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

TREVA THOMPSON, et al.,  
Plaintiffs,  
vs. CASE NO.: 2:16cv783-WKW  
STATE OF ALABAMA, et al.,  
Defendants.

\* \* \* \* \*

MOTION HEARING

\* \* \* \* \*

BEFORE THE HONORABLE W. KEITH WATKINS, UNITED STATES  
DISTRICT JUDGE, at Montgomery, Alabama, on Tuesday, July 25,  
2017, commencing at 2:38 p.m.

APPEARANCES:

FOR THE PLAINTIFFS: Ms. Danielle Lang  
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1 APPEARANCES, Continued:

2 FOR THE DEFENDANTS: Mr. Andrew L. Brasher  
Solicitor General  
3 Mr. James William Davis  
Ms. Mary Mangan  
4 Assistant Attorneys General  
STATE OF ALABAMA  
5 OFFICE OF THE ATTORNEY GENERAL  
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6 Montgomery, Alabama 36103

7 ALSO PRESENT: Mr. Brent Beal  
Deputy Attorney General  
8 STATE OF ALABAMA  
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9 State Capitol Building  
600 Dexter Avenue  
10 Montgomery, Alabama 36130

11 Proceedings reported stenographically;  
12 transcript produced by computer.

13 \* \* \* \* \*

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1 (The following proceedings were heard before the Honorable  
2 W. Keith Watkins, United States District Judge, at  
3 Montgomery, Alabama, on Tuesday, July 25, 2017, commencing  
4 at 2:38 p.m.):)

5 (Call to Order of the Court)

6 THE COURT: Good afternoon. We're here today in  
7 Thompson versus State, basically, 16cv783, for arguments on a  
8 motion of the plaintiff -- or plaintiffs -- for a preliminary  
9 injunction.

10 So let's take appearances, first for the plaintiffs, on  
11 the record.

12 MS. LANG: Danielle Lang for the plaintiffs.

13 MR. MCGUIRE: Joseph McGuire for the plaintiff, Your  
14 Honor.

15 THE COURT: All right. Thank you.

16 And for the defendants?

17 MR. BRASHER: Andrew Brasher for the defendants, Your  
18 Honor.

19 MS. MANGAN: Mary Mangan for the defendants, Your  
20 Honor.

21 MR. DAVIS: Jim Davis for the defendants. And also,  
22 Your Honor, Brent Beal is here with the Alabama Secretary of  
23 State's Office. He's counsel in the office.

24 THE COURT: All right. Thank you.

25 Plaintiffs will have the burden today on their motion.

1 There was one matter that just came up about an hour ago. It's  
2 doc number 67, defendants' motion to strike plaintiffs'  
3 evidentiary submissions, which were filed yesterday. And a  
4 motion was filed about an hour ago. It's the defendants'  
5 motion.

6 So Ms. Lang, did you-all work anything out on any of  
7 those issues?

8 MS. LANG: We worked out a few things, Your Honor; but  
9 for the most part, no. Exhibit B and Exhibit C --

10 THE COURT: Ma'am, you need to stand, please.

11 MS. LANG: Absolutely.

12 THE COURT: Thank you.

13 MS. LANG: Exhibit B and Exhibit C are no longer  
14 objected to. However -- and most of Exhibit A, with the  
15 exception of the following attachments, is also not objected to.  
16 Attachment 8, 10, 12, 13, and 17.

17 THE COURT: Those are objected to or not?

18 MS. LANG: Those are objected to.

19 MR. BRASHER: And 18, Your Honor.

20 THE COURT: And 18?

21 MS. LANG: And 18. I apologize.

22 MR. BRASHER: And, of course, we maintain our  
23 objections with respect to Exhibits D through -- I'm actually  
24 not sure what exhibit we're at now, given that there are some  
25 exhibits that were brought to the hearing today. But we

1 maintain our objections and our motion to strike with respect to  
2 those exhibits.

3 THE COURT: To which --

4 MR. BRASHER: D through I think it's N now.

5 THE COURT: D through N?

6 MS. LANG: Yes, Your Honor.

7 THE COURT: N must be a new one.

8 MS. LANG: Yes.

9 THE COURT: Last one I had was J.

10 MS. LANG: Yes, Your Honor. And we have copies of the  
11 new exhibits for Your Honor if I can approach.

12 THE COURT: All right. Bring them up.

13 (Brief pause)

14 THE COURT: So the State basically objects to  
15 everything after C.

16 MR. BRASHER: Yes, Your Honor.

17 Your Honor, we worked out a small concession with  
18 respect to Exhibit C. The last line of the declaration itself,  
19 I believe we were going to agree that that was withdrawn. So  
20 there's a -- I can read it for Your Honor if you want me to.

21 THE COURT: Let me get to C.

22 (Brief pause)

23 THE COURT: All right. This is Molly Danahy?

24 MS. LANG: Yes, Your Honor.

25 MR. BRASHER: Yes, Your Honor. So we -- we -- Ms. Lang

1 can correct me if I'm wrong, but I think we agreed that the  
2 plaintiffs are withdrawing the line of the affidavit in  
3 paragraph four that comes after the words "the last four years."

4 MS. LANG: It's just the words "a policy which depends  
5 on tracking voter activity by date."

6 THE COURT: Right.

7 MS. LANG: The last few words of the declaration we've  
8 agreed to strike.

9 THE COURT: Okay. Noted.

10 Now, with the objections to Exhibits A-8, 10, 12, 13,  
11 17, and 18, what's the plaintiffs' intent?

12 MS. LANG: I believe we'll be calling Molly Danahy and  
13 Anna Bodi. And, Your Honor, I will apologize. There are at  
14 least two of those items that I think I am actually the most  
15 appropriate declarant for. I'd be happy to enter a declaration.  
16 They were documents that were given to me directly and that I  
17 had passed on.

18 THE COURT: Wait a minute. You're making yourself a  
19 witness?

20