinion whether or not Defendant Secretary of State  
13:39:28 7 John Merrill is implementing H.B. 19 in a way that  
13:39:33 8 discriminates against a particular race?

13:39:34 9 A. I don't know. I have not been asked to do  
13:39:37 10 that, and I'm not currently intending to do that.

13:39:41 11 Q. But you don't know whether you're going  
13:39:44 12 to?

13:39:45 13 A. I don't know. I might be asked to.

13:39:46 14 MR. MAZE: Can I ask counsel can we be  
13:39:49 15 assured he's not going to issue a supplemental  
13:39:51 16 report?

13:39:52 17 MR. ROSS: I don't think he's going to  
13:39:53 18 testify about anything that's not in his report, but  
13:39:55 19 I do think, as he said, there are aspects of his  
13:39:58 20 report which touch on that, and I can point them out  
13:40:02 21 to you, if it's helpful.

13:40:03 22 MR. MAZE: Yes.

13:40:04 1 MR. ROSS: Obviously, one of the Arlington  
13:40:06 2 Heights factors is the impact of the law, so he will  
13:40:08 3 testify to that to the extent the information is  
13:40:12 4 already in his report.

13:40:13 5 MR. MAZE: Let's take counsel up on his  
13:40:15 6 offer and point to me the specific paragraphs in  
13:40:18 7 this report that will be used to support the  
13:40:22 8 argument that Secretary of State John Merrill is  
13:40:25 9 implementing the law in a discriminatory manner.

13:40:31 10 THE WITNESS: Well, there's a section on  
13:40:35 11 impact and anticipated impact, page 108 plus page  
13:40:46 12 109.

13:40:48 13 BY MR. MAZE:

13:40:48 14 Q. All right. All right. So let's look at  
13:40:55 15 paragraph 223 on page 108. In fact, I'm going to  
13:40:59 16 read it out loud, and you can tell me if I read it  
13:41:01 17 correctly. "Statements by African-American  
13:41:04 18 legislators, quoted in paragraph 220 and at other  
13:41:08 19 places in this report, anticipated that a voter ID  
13:41:12 20 law, especially a photo ID law, would have a  
13:41:16 21 disparate impact on black voters." Did I read that  
13:41:19 22 correctly?

13:41:20 1 A. Yes.

13:41:20 2 Q. Is there anything in that particular

13:41:23 3 sentence, statements of African-American legislators

13:41:26 4 pre-2011, is there anything about their statements

13:41:29 5 pre-2011 proves whether Secretary Merrill is

13:41:33 6 implementing the law in 2017 with a discriminatory

13:41:36 7 intent or purpose?

13:41:39 8 A. It's part of the purpose argument, and I

13:41:44 9 have talked in considerable detail about exactly how

13:41:53 10 we should weigh what African-American legislators

13:41:56 11 said. To boil it down, they said that it would have

13:42:03 12 a discriminatory impact. They said this again and

13:42:06 13 again and again and again.

13:42:09 14 And that shows, that supports the

13:42:14 15 proposition that anyone who is voting for the bill

13:42:18 16 would know of the contention that it would have a

13:42:22 17 discriminatory effect and that it had to be passed

13:42:27 18 with a discriminatory intent. They might not have

13:42:30 19 acted with that, but they couldn't have been, they

13:42:34 20 had to have been cognizant of that view, so that

13:42:37 21 sentence goes to that proposition.

13:42:39 22 Q. But that's not the proposition we're



13:42:41 1 talking about. These are two very separate things.

13:42:44 2 MR. ROSS: I think you asked him two, one

13:42:46 3 question about it --

13:42:47 4 MR. MAZE: I'm going to make it very clear

13:42:49 5 what we're talking about.

13:42:50 6 BY MR. MAZE:

13:42:50 7 Q. On the one hand, we have whether the

13:42:52 8 legislature in 2011 when they voted had a

13:42:57 9 discriminatory purpose. On the other hand, we're

13:43:00 10 talking about whether in 2017 the Secretary of State

13:43:04 11 John Merrill is implementing or enforcing the law in

13:43:08 12 a way that discriminates.

13:43:10 13 I'm not asking you anything right now

13:43:12 14 about the 2011 legislature, what they knew, what

13:43:15 15 they didn't know, what they were thinking. All I'm

13:43:18 16 asking right now and for the next few minutes has to

13:43:21 17 do with in 2017 is John Merrill enforcing the law in

13:43:27 18 a way that discriminates against minorities. Is

13:43:31 19 that clear, the distinction between the two, 2011

13:43:34 20 legislature, 2017 John Merrill?

13:43:38 21 A. But the -- under Arlington Heights and,

13:43:43 22 logically, the effect of a law and the anticipated

13:43:49 1 impact of that law has a bearing on whether that law  
13:43:53 2 was adopted with a racially discriminatory intent.

13:43:56 3 Q. Did John Merrill hold public office in  
13:43:59 4 2011 when it was adopted?

13:44:01 5 A. He was certainly not Secretary of State.

13:44:02 6 Q. He wasn't in the legislature either;  
13:44:05 7 correct?

13:44:05 8 A. Correct.

13:44:06 9 Q. How could John Merrill have had a  
13:44:08 10 discriminatory intent or purpose in 2011 if he  
13:44:11 11 didn't hold office that had anything to do with this  
13:44:14 12 law?

13:44:16 13 A. I'm not charging --

13:44:17 14 MR. ROSS: Objection.

13:44:18 15 THE WITNESS: -- Merrill did, but as part  
13:44:22 16 of the investigation into the valuation of the  
13:44:28 17 intent of the law, you have to take into account the  
13:44:32 18 effect of the law. And, if the effect of the law  
13:44:38 19 was to discriminate, then that has a bearing so the  
13:44:46 20 Supreme Court said, and so I agree, about the intent  
13:44:49 21 of the law.

13:44:50 22 It does through the anticipated effect of

13:44:53 1 the law, and the anticipated effect of the law is  
13:44:56 2 more credible if the actual effect of the law is  
13:45:00 3 what was anticipated.

13:45:01 4 BY MR. MAZE:

13:45:01 5 Q. Well, then let's ask that. What facts do  
13:45:06 6 you have, what facts have you offered in this report  
13:45:10 7 that support the assertion that minority voters have  
13:45:16 8 been disproportionately affected by H.B. 19?

13:45:23 9 MR. ROSS: Objection.

13:45:24 10 THE WITNESS: Well, as I said, I looked at  
13:45:28 11 the Senate Factors, and they are held to be  
13:45:31 12 intent -- sorry -- effect factors in Senate Report  
13:45:37 13 97-417. And this section on impact here and  
13:45:44 14 anticipated impact as part of the intent inquiry  
13:45:49 15 bears on that.

13:45:50 16 There was a study in 2014 that indicated  
13:45:56 17 that blacks were less likely to have driver's  
13:46:06 18 licenses in Alabama than whites. There had been  
13:46:10 19 material gathered in, for 1991 Law Review article  
13:46:16 20 which had been made available by the Secretary of  
13:46:19 21 State's office which they made available,  
13:46:23 22 apparently, with some ease -- there didn't have to

13:46:28 1 be any information request or anything. Just gave  
13:46:32 2 it to the law -- I don't know if it was a law  
13:46:39 3 student or, at that point, or a lawyer, and  
13:46:43 4 presumably that material was available in the  
13:46:49 5 interim between 1991 and 2014 because it was  
13:46:51 6 produced pretty quickly.

13:46:53 7 BY MR. MAZE:

13:46:53 8 Q. I think I understand the distinction.  
13:46:57 9 Everything you're talking about proves anticipated  
13:47:02 10 effect. I don't care right now about the  
13:47:04 11 anticipated effect. I want to know what facts  
13:47:08 12 you're going to offer that proves actual effect. Do  
13:47:13 13 you offer any facts or any proof that minority  
13:47:16 14 voters have had less turnout because of the photo ID  
13:47:21 15 law?

13:47:21 16 MR. ROSS: Objection.

13:47:23 17 THE WITNESS: I don't offer any proof on  
13:47:27 18 turnout, per se, but there is, just to make sure  
13:47:34 19 that you don't think that I was entirely agreeing  
13:47:37 20 with you, actual effect makes credible anticipated  
13:47:42 21 effect if they agree, and so it's part of the intent  
13:47:48 22 case in that regard.

13:47:51 1 If there is information about the  
13:47:55 2 disproportionate holding of driver's licenses by  
13:48:00 3 race, that does not get to turnout, per se, but it  
13:48:07 4 appears -- it contributes to the idea that there is  
13:48:11 5 a discriminatory effect of the law, and I do say a  
13:48:15 6 little about that. I'm not primarily going to  
13:48:18 7 testify about the effect of the law,  
13:48:23 8 disproportionate effect of the law on turnout.

13:48:25 9 BY MR. MAZE:

13:48:25 10 Q. Okay. I understand your distinction  
13:48:29 11 between anticipated effect and actual effect. I  
13:48:35 12 also understand your point that actual effect can  
13:48:39 13 help bolster anticipated effect, that it helps prove  
13:48:46 14 that it was true. My question is do you offer any  
13:48:49 15 evidence in this report of, quote, actual effect?  
13:48:55 16 What evidence of actual effect are you going to  
13:48:58 17 testify to that supports that hypothesis, if any?

13:49:03 18 MR. ROSS: Objection.

13:49:06 19 THE WITNESS: Primarily the differential  
13:49:10 20 driver's license holding by race.

13:49:12 21 BY MR. MAZE:

13:49:12 22 Q. So that 2014 study is your actual effect

13:49:16 1 evidence?

13:49:17 2 MR. ROSS: Objection.

13:49:20 3 THE WITNESS: It goes --

13:49:21 4 MR. ROSS: Frankly, I'm unclear what

13:49:23 5 you're asking. Are you asking about turnout or ID

13:49:25 6 position?

13:49:26 7 MR. MAZE: Deuel, I think you understand.

13:49:28 8 MR. ROSS: I honestly don't. That's why

13:49:30 9 I'm objecting.

13:49:31 10 MR. MAZE: Okay. We'll stay on the

13:49:33 11 record, but he is saying that actual impact of the

13:49:38 12 law can help bolster or prove what the Legislative

13:49:45 13 Black Caucus was saying was the anticipated effect

13:49:47 14 of the law before 2011. I understand the argument.

13:49:52 15 I understand the theory.

13:49:53 16 My question is does this witness intend to

13:49:57 17 offer any evidence of actual effect, the effect of

13:50:01 18 the law after it was put in place in 2014? Does he

13:50:05 19 have any evidence after the election of 2014 forward

13:50:09 20 that proves actual effect to bolster his anticipated

13:50:14 21 impact statement or are you relying on other expert

13:50:17 22 witnesses to give us the actual effect?

13:50:19 1 MR. ROSS: Since I'm not the one being  
13:50:22 2 deposed, I will not answer except to say that I  
13:50:25 3 believe he's given his testimony, which is that  
13:50:28 4 there was an anticipated effect. The Secretary of  
13:50:30 5 State did an analysis that showed there were some  
13:50:32 6 voter, substantial number of voters without driver's  
13:50:37 7 licenses, and I think he's told you repeatedly now  
13:50:40 8 what he intends to testify to. He's identified for  
13:50:43 9 you in his report where it's discussed, so --

13:50:46 10 BY MR. MAZE:

13:50:46 11 Q. Okay. Next question. Is there any  
13:50:49 12 evidence outside the four corners of this report  
13:50:53 13 that you intend to testify to that would bolster  
13:50:56 14 actual effect?

13:51:00 15 A. There is nothing that I know about that  
13:51:03 16 I'm supposed to testify about now.

13:51:06 17 Q. If you are told at some point in the  
13:51:10 18 future that you're going to testify about actual  
13:51:13 19 effect beyond the four corners of this report, will  
13:51:16 20 you issue a written report containing that  
13:51:19 21 information?

13:51:22 22 A. I expect that I will.

13:51:25 1 Q. Okay. Who initially contacted you to  
13:51:33 2 create this report?

13:51:34 3 MR. ROSS: Objection.

4 BY MR. MAZE:

13:51:36 5 Q. I'm not asking you what was said. I'm  
13:51:38 6 just asking you for what entity or person first  
13:51:41 7 reached out to you. I don't care what was said. I  
13:51:44 8 just want to know who called you.

13:51:46 9 A. I think it was Deuel.

13:51:48 10 Q. It's not privileged.

13:51:50 11 MR. ROSS: It's not privileged, but it  
13:51:52 12 just -- I don't, I don't understand the purpose, but  
13:51:56 13 you can go ahead.

13:51:57 14 MR. MAZE: That's an objection to form,  
13:51:58 15 and we'll keep moving.

13:52:00 16 MR. ROSS: Go ahead.

13:52:02 17 THE WITNESS: I believe it was Deuel.

13:52:05 18 BY MR. MAZE:

13:52:05 19 Q. Who is paying for your work in this case?

13:52:08 20 MR. ROSS: Objection. That's -- I'm not  
13:52:10 21 going to --

13:52:12 22 MR. MAZE: We have an argument that you



13:52:15 1 know well --

13:52:16 2 MR. ROSS: I don't know, actually.

13:52:19 3 MR. MAZE: -- that the NAACP State

13:52:22 4 Conference Greater Birmingham Ministries do not have

13:52:25 5 standing in this case because they have taken on no

13:52:29 6 financial or any other burden or injury. If

13:52:33 7 everything in this case is being paid for by

13:52:35 8 something else and they have suffered absolutely no

13:52:37 9 injury whatsoever, then our argument is going to be

13:52:40 10 they don't have standing.

13:52:41 11 I think we've made that very clear, and I

13:52:43 12 have asked questions in a lot of other depositions

13:52:45 13 that you've been in where we asked to find out what

13:52:48 14 the actual expenses of --

13:52:50 15 MR. ROSS: If you can point me to a case

13:52:51 16 where the court says that the injury is paying for

13:52:54 17 litigation, then I would gladly allow him to talk

13:52:58 18 about that, but I've never seen a case discussing

13:53:00 19 that.

13:53:01 20 In fact, you can look at, we can all sit

13:53:03 21 here right now and look at common cause where the

13:53:05 22 court talks about the injury to the organization,

13:53:07 1 which is the time and money and energy that they  
13:53:10 2 spend on getting word out about voter ID, not about  
13:53:13 3 paying experts in litigation.

13:53:15 4 MR. MAZE: All I need you to do is object  
13:53:16 5 on the record and tell him not to answer.

13:53:19 6 MR. ROSS: I'm objecting and instructing  
13:53:21 7 him not to answer.

13:53:22 8 BY MR. MAZE:

13:53:22 9 Q. When were you first contacted? What was  
13:53:24 10 the date?

13:53:26 11 A. I really don't recall. It was probably in  
13:53:30 12 spring or even in the winter of 2016. Winter  
13:53:42 13 being -- I'm sorry -- 2015-'16. That winter.

13:53:47 14 Q. Who chose the articles that form the basis  
13:53:52 15 of this report?

13:53:53 16 MR. ROSS: Objection.

13:53:54 17 THE WITNESS: I did.

13:53:55 18 BY MR. MAZE:

13:53:55 19 Q. Were any articles given to you by someone  
13:53:59 20 else?

13:53:59 21 A. Yes.

13:54:00 22 Q. Without telling me things you discussed

13:54:03 1 with counsel, who were the persons who gave you  
13:54:07 2 articles to review?

13:54:11 3 A. Deuel sent me articles, but I had articles  
13:54:15 4 from other sources, not other people, but that I  
13:54:20 5 downloaded for a long period of time.

13:54:21 6 MR. ROSS: Again, I'm going to object  
13:54:23 7 because this is clearly -- you're getting into work  
13:54:25 8 product.

13:54:25 9 MR. MAZE: I'm not asking anything else  
13:54:27 10 about it.

13:54:27 11 MR. ROSS: Well, you're asking him what  
13:54:29 12 documents I sent to him. You want me to go and ask  
13:54:31 13 your experts what documents you all sent to them?

13:54:33 14 MR. MAZE: I'm not going to ask him which  
13:54:35 15 ones. I promise you. I was about to move on.

13:54:38 16 MR. ROSS: Go ahead.

13:54:39 17 BY MR. MAZE:

13:54:39 18 Q. Who decided what articles you would  
13:54:41 19 include in the report and which articles you  
13:54:43 20 wouldn't?

13:54:43 21 MR. ROSS: Surprising that's moving on,  
13:54:45 22 but objection. The same, work product.

13:54:48 1 THE WITNESS: In every case it was mine --

13:54:52 2 MR. ROSS: And I'll instruct you not to

13:54:53 3 answer. Well, go ahead. Go ahead. You can answer.

13:54:57 4 THE WITNESS: It's my decision.

13:55:02 5 BY MR. MAZE:

13:55:02 6 Q. Did you interview or talk to anyone other

13:55:06 7 than counsel in preparation for your report?

13:55:10 8 A. No.

13:55:11 9 Q. How many hours did you spend researching

13:55:15 10 news articles that form the basis of this report?

13:55:18 11 A. I can't distinguish between researching

13:55:21 12 and writing. It's all part of the same process.

13:55:24 13 Q. How many hours have you spent researching

13:55:26 14 and writing this report?

13:55:31 15 A. On the order of 400.

13:55:40 16 Q. Are you confident that you saw everything

13:55:45 17 that was relevant in forming your opinion on intent

13:55:50 18 in this case?

13:55:54 19 A. There could be other things that I haven't

13:56:03 20 seen that I didn't use the right search terms or

13:56:09 21 that some newspapers were not covered by News Bank

13:56:13 22 or something like that. You are always worried

13:56:16 1 whatever you write that there will be something else  
13:56:19 2 that will come up that you haven't looked at. I  
13:56:23 3 tried to look at everything that I could think of.

13:56:25 4 I tried to use every search term that I  
13:56:27 5 could use. I tried to look for every piece of  
13:56:34 6 information, articles, court cases, everything.

13:56:43 7 Q. I want you to turn to page six, paragraph  
13:56:48 8 eight. I'm going to read right after the colon.

13:56:58 9 "First, black legislators always and  
13:57:01 10 almost uniformly opposed voter ID bills, and they  
13:57:06 11 continually referred to the racially discriminatory  
13:57:09 12 intent and effects of these bills, making it  
13:57:11 13 impossible for anyone to be unaware of charges that  
13:57:14 14 the bills were discriminatory?" Did I read that  
13:57:16 15 correctly?

13:57:17 16 A. Yes.

13:57:17 17 Q. You say that they always opposed and then  
13:57:23 18 used the words "almost uniformly." What does  
13:57:26 19 "almost uniformly" mean?

13:57:30 20 A. There was one African American legislator  
13:57:40 21 in one session who voted for a voter ID, bill and,  
13:57:51 22 finally, when the compromise was, the log rolled

13:57:55 1 compromise in 2003 was put forward, the Black  
13:58:05 2 Legislative Caucus agreed to vote for the voter ID  
13:58:09 3 bill in exchange for the governor's support and, as  
13:58:15 4 they understood it at least, the Republican support  
13:58:18 5 for, for reducing the problems that felons would  
13:58:30 6 have to get re-enfranchised, so, in that roll call  
13:58:37 7 they voted for a voter ID bill.

13:58:40 8                   So I wanted to take into account those  
13:58:42 9 possibilities, but that was not because they  
13:58:46 10 supported the concept of voter ID. It was because  
13:58:50 11 of the log roll and the possibility that large  
13:58:56 12 numbers of African Americans could get back the  
13:58:59 13 right to vote who were denied it because of the  
13:59:04 14 felon disfranchisement procedures.

13:59:08 15           Q. In your report do you cite any articles or  
13:59:12 16 quotes from an active African American legislator  
13:59:15 17 who was in favor of a voter ID bill?

13:59:22 18           A. I don't think that I do, but I do note  
13:59:27 19 the, one person who voted that way, and I noted also  
13:59:31 20 the log roll.

13:59:33 21           Q. Would that have been a conscious decision  
13:59:36 22 not to include an article with quotes from that

13:59:39 1 particular legislator?

13:59:40 2 MR. ROSS: Objection.

13:59:42 3 THE WITNESS: I don't think so. I did

13:59:46 4 not, in the article that I saw, see any quotes from

13:59:51 5 him, so I didn't have -- I would probably have

13:59:54 6 included that.

13:59:54 7 BY MR. MAZE:

13:59:54 8 Q. How about articles containing quotes from

14:00:01 9 African-American legislators after they left the

14:00:04 10 legislature who said that they favored voter ID

14:00:08 11 laws?

14:00:09 12 A. I don't know that I saw those. I know

14:00:17 13 that Artur Davis changed his mind on voter ID laws,

14:00:21 14 but I don't even know whether he was ever in the

14:00:23 15 legislature.

14:00:24 16 Q. Why wouldn't you include the fact that

14:00:26 17 Artur Davis was in favor of voter ID laws in your

14:00:31 18 report?

14:00:34 19 A. There were lots of things that he did

14:00:39 20 after he lost the Democratic nomination for governor

14:00:43 21 that seemed to me to be about revenge and

14:00:51 22 exasperation. For someone who had run for the

14:00:56 1 Democratic nomination for governor to, particularly  
14:01:00 2 a black person, to leave the Democratic Party and  
14:01:04 3 become a Republican sort of undermines his, the  
14:01:11 4 forthrightness of his opinion.

14:01:13 5 Q. Did you see statements by any other former  
14:01:19 6 African-American legislators who also said that they  
14:01:22 7 were in favor of voter ID laws?

14:01:24 8 A. I don't think I did.

14:01:26 9 Q. Would that change your opinion in any way  
14:01:32 10 if you were to see or hear from former  
14:01:36 11 African-American legislators who said that voter ID  
14:01:39 12 laws were a good idea in 2011?

14:01:42 13 MR. ROSS: Objection.

14:01:43 14 THE WITNESS: It would depend upon the  
14:01:46 15 context, but after they -- all I was establishing  
14:01:51 16 here is what was in the first sentence. This -- the  
14:02:05 17 statements go to the question about whether someone  
14:02:07 18 who voted for a voter ID law was aware of the  
14:02:12 19 charges that it was discriminatory in effect. As  
14:02:17 20 long as there are even a substantial number of  
14:02:21 21 African Americans who say this, even if they are not  
14:02:24 22 unanimous, it still goes to the question of



14:02:28 1 awareness of other people of the discriminatory  
14:02:33 2 intent and effect charges, and that would have stood  
14:02:39 3 even if the Black Caucus had not been absolutely  
14:02:43 4 unanimous.

14:02:44 5 BY MR. MAZE:

14:02:44 6 Q. So you agree then that it's possible it  
14:02:47 7 was not unanimous, that there are, in fact, or at  
14:02:50 8 least possibly African-American legislators who  
14:02:52 9 believe that this was a good idea?

14:02:54 10 MR. ROSS: Objection.

14:02:55 11 THE WITNESS: I do not know of that.

14:02:57 12 BY MR. MAZE:

14:02:57 13 Q. Because you didn't see anything that said  
14:02:58 14 that?

14:02:59 15 A. I believe I did not see anything that said  
14:03:02 16 that.

14:03:02 17 Q. Did you see any articles in your search  
14:03:06 18 that quoted African-American voters who were in  
14:03:09 19 favor of the voter ID law?

14:03:12 20 A. There may have been. I cannot recall any  
14:03:20 21 offhand.

14:03:22 22 Q. Does it matter to you what voters believed

14:03:26 1 with regard to the voter ID law in judging the  
14:03:30 2 intent of the legislature?

14:03:38 3 A. Even if there were a lot of voters who had  
14:03:42 4 a view, African-American voters who had a view of  
14:03:46 5 the voter ID law that was different from the  
14:03:51 6 overwhelming majority of the Black Caucus, that  
14:03:54 7 would not change the point of the awareness of the  
14:04:04 8 anticipated effect and also of the purpose.

14:04:10 9 I was not making -- I was trying to be  
14:04:13 10 very clear that I was not using the evidence of  
14:04:18 11 opponents of the photo ID law by themselves as  
14:04:23 12 evidence of the intent of the proponents of the law.  
14:04:27 13 I was trying to make a very clear distinction  
14:04:31 14 between that.

14:04:32 15 I was using the evidence from the  
14:04:36 16 African-American legislators only to go to the point  
14:04:39 17 of awareness. This was not something that people  
14:04:42 18 were unaware of, and that's all it had to do with.  
14:04:47 19 As a consequence, unanimity of voters or legislators  
14:04:53 20 is not so, not so decisive as it would be if this  
14:04:59 21 were to be used to prove by itself the  
14:05:04 22 discriminatory intent of the proponents of the law.

14:05:08 1 Q. I want to ask my question again and make  
14:05:11 2 sure I'm very clear on what I'm asking. In your  
14:05:15 3 opinion as an intent expert, when you were coming up  
14:05:20 4 with your opinion, does it play a role in any way,  
14:05:26 5 the opinions of the legislator's constituency as to  
14:05:31 6 whether or not his actions have a discriminatory  
14:05:33 7 intent or purpose?

14:05:35 8 In other words, I'll try to make it very  
14:05:37 9 clear. If 80 percent of your voters say I am  
14:05:43 10 against or in favor of voter ID, does that play any  
14:05:49 11 role in your analysis of whether or not the  
14:05:51 12 legislator who represents them acted with a  
14:05:54 13 discriminatory intent or purpose?

14:05:57 14 MR. ROSS: Objection.

14:06:00 15 THE WITNESS: I think not because the  
14:06:07 16 information that the voters have is often very  
14:06:10 17 different from the information that the legislators  
14:06:14 18 have, and the questions before them are different.

14:06:20 19 If you ask voters in general about, about  
14:06:26 20 voter ID, it seems clear, if you ask them lots -- in  
14:06:32 21 the surveys in which they've been asked lots of  
14:06:35 22 questions, the approval rate for voter ID goes down

14:06:42 1 if you explain to them how constrained the IDs are.

14:06:48 2 People have very different ideas, even

14:06:51 3 when laws pass, about exactly what the IDs that are

14:06:54 4 required under the law are. There was a study in

14:06:58 5 Texas recently, I think, looking at the 23rd

14:07:04 6 Congressional District, which is the one that's been

14:07:07 7 in play all this time, and they looked at the

14:07:12 8 reasons that voters who didn't vote didn't vote.

14:07:16 9 And a lot of them thought they didn't have

14:07:19 10 the right IDs when they did or they thought for

14:07:26 11 other reasons that they didn't want to vote and they

14:07:28 12 didn't have the right IDs. The confusion in the

14:07:32 13 public, sometimes the confusion in legislatures

14:07:36 14 about exactly what IDs are required and how easy it

14:07:43 15 is to get them clouds the question about the

14:07:49 16 importance of the correlation between public opinion

14:07:53 17 and what the legislature does.

14:07:55 18 As a consequence, I wanted to look almost

14:08:02 19 exclusively at what the legislature did, what they

14:08:05 20 saw, what they said, what they knew and so on and

14:08:13 21 not what relationship there was between often

14:08:20 22 ill-informed public opinion about voter ID and the

14:08:24 1 consideration of voter ID laws in the legislature.

14:08:29 2 BY MR. MAZE:

14:08:29 3 Q. Let's talk about persons who are not as

14:08:33 4 ill informed. Did you see any articles or

14:08:35 5 statements from African-American probate judges who

14:08:39 6 enforced these laws in favor of the voter ID law?

14:08:47 7 A. I do not remember any. I simply do not

14:08:52 8 remember any.

14:08:53 9 Q. If we were to be able to show you either

14:08:56 10 articles or testimony from African-American probate

14:09:01 11 judges that said we're in favor of the law, would

14:09:05 12 that change your opinion in any way?

14:09:13 13 A. It wouldn't change my opinion as to

14:09:16 14 whether legislators knew that the vast majority of

14:09:22 15 people, African Americans in the state legislature,

14:09:28 16 had made those charges from the beginning. It

14:09:33 17 wouldn't change the awareness that this was a

14:09:38 18 widespread opinion among African Americans and in

14:09:44 19 general among people who said, reporters who said

14:09:50 20 this is what African Americans said, newspaper

14:09:53 21 reporters, newspaper editorials that said these were

14:09:57 22 the charges.

14:09:58 1 It would not reduce the weight of that  
14:10:00 2 evidence even if some probate judges, if there are  
14:10:06 3 black probate judges, and I simply do not know  
14:10:09 4 whether there are black probate judges.

14:10:11 5 Q. Who has better evidence of the anticipated  
14:10:14 6 effect of a voter ID law, a state legislator in  
14:10:18 7 Montgomery or a probate judge who works day to day  
14:10:21 8 at the courthouse?

14:10:22 9 MR. ROSS: Objection.

14:10:23 10 THE WITNESS: The question is not the  
14:10:24 11 evidence for their opinion here. The question is  
14:10:26 12 whether this lends itself to supporting the idea  
14:10:33 13 that this action could not have been taken by the  
14:10:37 14 proponents unaware of charges of what the  
14:10:40 15 consequences would be.

14:10:41 16 BY MR. MAZE:

14:10:41 17 Q. But what if they were aware that there  
14:10:44 18 were two sides, that you had legislators saying this  
14:10:48 19 is going to be a problem and you having probate  
14:10:51 20 judges saying, no, it's not, we need it; is that not  
14:10:54 21 relevant, the fact that they are hearing people on  
14:10:57 22 the ground saying we need this law, and they are

14:11:00 1 hearing legislators saying, no, we don't? At that  
14:11:03 2 point, can't they choose who they believe the most?

14:11:05 3 MR. ROSS: Objection. This is a long line  
14:11:07 4 of hypotheticals and assuming facts that are not in  
14:11:10 5 evidence.

14:11:10 6 MR. MAZE: You can answer.

14:11:11 7 MR. ROSS: But you can answer.

14:11:14 8 THE WITNESS: There -- it's unclear  
14:11:23 9 whether this evidence that exists -- I don't know  
14:11:26 10 how many black probate judges there are. I don't  
14:11:29 11 know if there's a black probate judge association.  
14:11:31 12 I don't know if the association takes stands on  
14:11:36 13 issues. I don't know whether they were familiar  
14:11:39 14 with particular bills that were being proposed or  
14:11:42 15 just in general expressed an opinion about voter  
14:11:48 16 identification.

14:11:49 17 There are too many, there are too many  
14:11:52 18 hypotheticals here for me to give an informed answer  
14:11:54 19 to that question.

14:11:55 20 BY MR. MAZE:

14:11:55 21 Q. All right. Let's take it out of the  
14:11:57 22 hypotheticals and be concrete. How many articles

14:11:59 1 did you see in which an African-American district  
14:12:03 2 attorney said he had been investigating absentee  
14:12:06 3 voter fraud?

14:12:14 4 A. I don't remember any district attorneys,  
14:12:18 5 African-American district attorneys investigating  
14:12:20 6 voter fraud.

14:12:22 7 Q. And you didn't include any in your report;  
14:12:24 8 correct?

14:12:25 9 A. That's correct, but absentee voter fraud,  
14:12:30 10 we haven't started down that line, but just to  
14:12:33 11 start, to conflate the idea of absentee voter fraud  
14:12:42 12 and in-person voter impersonation fraud is to  
14:12:48 13 conflate two different things, and it's two  
14:12:51 14 different things that were widely considered  
14:12:54 15 different by authorities in Alabama, Secretaries of  
14:13:02 16 State, Attorneys General, lots of attorneys, and, if  
14:13:10 17 someone said there was absentee ballot fraud and we  
14:13:14 18 need to do something to get rid of absentee ballot  
14:13:20 19 fraud, that doesn't have any implications for voter  
14:13:23 20 ID laws.

14:13:24 21 Q. Did you see any articles in which  
14:13:30 22 African-American citizens of Alabama admitted to



14:13:34 1 accepting payments for their absentee votes?

14:13:43 2 A. There may have been, that may have been

14:13:46 3 mentioned. I don't know. I talked about absentee

14:13:49 4 votes.

14:13:49 5 Q. But did you talk about articles in which

14:13:52 6 people were admitting to being paid and district

14:13:56 7 attorneys admitting to investigating the payments of

14:13:59 8 these people because they are not in the report?

14:14:01 9 I'm asking if you even saw them.

14:14:05 10 A. There were articles about the absentee

14:14:12 11 voting cases, and I treated articles about the

14:14:16 12 absentee voting cases. There were -- I made a

14:14:25 13 differentiation between absentee voting and

14:14:28 14 in-person voting, and I said that some people were

14:14:32 15 convicted of absentee voting fraud. I talked about

14:14:35 16 that.

14:14:39 17 And there were other cases in which either

14:14:42 18 people were not convicted or the convictions were

14:14:45 19 overturned, but I talked about that. Whether I

14:14:49 20 talked about people being paid, exactly why they

14:14:54 21 were convicted or paying other people, exactly why

14:14:57 22 they are convicted, maybe I didn't say anything

14:14:59 1 explicitly about that, but it's part of the -- if I  
14:15:03 2 said they were convicted, that's part of it.

14:15:05 3 Whether I mentioned whether, the exact  
14:15:08 4 nature of the conviction doesn't seem to me  
14:15:13 5 relevant.

14:15:15 6 Q. The nature of someone's conviction for  
14:15:18 7 voter fraud?

14:15:19 8 A. What exactly they were convicted of on  
14:15:21 9 voter fraud. I paid Jim Smith \$5 to vote for so and  
14:15:27 10 so. If you just said he was convicted of voter  
14:15:30 11 fraud for the purposes of this report, I don't see  
14:15:35 12 why you need to go into more detail than to say he  
14:15:40 13 was convicted of voter fraud.

14:15:42 14 Q. Do you know the Democracy Defense League?

14:15:49 15 A. I read some articles that mentioned that.

14:15:52 16 Q. It's not in your report, though; correct?

14:15:54 17 A. I don't know whether I mentioned it in the  
14:15:59 18 report, but I did say that there were people, there  
14:16:03 19 were factions in the, in certain counties that had  
14:16:12 20 different views of the absentee ballot  
14:16:19 21 controversies.

14:16:19 22 Q. Did you read any articles regarding the

14:16:22 1 Honest Election Commission?

14:16:28 2 A. That does not ring a bell. It's possible  
14:16:30 3 that I did.

14:16:31 4 Q. Are there any quotes from any of the  
14:16:37 5 articles that you saw that made it into your report  
14:16:41 6 that supports the passage of a voter ID law?

14:16:48 7 A. I quoted the Governor and, I think, Fob  
14:16:53 8 James and several legislators saying that this was  
14:16:58 9 about, about voter fraud.

14:17:01 10 Q. Is there a quote from any person in this  
14:17:04 11 report in favor of a voter ID bill that you don't  
14:17:10 12 believe acted with a discriminatory purpose or  
14:17:12 13 intent?

14:17:15 14 A. There were people who weren't part of the  
14:17:29 15 legislature. They were perhaps part of the general  
14:17:32 16 surge of push for a voter ID law, but they weren't  
14:17:36 17 part of the legislature.

14:17:38 18 Q. Do you consider your job or your goal in  
14:17:44 19 this case to be either, A, convincing the court that  
14:17:49 20 you are correct that the legislature acted with a  
14:17:53 21 discriminatory intent or, B, I'm going to present  
14:17:57 22 the court with both sides of the case and let him

14:18:00 1 decide?

14:18:00 2 MR. ROSS: Objection.

14:18:05 3 THE WITNESS: I presented the evidence for  
14:18:14 4 alternative hypotheses, as well as the hypothesis  
14:18:18 5 about discriminatory intent. And the evidence for  
14:18:22 6 the alternative hypotheses I presented in an honest  
14:18:29 7 way.

14:18:31 8 In particular, I looked again and again at  
14:18:38 9 questions about whether they had found evidence of  
14:18:43 10 current voter impersonation fraud. Did they look  
14:18:47 11 for it? Did they find it? Did they present it?  
14:18:51 12 They didn't. They looked for it. They didn't find  
14:18:56 13 it. They didn't present it. They didn't have  
14:19:02 14 hearings.

14:19:04 15 They didn't have evidence presented to the  
14:19:07 16 legislature of here or so many instances of voting  
14:19:11 17 fraud, and in particular between 2003 after the  
14:19:18 18 passage of that first law and 2011 in the  
14:19:22 19 consideration of the second law, nobody presented  
14:19:26 20 evidence saying there are 20 ways of identification  
14:19:32 21 under the 2003 law and there are, we are proposing  
14:19:40 22 nine laws, nine ways; and we have evidence here that

14:19:46 1 people using any, any of these 11 certificates or  
14:19:53 2 identification documents have voted fraudulently.

14:20:01 3                   There were statements which I presented  
14:20:06 4 where people said they are going to cut down on  
14:20:09 5 fraud or they are going to cut down on prospective  
14:20:12 6 fraud by passing a voter ID law. I took those into  
14:20:18 7 account. In particular I weighed them against the  
14:20:23 8 evidence of actual current fraud that they had and,  
14:20:28 9 therefore, discounted the gravity of those charges  
14:20:33 10 of fraud and that that could be a reason for voting  
14:20:41 11 for the law.

14:20:42 12                   The same thing with partisanship. It is  
14:20:51 13 possible to have a hypothesis that it was Republican  
14:20:55 14 partisanship in 2011 and not race that caused people  
14:20:59 15 to vote for H.B. 19, but the argument, the case for  
14:21:05 16 that is undercut by the fact that white Democrats  
14:21:09 17 from 1995 through 2003 were in favor of a voter ID  
14:21:16 18 law, that the distinction in those years was a  
14:21:20 19 racial distinction and that it was not, that it was  
14:21:23 20 only when partisanship and race became almost  
14:21:27 21 entirely coterminous in Alabama that the issue  
14:21:33 22 became one of partisanship, when partisanship could

14:21:36 1 no longer be distinguished from race.

14:21:39 2 So I presented the evidence for

14:21:42 3 alternative hypotheses as clearly and forcefully as

14:21:48 4 I could, evaluated it, and evaluated all the

14:21:52 5 evidence for a racially discriminatory intent and

14:21:55 6 against racially discriminatory intent. The judge

14:22:00 7 looking at this I hope will look at the evidence

14:22:03 8 that I present and the evidence that other witnesses

14:22:08 9 present on your side, as well as the NAACP LDF side,

14:22:15 10 and try to come to a conclusion as to which case is

14:22:21 11 better, which evidence counts for one hypothesis,

14:22:26 12 whether that evidence is strong, which evidence

14:22:29 13 counts for the other hypothesis and whether that

14:22:32 14 evidence is strong.

14:22:33 15 I hope, obviously, that he will agree with

14:22:36 16 me, but it's his decision and he -- I present the

14:22:40 17 evidence and he, and my reasoning, and he gets a

14:22:43 18 chance to look at it.

14:22:44 19 BY MR. MAZE:

14:22:44 20 Q. I'll ask it a little different way. Do

14:22:48 21 you consider yourself in this case to be a neutral

14:22:50 22 historian or an advocate for the Plaintiffs?

14:22:56 1 MR. ROSS: Objection.

14:22:59 2 THE WITNESS: I am not an advocate for the  
14:23:01 3 Plaintiffs. I am an historian who is evaluating the  
14:23:03 4 evidence, and it is exactly the same way as in every  
14:23:12 5 historical or social scientific examination of  
14:23:20 6 evidence or data. You become convinced, if the  
14:23:25 7 evidence is clear, that one hypothesis is correct or  
14:23:32 8 partially correct and other hypotheses are incorrect  
14:23:35 9 or less correct.

14:23:37 10 So you put that evidence up, and you  
14:23:43 11 evaluate the hypothesis, and that's exactly what I  
14:23:46 12 did in this case.

14:23:47 13 BY MR. MAZE:

14:23:47 14 Q. I noticed that you avoided using the word  
14:23:52 15 "neutral" when I asked you if you were a neutral  
14:23:54 16 historian. Do you have a problem identifying  
14:23:59 17 yourself as neutral in this case?

14:24:01 18 MR. ROSS: Objection.

14:24:05 19 THE WITNESS: Well, here's what I mean by  
14:24:14 20 objectivity. There was a guy who used to teach at  
14:24:25 21 the University of Chicago Economics Department, and  
14:24:28 22 whenever anybody came to the University of Chicago

14:24:31 1 Economics Department, he had a stamp which he would  
14:24:35 2 put on your paper which was distributed for his  
14:24:40 3 workshop, and it said "put your thesis at risk."  
14:24:46 4 The thesis here, one to be evaluated in  
14:24:50 5 this case, is whether there was a racially  
14:24:53 6 discriminatory intent. I put that thesis at risk.  
14:24:58 7 I have evaluated the evidence. I have set up the  
14:25:03 8 hypothesis as clearly as I can and evaluated, and  
14:25:10 9 made my processes of reasoning as clear as I can and  
14:25:13 10 evaluated the hypothesis by putting my thesis at  
14:25:16 11 risk.  
14:25:17 12 The thesis that is, the thesis that is,  
14:25:21 13 obviously, to be put at risk in this case is whether  
14:25:23 14 there was a discriminatory intent or not. And if by  
14:25:28 15 neutrality you mean did I put my thesis at risk,  
14:25:32 16 yes, I did put my thesis at risk, and in that sense,  
14:25:36 17 yes, I'm neutral.  
14:25:38 18 BY MR. MAZE:  
14:25:38 19 Q. Do you believe that you came into this  
14:25:41 20 case without any preconceived notion that Alabama's  
14:25:46 21 legislature acted with a discriminatory intent? And  
14:25:51 22 I say that particularly in light of your experiences



14:25:54 1 in the Texas and North Carolina case.

14:25:57 2 MR. ROSS: Objection.

14:26:02 3 THE WITNESS: If you asked me at the  
14:26:03 4 beginning, I would have said I thought it more  
14:26:05 5 likely than not, but that it was adopted with a  
14:26:11 6 discriminatory intent, but that I could change my  
14:26:17 7 mind depending upon what the evidence was. The  
14:26:21 8 evidence might have been that it's very hard to  
14:26:26 9 tell, but that was not the case here.

14:26:28 10 BY MR. MAZE:

14:26:29 11 Q. I'm going to hand you a document that I  
14:26:31 12 created on my own. It's marked Deposition  
14:26:37 13 Exhibit 8. I hand you a copy. I'll hand counsel a  
14:26:40 14 copy.

14:26:40 15 (Deposition Exhibit No. 8, List, was  
14:26:41 16 marked for identification.)

14:26:41 17 BY MR. MAZE:

14:26:42 18 Q. And you just mentioned the evidence that  
14:26:45 19 you considered in this case. What I did was I went  
14:26:48 20 through your intent factors and your summary and  
14:26:53 21 through your report and tried to list the different  
14:26:57 22 things that you said was evidence of discriminatory

14:27:02 1 intent or effect. And to the extent that I missed  
14:27:06 2 one, I'm going to hand you a pen, and you can  
14:27:09 3 certainly add to it, but I want you just to take a  
14:27:14 4 look at it because what I'm going to do is, a lot of  
14:27:19 5 times in depositions we ask people to, especially  
14:27:24 6 when you're weighing factors, to determine what's  
14:27:27 7 the most important, what's the least important, how  
14:27:29 8 important is something.

14:27:32 9 I'm going to mark this chart Deposition  
14:27:37 10 Exhibit 9, and I'm going to hand it to you, and I'm  
14:27:40 11 going to ask you to do -- and you can take as long  
14:27:43 12 as you need to. I want you, on Exhibit 9, to list  
14:27:48 13 for me what you think the most important factors  
14:27:51 14 were that led you to your decision.

14:27:55 15 (Deposition Exhibit No. 9, Chart, was  
14:27:55 16 marked for identification.)

14:27:55 17 MR. ROSS: Object to this line of  
14:27:56 18 questioning. Our expert has written a 126-page  
14:28:00 19 report, which, obviously, lays out what he believes  
14:28:03 20 are all of the relevant factors, so to ask him to  
14:28:06 21 narrow it to your page-long document and your own  
14:28:12 22 representations of what he thinks are the most

14:28:14 1 important facts is, frankly, absurd.

14:28:17 2 MR. MAZE: I'm not asking that at all.

14:28:19 3 Let me make it clear what I'm doing. We have a

14:28:22 4 127-page report that has a lot of different factors,

14:28:24 5 and rather than me going through all 127 pages and

14:28:28 6 asking you how important was this, how important was

14:28:30 7 that, what does this mean, what does that mean, I'm

14:28:35 8 giving you a chance to, in a very brief amount of

14:28:37 9 time, summarize to all of us what were the most

14:28:41 10 important factors that led you to your decision.

14:28:46 11 I would think it would be a lot better for

14:28:48 12 all of us and save us a lot of time instead of me

14:28:51 13 asking all of those questions to give you five or

14:28:54 14 ten minutes to, on Deposition Exhibit Number 9, list

14:28:57 15 for us the factors that you felt were most important

14:29:01 16 in leading you to your decision.

14:29:03 17 You can word them however you want. I

14:29:05 18 take no pride in authorship. I only used that as a

14:29:09 19 handy guide to my understanding. If they are wrong,

14:29:13 20 by all means write it the way you want to. All I'm

14:29:16 21 asking, and this is the question for the record,

14:29:19 22 will you take Deposition Exhibit Number 9 and list

14:29:23 1 for me the factors in order that you deemed most  
14:29:28 2 important in coming to your conclusion that H.B. 19  
14:29:33 3 was passed with a discriminatory intent and purpose?

14:29:35 4 MR. ROSS: And, again, Plaintiffs object.  
14:29:37 5 This is -- the man has written a report. To ask him  
14:29:40 6 to sit here in a deposition and write out what he  
14:29:42 7 thinks are most important -- he has written a  
14:29:45 8 127-page report. He has summarized it in various  
14:29:48 9 places in the report, what he thinks the intent  
14:29:50 10 factors are. He's done it here in this document.

14:29:53 11 MR. MAZE: Then explain to me, Deuel,  
14:29:55 12 explain to me what is improper about asking a  
14:29:57 13 witness what is the most important factor in your  
14:30:00 14 analysis. What's improper about that question?

14:30:03 15 MR. ROSS: The expert has provided you  
14:30:05 16 with an expert report.

14:30:06 17 MR. MAZE: He's never said in here what's  
14:30:08 18 the most important. Never, and I have seven hours  
14:30:10 19 to ask him, and, if I don't ask him today I'll ask  
14:30:13 20 him at trial. I'm giving him a chance now to let us  
14:30:16 21 all know because, if I don't do it, then I'll do it  
14:30:19 22 then.

14:30:20 1 MR. ROSS: Can we take a short break?

14:30:21 2 MR. MAZE: Absolutely. You can take as

14:30:23 3 long as you want to go through those and determine

14:30:25 4 which ones you think are the most important.

14:30:28 5 MR. ROSS: All right. Let's take a break,

14:30:30 6 and we'll come back.

14:30:31 7 MR. MAZE: We'll be in our room, and you

14:30:33 8 can come get us.

14:30:34 9 (Whereupon, a short recess was taken from

14:55:06 10 2:30 to 2:55 p.m.)

14:55:06 11 BY MR. MAZE:

14:55:07 12 Q. We are back on the record, and I am going

14:55:12 13 to -- first of all, what's the sticker number on

14:55:14 14 that document in front of you? 8 and 9. Okay.

14:55:21 15 Doctor, I'm going to ask you, if you would, please,

14:55:24 16 take Document Number 9 and simply list what factors

14:55:29 17 you considered in this case in the order of

14:55:32 18 importance to you.

14:55:33 19 MR. ROSS: Plaintiffs object. You can

14:55:37 20 answer, to the extent you can.

14:55:40 21 THE WITNESS: In this report there are 89

14:55:56 22 plus pages, mostly about discriminatory intent, and

14:56:01 1 then in Section VII I summarize those factors citing  
14:56:08 2 to paragraphs and pages 90 through 111, which  
14:56:18 3 contains a table that's three pages long, another  
14:56:25 4 couple of tables that are a page, and those are my  
14:56:32 5 summaries, that's my summary. That's what I think  
14:56:35 6 is most important.

14:56:38 7 As I interpret the guidelines offered by  
14:56:43 8 courts, particularly Arlington Heights, and the way  
14:56:46 9 that I think about the intent factors, I simply  
14:56:52 10 present all the evidence. I do not weigh it.  
14:56:58 11 Particularly I don't weigh it in sort of an  
14:57:01 12 artificial way like putting numbers beside it from  
14:57:06 13 zero to 10 or zero to 100 or whatever the numbers  
14:57:10 14 are.

14:57:12 15 So, I think, and, since I've already  
14:57:16 16 answered your question, I've summarized what I  
14:57:19 17 thought were the most important things in a  
14:57:23 18 relatively small compass from page, in Section VII.  
14:57:30 19 So I think that I have, essentially, already done  
14:57:33 20 that.

14:57:33 21 BY MR. MAZE:

14:57:33 22 Q. Okay. In Section VII you list a lot of

14:57:37 1 different things that you considered. Which of them  
14:57:39 2 do you find to be the most telling when it comes to  
14:57:43 3 discriminatory intent?

14:57:45 4 MR. ROSS: Objection.

14:57:45 5 BY MR. MAZE:

14:57:46 6 Q. Please state the objection, Counsel.  
14:57:48 7 What's objectionable about that question?

14:57:49 8 MR. ROSS: The objection is you're  
14:57:50 9 assuming facts in evidence. You're assuming he  
14:57:53 10 thinks one thing is more important than another, and  
14:57:55 11 he's given you testimony that he weighs it all.

14:57:58 12 MR. MAZE: Okay.

13 BY MR. MAZE:

14:57:59 14 Q. You can answer the question. What do you  
14:58:01 15 consider to be the most telling piece of evidence in  
14:58:03 16 your report?

14:58:05 17 MR. ROSS: You can answer, to the extent  
14:58:07 18 you can.

14:58:08 19 THE WITNESS: The reason that I defined  
14:58:13 20 ten intent factors the way that I did was to show  
14:58:16 21 how to review the evidence systematically, and I  
14:58:23 22 think that particularly here when I'm telling a

14:58:28 1 chronological story everything is cumulative, and  
14:58:38 2 because of that it's not really reflective of what  
14:58:46 3 I've done to pick out one thing or another thing.

14:58:49 4 BY MR. MAZE:

14:58:49 5 Q. So you would say --

14:58:50 6 A. One small fact or another small fact.

14:58:52 7 Q. So you would say they are all equally  
14:58:55 8 weighted?

14:58:56 9 MR. ROSS: Objection.

14:58:56 10 THE WITNESS: They are all part of a  
14:58:58 11 whole. They are not all necessarily equally  
14:59:01 12 weighted, but they are all part of a whole.

14:59:03 13 BY MR. MAZE:

14:59:03 14 Q. Well, which one do you think is the most  
14:59:07 15 telling when it comes to discriminatory intent? For  
14:59:10 16 example, do you think that the near unanimous  
14:59:17 17 objections from the Legislative Black Caucus is more  
14:59:20 18 telling than the lack of evidence that the 2003 law  
14:59:26 19 was inadequate? Which of those two things do you  
14:59:29 20 think is more telling as to the legislative intent?

14:59:31 21 MR. ROSS: Objection.

14:59:33 22 THE WITNESS: As I have discussed, they



14:59:35 1 play different roles in the argument. One of the  
14:59:38 2 roles in the argument, the role in the argument of  
14:59:43 3 the near unanimous objections and charges that, by  
14:59:49 4 the African-American legislators that the laws would  
14:59:54 5 have a discriminatory effect and are intended to  
14:59:57 6 have a discriminatory effect, that goes to the  
15:00:02 7 question about whether anyone who voted for the law  
15:00:08 8 could have been unaware of what, of those charges,  
15:00:17 9 could have been unaware of that possibility.

15:00:20 10 That's simply a different thing. It plays  
15:00:22 11 a different role in the argument than, for example,  
15:00:28 12 something that you don't mention here, which is the  
15:00:32 13 comparison in Table 3 of the various identification  
15:00:39 14 documents and the obvious correlation between the  
15:00:44 15 differences in the identification documents and a  
15:00:49 16 racial intent or effect. It's simply a different  
15:00:52 17 part of an argument. It can't be weighed one  
15:00:55 18 against the other in the sense that you want me to  
15:00:59 19 do that.

15:00:59 20 BY MR. MAZE:

15:00:59 21 Q. As an attorney, when I make an argument to  
15:01:02 22 a court and write a brief about multiple factors, I

15:01:06 1 have to pick one that I lead with. You go with your  
15:01:10 2 strongest argument first. If you had to pick one of  
15:01:13 3 these intent factors, which one would you lead with  
15:01:17 4 because it's your strongest?

15:01:18 5 MR. ROSS: Objection. He's not an  
15:01:23 6 attorney. He's a historian. He's testifying to the  
15:01:26 7 process he did, but you can answer.

15:01:28 8 BY MR. MAZE:

15:01:28 9 Q. You can answer.

15:01:33 10 A. They play different roles in a complicated  
15:01:36 11 argument. It's partially a narrative argument.  
15:01:39 12 It's partially an analytical argument, and the  
15:01:42 13 things that you have written down here simply aren't  
15:01:48 14 commensurate.

15:01:49 15 Q. You intend to testify at trial; correct?

15:01:53 16 A. Yes.

15:01:53 17 Q. I am going to ask you this question. What  
15:01:58 18 do you find to be the most compelling piece of  
15:02:00 19 evidence in legislative intent?

15:02:02 20 MR. ROSS: Objection.

15:02:03 21 BY MR. MAZE:

15:02:04 22 Q. And assuming for the second that the trial

15:02:06 1 court says you need to answer that question, what's  
15:02:10 2 your answer going to be?

15:02:13 3 A. I'm sorry. Is this in legislative intent  
15:02:16 4 in general or legislative intent in Alabama in this  
15:02:20 5 particular case?

15:02:21 6 Q. In this particular case, your opinion is  
15:02:23 7 that H.B. 19 was passed by the legislature who was  
15:02:28 8 acting on a discriminatory intent or purpose. If  
15:02:32 9 you had to pick what you believe to be the most  
15:02:35 10 damaging evidence or the most telling evidence that  
15:02:38 11 they had a discriminatory purpose, what would it be?

15:02:41 12 MR. ROSS: Objection.

15:02:44 13 THE WITNESS: I think what will happen is  
15:02:51 14 that there will have been, by the time you get to  
15:02:55 15 ask that question, there will have been a whole case  
15:03:01 16 organized and laid out in my testimony. I don't  
15:03:05 17 know how that will be set up. I don't know what  
15:03:09 18 will come in what order, whether the order will be  
15:03:13 19 in the order of, some order of importance, whether  
15:03:20 20 it will be chronological, exactly how it will be.

15:03:24 21 So, at that point, as well as at this  
15:03:28 22 point in some sense, you will have seen a method of

15:03:35 1 organization which we will have decided best

15:03:42 2 presents the case.

15:03:42 3 BY MR. MAZE:

15:03:42 4 Q. And then I get to ask questions on

15:03:45 5 cross-examination.

15:03:46 6 A. That's right.

15:03:46 7 Q. And my very first question to you would be

15:03:49 8 what do you consider, of all of the things that you

15:03:52 9 just went through in your presentation, what do you

15:03:54 10 consider to be the most damning piece of evidence

15:03:58 11 against the 2011 Alabama State Legislature? And

15:04:01 12 what would your answer to that be?

15:04:03 13 MR. ROSS: Objection.

15:04:06 14 THE WITNESS: Probably my answer would be

15:04:09 15 that it is hard to decide between several pieces of

15:04:14 16 evidence. I can give you --

15:04:16 17 BY MR. MAZE:

15:04:16 18 Q. Tell me the ones you have to decide

15:04:18 19 between.

15:04:18 20 A. I can give you several pieces of evidence

15:04:21 21 that are particularly important.

15:04:22 22 Q. Okay.

15:04:23 1           A.    One is the continuing attempt to pass a  
15:04:33 2   log roll that was a tradeoff between an, obviously,  
15:04:38 3   racial law that would make it easier for blacks to,  
15:04:49 4   more blacks to be, take part in the election through  
15:04:53 5   the voter ID law -- I'm sorry -- through the felon  
15:04:59 6   disfranchisement liberalization law and voter ID.

15:05:03 7           That's certainly one that's exceedingly  
15:05:06 8   important because, on the one side of this, on the  
15:05:09 9   one scale is something that has, obviously, racial  
15:05:12 10   impact. That racial impact was considered not only  
15:05:19 11   by the Black Caucus, but was talked about by people  
15:05:23 12   who were proponents of voter ID. That swap was  
15:05:27 13   finally made, and that has considerable importance.

15:05:31 14           Another is the comparison in Table 3  
15:05:36 15   between the 2003 law and the 2011 law. If you look  
15:05:42 16   at the, in effect, amendments offered to the 2011  
15:05:53 17   law because they were the status quo, you look how  
15:05:56 18   the status quo changed. It changed particularly to,  
15:06:05 19   to eliminate identification documents that were  
15:06:10 20   disproportionately held by people of lower  
15:06:16 21   socioeconomic status. Those two things are  
15:06:19 22   certainly very important.

15:06:20 1 The whole sweep of the 1995 through 2003  
15:06:29 2 and then 2003 to 2011 history of the consideration  
15:06:38 3 of the voter ID laws and then the lack of  
15:06:41 4 consideration and, finally, the forcing through of  
15:06:44 5 the laws is certainly very important in the  
15:06:48 6 narrative.

15:06:50 7 There's certainly statements that were  
15:06:54 8 important, not only the statements you quoted, but  
15:06:57 9 some others that I highlighted in the report. Those  
15:07:02 10 things are very important.

15:07:03 11 Q. Whose statement do you think is the most  
15:07:06 12 telling, Larry Dixon? Scott Beason? Who would you  
15:07:10 13 pick?

15:07:10 14 MR. ROSS: Objection.

15:07:12 15 THE WITNESS: Well, the Beason -- sorry --  
15:07:14 16 the Dixon statements are fairly telling just because  
15:07:19 17 they are so extraordinary to see. We hardly ever  
15:07:24 18 get such statements made by legislators about a  
15:07:29 19 piece of legislation anymore, so they attract  
15:07:32 20 attention simply because of that.

15:07:35 21 But there are other statements as well,  
15:07:39 22 statements about the NVRA and the effect of the NVRA

15:07:46 1 -- that's National Voter Registration Act -- on the  
15:07:51 2 introduction of the voter ID in the first place in  
15:07:56 3 1995, the statement that we don't want those people,  
15:08:01 4 those people are not voting for us, and  
15:08:06 5 interpretation of that statement in a newspaper  
15:08:10 6 article where those people becomes, to a large  
15:08:15 7 degree, blacks.

15:08:17 8                   There are many other things that are  
15:08:20 9 contained in the narrative that are part of the  
15:08:26 10 intent factors.

15:08:33 11 BY MR. MAZE:

15:08:33 12           Q.    But it's fair to say then --

15:08:35 13           A.    There are, there are lots -- the fact that  
15:08:38 14 in case after case there were attempts to find voter  
15:08:51 15 impersonation fraud, and they never found it.

15:08:54 16 That's certainly very important in evaluating the  
15:08:58 17 fraud hypothesis. The fact that white Democrats  
15:09:02 18 overwhelmingly backed voter ID laws from 1995 to  
15:09:09 19 2003 is very important in the partisanship  
15:09:12 20 hypothesis.

15:09:13 21                   So there are lots of things that make for  
15:09:21 22 a case. There are lots of things that I haven't

15:09:23 1 mentioned that contribute to the case as well. They  
15:09:27 2 are all put together here in these pages in Section  
15:09:37 3 VII, and there are certainly things that I have left  
15:09:41 4 out that contribute to the case as well.

15:09:44 5 Q. You can put those away. Well, you can  
15:10:00 6 keep your report.

15:10:11 7 (Deposition Exhibit No. 10, Roll of the  
8 Senate for Vote 1063 on H.B. 19 (Regular Session  
15:10:12 9 2011), was marked for identification.)

15:10:12 10 BY MR. MAZE:

15:10:12 11 Q. I'm going to hand you what I'm marking  
15:10:16 12 Deposition Exhibits 10 and 11.

15:10:21 13 (Deposition Exhibit No. 11, Roll of the  
14 House for Vote 62 on H.B. 19 (Regular Session 2011),  
15:10:24 15 was marked for identification.)

15:10:24 16 MR. MAZE: Well, just 10 for now. Now I'm  
15:10:55 17 going to hand you Number 11.

15:11:05 18 BY MR. MAZE:

15:11:06 19 Q. Okay. Deposition Exhibit Number 10 is the  
15:11:10 20 roll call vote on H.B. 19 for the Senate, and  
15:11:18 21 Deposition Exhibit Number 11 is the roll call vote  
15:11:21 22 for the House vote on H.B. 19. Does that seem fair



15:11:27 1 to you?

15:11:28 2 A. If you represent those as the case, I will  
15:11:31 3 accept your representation. I don't know that they  
15:11:34 4 are true, but --

15:11:35 5 Q. Looking at Deposition Exhibit Number 10,  
15:11:38 6 which is the roll call vote of the Senate on H.B.  
15:11:42 7 19, can you identify those persons who voted yes who  
15:11:51 8 you believe voted with a discriminatory intent or  
15:11:55 9 purpose as it relates to minority voters?

15:11:57 10 MR. ROSS: Objection.

15:12:00 11 THE WITNESS: I think that really is an  
15:12:01 12 ill-formed question. I don't think that's the way  
15:12:04 13 that I consider racially discriminatory intent, and  
15:12:09 14 I don't think that's the way that the courts have  
15:12:13 15 traditionally considered racially discriminatory  
15:12:18 16 intent. It is not something that one can do.

15:12:21 17 One considers lots of factors outside the  
15:12:26 18 legislature, discussions in the legislature, the  
15:12:35 19 whole range of intent factors I've set out here in  
15:12:39 20 Section VII. They don't depend at all on saying one  
15:12:43 21 person or another voted for a bill because they were  
15:12:47 22 a racist, they were an anti-racist or anything else.

15:12:51 1 So that does not seem to be a well-formed question,  
15:12:56 2 and I simply cannot answer that.

15:12:58 3 BY MR. MAZE:

15:12:58 4 Q. Do you believe that the statements of  
15:13:03 5 Larry Dixon, for example, because, obviously, Larry  
15:13:08 6 Dixon is not part of the legislature at the time of  
15:13:11 7 this vote; correct?

15:13:11 8 A. That's correct.

15:13:12 9 Q. Are his statements imputed to the people  
15:13:15 10 on this list? Is he subject to the statements --  
15:13:21 11 are they subject to the statements he made?

15:13:24 12 A. I think that you interpret what they did  
15:13:28 13 partially from the statements that he made because  
15:13:33 14 of two things. One, he was the sponsor of the bill  
15:13:37 15 for 15 years, the chief sponsor to the bill for  
15:13:41 16 15 years. He was identified with it. He led the  
15:13:44 17 fight for it and so on, and so this was a bill that  
15:13:49 18 was simply carried through.

15:13:52 19 Republicans had wanted to pass such a bill  
15:13:55 20 for a long time, and this was carried through.

15:14:00 21 It's, essentially, like the Dixon bills earlier.

15:14:05 22 The second thing is that there were many co-sponsors

15:14:07 1 of the bills, along with Dixon and the previous  
15:14:12 2 legislatures, who are co-sponsors, who were  
15:14:17 3 co-sponsors in this particular session of  
15:14:20 4 legislature, and so it's easy to connect them to him  
15:14:26 5 in 2011.

15:14:27 6 Q. Do you think there ever becomes a point  
15:14:30 7 where the legislators can be free from their  
15:14:35 8 predecessors' statements and vote for something out  
15:14:38 9 of their own purposes?

15:14:40 10 MR. ROSS: Objection.

15:14:44 11 THE WITNESS: I don't think that's a  
15:14:46 12 question I can answer.

15:14:47 13 BY MR. MAZE:

15:14:47 14 Q. Well, you're the intent expert. You're  
15:14:50 15 here to testify to the court that you believe this  
15:14:53 16 body of people in Exhibit Number 10 acted with a  
15:14:59 17 discriminatory intent, and I'm asking you the  
15:15:01 18 question of whether this body of people can have a  
15:15:04 19 different intent when they vote than Larry Dixon  
15:15:08 20 would have had.

15:15:10 21 Is it possible that the people listed on  
15:15:12 22 Number 10 could have a completely different purpose

15:15:15 1 in passing this law than Larry Dixon might have?

15:15:23 2 A. In this instance I do not think they did

15:15:28 3 because the law was substantially the same law.

15:15:31 4 Some of them sponsored it with him beforehand. The

15:15:35 5 law had came in the same context. He had only been

15:15:40 6 out of the legislature for a year by the time that

15:15:43 7 the law passed. We're not talking about 100 years

15:15:46 8 later. There may be some period between a year and

15:15:51 9 100 years where the influence is fleeting, but a

15:15:58 10 year is clearly on one side of that line.

15:16:04 11 The factors that I've identified before

15:16:12 12 are still operative here. In particular look at the

15:16:18 13 difference between the identification documents

15:16:21 14 available in the 2003 law and the identification

15:16:26 15 documents in the 2011 law. His photo ID law bills

15:16:32 16 in previous sessions of the legislature had been, in

15:16:37 17 effect, alternatives to what was passed before and

15:16:42 18 what was passed in 2003.

15:16:46 19 The differences between what was in 2003,

15:16:50 20 the 2003 law and what was in the 2011 law would be

15:16:55 21 the same for people who were sitting in the 2010

15:17:00 22 legislature or sitting in the 2011 legislature. So

15:17:05 1 for all of these reasons I don't impute different  
15:17:09 2 motives. I impute exactly the same motives. They  
15:17:12 3 did exactly what he wanted to do, and there is every  
15:17:18 4 reason to believe that they did it for the same  
15:17:20 5 reasons.

15:17:21 6 Q. Okay. Can you list for me or identify for  
15:17:27 7 me the persons on Exhibit Number 10 who made  
15:17:30 8 statements that you believe show a discriminatory  
15:17:34 9 intent or purpose?

15:17:39 10 A. There were almost no statements in 2011  
15:17:42 11 that were made about the law that went one way or  
15:17:49 12 another to a discriminatory intent.

15:17:50 13 Q. So the answer then is you cannot name  
15:17:53 14 anybody on Exhibit 10?

15:17:54 15 A. No, I did not say that.

15:17:56 16 Q. Okay. Then who is on Exhibit 10?

15:17:57 17 A. There were people who had made, there were  
15:18:00 18 people who were in Exhibit 10 who had made  
15:18:04 19 statements before or who made statements about other  
15:18:08 20 things that lent credence to the view that they  
15:18:13 21 voted for H.B. 19 for discriminatory reasons.

15:18:22 22 Q. Identify them.

15:18:23 1 A. Mr. Allen.

2 Q. Okay.

15:18:26 3 A. Mr. Beason.

15:18:28 4 Q. Okay.

15:18:29 5 A. I do not know a lot of the other people.

15:18:32 6 These are people that I remember making statements

15:18:36 7 or taking actions at other times that indicated

15:18:45 8 generally discriminatory intent.

15:18:45 9 Q. Anybody else other than Allen and Beason?

15:18:49 10 A. I don't know of anybody. There may have

15:18:52 11 been.

15:18:52 12 Q. Same question for Exhibit 11. How many

15:18:55 13 persons on Exhibit 11 can you identify that made a

15:18:58 14 statement that you believe indicates a

15:19:01 15 discriminatory intent or purpose?

15:19:03 16 A. I remember statements by Mr. Rich.

15:19:08 17 Q. Okay.

15:19:11 18 A. I don't remember statements by other

15:19:12 19 people.

15:19:14 20 Q. Okay. Did any of the people, other than

15:19:19 21 Allen, Beason and Rich, can you identify any other

15:19:24 22 persons on Exhibits 10 or 11 that took any actions,

15:19:30 1 overt actions or identifiable actions that led you  
15:19:33 2 to believe that that person acted with a  
15:19:36 3 discriminatory intent or purpose?

15:19:39 4 A. Well, the votes on H.B. 56, I think, I  
15:19:44 5 think that was a discriminatory bill. The  
15:19:47 6 Republicans in general in the legislature supported  
15:19:50 7 H.B. 56, and I think that colors my view of their  
15:19:57 8 actions on H.B. 19.

15:19:58 9 Q. So you would say that everybody who voted  
15:20:00 10 for H.B. 56 yes has a discriminatory intent or  
15:20:05 11 purpose in voting yes on H.B. 19?

15:20:07 12 MR. ROSS: Objection. Mischaracterizing  
15:20:10 13 his testimony.

15:20:11 14 THE WITNESS: It lends weight to the  
15:20:15 15 contention that they voted for H.B. 19 with, for  
15:20:21 16 discriminatory reasons. It is not determinative by  
15:20:25 17 itself, but it lends weight to that.

15:20:27 18 BY MR. MAZE:

15:20:27 19 Q. How do you know or how can you give an  
15:20:30 20 opinion on the intent of an individual legislator in  
15:20:33 21 voting for H.B. 56?

15:20:39 22 A. Partially by statements, partially by

15:20:41 1 exactly what it did. It was discriminatory. It was  
15:20:46 2 flagrantly discriminatory and has been so decided by  
15:20:49 3 courts, I understand.

15:20:51 4 Q. Who on Exhibits 10 or 11 made statements  
15:20:55 5 about H.B. 56 that you believe would show a  
15:21:00 6 discriminatory intent or purpose in voting for H.B.  
15:21:03 7 56?

15:21:04 8 A. Well, I remember Mr. Beason. I remember  
15:21:08 9 Mr. Rich. I remember -- who is that? I forget the  
15:21:14 10 name of the sponsor in the House. It starts with H.  
15:21:23 11 Maybe it doesn't start with H. Hammon, H-A-M-M-O-N.  
15:21:44 12 He does not appear to be listed here in the House.

15:21:49 13 Q. He is. He's on the left side about  
15:21:51 14 halfway down.

15:21:51 15 A. Oh, I'm sorry.

15:21:53 16 Q. It's okay.

15:21:54 17 A. It's not alphabetical. But statements are  
15:22:05 18 not the only thing I take into account.

15:22:08 19 Q. Sure.

15:22:08 20 A. I take into account all the factors that  
15:22:12 21 I've talked about before.

15:22:16 22 Q. You can put those away, and let's go back



15:22:21 1 to your report. I just have some questions in  
15:22:37 2 random spots that we just wanted to clarify to make  
15:22:39 3 sure we understand. Starting on page five, you make  
15:22:53 4 the statement that "The Republicans held no public  
15:22:57 5 hearings, took no testimony, allowed no amendments  
15:23:00 6 to be offered, and engaged in only the briefest of  
15:23:04 7 debates." Did I read that correctly?

15:23:05 8 A. Yes.

15:23:06 9 Q. Do you know what percentage of the time or  
15:23:08 10 how often the Alabama State Legislature takes  
15:23:11 11 testimony or has public hearings on a bill?

15:23:15 12 A. I do not know the, I don't know what  
15:23:21 13 percentage of the time that's the case. They do,  
15:23:27 14 they have on other bills, and certainly other  
15:23:32 15 legislatures have done so.

15:23:33 16 Q. You make a statement about two sentences  
15:23:37 17 down, "There were no public forums held to justify  
15:23:39 18 the law and no stage was afforded for any public  
15:23:43 19 criticisms." How often does the Alabama legislature  
15:23:46 20 hold public forums to discuss pending bills?

15:23:51 21 A. I do not know. I know about other states  
15:23:54 22 doing that.

15:23:54 1 Q. What year did Alabama's legislature start  
15:24:00 2 considering a voter ID law?

15:24:09 3 A. I list the first year in which the bill  
15:24:11 4 was introduced at some point, and I think it was in  
15:24:16 5 the 1980s, 1985 or so a bill was introduced, but the  
15:24:22 6 substantial consideration -- sorry -- 1986. It's on  
15:24:32 7 page 15. And then it was really only considered  
15:24:37 8 very substantially from 1995 on. I could not find  
15:24:43 9 any references in the newspapers to consideration of  
15:24:46 10 the bill in 1986 or 1988.

15:24:49 11 Q. So, doing the math, it had been brought up  
15:24:53 12 and discussed for 25 years and had been  
15:24:57 13 substantially considered for 16 years; correct?

15:25:00 14 A. Yes.

15:25:00 15 Q. Wouldn't you agree that, after 16 years of  
15:25:04 16 serious debate, that the legislators pretty much had  
15:25:09 17 the information they needed to understand which side  
15:25:12 18 they were on?

15:25:12 19 MR. ROSS: Objection.

15:25:18 20 THE WITNESS: Great many of the  
15:25:19 21 legislators were new. That was one of the things  
15:25:21 22 that was so striking about the 2010 election. These

15:25:25 1 people had not served in legislature for the most  
15:25:29 2 part. They had not even served in public office for  
15:25:32 3 the most part, so I would think, particularly  
15:25:35 4 because of the newness of the people who were in the  
15:25:41 5 legislature, the first legislature that the  
15:25:44 6 Republicans had controlled both houses of the  
15:25:47 7 legislature in Alabama since 1874, they would have  
15:25:51 8 wanted hearings.

15:25:53 9 BY MR. MAZE:

15:25:53 10 Q. The last sentence of that page you state  
15:25:57 11 that "Alabama did not offer up the law to federal  
15:26:00 12 scrutiny for more than two years, until Section 5  
15:26:03 13 was rendered toothless by the Supreme Court" in  
15:26:06 14 Shelby County. First of all, how important do you  
15:26:10 15 believe that to be in your analysis?

15:26:13 16 MR. ROSS: Objection. I'm not sure which  
15:26:15 17 page you're talking about.

15:26:16 18 MR. MAZE: Bottom of page five, same page  
15:26:19 19 we've been on. It's the last sentence.

15:26:21 20 THE WITNESS: Right. It's just one more  
15:26:25 21 fact. It's not absolutely crucial. It's just one  
15:26:31 22 more fact.

15:26:32 1 BY MR. MAZE:

15:26:32 2 Q. How is that fact?

15:26:33 3 A. But it is relevant because it is an

15:26:35 4 indication, since generally Alabama offered --

15:26:40 5 Alabama was very, very well regulated, very used to

15:26:49 6 submitting laws. They had had a lot of laws turned

15:26:53 7 down by Section 5. They knew the procedures. They

15:26:57 8 knew that, if they passed a new law that had to do

15:27:01 9 with elections, that it couldn't go into effect

15:27:04 10 before they submitted it, and they were used to

15:27:10 11 doing that. It was a trivial bureaucratic exercise,

15:27:13 12 for the most part, to do these sorts of things.

15:27:17 13 They knew that the, they knew that the

15:27:27 14 laws on voter ID were very controversial and that

15:27:31 15 they had been, some of them allowed by the Justice

15:27:37 16 Department. Some of them not allowed by the Justice

15:27:40 17 Department. Some of them clear. Some of them not

15:27:43 18 very clear, and they were used to doing that.

15:27:47 19 They knew that the Obama Justice

15:27:51 20 Department was quite skeptical of voter ID laws, and

15:27:54 21 so several states held back voter ID laws during

15:27:58 22 this period or they didn't -- North Carolina didn't

15:28:02 1 pass one as early as they might have otherwise had  
2 --

15:28:08 3 Q. Where do you get the factual belief that  
15:28:10 4 the reason that this had not been submitted was to  
15:28:15 5 hide it from the Obama DOJ? What's the factual  
15:28:19 6 basis for that?

15:28:20 7 A. They weren't trying to hide it. They were  
15:28:23 8 just trying to have it not be turned down for  
15:28:29 9 preclearance.

15:28:30 10 Q. First of all, do you even know who submits  
15:28:33 11 preclearances for the state of Alabama and, second,  
15:28:36 12 what those people were doing in that time period?

15:28:40 13 A. I believe it is the Secretary of State.

15:28:43 14 Q. You believe, but don't know?

15:28:47 15 MR. ROSS: Objection.

15:28:48 16 THE WITNESS: I believe that they are  
15:28:51 17 Secretaries of State, that that's the usual way of  
15:28:53 18 submitting state laws for preclearance.

15:28:57 19 BY MR. MAZE:

15:28:57 20 Q. You called this a trivial bureaucratic  
15:28:59 21 exercise. How can you say that it's trivial if you  
15:29:03 22 don't even know the process that the state has to go

15:29:05 1 through?

15:29:07 2 A. Because they did it a lot. They are used  
15:29:09 3 to it. It's a bureaucratic exercise. The voter ID  
15:29:14 4 law was not as trivial as other things that they  
15:29:19 5 submitted for preclearance, but the bureaucracies  
15:29:22 6 were pretty well set up for doing preclearance under  
15:29:27 7 Section 5 in covered jurisdictions for a long period  
15:29:30 8 of time.

15:29:30 9 Q. I'm not asking --

15:29:32 10 A. They submitted a good many of those in  
15:29:35 11 Alabama and other places. Alabama had more  
15:29:39 12 preclearance denials than any other state besides  
15:29:42 13 Texas.

15:29:43 14 Q. How many preclearance denials did Alabama  
15:29:46 15 have in the ten years leading up to Shelby County?

15:29:49 16 A. I do not remember.

15:29:50 17 Q. Zero? Zero?

15:29:54 18 A. Shelby County was a preclearance denial  
15:29:59 19 itself.

15:29:59 20 Q. No. Shelby County was an affirmative  
15:30:02 21 lawsuit filed by Shelby County. Shelby County was  
15:30:05 22 the plaintiff. It wasn't a denial. How many

15:30:08 1 denials of a state legislation did Alabama have in  
15:30:14 2 the ten years leading up to Shelby County?

15:30:16 3                   You said you did the research. How many  
15:30:19 4 times had Alabama been turned down by the Department  
15:30:22 5 of Justice in the last ten years?

15:30:23 6           A. I would have to look up my figures, my  
15:30:25 7 table.

15:30:26 8           Q. My question about trivial is not about  
15:30:28 9 whether the voting ID law is trivial. We all agree  
15:30:31 10 it's not a trivial law. My contention is whether or  
15:30:38 11 not the process is trivial. And I ask that because  
15:30:42 12 I'm not sure you understand the process of actually  
15:30:45 13 having to submit something from preclearance.

15:30:49 14                   I want to know how you come to the  
15:30:51 15 conclusion that what the state goes through to  
15:30:54 16 submit something is trivial.

15:30:56 17                   MR. ROSS: Objection. Mischaracterizes  
15:30:58 18 his testimony. You can answer.

15:31:00 19                   THE WITNESS: I have read preclearance  
15:31:03 20 documents that are submitted by, that were submitted  
15:31:08 21 by states or by localities. I've read the whole  
15:31:12 22 sort of dossier.

15:31:14 1 BY MR. MAZE:

15:31:14 2 Q. Did you know that Alabama has made

15:31:16 3 preclearance submissions that were more than 40

15:31:19 4 banker boxes that we had to send to Washington that

15:31:22 5 took over a year, sometimes two?

15:31:24 6 MR. ROSS: Objection. Assuming facts not

15:31:26 7 in evidence.

15:31:27 8 MR. MAZE: I'm asking if he knew that that

15:31:28 9 was true.

15:31:29 10 MR. ROSS: Well, we don't know it's true.

15:31:31 11 No one knows. You're making statements about it.

15:31:33 12 THE WITNESS: I don't know whether it is

15:31:34 13 true or not.

15:31:36 14 BY MR. MAZE:

15:31:36 15 Q. Did you read the Governor's brief in

15:31:41 16 Northwest Austin Municipal District Number 1 for the

15:31:45 17 State's brief in Shelby County describing the

15:31:48 18 process of submitting something for preclearance

15:31:52 19 under Section 5?

15:31:54 20 A. I read a lot of the amicus briefs in both

15:31:57 21 cases. I don't remember whether I read those.

15:31:59 22 Q. Well, the story that he's saying is not in



15:32:02 1 evidence is from something you just said you read.

15:32:05 2 Have you read the process that Alabama goes through

15:32:08 3 to submit something for preclearance?

15:32:10 4 MR. ROSS: Objection. His testimony was

15:32:11 5 that he is not sure that he read the specific briefs

15:32:14 6 you were talking about, but you can answer.

15:32:19 7 THE WITNESS: When I was doing the article

15:32:20 8 on Section 5 that published in the Texas Law Review,

15:32:28 9 I looked at evidence from the hearings on the Voting

15:32:36 10 Rights Act renewal in 2006. Maybe some of the

15:32:39 11 hearings were in 2005, and there was a lot of

15:32:43 12 discussion about what the procedures were and how

15:32:48 13 onerous those procedures were in making preclearance

15:32:54 14 submissions.

15:32:56 15 For most preclearance submissions, the

15:33:01 16 amount of work that people had to do was relatively

15:33:05 17 small, and it did not take terribly much time.

15:33:12 18 There were estimates of the average time that it

15:33:15 19 took for preclearance request in general in that

15:33:21 20 testimony, and it was a very short time so that with

15:33:27 21 any reasonable estimate of the cost per hour of

15:33:33 22 paying somebody to do it for relatively minor

15:33:39 1 requests was on the order of \$500 per preclearance.

15:33:43 2 Voter ID as a statewide law would be more, but it

15:33:48 3 would not be insuperable.

15:33:51 4 BY MR. MAZE:

15:33:51 5 Q. In those instances that you're discussing,

15:33:54 6 those laws were passed to take effect immediately;

15:33:57 7 correct?

15:34:02 8 A. For the most part, yes.

15:34:04 9 Q. This law was passed with a three-year time

15:34:08 10 window for implementation; correct?

15:34:11 11 A. Yes.

15:34:12 12 Q. I want to turn the page to eight,

15:34:19 13 paragraph 12. And I'm going to read the first

14 sentence.

15:34:24 15 "Second, although there were

15:34:25 16 circumstantial and some direct evidence of fraud or

15:34:27 17 irregularities involving absentee ballots, that was

15:34:30 18 quickly remedied by the legislature in 1996 in a

15:34:33 19 bill that Republican Governor Fob James declared

15:34:36 20 would cut such fraud to a point where it should no

15:34:39 21 longer be a factor?" Did I read that correctly?

15:34:42 22 A. Yes.

15:34:43 1 Q. Do you, personally, believe from your  
15:34:45 2 research that absentee voter fraud has ended in  
15:34:49 3 Alabama?

15:34:52 4 A. I think there was evidence of some fraud  
15:34:54 5 afterwards. There were some prosecutions that were  
15:34:58 6 successful.

15:34:59 7 Q. Do you believe that requiring a photo  
15:35:02 8 identification card to be included in an absentee  
15:35:06 9 ballot envelope makes it more likely to reduce the  
15:35:12 10 amount of absentee voter fraud?

15:35:15 11 MR. ROSS: Objection.

15:35:17 12 THE WITNESS: I do not think that those  
15:35:18 13 are well matched requirements.

15:35:21 14 BY MR. MAZE:

15:35:21 15 Q. Not my question. My question is do you  
15:35:24 16 think that it is possible that requiring a photo  
15:35:28 17 identification to be included in your absentee  
15:35:30 18 envelope can reduce the number of instances where  
15:35:34 19 someone commits fraud with an absentee ballot?

15:35:37 20 MR. ROSS: Objection.

15:35:40 21 THE WITNESS: The reason that you have  
15:35:45 22 photo ID is so that you can compare it to someone's

15:35:48 1 face. If you have an absentee ballot, having a  
15:35:53 2 photo ID doesn't allow you to compare it to  
15:35:56 3 someone's face. It doesn't make any difference in  
15:36:01 4 the amount of potential fraud that you might have  
15:36:04 5 any more than any other document.

15:36:07 6 If you had good screening for signatures,  
15:36:12 7 that might be more effective in preventing fraud  
15:36:16 8 than a, than any other form of identification,  
15:36:20 9 particularly photo identification. There seems to  
15:36:22 10 be no connection whatsoever between a photo  
15:36:26 11 identification and the protection against absentee  
15:36:32 12 ballot fraud.

15:36:33 13 It seems rather something which is just  
15:36:36 14 another requirement, another onerous requirement  
15:36:40 15 that somebody get a photo ID and get a photocopy of  
15:36:47 16 that made before they can submit an absentee ballot.

15:36:52 17 BY MR. MAZE:

15:36:53 18 Q. Paragraph 14 you make a statement,  
15:36:57 19 "Fourth, Jim Bennett, the Secretary of State, who  
15:36:59 20 pushed voter ID laws from the time when he was in  
15:37:02 21 the state Senate through his two-plus terms as  
15:37:05 22 Secretary of State, declared during the debate that

15:37:07 1 voter ID was aimed not at current, but as possible  
15:37:11 2 future problems, i.e., that the need for such a law  
15:37:14 3 was based on speculation." Did I read that  
15:37:17 4 correctly?

15:37:17 5 A. Yes.

15:37:18 6 Q. It's actually true, is it not, that Jim  
15:37:22 7 Bennett is not the one who made that statement? It  
15:37:25 8 was an employee of his; correct? I can tell you it  
15:37:42 9 comes later in your report.

15:37:43 10 A. I know his employee did, but I thought  
15:37:46 11 that he did as well.

15:37:46 12 Q. Then you just answered my question. Going  
15:37:55 13 back to absentee voter fraud, do you believe, as a  
15:37:58 14 matter of fact, that absentee voter fraud has  
15:38:00 15 occurred in Alabama?

15:38:02 16 MR. ROSS: Objection.

15:38:03 17 THE WITNESS: There have been people  
15:38:05 18 convicted for absentee voter fraud in Alabama.

15:38:07 19 BY MR. MAZE:

15:38:07 20 Q. Okay. Let's turn to page 52, paragraph  
15:38:24 21 119. When we were talking earlier about creating a  
15:38:35 22 chart of the most important or ranking, which I know

15:38:39 1 we didn't do, but the first thing that you mentioned  
15:38:42 2 as something that was important was the continuing  
15:38:45 3 attempt to pass a log roll that is a bill regarding  
15:38:50 4 voter identification and a bill regarding felon  
15:38:53 5 disenfranchisement.

15:38:56 6 Paragraph 119, I'm just going to read  
15:38:59 7 where it starts with "Kennedy exalted."

15:39:02 8 "Kennedy exalted, it says all of our  
15:39:05 9 citizens are valuable to our state and she hoped it  
15:39:08 10 would make it much easier for up to 200,000 former  
15:39:11 11 inmates to gain the right to vote. Former Secretary  
15:39:15 12 of State Jim Bennett was equally jubilant about the  
15:39:18 13 passage of the voter ID law bill. I am thrilled  
15:39:21 14 that finally after 15 years of all those failed  
15:39:23 15 attempts, we have brought this most worthwhile issue  
15:39:27 16 to closure?" Did I read that correctly?

15:39:28 17 A. Yes.

15:39:29 18 Q. Seeing that the anticipated effect of the  
15:39:35 19 voter disenfranchisement bill was 200,000 persons  
15:39:40 20 and later you say that 62 percent of incarcerated  
15:39:45 21 persons are African American, which would make that  
15:39:48 22 124,000, is it not true that in this particular log

15:39:52 1 roll more African Americans would regain the right  
15:39:57 2 to vote than there were persons who lacked an ID  
15:40:00 3 card?

15:40:00 4 MR. ROSS: Objection. You're assuming  
15:40:03 5 facts not in evidence. Where is --

15:40:05 6 BY MR. MAZE:

15:40:06 7 Q. Well, what do you believe?

15:40:06 8 A. I don't know how many people lacked an ID  
15:40:09 9 card, so it's hard to make that comparison.

15:40:11 10 Q. Your testimony is that this was a  
15:40:14 11 tradeoff, that the Legislative Black Caucus gave up  
15:40:18 12 voter ID to get felon re-enfranchisement; correct?

15:40:24 13 A. Correct.

15:40:25 14 Q. Because of that you would say that the  
15:40:29 15 2003 voter ID law was passed with a discriminatory  
15:40:33 16 intent or purpose; correct?

15:40:34 17 MR. ROSS: Objection. Mischaracterizing  
15:40:37 18 his testimony.

15:40:37 19 BY MR. MAZE:

15:40:37 20 Q. I'm asking what his testimony is.

15:40:39 21 A. Well, it's part of the continuing attempt  
15:40:46 22 to make that log roll and for, from 1996, 1995, I

15:40:54 1 guess -- no, 1996, right, when it was first  
15:40:58 2 proposed. From 1996 to 2003 that log roll was  
15:41:01 3 proposed, and the process of arguing about it, the  
15:41:05 4 process of trading about it creates evidence for a  
15:41:12 5 discriminatory intent of voter IDs because of the  
15:41:15 6 mechanisms that you said and the tradeoffs that you  
15:41:18 7 said.

15:41:22 8 I think that Dr. Kennedy believed that  
15:41:26 9 there would be more or at least a very substantial  
15:41:31 10 number of African Americans who gained the right to  
15:41:35 11 vote through the easing of the felon  
15:41:38 12 disenfranchisement provisions that was worth giving up  
15:41:44 13 the voter ID to get that.

15:41:46 14 Q. Okay. So you're saying that  
15:41:49 15 Representative Kennedy believed that the felon  
15:41:56 16 disenfranchisement bill -- strike that. Let me see  
15:42:01 17 if I can say it correctly.

15:42:02 18 There was a discriminatory purpose in the  
15:42:05 19 felon disenfranchisement bill, and that purpose was  
15:42:08 20 to assist additional African-American voters to  
15:42:12 21 regain the right to vote; correct?

15:42:14 22 MR. ROSS: Objection.



15:42:15 1 THE WITNESS: I'm sorry. I don't -- no,  
15:42:18 2 no, no. It was the beginning of the question that I  
15:42:21 3 didn't, I'm not sure that you got correct.  
15:42:23 4 BY MR. MAZE:  
15:42:23 5 Q. I'll try to make it as easy as I can.  
15:42:27 6 Sure. Do you believe that there was a racial  
15:42:29 7 component to both sides of the log roll? That is on  
15:42:33 8 the felon side there was a racial intent or purpose  
15:42:36 9 to give back the right to vote to minorities, and on  
15:42:43 10 the voter ID side there was a discriminatory purpose  
15:42:46 11 to take away or make it harder for certain  
15:42:49 12 minorities to vote?  
15:42:49 13 A. Yes.  
15:42:50 14 Q. Do you believe that it's true on both  
15:42:52 15 sides?  
15:42:52 16 A. Yes.  
15:42:52 17 Q. And when we were talking about imputing  
15:42:56 18 intent earlier, you would impute the same  
15:43:00 19 discriminatory intent of the voter ID side of 2003  
15:43:03 20 also to the 2011 amendment, as you put it, to it;  
15:43:08 21 correct? They both have the same discriminatory  
15:43:12 22 purpose, that is to make it harder for certain

15:43:14 1 minorities to vote. That's your opinion?

15:43:16 2 MR. ROSS: Objection.

15:43:17 3 THE WITNESS: Yes.

15:43:18 4 BY MR. MAZE:

15:43:18 5 Q. And it applies equally to 2003 and 2011;

15:43:22 6 they were both done for the same purpose?

15:43:24 7 MR. ROSS: Objection.

15:43:24 8 THE WITNESS: Well, 2003 was less

15:43:29 9 discriminatory. It was a compromise between white

15:43:32 10 Democrats and white Republicans in a sense.

15:43:35 11 BY MR. MAZE:

15:43:35 12 Q. But discriminatory, nonetheless?

15:43:37 13 A. It was discriminatory, but much less

15:43:39 14 discriminatory.

15:43:39 15 Q. If you had been asked to write an opinion

15:43:42 16 using the same factors as you use in this case, you

15:43:46 17 would have come to the same conclusion; correct,

15:43:48 18 that it was passed with a discriminatory intent or

15:43:51 19 purpose? While it may not have been as strong as

15:43:54 20 this one, in your opinion, you still would have come

15:43:57 21 to the same result; correct?

15:43:58 22 MR. ROSS: Objection. You're

15:43:58 1 mischaracterizing his testimony.

15:44:00 2 MR. MAZE: I'm asking him what he's

15:44:01 3 saying.

15:44:02 4 MR. ROSS: Go ahead.

15:44:02 5 THE WITNESS: I would have found that it

15:44:04 6 was passed with a discriminatory intent, but that it

15:44:07 7 wasn't a very serious, wasn't likely to have a very

15:44:12 8 serious discriminatory effect. And the effect part

15:44:16 9 of the intent case would have been weaker than the

15:44:22 10 effect part of this intent case.

15:44:24 11 BY MR. MAZE:

15:44:24 12 Q. Turn to page 57. And you've got a table

15:44:31 13 that talks about forms of identification, and I need

15:44:37 14 clarification. On page 57 you state "State or U.S.

15:44:43 15 Government ID, photo or non-photo." And I'm trying

15:44:46 16 to understand how that is different than Government

15:44:50 17 Photo ID, U.S. or any state, which you have on the

15:44:54 18 previous page, one of which you say is valid, and

15:44:57 19 the other you say is not valid. What's the

15:44:59 20 difference between the two?

15:45:01 21 A. Because the state or U.S. Government ID,

15:45:04 22 photo or non-photo includes non-photos.

15:45:10 1 Q. You say non-photos, so why would you  
15:45:12 2 include photo? I'm not trying to trick you. I'm  
15:45:17 3 just trying to understand.

15:45:18 4 A. That's what they put in the law. I put it  
15:45:21 5 there because that's what they put in the law. So  
15:45:23 6 you could, I could have presented it by saying  
15:45:27 7 non-photo ID and tick --

15:45:35 8 Q. Let me make it easier. This is the  
15:45:37 9 government-issued ID card that I get for working at  
15:45:40 10 the office.

15:45:40 11 A. Okay. All right.

15:45:41 12 Q. Which column does this fall under? Is  
15:45:44 13 this a government photo, U.S. or any state, which is  
15:45:47 14 a yes, or is this a state or U.S. Government ID  
15:45:50 15 photo or non-photo?

15:45:54 16 A. It would fall under both, but if you  
15:45:57 17 didn't have a photo on it, it would, it would fall  
15:46:03 18 under the second.

15:46:04 19 Q. Okay. So because it has a photo, it falls  
15:46:07 20 under the first?

15:46:08 21 A. Yes. It could fall under the second as  
15:46:10 22 well.

15:46:10 1 Q. But the second says, as passed, I couldn't  
15:46:14 2 use it, but I think clearly I can use it. See, if  
15:46:21 3 it's in the second --  
15:46:22 4 A. Yes, yes.  
15:46:23 5 Q. -- you have no Xs in 2011. I'm just  
15:46:26 6 trying to understand why that column exists to say  
15:46:28 7 that it changed from '03 to '11, that a state or  
15:46:33 8 U.S. Government photo ID no longer was accepted when  
15:46:36 9 it had been, which I believe is not correct.  
15:46:38 10 A. Okay.  
15:46:39 11 MR. ROSS: Objection. It says photo or  
15:46:41 12 non-photo.  
15:46:43 13 THE WITNESS: So I could have stated this  
15:46:45 14 as just non-photo.  
15:46:46 15 BY MR. MAZE:  
15:46:46 16 Q. Right.  
15:46:47 17 A. And put an X there and no X later.  
15:46:49 18 Q. Okay. If you just put non-photo, I would  
15:46:52 19 get it. I didn't understand because it said  
15:46:55 20 photo -- okay. Turn to page 81, paragraph 173. And  
15:47:12 21 the bottom of the last paragraph I'm just going to  
15:47:14 22 read.

15:47:15 1 "Instead of recognizing a right to  
15:47:16 2 education, the 2011 session of the legislature cut  
15:47:21 3 more than 1,100 teaching jobs, reduced teacher pay,  
15:47:26 4 required a higher teacher contribution to health  
15:47:28 5 insurance, made it easier to fire teachers, and  
15:47:32 6 stopped the state from deducting dues for political  
15:47:35 7 action from teachers' salaries." Did I read that  
15:47:37 8 correctly?

15:47:38 9 A. Yes.

15:47:38 10 Q. Why is it your opinion that the  
15:47:42 11 legislature's cutting of the education budget proves  
15:47:48 12 or lends further evidence to a discriminatory intent  
15:47:51 13 when it comes to voter ID? In other words, why is  
15:47:56 14 this in here?

15:47:57 15 A. The next line, I think --

15:47:59 16 Q. Okay.

15:48:00 17 A. -- perhaps explains that. "Any reductions  
15:48:02 18 in educational services in the power of black allies  
15:48:06 19 like the Alabama Black Education Association  
15:48:11 20 disproportionately damaged African Americans."

15:48:12 21 Q. But don't all white and black children go  
15:48:15 22 to Alabama public schools?

15:48:17 1 MR. ROSS: Objection.

15:48:18 2 BY MR. MAZE:

15:48:18 3 Q. Why is it disproportionate? If you're

15:48:21 4 cutting school, then why isn't everybody equally

15:48:24 5 effected? How does this prove discriminatory intent

15:48:27 6 as to one race over another?

15:48:29 7 A. A lot of white kids in Alabama go to

15:48:37 8 private schools.

15:48:37 9 Q. Okay.

15:48:38 10 A. Probably a higher proportion of black kids

15:48:41 11 go to public schools than white kids go to public

15:48:45 12 schools. Black children are more dependent on

15:48:52 13 public education because there is more poverty.

15:48:58 14 There is more to overcome. Education gives greater

15:49:02 15 benefits. Potentially, if it's equally offered to

15:49:07 16 people who are disadvantaged by the current system

15:49:10 17 than to people who are advantaged by the current

15:49:14 18 system, if it's equally offered, so cutbacks --

15:49:18 19 education, public education is redistributive

15:49:25 20 fundamentally.

15:49:26 21 It's always been thought of in that way in

15:49:29 22 the United States, and anything that hits public

15:49:33 1 education very hard would, therefore, have a  
15:49:36 2 disproportionate effect on people who are  
15:49:39 3 disadvantaged, particularly African Americans in  
15:49:41 4 Alabama.

15:49:50 5 MR. ROSS: I don't know how much more time  
15:49:51 6 you have, but do you want to take a short break?

15:49:54 7 MR. MAZE: Sure.

15:49:57 8 THE WITNESS: I'm fine with going on.

15:50:00 9 MR. ROSS: Let's take a short break.

15:50:01 10 MR. MAZE: I'll tell you, if you let me go  
15:50:03 11 15 more minutes, I'll finish and you can prep him,  
15:50:06 12 if you have any questions for him. I'm 15 minutes  
15:50:09 13 from being done. It's your call.

15:50:11 14 MR. ROSS: Let's take a five-minute break.

15:50:15 15 (Whereupon, a short recess was taken from

16:03:48 16 3:50 to 4:03 p.m.)

16:03:48 17 BY MR. MAZE:

16:04:55 18 Q. Okay. We are on page 60 of your report,  
16:05:00 19 and you have a section entitled "Revealing Referenda  
16:05:04 20 on Constitutional Amendments"; correct?

16:05:06 21 A. Yes.

16:05:06 22 Q. In that section, particularly paragraph



16:05:11 1 127, you talk about 60 percent of the voters

16:05:17 2 endorsed removing from the state constitution a ban

16:05:22 3 on interracial marriage, but a political scientist

16:05:26 4 estimated only 44 percent of whites voted for the

16:05:30 5 proposition; correct?

16:05:31 6 A. Yes.

16:05:31 7 Q. And then on the next page you talk about

16:05:37 8 Amendment 2, which was the constitutional amendment

16:05:43 9 regarding public schools; correct?

16:05:47 10 A. Yes.

16:05:48 11 Q. Why do you consider it relevant in judging

16:05:53 12 the legislature's intent in 2011 how the votes

16:05:58 13 turned out on two constitutional amendments?

16:06:02 14 A. It reflects public opinion in general. I

16:06:11 15 say in paragraph 127 Alabama could not escape its

16:06:16 16 past and attempts to do so in 2000 and 2004 casting

16:06:21 17 an interesting light on white public opinion.

16:06:24 18 Q. Okay. So here's my question. In the last

16:06:26 19 hour you told me, and I wrote it down with quotes,

16:06:29 20 that the public was, quote, ill informed and that

16:06:33 21 you didn't consider the opinions of black voters who

16:06:37 22 were in favor of voter ID because you should only

16:06:40 1 look or, quote, almost exclusively look at

16:06:44 2 legislators, yet when it comes to constitutional

16:06:47 3 amendments that favor your position, you're now

16:06:52 4 relying on voters and not the legislators

16:06:55 5 themselves; correct?

16:06:55 6 MR. ROSS: Objection. Mischaracterizing

16:06:58 7 his testimony.

16:06:58 8 BY MR. MAZE:

16:06:59 9 Q. You understand the difference between the

16:07:01 10 two? Earlier you told me we couldn't look at what

16:07:05 11 voters though of voter ID law, but now we're looking

16:07:08 12 at what voters think about interracial marriage and

13 public schools as evidence of the legislature's

16:07:11 14 intent. Which one is it? Does the public inform

16:07:14 15 the legislature's intent or is the public completely

16:07:17 16 irrelevant to the legislature's intent?

16:07:22 17 A. It depends upon the issue and the nature

16:07:26 18 of the question.

16:07:27 19 Q. Okay. Let's talk first about voter ID.

16:07:31 20 Is the public's opinion about voter ID relevant to

16:07:37 21 the legislature's intent?

16:07:39 22 A. It's something that might be taken into

16:07:42 1 account, but it is not, it's not the most important  
16:07:48 2 thing. The difference between the constitutional  
16:07:51 3 amendments and the reason that I was spotlighting  
16:07:55 4 those and differing on the voter ID is twofold.

16:08:03 5 One, the constitutional amendments were  
16:08:07 6 voted on by the public. They were quite specific,  
16:08:10 7 so the public knew that these provisions did X, Y  
16:08:16 8 and Z. In the voter ID, they don't vote on the  
16:08:22 9 voter ID because it's not a constitutional amendment  
16:08:24 10 and it's not something that's in a referendum, and  
16:08:29 11 they don't have X, Y, Z; these are the provisions.

16:08:35 12 Q. So how do you --

16:08:38 13 A. But, furthermore, the referenda on  
16:08:41 14 constitutional amendments related to questions that  
16:08:46 15 were of less technical nature and more generally,  
16:08:53 16 obviously, reflected of racial matters than voter ID  
16:08:58 17 might be presented to have. And so you take those  
16:09:04 18 measures and you say public opinion is white public  
16:09:10 19 opinion so conservative in Alabama that they  
16:09:14 20 wouldn't even vote, a majority of them wouldn't even  
16:09:20 21 vote for a constitutional amendment to take the ban  
16:09:22 22 on interracial marriage, which had been illegal

16:09:26 1 since 1967, out of the constitution.

16:09:32 2 And the discussion of section, Article

16:09:37 3 2 -- Amendment 2, rather, is another amendment that

16:09:43 4 has consequences for schools and that was adopted as

16:09:50 5 part of the anti-Brown versus Board of Education

16:09:54 6 reaction. The failure to get rid of that also

16:10:00 7 indicates how conservative white public opinion was.

16:10:04 8 Q. So --

16:10:05 9 A. The legislature acts with the knowledge of

16:10:09 10 what white public opinion generally is, and the idea

16:10:16 11 that white public opinion was so conservative on

16:10:19 12 race, even still not back in the 1960s, not in 1901,

16:10:26 13 but in 2004 and so on, was so conservative gives

16:10:36 14 historical context to the legislature's actions

16:10:41 15 afterwards.

16:10:43 16 Q. How does --

16:10:43 17 A. Including voter ID.

16:10:45 18 Q. How does a constitutional amendment get on

16:10:48 19 the ballot for persons to vote in Alabama?

16:10:51 20 A. I think it's put on by the legislature.

16:10:53 21 Q. By a vote of the legislature; correct?

16:10:55 22 A. That's correct.

16:10:55 1 Q. What percentage of white legislators voted  
16:10:59 2 in favor of putting that on the ballot in 2004?

16:11:03 3 A. I think it was virtually unanimous.

16:11:05 4 Q. It was unanimous, 100 percent. Does that  
16:11:09 5 not reflect that the legislature, at the time of  
16:11:12 6 2004, did not have a discriminatory intent or  
16:11:15 7 purpose with regard to that bill since every single  
16:11:18 8 one of them voted to put it on the ballot?

16:11:20 9 A. I think they thought they should get rid  
16:11:23 10 of this vestige of Jim Crow, but they must have been  
16:11:28 11 surprised, actually, that the voters didn't. And  
16:11:35 12 seeing that would have some influence about how they  
16:11:39 13 would act in the future on other laws.

16:11:42 14 Q. Let's turn to page 99, paragraph 204. You  
16:12:01 15 say "It is particularly important for the impact of  
16:12:03 16 photo ID laws that only 4 percent of white  
16:12:06 17 households lack a vehicle compared to 13.9 percent  
16:12:10 18 of African Americans, over three times as high  
16:12:13 19 percentage"; correct?

16:12:14 20 A. Correct.

16:12:15 21 Q. Is that disparity between white and  
16:12:20 22 African-American households that possess a vehicle

16:12:23 1 dissipated or eliminated by the fact that Alabama  
16:12:27 2 offers to bring free photo ID cards to a person's  
16:12:32 3 house and, thus, they don't need a vehicle to get  
16:12:35 4 one?

16:12:35 5 MR. ROSS: Objection. You're, again,  
16:12:41 6 assuming facts that are not in evidence. You can  
16:12:43 7 answer, to the extent you can.

16:12:45 8 MR. MAZE: I'll strike it and restart.

16:12:47 9 BY MR. MAZE:

16:12:48 10 Q. You have an exhibit in front of you,  
16:12:50 11 Defendant or Deposition Exhibit 3, that shows how a  
16:12:54 12 person can request an in-home visit; correct?

16:12:56 13 A. Yes.

16:12:57 14 Q. So with that fact that is in evidence does  
16:13:01 15 it dissipate your belief that it is important that  
16:13:06 16 African Americans are three times more likely to  
16:13:08 17 lack a vehicle than white Alabamans?

16:13:12 18 MR. ROSS: Objection. Again, there's --  
16:13:15 19 all he knows is what you've presented him with and  
16:13:18 20 not other surrounding circumstances, but you can  
16:13:20 21 answer, to the extent you can.

16:13:22 22 THE WITNESS: Okay. Two answers. One, if

16:13:28 1 that is used in a widespread fashion. If Alabama  
16:13:34 2 makes it, uses publicity to make it clear to people  
16:13:39 3 who don't have photo IDs now that they can get them  
16:13:43 4 delivered to their houses -- does Amazon do that? --  
16:13:51 5 then that diminishes the effect of photo ID laws,  
16:13:58 6 the discriminatory effect of photo ID laws. But  
16:14:03 7 that later occurrence does not obviate the case for  
16:14:12 8 what was done in 2011.

16:14:14 9 BY MR. MAZE:

16:14:14 10 Q. Right. And this goes back to what we  
16:14:16 11 talked about earlier, that if you got rid of the  
16:14:20 12 2011 law that you could see circumstances in which  
16:14:22 13 in 2018 we could pass a law without a discriminatory  
16:14:27 14 intent?

16:14:28 15 A. I would be very happy if Alabama would  
16:14:33 16 change its mind and pass a law requiring the  
16:14:38 17 Secretary of State to deliver voter registration  
16:14:43 18 cards or photo IDs, if necessary, that would make it  
16:14:47 19 easy for everybody to vote who was registered and  
16:14:51 20 also if they would make registration easier.

16:14:54 21 Q. Paragraph 234, page 112, the second  
16:15:14 22 sentence says "In 2011 race so overlapped with party

16:15:18 1 that partisan intent was indistinguishable from a  
16:15:22 2 racial intent." Did I read that correctly?

16:15:24 3 A. Yes.

16:15:25 4 Q. Would you agree that that statement still  
16:15:27 5 applies in 2017, that race so overlaps with party in  
16:15:33 6 Alabama that partisan intent cannot be distinguished  
16:15:37 7 from a racial intent?

16:15:38 8 MR. ROSS: Objection.

16:15:40 9 THE WITNESS: That was a statement about  
16:15:41 10 the intent of the passage of H.B. 19. With respect  
16:15:48 11 to other laws, it might possibly not hold. The  
16:15:58 12 overlap is still very great, and there is certainly  
16:16:04 13 reason to believe that something that was done for  
16:16:08 14 partisan reason can't be distinguished from  
16:16:11 15 something that was done for a racial reason.

16:16:15 16 BY MR. MAZE:

16:16:15 17 Q. And your --

16:16:15 18 A. But it depends upon what exactly was done.  
16:16:19 19 That specifically is related to 2011. I don't think  
16:16:23 20 I would take it farther.

16:16:24 21 Q. Well, I want to take it farther because  
16:16:26 22 what you've said in your report has implications for



16:16:29 1 the future, and let me give you examples of what I  
16:16:32 2 mean. Part of your facts or evidence in your report  
16:16:42 3 is the fact that the Legislative Black Caucus had  
16:16:47 4 for a long time said that voter ID law was  
16:16:53 5 discriminatory; correct?

16:16:55 6 A. I've gone over this a good many times.

16:16:58 7 Q. I'm just trying to get it as a set-up  
16:17:01 8 question. I'm not trying to --

16:17:03 9 A. Well, understanding that the purpose of  
16:17:06 10 emphasizing that was not to impute the intent to the  
16:17:16 11 pro-voter ID people, just purely on the basis of the  
16:17:20 12 fact that the anti-voter ID people said this would  
16:17:24 13 have a racially discriminatory effect and have a  
16:17:27 14 racially discriminatory intent. It was simply to  
16:17:30 15 talk about consciousness.

16:17:31 16 Q. And that's where I want to go because I  
16:17:34 17 need you to help me understand how this can work.  
16:17:39 18 Let's say, for example, you were talking earlier  
16:17:41 19 about how public schools that, cutting the budget of  
16:17:46 20 a public school disproportionately affects  
16:17:49 21 African-American students.

16:17:51 22 If every year the Legislative Black Caucus

16:17:55 1 says it would discriminate against African-American  
16:18:00 2 students to cut the budget of Alabama K through 12,  
16:18:05 3 is it ever possible for a Republican-controlled  
16:18:09 4 state legislature to cut the budget, when necessary,  
16:18:13 5 of public education K through 12 without  
16:18:17 6 discriminating in purpose or intent?

16:18:19 7 If the Legislative Black Caucus says this  
16:18:22 8 is going to hurt our constituency, can a Republican  
16:18:26 9 legislature ever do something against it without  
16:18:28 10 being discriminatory in intent or purpose?

16:18:33 11 MR. ROSS: Objection.

16:18:36 12 THE WITNESS: The analogy would be that  
16:18:40 13 the Republican legislature would have to have, I  
16:18:46 14 would say taken the action of cutting K through 12  
16:18:50 15 schools by -- they would have to have been conscious  
16:18:56 16 that there were charges that this would  
16:19:00 17 disproportionately impact African Americans and that  
16:19:05 18 it would be characterized by a lot of people, if it  
16:19:09 19 was, if the Black Caucus went ahead and said that  
16:19:13 20 this would have a racially discriminatory intent --  
16:19:17 21 it might not, but if they did, then that would be a  
16:19:22 22 conscious act on the part of the Republican

16:19:26 1 legislature.

16:19:26 2 That's not the only piece of evidence that  
16:19:28 3 you would use if you were evaluating whether, in  
16:19:32 4 fact, it was adopted for a racially discriminatory  
16:19:34 5 intent.

16:19:34 6 BY MR. MAZE:

16:19:34 7 Q. So it is possible for a Republican-led  
16:19:39 8 legislature to pass a bill over the opposition of  
16:19:44 9 the Legislative Black Caucus with regard to  
16:19:47 10 discriminatory intent or purpose, that even though  
16:19:50 11 the Legislative Black Caucus might say this is  
16:19:52 12 objectionable because it hurts our constituency,  
16:19:56 13 there are instances in which a Republican  
16:19:58 14 legislature can say, but we still need to do it for  
16:20:01 15 valid nondiscriminatory reasons? Is that possible?

16:20:06 16 MR. ROSS: Objection.

16:20:08 17 THE WITNESS: I think that you would  
16:20:13 18 evaluate whether there were nondiscriminatory  
16:20:17 19 reasons that were persuasive using the same sorts of  
16:20:23 20 analysis that I use here with respect to that  
16:20:26 21 particular law.

16:20:28 22 BY MR. MAZE:

16:20:28 1 Q. Okay. So let's take what you just said  
16:20:31 2 and apply it to this case. Is it a  
16:20:37 3 nondiscriminatory reason that someone can cite on  
16:20:42 4 the right circumstances that we want clean,  
16:20:48 5 non-fraudulent elections?

16:20:51 6 A. That's a possible nondiscriminatory  
16:20:54 7 reason.

16:20:55 8 Q. Is it a possible nondiscriminatory reason  
16:20:58 9 for the state legislature to say we want to ensure  
16:21:03 10 voter confidence in our elections?

16:21:10 11 MR. ROSS: Objection.

16:21:11 12 THE WITNESS: There are various ways to  
16:21:12 13 instill voter confidence in the elections. One of  
16:21:15 14 the ways is to ensure that everybody has an equal  
16:21:19 15 right to vote. That might well ensure voter  
16:21:23 16 confidence better than requiring a voter ID, and it  
16:21:27 17 might be that you could find surveys that would find  
16:21:31 18 that.

16:21:31 19 BY MR. MAZE:

16:21:31 20 Q. Not my question, though. The question is  
16:21:34 21 the very simple question of is citing voter  
16:21:39 22 confidence the desire to increase voter confidence

16:21:43 1 in the reliability of our elections a valid reason  
16:21:47 2 to pass a voter-related law?

16:21:51 3 MR. ROSS: Objection.

16:21:51 4 BY MR. MAZE:

16:21:52 5 Q. Regardless of the specifics of the law  
16:21:54 6 itself, is it a valid reason to say we want to  
16:21:57 7 ensure voter confidence?

16:21:58 8 MR. ROSS: Objection.

16:22:03 9 THE WITNESS: In evaluating whether that  
16:22:05 10 was true, you would have to look at a particular  
16:22:08 11 instance, and you would have to look at the  
16:22:11 12 specifics of the law.

16:22:13 13 BY MR. MAZE:

16:22:13 14 Q. Okay. Let me give you a specific.

16:22:15 15 A. So it would always be possible, but in a  
16:22:20 16 specific instance the evidence might be that it was  
16:22:24 17 not the real reason.

16:22:26 18 Q. Let me give you a specific instance. You  
16:22:28 19 told me at the very beginning of the day that you  
16:22:30 20 were a registered Democrat; correct?

16:22:32 21 A. Correct.

16:22:32 22 Q. And you financially supported Hillary

16:22:36 1 Clinton in the 2016 election; correct?

16:22:38 2 A. Correct.

16:22:39 3 Q. Do you, personally, support an

16:22:42 4 investigation into Russian interference in the 2016

16:22:45 5 election?

16:22:46 6 A. Certainly.

16:22:47 7 MR. ROSS: Objection.

16:22:47 8 BY MR. MAZE:

16:22:47 9 Q. Certainly?

16:22:48 10 A. Yes.

16:22:48 11 Q. And that is because you, personally, want

16:22:51 12 to feel confident that the American public, not the

16:22:56 13 Russians, chose the President of the United States;

16:22:59 14 correct?

16:23:00 15 MR. ROSS: Objection.

16:23:01 16 THE WITNESS: There are many reasons for

16:23:03 17 that.

16:23:03 18 BY MR. MAZE:

16:23:03 19 Q. Well, what are they?

16:23:05 20 A. That's certainly one reason. I want to

16:23:09 21 find out how it was done, whether it could be done

16:23:12 22 in the future, how pervasive it was, what mechanisms

16:23:18 1 were used, whether there was collaboration by people  
16:23:28 2 connected with or dissociated with the Trump  
16:23:31 3 campaign, whether this was part of an official  
16:23:37 4 Soviet -- Soviet, back in the wrong times; I feel  
16:23:43 5 like that sometimes -- an official Russian  
16:23:46 6 government policy or a patriotic soul, as Mr. Putin  
16:23:55 7 said, deciding to act. The election, I would like  
16:24:03 8 to go get to the bottom of all the facts about it.

16:24:06 9 Q. So in that instance at least you would say  
16:24:09 10 there are certain circumstances in which the  
16:24:12 11 government needs to take action to show the public  
16:24:17 12 that the integrity of the election process has been  
16:24:23 13 secured?

16:24:25 14 A. Yes, and to secure it for the future as  
16:24:28 15 well.

16:24:29 16 MR. MAZE: That's all. Thank you, sir.

16:24:49 17 MR. ROSS: Take a very short break.

16:24:54 18 (Whereupon, a short recess was taken from  
19 4:24 to 4:34 p.m.)

16:34:16 20 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

16:34:16 21 BY MR. ROSS:

16:34:50 22 Q. All right. Dr. Kousser, I have a few

16:34:54 1 follow-up questions for you. Let's go back to  
16:34:57 2 Defendant's Exhibit 3. Have you had a chance to  
16:35:01 3 review that exhibit?

16:35:02 4 A. Yes, I've looked at it further.

16:35:04 5 Q. And I believe Mr. Maze had a few questions  
16:35:07 6 for you about it, and I believe it was Mr. Maze's  
16:35:13 7 representation that Secretary Merrill ultimately  
16:35:17 8 assisted Mr. Strayer; is that right?

16:35:19 9 A. Yes.

16:35:20 10 Q. Can you describe to me, based on this  
16:35:25 11 article, what happened between Mr. Strayer initially  
16:35:28 12 reaching out to the Secretary of State's office and  
16:35:30 13 him getting the photo ID needed to vote?

16:35:33 14 A. Well, he called the county Registrar's  
16:35:36 15 office it says. Then he didn't get any guarantee  
16:35:44 16 that his vote would be counted. Then he contacted  
16:35:47 17 his state representative, Patricia Todd. She  
16:35:53 18 contacted Secretary Merrill. There were several  
16:35:56 19 phone calls from her and Strayer, and then Merrill  
16:36:01 20 changed the ballot application, absentee ballot  
16:36:06 21 application to make it clear that physically  
16:36:09 22 disabled people can vote absentee. So he went



16:36:13 1 through a whole lot of steps before Merrill did  
16:36:20 2 that.

16:36:20 3 And then Merrill eventually sent somebody  
16:36:27 4 to take his picture so that he could get a photo ID,  
16:36:31 5 and the camera didn't work, and somebody took a  
16:36:36 6 camera, picture with a smart phone, and all of those  
16:36:42 7 things are things that he had to do, but it's a  
16:36:45 8 pretty long and complicated process.

16:36:48 9 It's not like he could just walk in and do  
16:36:53 10 this. He can't walk in because he's at home laid up  
16:36:58 11 with cancer. This is a lot to go through for  
16:37:02 12 somebody who particularly was in that sort of  
16:37:05 13 condition.

16:37:06 14 Q. It's not clear to me that it's in the  
16:37:10 15 article, but -- well, strike that. Mr. Maze was  
16:37:16 16 asking you about Mr. Merrill's deposition. When the  
16:37:27 17 deposition transcript becomes available, do you  
16:37:30 18 intend to review it?

16:37:32 19 MR. MAZE: Object to form. Only because  
16:37:33 20 it is available. Sorry.

16:37:36 21 BY MR. ROSS:

16:37:36 22 Q. Now that it's -- well, I'll represent to

16:37:40 1 you that the deposition transcript only became

16:37:42 2 available in the last several days; is that right?

16:37:44 3 Mr. Kousser, or I'll represent to you.

16:37:48 4 A. I don't know. Okay.

16:37:49 5 Q. All right. Do you intend to read it now

16:37:51 6 that it is available?

16:37:52 7 A. Yes, if you would let me read it.

16:37:57 8 Q. And so Mr. Maze was also asking you about

16:38:01 9 the availability of what he purports to be the

16:38:06 10 ability to request a mobile unit, and he

16:38:10 11 specifically was referencing Exhibit 2. If I told

16:38:17 12 you that only four people had ever received a visit

16:38:21 13 from the mobile unit, would that change your view of

16:38:25 14 the effectiveness of the mobile unit as to its

16:38:28 15 ability to lessen the discriminatory effect of the

16:38:30 16 photo ID law?

16:38:32 17 A. It would indicate that this was a

16:38:40 18 relatively ineffective gesture, and the mobile unit

16:38:45 19 requirement wouldn't seem then to me to diminish my

16:38:50 20 confidence that the law was carried out with the

16:38:56 21 discriminatory intent with which I think it was

16:38:59 22 passed.

16:39:00 1 Q. And I understand that Mr. Maze has  
16:39:04 2 represented to you that Exhibit 2 is all that is  
16:39:08 3 required in order for someone to request a home  
16:39:12 4 visit, but, if I were to tell you that the Secretary  
16:39:15 5 of State testified that there is actually a needs  
16:39:18 6 test that he has decided to apply which requires a  
16:39:21 7 voter to demonstrate that they have reached out to  
16:39:25 8 local organizations like the NAACP and other groups  
16:39:29 9 before they could get a home visit, would that  
16:39:31 10 change your view of how effective this is, this  
16:39:35 11 purported home visit option to allowing people to  
16:39:39 12 actually get the photo ID and to lessen its  
16:39:43 13 discriminatory effect?

16:39:44 14 A. That would make the gesture even less  
16:39:47 15 meaningful.

16:39:48 16 Q. Mr. Maze was also asking you reference,  
16:39:56 17 represented to you that there was voter  
16:40:00 18 registration, online voter registration that was  
16:40:02 19 available in Alabama. Can you turn to me, for me to  
16:40:06 20 page 116 of your report, paragraph 241?

16:40:27 21 A. Yes. It reads "In very recent history,  
16:40:31 22 Alabama settled two separate NVRA lawsuits with the

16:40:36 1 Alabama NAACP and the U.S. Department of Justice.

16:40:40 2 In 2016 the D.C. Circuit blocked the requests of

16:40:44 3 Secretary Merrill to the Federal Election Assistance

16:40:47 4 Commission for permission to enforce H.B. 56's

16:40:51 5 documentary proof of citizenship requirement for

16:40:54 6 federal voters."

16:40:55 7 Q. So were you aware of those NVRA lawsuits

16:40:59 8 that were recently settled by Alabama?

16:41:02 9 A. To the extent that I've read these

16:41:05 10 documents, yes.

16:41:05 11 Q. And is it your understanding that, as a

16:41:10 12 part of the settlement, Alabama agreed to offer

16:41:14 13 online voter registration?

16:41:15 14 A. That's my understanding.

16:41:18 15 Q. So, to the extent Alabama is offering

16:41:21 16 online voter registration, that was a part of a

16:41:24 17 settlement; is that right?

16:41:25 18 A. I believe that that's the case.

16:41:27 19 Q. Okay. Is the focus of your report on the

16:41:34 20 intent of the Secretary of State or on the intent of

16:41:38 21 the Alabama legislature in 2011?

16:41:41 22 A. It's on the intent of the Alabama

16:41:44 1 legislature in 2011 and in general of the Alabama  
16:41:49 2 legislature in its consideration of voter ID bills  
16:41:51 3 from 1995 on.

16:41:53 4 Q. And Mr. Maze was also asking you about  
16:41:57 5 your prior testimony. What are the other voter ID  
16:42:01 6 cases you've testified in?

16:42:02 7 A. The North Carolina case and the Texas  
16:42:05 8 case.

16:42:05 9 Q. And in those cases in Texas, did the --  
16:42:10 10 you testified in the Section 5 trial; is that right?

16:42:12 11 A. Correct.

16:42:13 12 Q. Did the Section 5 court judges, did they  
16:42:17 13 ultimately block the Texas voter ID law?

16:42:20 14 A. They did.

16:42:21 15 Q. And are you aware of a later case in  
16:42:25 16 Texas, VC versus Perry?

16:42:27 17 A. Yes.

16:42:28 18 Q. And was Texas's voter ID law found to be  
16:42:32 19 intentionally discriminatory in that case?

16:42:34 20 A. Yes.

16:42:35 21 Q. Is that consistent with what you testified  
16:42:36 22 to in the prior case?

16:42:37 1 A. Yes.

16:42:38 2 Q. And in the North Carolina voter ID case,  
16:42:40 3 you testified in that as well?

16:42:42 4 A. Yes.

16:42:42 5 Q. You testified that that law was  
16:42:44 6 intentionally discriminatory?

16:42:45 7 A. Yes.

16:42:46 8 Q. And what did the court of appeals  
16:42:49 9 ultimately find in that case?

16:42:51 10 A. They decided that the law was  
16:42:53 11 intentionally discriminatory.

16:42:54 12 Q. And is that consistent with what you  
16:42:56 13 found?

16:42:56 14 A. Yes.

16:42:57 15 Q. Okay. In the other Alabama cases in which  
16:43:02 16 you've testified, we'll start with Mobile versus  
16:43:08 17 Bolden, a case from 1982, was there also allegations  
16:43:14 18 related to discrimination that occurred in the 1970s  
16:43:18 19 and '80s regarding the maintenance of at-large  
16:43:21 20 elections in Mobile, Alabama?

16:43:23 21 A. Yes.

16:43:24 22 Q. And was there, was the same true, that

16:43:26 1 there was testimony in the Brown versus Board of  
16:43:29 2 School Commissioners, of Mobile School  
16:43:32 3 Commissioners, was there also testimony about the  
16:43:35 4 maintenance of at-large elections that was  
16:43:38 5 intentionally discriminatory in the 1970s and 1980s?

16:43:42 6 A. Yes.

16:43:42 7 Q. Okay. There was some testimony earlier  
16:44:00 8 about sort of bias in the news media. Do you recall  
16:44:03 9 that testimony --

16:44:04 10 A. Yes.

16:44:04 11 Q. -- those questions? Is it fair to say, if  
16:44:11 12 you're reading an opinion piece, you may give it  
16:44:14 13 less weight than a piece that's purporting to just  
16:44:18 14 tell the facts; is that right?

16:44:20 15 A. Well, it depends on what you're looking  
16:44:22 16 for, but, if you're looking for facts, you typically  
16:44:25 17 don't look in opinion pieces. They may contain  
16:44:28 18 facts, but usually there -- unless you're trying to  
16:44:35 19 figure out what public opinion is, you look to them  
16:44:38 20 less for facts than you do to news articles.

16:44:41 21 Q. And I believe your testimony earlier to  
16:44:43 22 Mr. Maze was that you look at things from various,

16:44:48 1 people with various biases and various opinions and  
16:44:51 2 you try to weigh, you know, which ones you're going  
16:44:57 3 to take into consideration and your, you review all  
16:45:02 4 of them; is that fair to say?

16:45:04 5 A. Yes.

16:45:04 6 Q. Okay. You review all of the evidence and  
16:45:06 7 then try to come to a conclusion. You don't focus  
16:45:09 8 on one piece of evidence over another; is that  
16:45:12 9 right? And by evidence I mean newspaper articles.

16:45:15 10 A. Yes, I just downloaded as much as I could  
16:45:19 11 and evaluated it and used what seemed to be most  
16:45:22 12 relevant.

16:45:23 13 Q. Okay. This website, the Alabama Secretary  
16:45:46 14 of State's website, what you've seen here,  
16:45:50 15 Exhibit 2, is this, were you provided with or are  
16:45:53 16 you aware of Alabama providing any of this  
16:45:55 17 information in Spanish?

16:46:00 18 A. I think that it is the case that it does  
16:46:02 19 not.

16:46:03 20 Q. Can you turn to me to page 113 of your  
16:46:07 21 report, the last sentence in paragraph 236? And do  
16:46:16 22 I see there that you note that 37 percent of Latinos



16:46:20 1 in Alabama speak English not well or not at all?

16:46:23 2 A. Yes.

16:46:24 3 Q. So is it your testimony, which I believe

16:46:26 4 is also in your report, that the failure to provide

16:46:29 5 information in Spanish has an impact on those

16:46:33 6 Latinos who do not speak English?

16:46:37 7 A. Who do not read.

16:46:38 8 Q. Do not speak English well?

16:46:41 9 A. Or read English, yes.

16:46:42 10 Q. Okay. So then the decisions by the

16:46:47 11 Secretary of State not to provide information in

16:46:50 12 Spanish, that could have a disparate impact on

16:46:53 13 Latinos; is that right?

16:46:55 14 A. Yes.

16:46:55 15 Q. And that also could be indicative of

16:46:59 16 discriminatory intent; is that fair to say?

16:47:01 17 A. Yes, and discriminatory administration.

16:47:05 18 Q. Mr. Maze -- let's also turn to page 115 of

16:47:21 19 your report. 116. I'm sorry. In paragraph 243 to

16:47:30 20 244 you discuss the positively identified provision

16:47:36 21 in Alabama. Do you recall that portion? Are you

16:47:40 22 able to review it? You don't have to read it.

16:47:43 1 Just --

16:47:44 2 A. Yes.

16:47:47 3 Q. What is your -- and Mr. Maze asked you

16:47:52 4 about this earlier, but can you just tell me what

16:47:55 5 your concern is regarding the positively identified

16:47:59 6 provision in Alabama's law?

16:48:02 7 A. The concern is with arbitrary enforcement

16:48:07 8 and particularly discriminatory arbitrary

16:48:09 9 enforcement. How many election officials would

16:48:17 10 positively identify someone that they knew who was

16:48:21 11 black versus someone they knew who was white? What

16:48:25 12 sort of guidelines would there be on positively

16:48:28 13 identify? How sure do you have to be that this is

16:48:32 14 really the person there?

16:48:36 15 It's sort of an invitation to

16:48:37 16 arbitrariness, and it is reminiscent of the old time

16:48:46 17 voucher system where somebody has to vouch that

16:48:50 18 someone, as they would have put it, just to clean up

16:48:56 19 the language a bit, as they would have put it in the

16:48:58 20 early 20th Century, is a good Negro.

16:49:02 21 Q. And those voucher requirements in Alabama

16:49:05 22 and other states, do they ever act as exemptions to

16:49:09 1 laws like poll taxes and literacy tests?

16:49:13 2 A. The grandfather clause or plotting

16:49:19 3 grandfather clause in Alabama were the chief

16:49:20 4 exemptions from those sorts of things, but the

16:49:29 5 voucher requirements could be used, along with poll

16:49:34 6 tax requirements, to say, yes, he's paid his poll

16:49:37 7 tax.

16:49:39 8 Sometimes they hadn't paid their poll

16:49:41 9 taxes, and that could be used in a discriminatory

16:49:44 10 fashion. I believe there were some early cases

16:49:47 11 about that. I forget the names.

16:49:48 12 Q. Are those the cases that are cited in your

16:49:52 13 report in Footnote 541?

16:49:57 14 A. Yes, that's right.

16:49:59 15 Q. Can we turn to paragraph -- we'll come

16:50:27 16 back to it. Mr. Maze has also asked you about

16:50:35 17 allegations without presenting evidence, allegations

16:50:40 18 that individuals may have been paid for their votes

16:50:44 19 in Alabama. Do you recall that discussion?

16:50:45 20 A. Yes.

16:50:46 21 Q. Does a photo ID law prevent people from

16:50:49 22 selling their votes?

16:50:50 1 A. No.

16:50:51 2 Q. Okay. And I believe you already testified  
16:50:54 3 to how a photo ID law does not prevent absentee  
16:50:58 4 ballot fraud?

16:50:59 5 A. Yes. It's a very crude method for doing  
16:51:04 6 that.

16:51:13 7 Q. Has the fact that Alabama or has the fact  
16:51:20 8 that there have been incidents of voter fraud in  
16:51:23 9 Alabama, has that ever sparked the legislature  
16:51:26 10 passing discriminatory laws in the past?

16:51:31 11 A. I'm sorry. I was --

16:51:34 12 Q. That's okay. Has Alabama ever passed  
16:51:38 13 discriminatory laws, racially discriminatory laws in  
16:51:41 14 response to alleged voter fraud?

16:51:44 15 A. Oh, quite obviously so. I have a long  
16:51:49 16 discussion of the Sayre, S-A-Y-R-E, law in 1893 and  
16:51:56 17 also the charges of fraud supposedly inspiring the  
16:52:05 18 passage of literacy taxes and poll taxes in the 1901  
16:52:11 19 Constitutional Convention. So, yes, that has been  
16:52:14 20 talked about quite a good deal, and there are other  
16:52:18 21 instances of it which I talk about it in the report.

16:52:24 22 Q. And is that, I believe this may not be the

16:52:27 1 entire universe, but is it what's on paragraph 190

16:52:34 2 to 193 of your report, which is page 191 and 192?

16:52:42 3 Are those some of the incidents you're discussing?

16:52:47 4 A. Yes.

16:52:47 5 Q. There were questions about Artur Davis, an

16:53:04 6 African American. Who is Artur Davis?

16:53:07 7 A. He was a member of Congress from -- was it

16:53:13 8 the 7th District? -- the only black majority

16:53:18 9 district in Alabama who was elected -- I have

16:53:23 10 forgotten the person that he beat, but that is a

16:53:30 11 young Harvard graduate star, etc., and he, he was

16:53:42 12 fairly successful in Congress at the beginning and

16:53:45 13 fairly popular in his district.

16:53:48 14 And then he ran for governor and faced a

16:53:54 15 white opponent, Mr. Sparks, S-P-A-R-K-S, and he

16:54:03 16 alienated black voters overwhelmingly by his vote

16:54:08 17 against Obamacare, and that seems to have been,

16:54:12 18 according to newspaper reports, the chief reason why

16:54:15 19 he did not get very substantial proportion of the

16:54:20 20 black vote, which he had expected to get.

16:54:25 21 And then he sort of left Alabama and

16:54:30 22 became a Republican, and I think he gave a speech at

16:54:38 1 the 2012 Republican National Convention and endorsed  
16:54:43 2 voter ID.

16:54:44 3 Q. Was Mr. Davis in the Alabama legislature  
16:54:47 4 in 2011?

16:54:48 5 A. No.

16:54:49 6 Q. He was in Congress prior to that; is that  
16:54:54 7 right?

16:54:54 8 A. Yes.

16:54:54 9 Q. Mr. Maze was also asking you about sort of  
16:55:08 10 the views of the constituents of the Alabama  
16:55:13 11 legislature and whether you take that into account  
16:55:15 12 in your analysis. Do you remember that discussion?

16:55:17 13 A. Yes.

16:55:18 14 Q. And could it, could the views of  
16:55:28 15 constituents in some ways impact the votes of  
16:55:34 16 legislators?

16:55:35 17 A. The views of constituents do impact the  
16:55:39 18 votes of legislators often.

16:55:41 19 Q. So, if legislators are getting calls about  
16:55:45 20 alleged voter fraud that is, you know, either  
16:55:51 21 incorrect or is based on racial animus of the  
16:55:56 22 constituents, is that something that's relevant to

16:55:59 1 your analysis?

16:56:01 2 A. If it's incorrect or has no backing behind  
16:56:11 3 it, then the legislator, and the legislator knew it,  
16:56:17 4 then clearly he would not want to take that -- that  
16:56:21 5 would not influence his vote.

16:56:23 6 Q. And I believe you talked with Mr. Maze  
16:56:26 7 earlier about how Republican-led Secretaries of  
16:56:32 8 State and Attorneys General in Alabama looked for  
16:56:36 9 voter fraud. Do you recall that testimony?

16:56:38 10 A. Yes.

16:56:38 11 Q. Did they ever find any evidence of voter  
16:56:41 12 fraud?

16:56:41 13 A. They did not find evidence of voter  
16:56:44 14 impersonation fraud. Sometimes they found evidence  
16:56:47 15 of absentee ballot fraud.

16:56:49 16 Q. And did they offer money, cash rewards at  
16:56:52 17 times?

16:56:53 18 A. They did, and the Republican Party did,  
16:56:56 19 and they didn't find anything.

16:56:57 20 Q. They didn't find any voter impersonation  
16:57:00 21 fraud?

16:57:01 22 A. No.

16:57:01 1 Q. Okay. There was some discussion earlier  
16:57:10 2 about how there was no robust debate in 2011 about  
16:57:15 3 the photo ID law. Do you remember that?

16:57:17 4 A. Yes.

16:57:17 5 Q. Prior to 2011, had there been debates  
16:57:22 6 about photo ID law, both public and in the  
16:57:27 7 legislature?

16:57:28 8 A. Yes.

16:57:28 9 Q. Okay. And more robust debates than what  
16:57:34 10 occurred in 2011?

16:57:35 11 A. The debates from 1995 to 2003 were much  
16:57:41 12 more robust.

16:57:42 13 Q. Okay. So does that, the fact that the  
16:57:46 14 prior debates were more robust, does that influence  
16:57:53 15 your analysis when it comes to what happened in  
16:57:58 16 2011, the fact that it was much shorter?

16:58:02 17 A. Yes.

16:58:04 18 Q. Okay. I'm going to turn -- so in 2003  
16:58:14 19 when the voter ID law was passed, I believe you were  
16:58:17 20 talking with Mr. Maze that you believe that law was  
16:58:22 21 also discriminatory; is that right?

16:58:23 22 A. Yes.



16:58:24 1 Q. Do you believe that everyone who voted for  
16:58:26 2 the 2003 law had a discriminatory intent or were  
16:58:30 3 some people motivated by their desire to pass this  
16:58:35 4 log roll?

16:58:37 5 A. Clearly, they were motivated by the desire  
16:58:41 6 to pass the log roll because, as far as I can tell,  
16:58:47 7 only one black legislator prior to 2003 voted for a  
16:58:51 8 voter ID bill, but in 2003, as a result of the log  
16:58:57 9 roll, virtually the whole Black Caucus voted for the  
16:59:03 10 voter ID law. They lived up to their end of the  
16:59:06 11 bargain. The Governor did not.

16:59:09 12 Q. What happened after the Black Caucus voted  
16:59:13 13 for the voter ID law? Did the felon  
16:59:15 14 disenfranchisement law pass?

16:59:17 15 A. That passed as well, but the Governor  
16:59:22 16 vetoed it. Pocket veto allowed it to become,  
16:59:26 17 allowed it not to become law, my understanding.  
16:59:30 18 Sort of reverse pocket veto.

16:59:32 19 Q. So, as you said, the Governor didn't hold  
16:59:36 20 up his end of the bargain?

16:59:37 21 A. And then he got, then the Legislative  
16:59:43 22 Black Caucus played very rough. The Republican

16:59:46 1 Governor Riley wanted to pass a tax bill which would  
16:59:53 2 have raised more money and been less regressive with  
17:00:00 3 a constitutional amendment, I guess, or perhaps just  
17:00:03 4 a referendum that had to pass or an initiative that  
17:00:07 5 had to pass, and he lost the support of a lot of  
17:00:13 6 Republicans.

17:00:15 7                   The Black Caucus, particularly the people  
17:00:18 8 from Mobile, Dr. Kennedy, et al., bargained tough  
17:00:24 9 with him and said we won't back this bill and the  
17:00:30 10 referendum unless you agree to sign a felon  
17:00:36 11 re-enfranchisement bill or a felon  
17:00:41 12 disenfranchisement liberalization bill. He agreed.  
17:00:45 13 The referendum failed.

17:00:49 14                   The Black Caucus kept up its part of the  
17:00:51 15 bargain again, and this time Governor Riley kept up  
17:00:55 16 his part of the bargain over the objections of a lot  
17:00:58 17 of Republicans, including Mr. Dixon, I believe.

17:01:01 18           Q. Do you know whether -- let's go to a  
17:01:10 19 different topic. House Bill 56, that was the  
17:01:17 20 anti-immigration bill passed by the Alabama  
17:01:20 21 legislature?

17:01:20 22           A. Yes.

17:01:20 1 Q. Do you know whether -- did H.B. 56 have  
17:01:24 2 any voting requirements in it?

17:01:25 3 A. It did.

17:01:27 4 Q. And what was that?

17:01:28 5 A. It required proof of citizenship.

17:01:32 6 Q. Documentary proof of citizenship; is that  
17:01:37 7 right?

17:01:37 8 A. I believe so.

17:01:38 9 Q. And was H.B. 56 submitted for  
17:01:42 10 preclearance? I believe, if you look at paragraph  
17:01:52 11 167 of your report on page 79 --

17:01:58 12 A. I'm getting tired. It was never  
17:02:07 13 precleared. They withdrew the submission.

17:02:18 14 Q. So Alabama withdrew the submission of H.B.  
17:02:22 15 56; is that right?

17:02:22 16 A. That is correct.

17:02:23 17 Q. Okay. Does that, the fact that Alabama  
17:02:29 18 submitted and then withdrew its submission around  
17:02:33 19 H.B. 56, does that influence your view of why  
17:02:38 20 Alabama may have failed to submit H.B. 19 for  
17:02:46 21 preclearance?

17:02:47 22 A. Yes. In contrast to H.B. 19, they at

17:02:54 1 least did submit it, but then they withdrew it, and  
17:03:02 2 they withdrew it five weeks before Shelby County was  
17:03:12 3 decided.

17:03:25 4 Q. If Alabama allowed people to use voter  
17:03:31 5 registration cards which are mailed to every voter  
17:03:36 6 in the state, would that be at least one less  
17:03:39 7 discriminatory alternative that they could have  
17:03:41 8 chosen for this law?

17:03:43 9 A. Yes.

17:03:44 10 Q. Would allowing an affidavit where, like in  
17:03:48 11 California, you merely need to sign it and have that  
17:03:51 12 signature match up, would that also be one less  
17:03:55 13 discriminatory option that the state could adopt or  
17:03:59 14 could have adopted in the past?

17:04:00 15 A. Yes.

17:04:01 16 Q. Okay.

17:04:08 17 MR. ROSS: That's it.

17:04:11 18 MR. MAZE: Did you say you were done? I  
17:04:13 19 didn't hear what you said.

17:04:14 20 MR. ROSS: All set, so you can go, if you  
17:04:17 21 have questions.

22 EXAMINATION BY COUNSEL FOR THE DEFENDANT

17:04:17 1 BY MR. MAZE:

17:04:17 2 Q. Do you know why the state pulled H.B. 56  
17:04:20 3 for preclearance, the logistical reason why?

17:04:22 4 MR. ROSS: Objection.

17:04:23 5 THE WITNESS: No, I do not.

17:04:24 6 BY MR. MAZE:

17:04:24 7 Q. Did you talk to anybody about why?

17:04:27 8 A. No.

17:04:27 9 Q. So how is it that you can use that as  
17:04:30 10 evidence of intent for H.B. 19 when you don't know  
17:04:34 11 why H.B. 56 was pulled?

17:04:37 12 A. The date at which it was pulled seems  
17:04:43 13 suspicious.

17:04:44 14 Q. You're making an assumption based on no  
17:04:46 15 facts; correct?

17:04:47 16 MR. ROSS: Objection.

17:04:49 17 BY MR. MAZE:

17:04:49 18 Q. Yes or no. You're making an assumption  
17:04:51 19 that's based on no facts?

17:04:53 20 A. It's based on the fact that it was five  
17:04:55 21 weeks before Shelby County was decided. Shelby  
17:04:59 22 County was clearly going to be decided, and they

17:05:04 1 said, essentially, we'll wait to see what happens in  
17:05:09 2 Shelby County.

17:05:09 3 Q. Who said that?

17:05:10 4 A. Their action expresses that.

17:05:15 5 Q. Who's they? You continue --

17:05:22 6 A. Presumably, the Secretary of State.

17:05:27 7 Presumably, it's the Secretary of State's office.

17:05:29 8 Q. You presume that because you don't

17:05:31 9 understand the internal workings of how preclearance

17:05:34 10 was done; right?

17:05:35 11 MR. ROSS: Objection. His report speaks

17:05:37 12 for itself. Paragraph 167 and Footnote 344, the

17:05:41 13 information is in there.

17:05:43 14 MR. MAZE: Mr. Ross, you're coaching the

17:05:45 15 witness. Object to form, and he can answer the

17:05:47 16 question.

17:05:47 17 MR. ROSS: Objecting to form.

17:05:49 18 BY MR. MAZE:

17:05:49 19 Q. All right, sir.

17:05:50 20 MR. ROSS: Because the information is in

17:05:52 21 his expert report, and you're quizzing him on

17:05:54 22 information that is in front of you in his expert

17:05:56 1 report.

17:05:56 2 BY MR. MAZE:

17:05:56 3 Q. In your expert report, does it describe

17:05:59 4 the procedural process that the state goes through

17:06:01 5 to submit preclearance to the Department of Justice

17:06:05 6 before Shelby County?

17:06:06 7 A. It gives a reference to a letter from the

17:06:11 8 Assistant Attorney General of Alabama --

17:06:12 9 Q. Who wrote it?

17:06:13 10 A. -- to the chief of the voting section,

17:06:15 11 Winfield Jason Clair.

17:06:16 12 Q. Not from the Secretary of State's office;

17:06:22 13 correct?

17:06:22 14 A. Correct.

17:06:25 15 Q. Do you intend at trial to testify or to

17:06:28 16 give an opinion on the discriminatory effect of H.B.

17:06:33 17 19 on Latino voters?

17:06:39 18 A. I think so. I mean, it had an effect on

17:06:49 19 any voters who would have difficulties obtaining a

17:06:55 20 voter ID, so including --

17:06:57 21 Q. What statistical facts do you intend to

17:07:00 22 testify to at trial regarding the effect of H.B. 19

17:07:03 1 on Latino voters?

17:07:05 2 A. Again, I would be talking about a

17:07:11 3 prospective effect in the same way as for black

17:07:16 4 voters. Other people would be talking about the

17:07:20 5 effect on turnout. I would not be talking about

17:07:23 6 that. I would simply be talking about applying the

17:07:30 7 Senate Factors to Latinos, as well as African

17:07:35 8 Americans.

17:07:35 9 Q. And those are facts that you would assume

17:07:38 10 would happen, but you're not offering a statistical

17:07:41 11 or an actual factual basis to prove that it

17:07:46 12 happened?

17:07:46 13 MR. ROSS: Objection.

17:07:49 14 THE WITNESS: What I'm offering is what's

17:07:53 15 offered typically in Section 2 cases, Senate

17:08:00 16 Factors. There are other things that get done in

17:08:02 17 Section 2 cases that other people are going to

17:08:04 18 handle.

17:08:05 19 BY MR. MAZE:

17:08:05 20 Q. Right. All I'm trying to do, sir, is to

17:08:07 21 find out whether you, personally, intend to offer

17:08:10 22 any statistical or actual evidence that Latino



17:08:17 1 voters have been unable to vote or unwilling to vote  
17:08:21 2 due to the ID law?

17:08:22 3 MR. ROSS: Objection. I don't know what  
17:08:23 4 you mean by actual evidence.

17:08:24 5 MR. MAZE: What evidence -- strike  
17:08:26 6 everything else so far.

17:08:27 7 BY MR. MAZE:

17:08:28 8 Q. What evidence do you intend to testify to  
17:08:30 9 at trial regarding the effect of H.B. 19 on Latino  
17:08:36 10 voters?

17:08:37 11 A. I believe that it is evidence that is in  
17:08:40 12 this report already about the likely disparate  
17:08:46 13 impact because of the disparate socioeconomic  
17:08:57 14 status, the fact that Alabama doesn't offer election  
17:09:08 15 materials in Spanish, and the citizenship  
17:09:14 16 requirement that had been a part of H.B. 56.

17:09:22 17 Those are all things that have particular  
17:09:25 18 effect on Latinos. Some of them would have an  
17:09:30 19 effect on African Americans, but some of them  
17:09:32 20 particularly on Latinos.

17:09:33 21 Q. All I'm trying to find out is do you  
17:09:36 22 intend to offer any statistical proof or specific

17:09:43 1 examples like names of persons who have been

17:09:47 2 affected by this particular law?

17:09:51 3 MR. ROSS: Objection.

17:09:52 4 THE WITNESS: Not names of persons, but it

17:09:56 5 depends upon what you consider statistical proof.

17:09:58 6 BY MR. MAZE:

17:09:58 7 Q. What I consider statistical proof is are

17:10:01 8 you going to come to trial and say that I know that

17:10:05 9 there was an X percent decrease in the Latino vote,

17:10:10 10 and that is based on the application of H.B. 19?

17:10:14 11 A. I do not expect to testify to that.

17:10:16 12 Q. Okay. You testified or in your report in

17:10:22 13 North Carolina you chastised North Carolina for not

17:10:25 14 having a positively identify provision; correct?

17:10:31 15 A. I don't think that that's exactly what I

17:10:34 16 said.

17:10:35 17 Q. What did you chastise North Carolina for

17:10:38 18 with regard to the failure to allow someone to be

17:10:41 19 positively identified?

17:10:42 20 A. Can you point out the exact provision of

17:10:45 21 my report?

17:10:49 22 Q. Sure. It is page 58 of the North Carolina

17:10:54 1 report starting with Rick Glazier. Rick Glazier --

17:11:06 2 MR. ROSS: It's about four lines up from

17:11:08 3 the bottom.

17:11:09 4 BY MR. MAZE:

17:11:09 5 Q. "Rick Glazier proposed an amendment

17:11:11 6 allowing someone who did not bring a photo ID to the

17:11:13 7 polls to vote if a polling place official knew

17:11:17 8 them." Did I read that correctly?

17:11:19 9 A. Yes.

17:11:19 10 Q. That is what Alabama allows; correct?

17:11:27 11 A. Alabama allows people to be able to vote

17:11:33 12 without a photo ID in that sort of circumstance.

17:11:36 13 Q. And you say that you have a concern that,

17:11:40 14 despite the fact Alabama has done what you put in

17:11:43 15 the North Carolina report, that there could be

17:11:47 16 arbitrary enforcement. What do you mean by

17:11:50 17 arbitrary enforcement?

17:11:55 18 A. Go back to the chastise phrase. I did not

17:11:59 19 chastise North Carolina. I said that this, the

17:12:04 20 defeat of this amendment weakened the case for those

17:12:07 21 who contend that the law was about stopping fraud.

17:12:12 22 That is relating to the question about whether the

17:12:17 1 law was about stopping fraud, so that's what I meant  
17:12:22 2 there.

17:12:23 3 With respect to the arbitrariness, I  
17:12:30 4 explained earlier to you, I believe, that you wonder  
17:12:37 5 whether polling officials are applying a law  
17:12:44 6 arbitrarily. You don't know what the guidelines  
17:12:47 7 will be for the recognition of people. There is a  
17:12:52 8 possibility that polling place officials will apply  
17:12:57 9 something differently to people of different races,  
17:13:01 10 different classes, and so on and so on.

17:13:07 11 To the extent that it is a vague provision  
17:13:11 12 that leaves it up to polling place officials without  
17:13:17 13 rules or that makes it difficult even to frame the  
17:13:23 14 rules for deciding when there is a positive  
17:13:28 15 identification of people, it lends itself to  
17:13:31 16 arbitrary enforcement.

17:13:34 17 Q. This law was in effect in the 2014 state  
17:13:39 18 elections and then again in the 2016 federal  
17:13:42 19 Presidential elections; correct?

17:13:44 20 A. Yes.

17:13:45 21 Q. Have you seen or heard a single allegation  
17:13:50 22 that the positively identify provision was applied

17:13:53 1 arbitrarily to prevent an African American or other  
17:13:57 2 minority from voting?

17:13:58 3 MR. ROSS: Objection.

17:13:59 4 THE WITNESS: I have not seen, but I have  
17:14:01 5 not looked for them. I have not studied that.

17:14:03 6 BY MR. MAZE:

17:14:03 7 Q. So the fear that you say you had from  
17:14:09 8 2011, you have no evidence that it's actually come  
17:14:11 9 to fruition; correct?

17:14:13 10 A. I do not know whether, in fact, that has  
17:14:16 11 been carried out.

17:14:16 12 Q. You told Mr. Ross that you intended to  
17:14:20 13 review the deposition transcript of Secretary of  
17:14:23 14 State Merrill; correct?

17:14:24 15 A. Yes.

17:14:24 16 Q. And that's so that you will be more fully  
17:14:28 17 informed on some of the things within this report  
17:14:31 18 come time to testify; correct?

17:14:33 19 MR. ROSS: Objection. Misstating his  
17:14:36 20 testimony.

17:14:36 21 MR. MAZE: That's fine.

17:14:37 22 MR. ROSS: Transcript, obviously, was not

17:14:39 1 available until very recently before his deposition.

17:14:41 2 MR. MAZE: That's fine. I'll start over.

17:14:43 3 BY MR. MAZE:

17:14:43 4 Q. You will agree you will review Secretary

17:14:48 5 of State Merrill's deposition before trial; correct?

17:14:49 6 A. Yes.

17:14:50 7 Q. Will you also review the deposition

17:14:53 8 transcript of Probate Judge King of Jefferson County

17:14:57 9 as well?

17:14:57 10 A. I don't know who, I don't know the

17:15:01 11 existence of that.

17:15:01 12 Q. The probate judge was asked multiple

17:15:05 13 questions about this particular topic about the

17:15:08 14 enforcement of the positively identify provision and

17:15:11 15 how it is applied with the nondiscriminatory effect

17:15:15 16 in Jefferson County, the largest county in the

17:15:18 17 state, including the largest African-American

17:15:21 18 population in the state, and I'm simply asking will

17:15:24 19 you also agree to review that deposition transcript

17:15:28 20 before you testify at trial regarding your belief on

17:15:31 21 the effect of the positively identify provision?

17:15:33 22 A. Be happy to.

17:15:36 1 MR. MAZE: That's all we got.

17:15:38 2 MR. ROSS: Just have very brief question  
17:15:41 3 for you.

17:15:41 4 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

17:15:41 5 BY MR. ROSS:

17:15:42 6 Q. When you were discussing the positive  
17:15:45 7 identify provision, that was based on your  
17:15:47 8 understanding as a historian about how these  
17:15:50 9 provisions have been used in the past; is that  
17:15:52 10 right?

17:15:52 11 A. Yes.

17:15:52 12 Q. And you are aware that another expert will  
17:15:54 13 be testifying to the particular facts of how  
17:15:57 14 positively identify has been applied in Alabama; is  
17:16:01 15 that right?

17:16:01 16 A. Yes, and I think I said that in the report  
17:16:03 17 somewhere.

17:16:04 18 Q. Yes. It's referenced in the report.

17:16:09 19 MR. ROSS: I think we're done.

17:16:10 20 MR. MAZE: We're good to go.

17:16:12 21 THE REPORTER: Mr. Ross, do you want a  
17:16:14 22 copy?

1 MR. ROSS: Yes.

2 (Whereupon, signature not having been

3 waived, the taking of the deposition concluded at

4 5:16 p.m.)

5 \* \* \*

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1 ACKNOWLEDGMENT OF DEPONENT

2

3 I, J. Morgan Kousser, Ph.D., do hereby acknowledge I  
4 have read and examined the foregoing pages of  
5 testimony, and the same is a true, correct and  
6 complete transcription of the testimony given by me,  
7 and any changes and/or corrections, if any, appear  
8 in the attached errata sheet signed by me.

9

10

11

12 \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

13

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, Kathleen M. Vaglica, the officer before  
3 whom the foregoing deposition was taken, do hereby  
4 certify that the witness whose testimony appears in  
5 the foregoing deposition was duly sworn by me; that  
6 the testimony of said witness was taken by me in  
7 stenotype and thereafter reduced to typewriting  
8 under my direction; that said deposition is a true  
9 record of the testimony given by said witness; that  
10 I am neither counsel for, related to, nor employed  
11 by any of the parties to the action in which this  
12 deposition was taken; and, further, that I am not a  
13 relative or employee of any attorney or counsel  
14 employed by the parties hereto, nor financially or  
15 otherwise interested in the outcome of the action.

16

17

18 Notary Public in and for

19 District of Columbia

20

21 My Commission Expires:

17:16:14 22 February 28, 2021

No. 08-322

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**In the  
Supreme Court of the United States**

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NORTHWEST AUSTIN MUNICIPAL UTILITY DISTRICT  
NUMBER ONE,  
*Appellant,*  
v.  
ERIC H. HOLDER, Jr., Attorney General of the  
United States of America, *et al.*,  
*Appellees.*

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On Appeal from the United States District Court  
for the District of Columbia

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**BRIEF OF THE HONORABLE BOB RILEY,  
GOVERNOR OF THE STATE OF ALABAMA,  
AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY**

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## QUESTIONS PRESENTED

1. Whether §4(a) of the Voting Rights Act, which permits “political subdivisions” of a State covered by §5’s requirement that certain jurisdictions preclear changes affecting voting with the federal government to bail out of §5 coverage if they can establish a ten-year history of compliance with the VRA, must be available to any political subunit of a covered State when the Court’s precedent requires “political subdivision” to be given its ordinary meaning throughout most of the VRA and no statutory text abrogates that interpretation with respect to §4(a).

2. Whether, under the Court’s consistent jurisprudence requiring that remedial legislation be congruent and proportional to substantive constitutional guarantees, the 2006 enactment of the §5 preclearance requirement can be applied as a valid exercise of Congress’s remedial powers under the Reconstruction Amendments when that enactment was founded on a congressional record demonstrating no evidence of a persisting pattern of attempts to evade court enforcement of voting rights guarantees in jurisdictions covered only on the basis of data 35 or more years old, or even when considered under a purportedly less stringent rational-basis standard.

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**BRIEF OF THE HONORABLE BOB RILEY,  
GOVERNOR OF THE STATE OF ALABAMA<sup>1</sup>**

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**INTEREST OF AMICUS CURIAE**

Since Governor Riley assumed office in January 2003, Alabama and its political subdivisions have submitted more than 2,300 voting-related changes for preclearance under §5 of the Voting Rights Act and sustained only one objection. Additionally, the Governor has twice battled §5 litigation, at significant taxpayer expense, after appointing an African-American to a vacant county commission seat in a majority-minority district. *See Riley v. Plump*, 555 U.S. \_\_\_, 129 S. Ct. 98 (2008) (mem.); *Riley v. Kennedy*, 553 U.S. \_\_\_, 128 S. Ct. 1970 (2008).

While Governor Riley takes no position on the legal questions raised by Appellant, J.S. at i, as Alabama's chief executive, he has an interest in two related issues:

1. *Alabama's Progress*: By renewing Alabama's coverage in 2006, Congress wrongly equated Alabama's modern government, and its people, with their Jim Crow ancestors. To rectify this error, Governor Riley chronicles Alabama's progress in minority voting rights from 1965, when §5 was created, through today.

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<sup>1</sup>The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The Governor's brief was funded by the State of Alabama.

2. *Section 5's Burden:* Congress also failed in 2006 to analyze the variety of burdens that §5 imposes on a fully-covered state. To fill this void, Governor Riley presents seven stories describing Alabama's dealings with §5 during the Governor's six years in office.

### SUMMARY OF THE ARGUMENT

1. Alabama earned its spot on §5's original coverage list. Through acts of violence and willful defiance of federal law, Alabama maintained an all-white Legislature and 19% black voter registration rate in 1965. When Congress renewed §5 ten years later, Alabama's progress had been minimal. The gap between black and white voter registration languished at 23.6%, and African-Americans composed only 10.7% of Alabama's Legislature, despite constituting nearly a quarter of its population.

But that was 34 years ago. When Congress renewed §5 in 2006, Alabama had exceeded the national average in minority registration and voting 16 straight years. Black and white Alabamians registered at virtually identical rates (72.9% and 73.8% respectively), and black Alabamians outvoted white Alabamians in the 2004 general election. African-Americans composed 25% of Alabama's Legislature, a figure that squarely reflected Alabama's 24.5% black population. And the number of black elected officials at all levels of Alabama government had increased nearly five-fold since 1975.



As importantly, Alabama's governments had shed their systematic defiance of federal civil rights law. The Department of Justice ("USDOJ") had not objected to a statewide preclearance submission from Alabama in 12 years. In fact, in the decade leading up to §5's fourth renewal (1996-2005), USDOJ objected to only two of Alabama's 3,279 preclearance submissions from *all* levels of government—a scant 0.06%. Simply put, when it came to honoring the Fifteenth Amendment, Alabama was no longer its grandfather's state.

2. Section 5 is the most intrusive remedy in the Congressional arsenal. From watching DVDs of Alabama's deliberative process, to second-guessing state supreme court decisions on purely state law questions, §5 injects the federal government into the heart of Alabama's government.

During his six years in office, Governor Riley has witnessed—and sometimes experienced first-hand—a variety of ways that §5 burdens Alabama:

- Section 5's preclearance process has impeded implementation of necessary and clearly non-discriminatory voting-related changes for more than a year;
- Political factions have used §5 to impede implementation of unfavorable outcomes in the state legislative and judicial processes;
- Section 5 makes implementing federally-mandated voting changes unnecessarily taxing; and,

- Section 5 handicaps, and may even prevent, Alabama from making the same non-discriminatory changes made by non-covered states.

Each of these burdens, while unique, shares a common thread: Its costs are borne by all Alabama citizens.

## ARGUMENT

### I. ALABAMA HAS PROGRESSED SIGNIFICANTLY SINCE 1965 AND 1975.

Alabama has shed its abysmal voting rights record of the 1960's. Today, black and white Alabamians register and vote at virtually identical rates, and Alabama's minority voter registration rate has exceeded the national average in every year since 1990. App. 17a-19a.<sup>2</sup> Furthermore, African-Americans comprise approximately 25% of Alabama's population, approximately 25% of its legislature, and more than 30% of its government workforce. App. 22a; *United States v. Flowers*, 444 F.Supp.2d 1192, 1193 (M.D. Ala. 2006).

Alabama's citizenry has similarly transformed. In 2005, 61% of Alabamians were under the age of 45; meaning that nearly two-thirds of Alabama's population was either in daycare or yet to be born when §5 was created. *Interim Projections*

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<sup>2</sup>See Charles S. Bullock, III & Richard Keith Gaddie, *An Assessment of Voting Rights Progress in Alabama*, Tables 2-5 (2005) available at [http://www.aei.org/docLib/20060505\\_VRAAlabamaStudy.pdf](http://www.aei.org/docLib/20060505_VRAAlabamaStudy.pdf).

*of the Population by Selected Age Groups for the United States and States*, U.S. Census Bureau, available at <http://www.census.gov/population/projections/SummaryTabB1.pdf> (last visited Feb. 26, 2009). By 2025—six years before §5 is set to expire—the same demographic is projected to reach 80%. *Id.*

One question facing the Court is whether §5's 25-year renewal is a “congruent and proportional” response to the modern state of minority suffrage in covered jurisdictions like Alabama. J.S. at i. When it last addressed §5's constitutionality after the 1975 renewal, the Court agreed with Congress that §5 was still necessary, and thus constitutional, due to insufficient progress in the following three areas:

1. Racial disparities in registration and voting;
2. Minority participation in state government, especially in the state legislature; and,
3. The state's history of §5 preclearance submissions and objections.

*See City of Rome v. United States*, 446 U.S. 156, 180-81 (1980). Using the *City of Rome* factors as guides, Governor Riley chronicles Alabama's progress from 1965 and 1975, when the Court deemed §5 a constitutional response to contemporary times, *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), *City of Rome, supra*, to 2006, when Congress re-authorized §5 for another generation.<sup>3</sup>

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<sup>3</sup>The district court used the 1975 Congressional Record as the benchmark for judging covered states' progress by 2006. J.S. App. at 58, 112-16.

### A. ALABAMA: 1965

*“Even after apparent defeat, resisters seek new ways and means of discriminating. Barring one contrivance too often has caused no change in result, only in methods.”*

- House Report (1965)<sup>4</sup>

Section 5’s preclearance requirement was Congress’s extraordinary response to an extraordinary problem: gamesmanship of federal litigation. For nearly a decade, Southern officials frustrated the Civil Rights Acts of 1957, 1960, and 1964 by treating federal litigation like a “game of whac-a-mole,” popping up new discriminatory devices each time the federal courts beat an old one down. Transcript of Oral Argument at 47, *Riley v. Kennedy*, 128 S. Ct. 1970 (2007) (argument by Pamela S. Karlan); *see also Beer v. United States*, 425 U.S. 130, 140 (1976) (“Section 5 was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down.”). Not only was Alabama involved, it provided Congress’s primary example. *See* H.R. Rep. No. 89-439, at 5-6 (1965); S. Rep. No. 89-162, at 5-6 (1965).

In 1961, only 156 of 15,000 voting-age African-Americans in Dallas County, Alabama were registered to vote.<sup>5</sup> S. Rep. No. 89-162, at 6 (1965). To ameliorate the situation, the United States sued the county registrars for violating the Civil Rights

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<sup>4</sup>H.R. Rep. No. 89-439, at 5 (1965).

<sup>5</sup>Selma, the site of “Bloody Sunday,” is located in Dallas County.

Act. *Id.* But while the case was pending, Dallas County switched registrars, thereby forcing the district court to deny injunctive relief because the new registrars were untainted. *Id.*

The court of appeals eventually reversed and issued an injunction, but the gamesmanship continued. *Id.* The new registrars soon defied the court's order themselves by heightening the county's application standards. *Id.* This prompted the United States to file yet another lawsuit. *Id.* While this new case proceeded, Alabama one-upped the system again by implementing two new, statewide "literacy and knowledge of government tests." *Id.* at 7. In February 1965, the federal court issued an order banning the state's newest tests. *Id.* But after four years of litigation, minority registration in Dallas County rose only from 1% to 3%.<sup>6</sup> *Id.*

This rampant defiance of federal law led not only to §5's creation, but also to the paltry numbers Congress faced when placing Alabama under §5's coverage. In 1964, only 19.4% of eligible black Alabamians were registered to vote, H.R. Rep. No. 89-439, at 5 (1965), while 69.3% of white Alabamians were registered, S. Rep. No. 94-295, at 6 (1975), creating a 49.9% registration gap. Not surprisingly, no African-Americans served in Alabama's Legislature. App. 22a.

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<sup>6</sup>Dallas County officials were not alone in their defiance of federal court orders. The 1965 Senate Report also details three years of gamesmanship by Perry County, Alabama officials, which ensured minority registration rates in the single digits. See S. Rep. No. 89-162, at 7-8.

**B. ALABAMA: 1975**

*“The nature of [the VRA’s] progress has been limited. It has been modest and spotty in so far as the continuing and significant deficiencies yet existing in minority registration and political participation.”*

- Senate Report (1975)<sup>7</sup>

While many things had changed in Alabama by 1975, its government was slow to follow suit. The Governor and 10 state legislators remained in their respective 1965 positions. *Compare* Ala. S. Journ. 2136-2142 (1965) *with* Ala. S. Journ. 3753-3765 (1975). Only two African-Americans served in the state senate (5.7%) and thirteen served in the house (12.3%). App. 22a. The total number of elected black officials statewide had climbed, but only to 161. App. 20a.

Minority advancement in appointed government positions fared no better. In 1968, the United States sued Alabama’s State Personnel Board and the heads of several state agencies for discriminatory hiring and promotion practices that resulted in (1) 49 black applicants being passed over by “lower-ranking white applicants” and (2) 94 of 3077 government jobs (3.1%) being held by African-Americans. *See United States v. Frazer*, 317 F. Supp. 1079, 1086-87 (M.D. Ala. 1970). This litigation resulted in a comprehensive injunction on state hiring practices that, by 1976, extended to virtually all state agencies. *See United States v. Frazer*, No. 2709-N, 1976 WL 729 (M.D. Ala. 1976).

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<sup>7</sup>S. Rep. No. 94-295, at 7-8 (1975).

Alabama's preclearance history and registration rates showed more promise. In §5's first decade, Alabama submitted 331 voting changes for §5 preclearance and received 22 objections (6.6%). *See* S. Rep. No. 94-295, at 16 (1975). During the same time period, black voter registration rose from 19.3% to 57.1%. *See id.* at 14. Yet, the gap between black and white voter registration languished at 23.6%. *Id.* at 13.

Based on this record, Congress's assessment of §5's continued need, at least with respect to Alabama, was understandable: "[A] 7-year extension of the Act was necessary to preserve the 'limited and fragile' achievements of the [VRA] and to promote further amelioration of voting discrimination." *City of Rome*, 446 U.S. at 182. But that was 34 years ago.

### C. ALABAMA: 2006 AND TODAY

*"Being an African-American just doesn't matter. I think it's a historical moment because we were given an opportunity to run."*

-Representative James Fields<sup>8</sup>

James Fields recently violated a core tenet of §5's renewal: "The only chance minority candidates have to be successful are in districts in which minority voters control the elections." H.R. Rep. 109-478, at 34 (2006). On January 28, 2008, Fields, an African-American, was elected to represent a

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<sup>8</sup>David Lazenby & Brittany Woodby, *Fields Gets Historic Win*, The Cullman Times, Jan. 30, 2008, available at [http://www.cullmantimes.com/homepage/local\\_story\\_029111149.html?keyword=leadpicturestory](http://www.cullmantimes.com/homepage/local_story_029111149.html?keyword=leadpicturestory) (last visited Feb. 26, 2009).

majority-white district. See Adam Nossiter, *Race Matters Less in Politics of South*, N.Y. Times, (Feb. 21, 2008) available at [www.nytimes.com/politics](http://www.nytimes.com/politics) (search politics for “race matters less”) (last visited Feb. 26, 2009). And not just any white district. Fields won 59.34% of the vote in Cullman, Alabama, a district whose voting populace is 96% white and 1% black.<sup>9</sup> Days later, Representative Fields joined Alabama’s modern, integrated government.

Gone is Alabama’s all-white legislature. When Congress re-authorized §5 in 2006, African-Americans composed 25% of Alabama’s legislature (22.86% of the Senate; 25.71% of the House), a figure in line with Alabama’s 24.5% African-American population. See S. Rep. No. 109-295, at 12 (2006). Similar advances have been made at the local level. Since 1975, the number of elected black officials increased nearly five-fold, from 161 to 756. App. 21a-22a.

Gone, too, is the thin representation of African-Americans in other areas of Alabama’s government. For example, the Court has twice seen Governor Riley’s commitment to appointing African-American county commissioners in majority-minority districts. See *infra* at 27-29. And in May 2003, the United States and Alabama jointly sought the termination of the 1970 *Frazer* injunction described *supra* at 8 because “the racial make-up of Alabama’s government [was] dramatically different from what it was in 1970.” *Flowers*, 444 F.Supp.2d at 1193. The “dramatic[] difference” was this: As of 2003, African-Americans constituted 39% of Alabama’s

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<sup>9</sup>See *fn.* 8.



government workforce, a figure approximately 15% greater than their representation in the general population. *Id.*

Alabama's modern governments have shown a great commitment to minority voting rights. The Department of Justice ("USDOJ") has not objected to a state-wide preclearance submission from Alabama in more than 14 years. App. 15a-16a. In fact, in the 10 years preceding the 2006 reauthorization, USDOJ lodged objections to a scant 0.06% (2 out of 3279) of Alabama's preclearance submissions from *all* levels of government: state, county, and municipal. *See id.*; App. 1a-14a (tracking the total number of §5 submissions from all jurisdictions from 1990 to 2008).<sup>10</sup> Furthermore, despite an exponential increase in Alabama's submissions, USDOJ objected to fewer Alabama submissions between 1982 and 2005 (45) than it did between 1965 and 1982 (59).<sup>11</sup> H.R. Rep. No. 109-478, at 73 (2006);

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<sup>10</sup>The Governor attaches USDOJ's chart of every objection from Alabama between 1994 and 2006. App. 15a-16a, *available at* [http://www.usdoj.gov/crt/voting/sec\\_5/al\\_obj2.php](http://www.usdoj.gov/crt/voting/sec_5/al_obj2.php). The only sustained objection during Governor Riley's term occurred in the City of Calera in 2008. USDOJ File No. 2008-1621. Calera voluntary entered into a consent decree to ameliorate the problem and is currently awaiting USDOJ's decision whether to lift the objection. *See United States v. Calera*, No. CV-08-BE-1982-S (N.D. Ala) (consent decree) *available at* [http://www.usdoj.gov/crt/voting/sec\\_5/calera\\_cd.pdf](http://www.usdoj.gov/crt/voting/sec_5/calera_cd.pdf); Scottie Vickery, *Calera Has Two Mayors, Two Sets of Council Members*, *The Birmingham News* (Jan. 9, 2009) *available at* [www.al.com](http://www.al.com) (site search "calera has two mayors" in quotations) (last visited Feb. 26, 2009).

<sup>11</sup>The Governor attaches USDOJ's record of preclearance submissions from every covered jurisdiction since 1990. *See infra* at 1a-14a. Tellingly, the combined number of Alabama submissions between 1965 and 1975 (331), *see* S. Rep. No. 94-

*cf id.* at 21, 37 (justifying §5's renewal on a greater number of §5 objections between August 1982 and 2005 than between 1965 and August 1982); J.S. App. at 103-106 (district court opinion; same).

As Alabama's leadership progressed, so did its minority voting record. In every year since 1990, black Alabamians have registered and voted in percentages greater than the national average. *See* App. 17a-18a; *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 44-45 (2005) (statement of Ronald Gaddie). By 2004, Alabama virtually eliminated the registration gap between black voters (72.9%) and white voters (73.8%), *see* S. Rep. No. 109-295, at 11, 94 (2006), and Alabama's black voters actually out-participated white Alabamians 63.9% to 62.2% in the 2004 general election. *Id.* at 11; App. 19a.

USDOJ apparently has recognized Alabama's progress at the voting booth. Last year, the United States Attorney General sent more than 800 federal observers and Justice Department personnel to monitor the general election in 59 counties across 23 states, 16 of which are not fully-covered by §5. *See* Press Release, USDOJ, *Department of Justice to Monitor Polls in 23 States Across the Nation on Election Day*, (Oct. 30, 2008) *available at* <http://www.usdoj.gov/opa/pr/2008/October/08-crt-973.html> (last visited Feb. 26, 2009). Using his "predictive judgment" to determine the nation's likely trouble spots, the Attorney General chose to

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295, at 16 (1975), is one-tenth the number of submissions Alabama made between 1995 and 2005 (3460). App. 1a-14a.

monitor just one of Alabama’s 67 counties. *See id.*; *cf.* H.R. Rep. No. 109-478, at 44 (2006) (justifying §5’s renewal, in part, on “the continued need for Federal observers to monitor polling places located in covered jurisdictions”); J.S. App. at 103-106 (district court opinion; same).

His judgment proved correct. Despite the lack of federal oversight, Alabamians cast more than two million ballots in what Secretary of State Beth Chapman described as “close to a flawless Election Day.” *Alabamians Cast Record Number of Votes*, Associated Press (Nov. 5, 2008). According to the Election Protection Coalition, Alabama, the nation’s 23rd most populous state, finished tied for 27th in the number of reported problems during the 2008 general election cycle.<sup>12</sup> *See* Our Vote Live, *Nationwide Problems Map*, <http://www.ourvotelive.org/map.php> (last visited Feb. 26, 2009). In fact, Alabama had fewer voting-related problems than the following less-populated, non-covered jurisdictions: Nevada; New Mexico; Essex County, New Jersey; Riverside County, California; Franklin and Cuyahoga Counties, Ohio; and Broward, Miami-Dade, and Hillsboro Counties, Florida. *Id.*

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<sup>12</sup>The Election Protection Coalition is the nation’s largest, bi-partisan coalition dedicated to reporting and preventing registration and polling place problems. The statistics used in this brief were taken from the Coalition’s twin websites, [www.ourvote.org](http://www.ourvote.org) and [www.ourvotelive.org](http://www.ourvotelive.org), and the population data was taken from the United States Census Bureau website, [www.census.gov](http://www.census.gov).

Alabama is by no means perfect. But neither is Alabama the same state that justified §5's creation in 1965 or its renewal in 1975. As the following table shows, each of the factors that justified §5's renewal in 1975, *see City of Rome*, 446 U.S. at 180-81, swung in Alabama's favor by 2006:

	<u>1965</u>	<u>1975</u>	<u>2006</u>
African-Americans Registered to Vote	19.4%	57.1%	72.9%
Registration Disparity Black vs. White Voters	49.9%	19.3%	0.9%
African-Americans In The State Legislature	0%	10.7%	25.0%
Preclearance Objections (preceding 10 yrs.)	n/a	6.64%	0.06%

Simply put, Alabama is under new management, chosen by a new electorate. In 2006, Congress amassed no evidence suggesting that, without §5, Alabama's modern leadership and their successors through 2031 stood poised to systematically defy federal court orders to deny minority voting rights. The reason is simple: It is not true.

## **II. SECTION 5 IMPOSES A VARIETY OF BURDENS ON ALABAMA’S DEMOCRATIC PROCESS.**

In the remaining pages, the Governor presents seven stories from his six years in office that demonstrate the variety of burdens that §5 imposes on a fully-covered state. Before placing the Court in the trenches with §5, however, the Governor details Alabama’s implementation of §5’s preclearance requirements.

### **A. HOW §5 WORKS IN ALABAMA.**

Section 5 requires Alabama and its political subdivisions to obtain federal permission (*i.e.* “preclearance”) before they may enforce any change in a voting-related standard, practice, or procedure. *See* 42 U.S.C. §1973c; 28 C.F.R. §51.1. Changes requiring preclearance include, but are not limited to,

- “Any change in qualifications or eligibility for voting,”
- “Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting,” and,
- “Any change in the boundaries of voting precincts or in the location of polling places.”

28 C.F.R. §51.13(a), (b), (d).

At the state level, the Attorney General monitors Acts of the Legislature for “covered” changes, and state executive officials inform the Attorney General when they make a voting-related change. If a voting-related change possesses statewide effect, the Attorney General submits it for preclearance. If a change is local in nature, the Attorney General informs the appropriate local official of his obligation to seek preclearance.<sup>13</sup> If a change originates at the local level (a municipal annexation, for example), the local officials identify and submit the change.<sup>14</sup>

Once a voting change is identified, Alabama and its political subdivisions bear the burden of proving to USDOJ that the change is not “retrogressive;” that is, the change does not discriminate against minorities in purpose or effect.<sup>15</sup> 42 U.S.C. §1973c; *see also* 28 C.F.R. §§ 51.1-51.67 (preclearance guidelines). To satisfy USDOJ’s submission requirements, Alabama must, at a minimum, compile and submit 16 pieces of information. 28 C.F.R. §51.27. In a nutshell, Alabama must (1) detail the old and new practices,

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<sup>13</sup>To help local officials satisfy their §5 responsibilities, the Attorney General has developed a step-by-step guide for submitting a preclearance request, App. 23a-30a, and offers advice or assistance as requested.

<sup>14</sup>The issue of whether state court opinions are covered changes is still unanswered. *See infra* Issue II(C)(2). No mechanism presently exists for monitoring voting-related changes arising from state court decisions.

<sup>15</sup>Alabama also has the option of seeking preclearance from a three-judge panel of the United States District Court for the District of Columbia. 42 U.S.C. §1973c(a). Virtually all submissions are made to USDOJ, however, because the administrative route is generally faster and less expensive.

and the difference between the two, (2) detail the preclearance and litigation history of the old practice(s), (3) explain why Alabama wants to make the change, and (4) explain how the change impacts minority voters. *Id.*; App. 24a-26a (listing all required information). USDOJ may also request supplemental information from the State, *see* 28 C.F.R. §51.37(a), ranging anywhere from transcripts and DVDs of the State's deliberative process to the name and race of every state legislator for the past 25 years. *See infra* at 25-26, App. 26a-27a. USDOJ also considers outside comments and suggestions as part of its final consideration, 28 C.F.R. §51.53.

Submission times vary. Routine preclearance submissions, such as setting a special election date to fill a legislative vacancy, can be generated in hours. Other submissions may take days, weeks, or even months to draft. *See infra* at Issue II(B)(1-2). Until preclearance is granted, the new practice—however beneficial or urgent—cannot be enforced. *See Clark v. Roemer*, 500 U.S. 646, 652-53 (1991); 28 C.F.R. §51.10.

**B. SECTION 5 IMPEDES THE ENFORCEMENT  
OF NECESSARY, AND CLEARLY NON-  
DISCRIMINATORY, STATE INITIATIVES.**

Two recent stories demonstrate how §5's preclearance process may stall the enforcement of necessary, and racially benign, legislative Acts for well over a year.

### **1. Title 17: Rewriting Alabama's Election Code**

Like many states, Alabama progressed from paper ballots, to machine voting booths, to electronic voting. Each new mechanism required specific state laws that remained on the books. Intervening developments such as the federal Help America Vote Act (“HAVA”), *see infra* at Issue II(D), Alabama Attorney General Opinions, and regulations of the Secretary of State also changed Alabama’s election law landscape.

Beginning in August 2003, a bi-partisan, bi-racial committee of 25 legislators, attorneys, circuit clerks, probate judges, and the Secretary of State re-wrote Alabama’s election code, “Title 17,” to embody the modern state of Alabama’s election law. After more than two years of committee meetings, public comments, and legislative vetting, Governor Riley signed the 370-page act re-writing Title 17 into law on April 25, 2006. *See* Ala. Act No. 2006-570.

When drafting a preclearance submission, the primary task is to identify each change within an Act. 28 C.F.R. §51.27a-c. To accomplish this task for the new Title 17, the Attorney General relied heavily on materials created by the bi-partisan committee and Alabama Code Commissioner red-lining each change. App. 30a.<sup>16</sup> But these materials were merely a starting point. Over the next few months, the Attorney General analyzed the new Act to

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<sup>16</sup>Letter from Attorney General Troy King to Bob McCurley, Director, Alabama Law Institute (Feb. 20, 2007) (on file with counsel) (explaining why Title 17 had yet to be submitted for preclearance 10 months after enactment).



supplement the committee materials, producing a 30-page roadmap and commentary to the changes contained within the new Title 17. USDOJ File No. 2007-3488.

Another task under the USDOJ guidelines is compiling the preclearance history of the soon-to-be “changed” practices. 28 C.F.R. §51.27p. To clear this hurdle, the Attorney General first identified 59 Acts impacted by the new Title 17 that were passed after Alabama’s coverage date of November 1, 1964. App. 32a. From there, the Attorney General researched the preclearance history of the 59 Acts and discovered that a handful had not been precleared. *Id.* This discovery required even further attention to the predecessor Acts. *Id.* In the end, this cumbersome process culminated in a 33-page preclearance history chart. USDOJ File No. 2007-3488.

The submission process was further complicated because the Legislature passed several other laws impacting Title 17 during the same legislative session—each of which had to be considered in conjunction with Title 17’s on-going preclearance submission. *See, e.g.*, Issue II(E)(1); 33a. Needless to say, the overall process of drafting Title 17’s submission request consumed weeks, if not months, of state attorney time. App. 30a-35a.

Ultimately, the Attorney General submitted Act 2006-570 for preclearance on July 13, 2007—15 months after it was signed into law. USDOJ File No. 2007-3488. The 44-page submission letter included the 30-page roadmap detailing the changes contained within the Act. *See* 28 C.F.R. §51.27c. The letter was

supplemented by 21 exhibits, including a red-line version of Act 2006-570 (marking the changes) and the 33-page chart detailing the preclearance history of the predecessor Acts. *See* 28 C.F.R. §51.27p; USDOJ File No. 2007-3488. According to its shipping label, the July 13 submission weighed 42 pounds.

USDOJ determined that the July 13 submission failed to provide the requisite clarity for describing the changes. *See* 28 C.F.R. 51.26(d). So, investing approximately 100 additional hours, the Attorney General created and proffered a unified 193-page chart setting out the old and new statutes, side-by-side, with detailed comments on the changes. USDOJ File No. 2007-3488. On October 29, 2007, USDOJ precleared Act 2006-570 (save for one change, which was later withdrawn), thereby allowing the new Title 17 to take effect 18 months after Governor Riley signed it into law.<sup>17</sup> *Id.*

## **2. Act 2007-488: Modernizing Alabama's County Commissions**

A similar situation arose in 2007 when the Association of County Commissions of Alabama (“ACCA”) successfully proposed legislation updating and unifying the law governing Alabama’s county commissions. Act 2007-488, the “County Modernization Act,” served multiple non-

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<sup>17</sup>During the 18-month preclearance process, the newly-enacted, but yet-to-be precleared, Title 17 was published on Westlaw and in the updated Alabama Code. To date, Alabama has not devised a system to prevent publication of yet-to-be precleared voting changes, nor do the publishers track preclearance.

discriminatory purposes, such as enabling local officials to update courthouse hours and pushing back the first meeting date of newly-formed county commissions due to the advent of provisional balloting. *See* Ala. Act No. 2007-488. One non-discriminatory purpose is particularly relevant here: Act 2007-488 established a state-wide, one-year residency requirement for (1) all candidates seeking a county commission seat and (2) any person the Governor might appoint to a vacant county commission seat. *Id.* Governor Riley signed Act 2007-488 into law on June 14, 2007. *See id.*

While benign in purpose, the Act was a nightmare to submit for preclearance. Alabama has 67 counties. Submitting the newly-unified residency requirement for preclearance necessarily entailed researching and charting the legislative, preclearance, and litigation histories of the now-superseded requirements of the 67 counties. *See* 28 C.F.R. §51.27. To accomplish this task, the Attorney General created a multi-page questionnaire addressing the information required by 28 C.F.R. §51.27 and distributed it to each county. While the questionnaires were pending, the Attorney General researched local acts regarding local commissioner residency requirements, as far back as the late 1800's, to establish the baseline practice for each county. (Tracing these legal pedigrees, of course, is pointless absent §5.)

Spending hundreds of hours in the year-long process, the Attorney General ultimately lodged three preclearance submissions concerning Act 2007-488, the last of which encompassed the work on the one-year residency requirement. USDOJ File Nos.

2008-427, 2008-1576, 2008-3861, 2008-5601. That final submission exceeded 1,700 pages, including voluminous exhibits and a 103-page appendix summarizing the applicable local law, baseline practices, preclearance history, and litigation history for all 67 counties. *Id.* USDOJ approved the last of the three submissions, allowing the County Modernization Act to take full effect, on December 22, 2008—18 months after Governor Riley signed it into law.<sup>18</sup> *See id.*

### **C. OUTSIDE FORCES CAN AND WILL USE §5 AS A POLITICAL TOOL.**

While benign submissions can be taxing enough, §5's financial and temporal costs skyrocket when politics are thrown into the preclearance mix. The following stories, both of which personally involved Governor Riley, demonstrate two ways that §5 can be used as a political tool to block enforcement of democratically-approved initiatives: (1) lobbying USDOJ for an objection and (2) filing §5 litigation.

#### **1. Double Dipping**

“Double dipping” is the practice of simultaneously serving in the state legislature and another government agency. For decades, double dipping tainted Alabama's two-year college system because legislators often peddled their legislative

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<sup>18</sup>Like the new Title 17, Act 2007-488 was published before it was precleared. Consequently, state officials took steps to ensure that local officials would *not* apply the residency requirements enacted in 2007 during the 2008 elections. *See* Letter from Beth Chapman, Secretary of State to Probate Judges, Registrars, Political Party Officials, and County Commission Chairmen (Feb. 15, 2008) (on file with counsel).

influence for sham “educational” jobs, either for themselves or family members. In 2007, journalist Brett Blackledge earned the Pulitzer Prize by exposing the depth of the problem: One-quarter of Alabama’s legislators, or their family members, double-dipped in Alabama’s two-year college system. Brett Blackledge, *Dozens of Legislators Paid by Two-Year Colleges*, The Birmingham News (Oct. 8, 2006).<sup>19</sup> The aftermath has included federal convictions of “about a dozen people,” including the former Chancellor of the two-year system and three State Legislators. Lee Roop, *Schmitz Guilty of Fraud, Loses Seat*, The Huntsville Times (Feb. 25, 2009) available at [www.al.com](http://www.al.com) (site search for “Schmitz guilty of fraud”) (last visited Feb. 26, 2009) (detailing the federal conviction of a State Legislator who bilked more than \$177,000 from Alabama’s two-year system).

In April 2007, Governor Riley responded on two fronts. First, the Governor introduced twin bills in the House (H.B. 667) and Senate (S.B. 395) banning legislators from double dipping in any state agency. Not surprisingly, the bills swiftly perished. Second, in his role as President of the State Board of Education, the Governor proposed policies that would end double dipping in the two-year college system. Despite vocal opposition from several legislators and special interest groups, on August 23, 2007, the bi-partisan Board passed two policies. Policy 609.04 requires legislators to take accrued leave from their educational jobs when serving in the legislature. Policy 220.01 bans active legislators

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<sup>19</sup>Mr. Blackledge’s entire series, and its aftermath, can be viewed on-line at <http://blog.al.com/twoyear/>.

from holding employment within the two-year college system after the 2010 election.

The Board promptly submitted both policies for §5 preclearance on September 6, 2007. USDOJ File No. 2007-4397. The opposing legislators and special interest groups immediately shifted their political assault to a new front: the Justice Department. For example, one group of Democratic legislators lobbied USDOJ to interpose a §5 objection based on the theories that (1) banning double dipping would cause many black Democrats to either resign or not seek re-election due to lost income and (2) “if all the Democrats were replaced by Republicans, the balance in the House” would shift political parties. USDOJ File No. 2007-4397, Letter from Edward Still to John Tanner, Chief, Voting Section (Sept. 18, 2007).

Beyond the ethical question of double dipping, the premise of the legislators’ political concerns was legally flawed: Even if a legislator left office, the voters of his district, not Governor Riley, would choose his replacement. *See* Ala. Code § 17-15-1. Alabama has successfully precleared Governor Riley’s setting of a special election to fill a legislative vacancy on numerous occasions. *See* USDOJ File Nos. 2004-3196 (House District 47, death); 2004-3869 (Senate District 24, resignation, and HD 65, death); 2004-4547 (HD 82, resignation); 2005-0161 (HD 46, resignation); 2005-0768 (HD 72, resignation); 2005-4282 (HD 31, death); 2005-4588 (HD 1, death); 2006-6924 (HD 22, death); 2007-3166 (SD 32, resignation); 2007-4751 (HD 12, resignation); 2008-5759 (SD 7, resignation); 2009-0112 (SD 22, death); *see also* 2009-0343 (SD 19, federal felony conviction, submission

pending as of Feb. 20, 2009). In fact, the Governor will soon set a special election schedule (requiring §5 preclearance) to replace a State Legislator who was convicted just this week on seven counts of fraud for double dipping. Roop, *Schmitz Guilty of Fraud, Loses Seat*, *supra*.

Nevertheless, citing the Legislators' "concerns," USDOJ requested the following supplementary information:

- "A comprehensive list of individuals affected by Policy 609.04;"
- "Any transcripts or DVDs" of the Board of Education meetings and legislative committee meetings in which the double dipping policies were considered;
- The "total employment statistics" for the entire state of Alabama, "broken down by race;"
- A "breakdown," by race, of employment in Alabama's state agencies, its K-12 school system, and the two-year and four-year college systems; and,
- The name and race of every state legislator for the past 25 years, plus a designation of which legislators had been employed in Alabama's educational systems.

USDOJ File No. 2007-4397, Letter from John Tanner, Chief, Voting Section to Bradley Byrne, Chancellor (Nov. 2, 2007).

Over the next eight weeks, a team of state and private attorneys worked countless hours, at taxpayer expense, to compile the requested information.<sup>20</sup> On December 28, 2007, Governor Riley and the new post-secondary Chancellor, Bradley Byrne, supplemented the original submission with the items listed above, the items required by 28 C.F.R. §51.27, and 22 exhibits, including a 29-page history of Alabama's double dipping dilemma, which itself contained 59 exhibits.<sup>21</sup> USDOJ File. No. 2007-4397, "Supplemental Submission Under Section 5, Voting Rights Act of 1965."

The Governor's supplement explained that (1) Policy 609.04 was not retrogressive because it merely required a legislator "be present at work during his or her duty hours and expending accrued leave-time for absences" and (2) Policy 220.01 was not retrogressive because "minorities may continue to vote for any person of their choosing." *Id.* On February 29, 2008, USDOJ precleared Policy 220.01 (the double dipping ban) and ruled that Policy 609.04

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<sup>20</sup>Private attorneys alone logged (and billed) approximately 110 hours on the preclearance effort between December 2007 and February 2008.

<sup>21</sup>At USDOJ's request, the Board previously had submitted a DVD of its "entire [April 26, 2007] meeting" where "the Board, including its chairman Governor Bob Riley, discussed, in detail" the double dipping ban. USDOJ File. No. 2007-4397, Letter from Ella B. Bell, Member, State Board to John Tanner, Chief, Voting Section (October 5, 2007).



(the leave policy) was not a voting change that required preclearance. USDOJ File No. 2007-4397.

While preclearance was ultimately achieved, §5 turned the federal executive into a supplementary appeals court for political forces to challenge unfavorable outcomes in the state legislative and judicial processes.<sup>22</sup> See 28 C.F.R. §51.53 (allowing USDOJ to consider information submitted by “individuals or groups”). Just as troubling, §5 vested USDOJ with the authority to impede or block the Governor’s attempt to eliminate legislative double dipping in the two-year system—at the same time USDOJ was itself prosecuting Alabama legislators for double dipping in Alabama’s two-year system. See *Lawmaker Indicted In 2-Year College Probe*, The Associated Press (Feb. 1, 2008); Roop, *Schmitz Guilty of Fraud, Loses Seat*, *supra*. In other words, when the two sovereigns reacted to the same situation with a common purpose, only the State did so with a federally-induced handicap.

## 2. *Kennedy and Plump*

The Court is familiar with §5’s use in litigation, as the following story recently brought Governor Riley before the Court on two occasions. While each case possesses its own nuances, the general facts overlap.

Long before §5, Alabama law required that vacant county commission seats be filled by

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<sup>22</sup>Several legislators also filed suit against the Board policies in state court, and that action is currently pending before the Alabama Supreme Court. See *Byrne v. Galliher*, No. 1080247. (Ala. filed Nov. 17, 2008).

gubernatorial appointment. *See* Ala. Code §11-3-6 *repealed by* Ala. Act 2007-488. Local laws in Jefferson County (1977) and Mobile County (1985) purported to change the selection method to special elections. *See* Ala. Acts 77-784, 85-237. The Alabama Supreme Court struck down Mobile County’s local law as unconstitutional under state law, thereby casting constitutional doubt on Jefferson County’s similar law. *Stokes v. Noonan*, 534 So. 2d 237 (Ala. 1988); *see also Riley v. Kennedy*, 928 So. 2d 1013 (Ala. 2005) (holding that a 2004 legislative act did not revive the Mobile County local law). Following the state supreme court’s decisions, Governor Riley appointed Juan Chastang to fill a commission vacancy in Mobile County and General George W. Bowman to fill a vacancy in Jefferson County. Both men were African-American, and both seats were in majority-minority districts.<sup>23</sup>

With each appointment, Governor Riley was sued under the following two-part theory: (1) The local laws, which had been precleared, changed the baseline practice from gubernatorial appointment to special elections and (2) any change back to gubernatorial appointment—even if the local laws were unconstitutional—was a change that required preclearance under §5. In *Kennedy*, this Court agreed with the Governor that Mobile County’s local law never went into “force or effect;” thus no change occurred within the meaning of §5. *See Kennedy*, 128 S. Ct. at 1984-86. In *Plump*, this Court dismissed the Governor’s appeal for want of jurisdiction. *See Plump*, 129 S. Ct. at 98.

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<sup>23</sup>The vacancies were created when an African-American was elected mayor of Alabama’s largest city (Larry Langford in Birmingham) and its third largest city (Sam Jones in Mobile).

The Governor recalls *Kennedy* and *Plump* to make two points.

1. Neither §5 lawsuit was based on race (both of the Governor's appointees were black); the lawsuits were based on political affiliation. When former Governor Don Siegelman, a Democrat, appointed Reverend Steve Small to a vacant Jefferson County Commission seat in 2001, he did so without objection or §5 litigation. *See* Val Walton, *U.S. Court Asked to Oust Riley Appointee*, *The Birmingham News* (November 29, 2007) *available at* <https://www.edwardstill.com/Bham%20News%202002%2011%2029.pdf> (last visited Feb. 26, 2009). Yet, when Governor Riley, a Republican, appointed two African-Americans to fill vacant majority-minority seats, he was sued to block the appointees from taking office, and the Democratic Party accused the Governor of “thwarting the democratic process.”<sup>24</sup> *Id.* Both rounds of political wrangling were funded, at great cost, by Alabama's taxpayers.<sup>25</sup>

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<sup>24</sup>Each of the three plaintiffs in *Kennedy* was a Democratic state legislator.

<sup>25</sup>The Governor cannot give an exact financial cost for both defenses, because state attorneys (who do not track and bill time), as well as private attorneys, defended the Governor. A good starting point, however, may be the fee requests made by the Plaintiffs' attorneys for their work in *Plump* (“approximate[ly] \$110,000”) and *Kennedy* (\$109,994.96). *See Plump, v. Riley*, No. 2:07-cv-01014-MEF-CSC (Doc. 51); *Kennedy v. Riley*, No. 2:05-cv-01100-MHT-DRB (Doc. 62). Included within the *Kennedy* fees request was compensation for time spent drafting objection letters and teleconferencing with the chief of USDOJ's voting section. *See* Issue II(C)(1).

2. The Court left unresolved the question festering in *Kennedy*: Does §5 require preclearance of a state supreme court decision interpreting the state constitution? If the answer is yes, as USDOJ asserted, then the federal government has the power to overrule Alabama's Supreme Court and to force Alabama's Governor to administer unconstitutional state laws. See Brief for the United States as Amicus Curiae Supporting Appellees in Part, *Riley v. Kennedy*, No. 07-77, at 10.

This issue may come to a head again soon. Alabama Act 2006-355 directs Governor Riley to appoint a new circuit judge in Talladega County "on or after October 1, 2009," and establishes general elections to determine that judge's successors in subsequent years. Ala. Act No. 2006-355; see also Ala. Const. Art. VI, § 153 (requiring a judicial appointee sit for one year before election); Ala. Const. amend. 615 (same). USDOJ precleared Act 2006-355 on June 29, 2006. USDOJ File No. 2006-4167.

Days later, litigation was filed in state court challenging the Act. Ultimately, the Alabama Supreme Court declared that Act 2006-355 unconstitutionally vested appointment power in the Governor, severed the appointment provision, and declared an election must be held in 2010. See *King v. Campbell*, 988 So. 2d 969 (Ala. 2007). The *Campbell* decision thus "changed" the date and manner of judicial selection prescribed by Act 2006-355, thereby placing the State in a Catch-22. Alabama can either (1) forgo seeking preclearance of the supreme court's decision and run the risk of another costly round of §5 litigation when the *Campbell* decision is followed or (2) expend public

resources to gain preclearance of the court's decision, thereby placing the fate of Alabama constitutional law in the hands of the federal government.

**D. WHEN IT COMES TO FEDERALLY-MANDATED CHANGES, PRECLEARANCE CAN LEAD TO TAXING AND ABSURD RESULTS.**

Section 5 was created to quash racist state initiatives, *see Beer*, 425 U.S. at 140, but it also requires covered states to submit for preclearance their responses to federally mandated changes. For example, the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. §§ 15301 *et seq.*, mandated not only that Alabama change many of its voting practices, but also that Alabama preclear the federally-mandated changes. 42 U.S.C. §15545(b). Alabama responded to HAVA with Act 2003-313, which Governor Riley signed into law on June 19, 2003. *See* Ala. Act. No. 2003-313. The Attorney General submitted Act 2003-313 for preclearance, which USDOJ granted in November 2003. USDOJ File Nos. 2003-2245 & 2003-3434.

Instead of rehashing the process of preclearing the 76-page Act, which included changes to more than 20 individual sections of the Alabama Code, *see id.*, the Governor presents three examples of how taxing, and in some cases absurd, preclearing particular federally-mandated changes can be.

1. HAVA contains detailed standards for the type of voting machinery a state may employ. *See* 42 U.S.C. §15481. In Alabama, the process of purchasing HAVA-compliant machines was handled

at the county level. To assist county officials, the Attorney General spearheaded a unified preclearance submission. As he did with the County Modernization Act, *see supra* at 21, the Attorney General first developed and sent out questionnaires to gather the necessary information under 28 C.F.R. §51.27 and then followed up with the counties as needed. This process culminated in the creation of a table embodying the equipment changes in 54 of Alabama's 67 counties, as well as a letter setting out the remaining information required by 28 C.F.R. §51.27. Two months later, USDOJ precleared the changes for use in the June 2006 primary election. See USDOJ File Nos. 2006-2900, 2006-3444, 2006-3446, 2006-3449, 2006-3450, 2006-3454, 2006-3470 through 2006-3484, 2006-3533, 2006-3537, 2006-3539 through 2006-3541, 2006-3548, 2006-3551, 2006-3555, 2006-3556, 2006-3568 through 2006-3580, and 2006-3583 through 2006-3594.

This, however, was not the end of the story. In Alabama, municipalities manage their own elections, but generally use the same voting machines as their corresponding counties. The preclearance submissions described above applied to federal, state, and county elections (which are held simultaneously), but not to municipal elections. So, when it came time for a vast majority of Alabama's approximately 450 municipalities to hold elections in 2008, §5 required each municipality to seek preclearance to use the same machines, unnecessarily creating preclearance *déjà vu*.

2. HAVA mandated that Alabama switch from its county-based registration databases to a unified statewide electronic database. 42 U.S.C.

§15483. A federal court appointed Governor Riley special master over the database switch. *See United States v. Alabama*, No. 2:06-CV-00392-WKW (M.D. Ala.).<sup>26</sup> Under Governor Riley’s leadership, and the federal court’s watchful eye, Alabama’s old county databases were replaced with a new, HAVA-compliant statewide database.

This switch raised an interesting §5 question, which has yet to be answered: When undertaken by a federal court’s special master in response to litigation filed by the United States, is a federally-mandated switch from a local to statewide registration database a voting-related change that requires §5 preclearance? If it is, compliance with §5 may be out of the question. As part of the mandated switch, the old, non-uniform systems were dismantled and carted-off, thus making it (1) extremely difficult to ascertain the historical information required for a preclearance submission and (2) impossible to revert back to the old, non-HAVA compliant system pending the outcome of the preclearance process. 28 C.F.R. §51.27b, c, p.

3. HAVA also requires that states ask specific questions on their mail-in registration forms, such as “Are you a citizen of the United States of America?” 42 U.S.C. §15483(b)(4). While compiling the information required by 28 C.F.R. §51.27 for the linguistic changes was not particularly taxing, submitting the altered forms for preclearance was nonetheless complicated by several factors.

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<sup>26</sup>The *United States v. Alabama* litigation regarded timely compliance with the database switch. The complaint raised no allegations of racially discriminatory state initiatives.

For example, Alabama's mail-in registration form underwent several cosmetic changes over the years, such as changing the name of the Secretary of State and updating the contact information for the Board of Registrars. Because USDOJ took the position that any change to the form required preclearance, and the changes had not previously been submitted for preclearance, the State had to retroactively seek preclearance for each of these changes, as well as preclearance of the new HAVA-mandated changes. *See* 28 C.F.R. §51.27.

Furthermore, a plaintiffs' attorney urged USDOJ not to preclear the revised form—thereby preventing Alabama from becoming HAVA-compliant—based on his on-going litigation against state officials regarding felon voting. *See* USDOJ File No. 2006-4509; *Chapman v. Gooden*, 974 So. 2d 972, 980 (Ala. 2007) (describing a change to the registration form regarding felon voting and the reasons for it).

That Alabama ultimately overcame these difficulties to achieve preclearance, *see* USDOJ File No. 2006-4509, is beside the point. An important fact remains: Alabama had to endure difficulties that were foreign to non-covered states, who simply typed the newly-required language into their old forms and instantly became HAVA-compliant.



**E. SECTION 5 HANDICAPS, AND MAY EVEN  
PREVENT, ALABAMA FROM MAKING THE  
SAME NON-DISCRIMINATORY CHANGES  
MADE BY NON-COVERED STATES.**

Being “covered” by §5 places jurisdictions at a severe disadvantage when attempting to make the same non-discriminatory change made by a non-covered state. Two final stories to prove the point. The first involves a nationwide change in which Alabama was ultimately successful in joining, but not without its share of §5-induced headaches. The second involves a non-discriminatory change that Alabama may be foreclosed from making.

**1. “Super Tuesday” 2008**

In April 2006, Alabama decided to push forward its Presidential preference primary from the first Tuesday in June, *see* Ala. Code § 17-16A-1(a) (1995), to the first Tuesday in February. Like each of the 24 states that made February 5, 2008 “Super Tuesday,” Alabama’s purpose was clearly non-discriminatory: “Any time we can make sure that Alabama has a stronger voice in national politics, we need to take advantage of it.” *Bill Would Set Earlier Presidential Primary*, The Birmingham News (Apr. 12, 2006) (quoting Governor Riley). Section 5 simply made Alabama’s switch more difficult.

On April 17, 2006, the Legislature passed Act 2006-634, which moved the primary to the first Tuesday in February. Ala. Act 2006-634. While the Act was on Governor Riley’s desk, a problem was reported: Fat Tuesday fell on February’s first Tuesday in 2008. Dan Murtaugh, *Primary, Carnival*

*on Track to Clash*, Mobile Press Register (Apr. 19, 2006) (on file with counsel). This created a dilemma in Mobile and Baldwin Counties because Fat Tuesday is an official holiday and downtown Mobile is transformed into a Mardi Gras parade route. *See id.*; Ala. Code § 1-3-8(c). To remedy the problem, the Legislature passed Act 2007-461, which required Mobile and Baldwin Counties to open polls both on Fat Tuesday and the preceding Wednesday. Ala. Act 2007-461.

Submitting both Acts for preclearance was no easy chore. Due to the Fat Tuesday fix, “changes” were made not only to the primary dates, but also to the rules for absentee voting, poll workers, and voter registration deadlines. *Id.* Furthermore, Mobile and Baldwin Counties had to open special election centers. *Id.* Each of these changes required preclearance. Later, language on the absentee registration forms had to be altered and submitted for preclearance. USDOJ File No. 2007-5733.

To complicate matters further, the Alabama Attorney General received a complaint that adding an additional primary was retrogressive under the theory that minorities tended to vote less as the number of elections in a year increased.<sup>27</sup> *Id.* Alabama included this complaint in its 35-page submission letter to USDOJ. *Id.* Alabama also included within its 27 exhibits a list of minority contacts and six charts of census data. USDOJ File No. 2007-3347.

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<sup>27</sup>The remainder of Alabama’s federal, state, and county primaries remained on the first Tuesday in June.

The story has a happy ending: USDOJ precleared both Acts, *id.*, and Alabama bested its previous record turnout for a Presidential primary by 11%. *Alabama Has Record-Breaking Presidential Primary*, Press Release, Alabama Secretary of State (Feb. 7, 2008) *available at* <http://www.sos.alabama.gov/PR/PR.aspx?ID=274> (last visited Feb. 26, 2009). The point is that when approximately 20 non-covered states made the same decision to hold their elections on Super Tuesday, they did so without struggling through a four-month preclearance process.<sup>28</sup> Furthermore, §5 granted the federal government the power to prevent Alabama from moving its primary date to Super Tuesday—a power it did not hold over non-covered states.

## 2. Appointing Supreme Court Justices

Since the Court granted cert in *Caperton v. A.T. Massey Coal*, No 08-22, the national debate between electing and appointing state supreme court justices has intensified. For example, Texas's Chief Justice, the Honorable Wallace Jefferson, recently called for Texas to switch from judicial elections to merit-based appointments, and a corresponding bill was immediately introduced in the Texas Senate. *See, e.g., Jefferson: Change Judicial Selection System*, The Associated Press (Feb. 11, 2009) *available at* <http://www.kristv.com/Global/story.asp?S=9827329> (last visited Feb. 26, 2009).

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<sup>28</sup>The second Act, Act 2007-461, was passed on April 16, 2007. The Attorney General submitted both Acts for preclearance on June 29, 2007 and provided supplemental information on August 28. USDOJ File No. 2007-3347. USDOJ precleared both acts on August 30, 2007. *Id.*

Alabama knows this debate well; it was home to the nation's most expensive state supreme court race in 2008. *See* Eric Valesco, *Alabama High Court Race Again Garners Most Expensive Pricetag in U.S.*, The Birmingham News (Jan. 31, 2009) *available at* <http://www.al.com/> (site search for "high court race again garners") (last visited Feb. 26, 2009). The Alabama State Bar has long advocated that Alabama switch from electing its appellate judges to a system of merit-based gubernatorial appointments; a position shared by Alabama's Chief Justice Sue Bell Cobb, if non-partisan elections are unattainable. *Cobb Wants to See Change and Prove Justice Is Not for Sale*, The Tuscaloosa News (Mar. 5, 2007) *available at* <http://www.tuscaloosanews.com/article/20070305/NEWS/703050310> (last visited Feb. 26, 2009).

Section 5, however, may render the "election versus appointment" debate purely academic in Alabama (and Texas). Eliminating judicial elections is clearly a voting change requiring §5 preclearance. *See* 28 C.F.R. §51.13(i). While the purpose of switching to merit-based appointments is non-discriminatory, the effect may be considered retrogressive: Minority voters would lose the ability "to elect their preferred candidates of choice." 42 U.S.C. §1973c(b). Thus, under §5, the federal government could veto any change. *See id.*; 28 C.F.R. §51.52(c). And while it is admittedly impossible to predict the ultimate federal response, USDOJ has twice objected to changes from election to appointment in Alabama's past. *See* USDOJ File Nos. V4105 (objecting to a statewide change from electing to appointing justices of the peace); 2006-6795 (objecting to Governor Riley's appointment of

Juan Chastang to the Mobile County Commission; withdrawn after the Court's decision in *Kennedy*).

Of course, the Governor's point is neither to take sides in the "election versus appointment" debate nor to predict USDOJ's position. The point is simply this: Under §5, if Alabama ever seeks to switch to judicial appointments—*i.e.* a process that is available to every non-covered state and has worked for this Court for 220 years—the ultimate choice of Alabama's selection process will be made by the federal government.

**CONCLUSION**

This Court should consider §5's burden on a fully-covered state, as well as the changes in Alabama's government and voting record since 1965.

Respectfully submitted,

Kenneth D. Wallis, II  
*Chief Legal Advisor*

Corey L. Maze  
*Solicitor General*  
Counsel of Record

Misty S. Fairbanks  
*Ass't Attorney General*

Office of the Governor  
600 Dexter Avenue,  
Suite NB-05  
Montgomery, AL 36130  
(334) 242-7120

Office of the  
Attorney General  
500 Dexter Avenue  
Montgomery, AL 36130  
(334) 242-7300

February 26, 2009

# APPENDIX

1a

**U.S. Department of Justice**

Civil Rights Division

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Freedom of Information/Privacy  
Acts Branch – NALC  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

NDH:TCG:ANF  
2008-0526(4-425)

SEP 30 2008

Misty S. Fairbanks  
Alabama State House  
11 South Union Street, 3<sup>rd</sup> Floor  
Montgomery, Alabama 36130-0152

Dear Ms. Fairbanks:

This is in response to your Freedom of Information Act request dated September 23, 2008, for a copy of the “Submission Tracking and Processing (STAPS) Statistics Report” to cover the years 1990 to 2008.

Enclosed please find a copy of the document that you requested.

I hope the Civil Rights Division has been of some assistance to you in this matter.



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Sincerely,

s/ Tawana C. Greene for  
Nelson D. Hermilla, Chief  
Freedom of Information/ Privacy Acts Branch  
Civil Rights Division

3a

Date: 09-23-2008  
Time: 10:22 AM

**Submissi[on]  
Tracking And  
Processing System  
[(ST]APS)  
Statistics Report**

Page: 1 of 4

**Number of Submissions By State for All  
Calendar Years**

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<b>State Name</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>
ALABAMA 0/	296	198	404	183	248
ALASKA 1/	72	61	115	92	72
ARIZONA 2/	234	151	208	165	193
ARKANSAS 5/	0	1	0	1	0
CALIFORNIA 8/	23	41	118	89	87
COLORADO 3/	***	***	***	***	***
CONNECTI[-] CUT 4/	***	***	***	***	***
FLORIDA 3/	32	28	33	22	51
GEORGIA 0/	906	590	1028	790	857
HAWAII 3/	***	***	***	***	***
IDAHO 3/	***	***	***	***	***
ILLINOIS 7/	1	***	***	***	***
LOUISIANA 0/	430	463	616	495	446
MAINE 4/	***	***	***	***	***

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MASSACHU[-] SETTS 4/	***	***	***	***	***
MICHIGAN 4/	0	3	7	1	3
MISSISSIPPI 0/	219	315	238	176	178
NEBRASKA 5/	***	***	***	***	***
NEW HAMPSHIRE 4/	0	0	11	0	1
NEW MEXICO 6/	4	9	5	7	1
NEW YORK 3/	65	50	44	42	15
NORTH CAROLINA 3/	201	229	171	169	157
OKLAHOMA 3/	***	***	***	***	***
SOUTH CAROLINA 0/	357	278	427	298	316
SOUTH DAKOTA 3/	0	0	3	0	1
TEXAS 0/	1597	1737	1445	1534	1665
VIRGINIA 0/	372	438	434	357	370
WYOMING 3/	***	***	***	***	***
<b>Totals</b>	4809	4592	5307	4421	4661

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- 0/ Fully covered
  - 1/ Entire state covered 1964-1966; selected election districts covered 1971-1972; entire state covered since 1975.
  - 2/ Selected counties covered until 1975; entire state covered since 1975.
  - 3/ Selected county (counties) covered rather than the entire state.
  - 4/ Selected towns covered rather than the entire state.
  - 5/ Coverage pursuant to court order under Section 3.
  - 6/ Selected counties covered in 1976; subsequent coverage of state, for certain changes and three counties under Section 3.
  - 7/ County covered under court order under Section 3; not covered in 1990, however, made one submission.
  - 8/ Selected counties covered under Section 5; subsequent coverage under Section 3 for an individual county.
- \*\*\* Not covered for years indicated

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Date: 09-23-2008  
Time: 10:22 AM

**Submissi[on]  
Tracking And  
Processing Syste[m  
(ST]APS)  
Statistics Report**

Page: 2 of 4

**Number of Submissions By State for All  
Calendar Years**

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<b>State Name</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
ALABAMA 0/	181	288	233	237	287
ALASKA 1/	67	79	64	107	82
ARIZONA 2/	240	210	195	198	235
ARKANSAS 5/	0	0	1	0	1
CALIFORNIA 8/	64	36	28	43	36
COLORADO 3/	***	***	***	***	***
CONNECTI[-] CUT 4/	***	***	***	***	***
FLORIDA 3/	26	26	15	52	30
GEORGIA 0/	598	556	611	551	537
HAWAII 3/	***	***	***	***	***
IDAHO 3/	***	***	***	***	***
ILLINOIS 7/	***	***	***	***	***
LOUISIANA 0/	403	460	507	504	497
MAINE 4/	***	***	***	***	***

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MASSACHU[-] SETTS 4/	***	***	***	***	***
MICHIGAN 4/	2	2	0	0	1
MISSISSIPPI 0/	239	203	150	180	216
NEBRASKA 5/	***	***	***	***	***
NEW HAMPSHIRE 4/	0	0	0	0	0
NEW MEXICO 6/	3	0	3	1	1
NEW YORK 3/	26	26	35	29	26
NORTH CAROLINA 3/	173	174	199	193	219
OKLAHOMA 3/	***	***	***	***	***
SOUTH CAROLINA 0/	323	367	305	282	257
SOUTH DAKOTA 3/	2	1	0	1	0
TEXAS 0/	1265	1974	1507	1500	1414
VIRGINIA 0/	387	327	194	143	173
WYOMING 3/	***	***	***	***	***
<b>Totals</b>	3999	4729	4047	4021	4012

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- 0/ Fully covered
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Date: 09-23-2008  
 Time: 10:22 AM

**Submiss[ion]  
 Tracking And  
 Processing Syste[m  
 (S)TAPS)  
 Statistics Report**

Page: 3 of 4

**Number of Submissions By State for All  
 Calendar Years**

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State Name	2000	2001	2002	2003	2004
ALABAMA 0/	609	241	347	355	456
ALASKA 1/	65	85	103	78	86
ARIZONA 2/	235	178	309	248	268
ARKANSAS 5/	0	1	1	0	0
CALIFORNIA 8/	59	56	55	62	75
COLORADO 3/	***	***	***	***	***
CONNECTI[-] CUT 4/	***	***	***	***	***
FLORIDA 3/	31	19	37	22	46
GEORGIA 0/	661	590	963	1014	958
HAWAII 3/	***	***	***	***	***
IDAHO 3/	***	***	***	***	***
ILLINOIS 7/	***	***	***	***	***
LOUISIANA 0/	397	305	724	502	478
MAINE 4/	***	***	***	***	***



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MASSACHU[-] SETTS 4/	***	***	***	***	***
MICHIGAN 4/	1	4	5	27	3
MISSISSIPPI 0/	174	118	264	188	203
NEBRASKA 5/	***	***	***	***	***
NEW HAMPSHIRE 4/	0	0	3	0	44
NEW MEXICO 6/	1	0	2	2	3
NEW YORK 3/	11	23	21	48	17
NORTH CAROLINA 3/	219	265	230	213	219
OKLAHOMA 3/	***	***	***	***	***
SOUTH CAROLINA 0/	336	241	398	292	347
SOUTH DAKOTA 3/	0	2	3	16	23
TEXAS 0/	1647	1751	2224	1569	1775
VIRGINIA 0/	192	343	221	195	209
WYOMING 3/	***	***	***	***	***
<b>Totals</b>	4638	4222	5910	4831	5210

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Date: 09-23-2008  
Time: 10:22 AM

**Submiss[ion]  
Tracking And  
Processing Syste[m  
(S)TAPS)  
Statistics Report**

Page: 4 of 4

**Number of Submissions By State for All  
Calendar Years**

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<b>State Name</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Totals</b>
ALABAMA 0/	226	396	346	595	6126
ALASKA 1/	38	68	68	66	1468
ARIZONA 2/	316	332	312	214	4441
ARKANSAS 5/	0	0	0	0	6
CALIFORNIA 8/	99	111	69	46	1197
COLORADO 3/	***	***	***	***	***
CONNECTI[-] CUT 4/	***	***	***	***	***
FLORIDA 3/	23	40	22	19	574
GEORGIA 0/	921	907	858	617	14513
HAWAII 3/	***	***	***	***	***
IDAHO 3/	***	***	***	***	***
ILLINOIS 7/	***	***	***	***	1

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LOUISIANA 0/	403	421	455	380	8886
MAINE 4/	***	***	***	***	***
MASSACHU[-] SETTS 4/	***	***	***	***	***
MICHIGAN 4/	1	4	10	1	75
MISSISSIPPI 0/	158	127	166	130	3642
NEBRASKA 5/	***	***	***	***	***
NEW HAMPSHIRE 4/	57	2	0	0	118
NEW MEXICO 6/	0	1	0	0	43
NEW YORK 3/	29	15	21	21	564
NORTH CAROLINA/3	214	240	231	172	3888
OKLAHOMA 3/	***	***	***	***	***
SOUTH CAROLINA 0/	308	346	362	283	6123
SOUTH DAKOTA 3/	16	8	5	7	88
TEXAS 0/	1689	3900	3056	2155	35404
VIRGINIA 0/	235	194	162	184	5130
WYOMING 3/	***	***	***	***	***
	—	—	—	—	—

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<b>Totals</b>	4733	7112	6143	4890	92287
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0/ Fully covered

1/ Entire state covered 1964-1966; selected election districts covered 1971-1972; entire state covered since 1975.

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\*\*\* Not covered for years indicated

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## [USDOJ OBJECTIONS: ALABAMA (1994-2006)]

[Jurisdiction & USDOJ File No.]	[Objection To]	[Date of Objection]
Greensboro (Hale Cty.) (93-4223)	Districting plan for the city council	1-3-94
State (89-1439)	Amendment 425 to the Alabama Constitution, insofar as it provides that a referendum on a local constitutional amendment may not be held unless it is first approved by the Local Constitutional Amendment Commission	1-31-94
State (93-3195-96) (93-2322)	The changes for the courts of criminal and civil appeals and the supreme court occasioned by Act Nos. 602 and 987 (1969), 75 (1971), and 346 (1993) in the context of the at- large method of electing these courts	4-14-94  Withdrawn 3-18-96
Tallapoosa County (97-1021)	Redistricting plan	2-6-98

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[Jurisdiction & USDOJ File No.]	[Objection To]	[Date of Objection]
Alabaster (Shelby Cty.) (2000-2230)	Annexations (Ordinance Nos. 94-338 and 96-410)	8-16-00

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[BULLOCK-GADDIE]

TABLE 2

REPORTED REGISTRATION BY RACE IN  
ALABAMA AND OUTSIDE THE SOUTH,  
1980-2004

	1980	1982	1984	1986	1988	1990	1992
ALABAMA							
Black	62.2	57.7	71.4	75.4	68.4	65.3	71.8
White	73.3	70.2	77.2	74.3	75	74.9	79.3
Non-South							
Black	60.6	61.7	67.2	63.1	65.9	58.4	63
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9
	1994	1996	1998	2000	2002	2004	
ALABAMA							
Black	66.3	69.2	74.3	72	67.6	72.9	
White	73.3	75.8	74.1	74.5	73.7	73.8	
Non-South							
Black	58.3	62	58.5	61.7	57	na	
White	65.6	68.1	63.9	65.9	63	na	

Source: Various post-election reports by the U.S.  
Bureau of the Census



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[BULLOCK-GADDIE]

TABLE 3

REPORTED TURNOUT BY RACE IN ALABAMA  
AND OUTSIDE THE SOUTH,  
1980-2004

	1980	1982	1984	1986	1988
ALABAMA					
Black	48.9	41.2	54.8	55.2	52.4
White	59.2	52	62.8	52.5	58.4
Non-South					
Black	52.8	48.5	58.9	44.2	55.6
White	62.4	53.1	63	48.7	60.4
	1990	1992	1994	1996	1998
ALABAMA					
Black	45.7	58.1	53.5	54.3	51.6
White	52.7	65.9	64.3	56.3	51.6
Non-South					
Black	38.4	53.8	40.2	51.4	40.4
White	48.2	64.9	49.3	57.4	45.4

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	<b>2000</b>	<b>2002</b>	<b>2004</b>
ALABAMA			
Black	57.2	43.3	63.9
White	60.8	50.7	62.2
Non-South			
Black	53.1	39.3	na
White	57.5	44.7	na

Source: Various post-election reports by the  
U.S. Bureau of the Census

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[BULLOCK-GADDIE]

TABLE 4

NUMBER OF AFRICAN-AMERICAN  
ELECTED OFFICIALS IN ALABAMA, 1969-2001

Year	Total	County	Municipal	School Board
1969	70	2	34	5
1970	86	4	44	7
1971	105	4	45	12
1972	83	7	42	11
1973	149	20	55	16
1974	149	17	57	16
1975	161	17	60	20
1976	171	19	75	19
1977	201	22	91	23
1980	238	26	115	25
1981	247	32	112	32
1984	314	48	158	44
1985	375	52	212	47
1987	448	71	253	56
1989	694	86	428	86
1991	707	88	473	81
1993	699	94	435	86

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Year	Total	County	Municipal	School Board
<hr/>				
1995	-----No Report from the Joint Center-----			
1997	726	107	444	85
1999	725	101	439	94
2001	756	99	470	91

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Source: Various volumes of *The National Roster of Black Elected Officials* (Washington, D.C.: Joint Center for Political and Economic Studies).

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[BULLOCK-GADDIE]

TABLE 5

RACIAL MAKEUP OF THE  
ALABAMA LEGISLATURE, 1965-2005

Year	Senate	House	% Black in Senate	% Black in House
1965	0	0	0	0
1967	0	0	0	0
1969	0	0	0	0
1971	0	2	0	1.90
1973	0	2	0	1.90
1975	2	13	5.71	12.38
1977	2	13	5.71	12.38
1979	3	13	8.57	12.38
1981	3	13	8.57	12.38
1983	3	15	8.57	14.29
1985	5	19	14.29	18.10
1987	5	19	14.29	18.10
1989	5	18	14.29	17.14
1991	5	19	14.29	18.10
1993	5	19	14.29	18.10
1995	8	27	22.86	25.71
1997	8	27	22.86	25.71
1999	8	27	22.86	25.71
2001	8	27	22.86	25.71
2003	8	27	22.86	25.71
2005	8	27	22.86	25.71

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[LETTERHEAD: ALABAMA ATTORNEY GENERAL]

MEMORANDUM

Date: November 21, 2007

To: All Interested Individuals

From: Winfield J. Sinclair, Assistant Attorney  
General, Constitutional Defense Division

Re: Making a Preclearance Submission under  
Section 5 of the Voting Rights Act

**Overview**

On July 27, 2006, President Bush signed into law a 25-year extension of the preclearance provisions Voting Rights Act. Alabama governments remain under Section 5 preclearance requirements. Section 5 of the Voting Rights Act of 1965 (42 U.S.C. § 1973c) requires that the State of Alabama and its political subdivisions seek preclearance from the United States Department of Justice or the United States District Court for the District of Columbia before making any change in any “voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting.” The Office of the Attorney General makes many submissions under Section 5 to the Department of Justice (“DOJ”) each year on behalf of the State but the State’s political subdivisions are responsible for submission of local changes (such as annexations or ordinances). The Attorney General’s Office can provide a sample submission for reference and comparison to help local officials in their preparation

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of such a submission. This memorandum is a brief outline for local officials on how to prepare a Section 5 preclearance submission.

In preparing a preclearance submission to the Department of Justice, you should follow the “Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.” The applicable regulations are in Part 51 of Title 28 of the Code of Federal Regulations and can also be found at the Department of Justice website <http://www.usdoj.gov/crt/voting/28cfr/51/28cfr51.htm>. The Voting Section portion of the website provides a great deal of helpful information regarding making Section 5 submissions at [http://www.usdoj.gov/crt/voting/sec\\_5/about.htm](http://www.usdoj.gov/crt/voting/sec_5/about.htm). The Voting Section can also be contacted by telephone at (800) 253-3931 or (202) 307-2767. Their facsimile (FAX) number is (202) 307-3961.

### **Necessary Submission Contents**

Sections 51.26, 51.27 and 51.28 of the DOJ regulations explain the necessary content for submissions. The list of required contents is found in section 51.27 and includes:

- a. A copy of the Act, plan, ordinance, etc., to be precleared;
- b. A copy of the Act, plan, ordinance, etc., repealed or amended by the submitted Act, plan, ordinance, etc. (if any);
- c. An explanation of the change affecting voting;

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- d. The name, address, and telephone number of the person(s) making the submission;
- e. The submitting authority and jurisdiction responsible for making the change;
- f. The county and state in which the submitting authority is located;
- g. The person or body responsible for making the change and the mode of decision;
- h. The statutory authority under which the change is made;
- i. The date of adoption of the submitted Act, plan, ordinance, etc.;
- j. The effective date of the submitted Act, plan, ordinance, etc.;
- k. A statement that the change has not been enforced or an explanation as to why such statement cannot be made;
- l. If the change affects less than the entire jurisdiction, the scope of the change;
- m. A statement of the reasons for the change;
- n. A statement of the anticipated effect on minority groups;
- o. Identification and description of past or pending litigation;



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- p. A statement that the prior practice has been precleared or why it was not precleared; and,
- q. Other information as needed.

### **Supplemental Submission Contents**

Section 51.28 lists supplemental contents for submissions. Some of this information is optional, but some is required. For example, maps are required for annexations. Examples of supplemental information include:

1. Maps, if pertinent, showing prior and new boundaries and location of racial groups;
2. Demographic information;
3. Total and voting age population in affected area by race;
4. Registered voters in affected area by precinct and by race;
5. Election returns and race of candidates;
6. Publicity information and participation of interested parties, e.g., newspaper articles, public hearings, public notices;
7. Notices of availability of submission to the public;
8. Minority group contacts – Name(s), address(es) and telephone number(s) of

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minority individual(s) whom DOJ can contact regarding the change;

9. Old and new boundaries for annexations, district changes, etc.; and,

10. Racial makeup of areas.

### **Transmittal of the Preclearance Request**

#### **By Mail or Other Carrier**

The preclearance submission should be addressed to the Chief of the Voting Section, and can be sent either by U.S. mail or by a private carrier, such as UPS, Federal Express, Airborne Express, or DHL. U.S. mail may be delayed due to volume and is not recommended. Whatever method of delivery is chosen, it is recommended that you obtain and retain proof of delivery. **The envelope and the first page of the submission must be marked: "Submission under Section 5 of the Voting Rights Act."** In the case of short submissions, a submission can be sent by FAX transmission, retaining proof of transmission, to: (202) 616-9514.

Submissions may also include electronically stored media (such as magnetic disks) but such submissions are subject to very detailed and specific requirements as to labeling, contents, and formatting, so a review of the DOJ requirements (posted on its website) is recommended before submitting a submission containing such media.

Use the following addresses for documentary submissions:

28a

**By U.S. Mail:**

Chief, Voting Section  
 Civil Rights Division  
 Room 7254 – NWB  
 Department of Justice  
 950 Pennsylvania Ave.,  
 N.W.  
 Washington, D.C. 20530

**By Private Carriers:**

Chief, Voting Section  
 Civil Rights Division  
 Room 7254 – NWB  
 Department of Justice  
 1800 G St., N.W.  
 Washington, D.C. 20006  
 (202) 307-2767

**By Electronic Means**

The DOJ Voting Section website offers the option of filing a Section 5 preclearance submission (or updating a previous filing) electronically. Such a submission may only be submitted during certain times and using a space-limited DOJ form. To utilize this feature, the submitting jurisdiction accesses the DOJ Voting Section website at the appropriate place and clicks on either the “New Submission” button or the “Update Previous Submission” button and follows the instructions. Due to limitations in the electronic submission process, the Office of the Attorney General has not made a Section 5 submission electronically. Accordingly, we have no recommendations on such submissions at the present.

**The DOJ Review Process**

By statute, 42 U.S.C. § 1973(c), the Department of Justice has 60 days to review a submission. Sometimes DOJ will request additional information from the submitting authority and then

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restart the 60 day clock. Frequently, the DOJ reviewer will contact the submitting authority by telephone and ask for additional information and/or clarification with respect to less important matters contained in a submission. This will not restart the 60 day clock and ordinarily will not delay preclearance.

Section 51.34 of the regulations explains how to request expedited consideration of a preclearance request. Expedited consideration cannot be guaranteed, but DOJ will attempt to complete its review by the requested date in appropriate cases.

When the DOJ grants preclearance, it will send a letter so stating but will further state that their grant of preclearance does not bar litigation. In the event that expedited preclearance is granted, the DOJ preclearance letter will also reserve the right to reexamine the submission if additional information comes to the attention of the DOJ before the 60 day submission review period expires. Finally, you will want to retain the DOJ preclearance letter for future preclearance purposes because DOJ regulations require submission of details of prior preclearance information in the event that you thereafter modify your practice.

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[LETTERHEAD: ALABAMA ATTORNEY GENERAL]

February 20, 2007

Mr. Robert L. McCurley, Jr.  
Director  
Alabama Law Institute  
Post Office Box 861425  
Tuscaloosa, Alabama 35486-0013

Dear Bob:

Thank you for your letter inquiring into the preclearance status of Act No. 2006-570. You are correct that the submission to the Department of Justice for review pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, has not yet been made, though this massive project has been started.

As you know, Act No. 2006-570 is the 370-page revision of Alabama's election laws. While we understand that the Act was not intended to make substantive changes to existing law, such changes were made and each change must be specifically identified and explained. Any change which is not identified and explained cannot be enforced.

You may recall that my Office contacted you for assistance in identifying the changes made by Act No. 2006-570, and that you responded by providing a book identifying some changes. During that initial conversation, or a subsequent one, it became clear that the book did not identify every change made. Specifically, the conversation concerned changes made to section 17-4-124 of the Code of Alabama

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which are not explained in the book, but which came to this attention of this Office during its defense of the *Gooden v. Worley* litigation.

We have learned through experience the importance of identifying changes to existing law. In *Ward v. Alabama*, 31 F. Supp. 2d 968 (M.D. Ala. 1998) (three-judge court), the State included a red-lined version of the amended absentee voting statute with its submission, but did not incorporate it by reference in its letter. The court enjoined enforcement of the law because the change at issue was not specifically called out. The court explained that, if the State had advised the Department of Justice that all of the changes were shown on the redline, that “might” be enough. *Id.* at 972; see also *id.* at 977 (Thompson, J. concurring). Then again, in another case, incorporating the redline by reference might not be sufficient. *Id.* at 974. Similarly, in *Boxx v. Alabama*, 50 F. Supp. 2d 1219 (M.D. Ala. 1999), the court enjoined use of a recount procedure under the electronic voting regulations because the effect of the change was not specifically called out. The statute had been precleared, and the regulations had twice been precleared, but the State did not note that the regulations created a new basis for an election challenge. In both cases, the problem was not apparent in the abstract. Rather, only when the change was sought to be enforced, and politicians feared that the result of enforcing a nondiscriminatory provision of the law would be adverse to their interests, was Section 5 invoked.

In addition to carefully reviewing Act No. 2006-570 to identify, understand and describe the changes made, it is also necessary to research the

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preclearance history of each and every statute involved. Accordingly, we have prepared a 25 page chart listing every statute renumbered, amended, or deleted by Act No. 2006-570. The chart details when each statute was enacted or last amended, as appropriate. While a number of statutes have not been enacted or changed since Alabama's coverage date, many others were. In sum, 59 different Acts are at issue in that they either added a statute, or last amended an existing statute, that is impacted by Act No. 2006-570.

Through a review of our own records and through a document request to the Department of Justice, we have ascertained that all but eight of those 59 Acts were submitted for Section 5 review and received the preclearance needed here.<sup>1</sup> As to the other eight Acts, a submission for each of those Acts may be necessary to facilitate the submission of Act No. 2006-570. Before preparing those submissions, however, we will look into whether any of these eight remaining Acts failed to make substantive changes requiring preclearance. We will also look into whether any of the statutes that had been impacted by these eight Acts were not substantively amended by Act No. 2006-570. It may be that not all eight submissions must be made before the review of Act No. 2006-570 can be completed.

Not only is the preclearance submission for Act No. 2006-570 standing alone a time-intensive project, but the 2006 federal, state and county

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<sup>1</sup> An objection was interposed to portions of one Act, namely Acts 1975, No. 1196, but the objection did not impact any portion of the Act at issue in Act No. 2006-570.

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elections have brought their own tremendous workload to the attorneys in my Office who have been assigned to prepare this submission. That work has manifested itself in the various election-related lawsuits as well as a higher-than-usual number of preclearance submissions which had to be made for the 2006 elections.

Many of these preclearance submissions were complicated, time-sensitive, and/or involved requests for more information from the Department of Justice. Additionally, many were connected to just a few of the election-related lawsuits that my Office has been actively defending over the past year.

Rest assured that the submission of Act No. 2006-570 has been assigned to able and experienced counsel who will do a thorough job explaining the various changes made by that Act and compiling the other information required by Department of Justice regulations. They have started this undertaking, and hope to have preclearance by sometime this summer.

The Act's effective date is January 1, 2007. This date was not realistic in light of the burdens placed on the State by federal preclearance requirements. This Act, and others with immediate effective dates, simply cannot be precleared before their effective date. In fact, there have been other preclearance matters in the past that have literally taken years, and a complete revision of Title 17 is not the sort of submission that one should expect to progress smoothly or quickly.



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Your letter states that you have had inquiries from municipalities holding elections. I would recommend that you refer those municipalities to Ken Smith, Deputy Director/General Counsel at the League of Municipalities. My Office has worked with Mr. Smith on the submission of Act No. 2006-281 and the municipal portions of Act No. 2006-354. Otherwise, you should encourage the municipalities to continue following the current law until such time as the Department of Justice preclears the numerous changes made by Act No. 2006-570.

I trust this explanation is helpful to you in understanding why this project is not yet complete. Thank you, in advance, for your willingness to provide any assistance requested by this Office to answer any questions which might arise during the preclearance process. My Office will continue to work hard to obtain preclearance in a timely manner. We will let you know when the submission is made and when preclearance is achieved. In the meantime, if you have any further questions or if I can assist you in any way, I trust you will not hesitate to call on me again.

Sincerely,

Troy King  
Attorney General

TRK/msf

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cc: Honorable Randy Hinshaw, State  
Representative  
Honorable Ken Guin, State Representative  
Honorable Zeb Little, State Senator  
Honorable Ken Smith, League of  
Municipalities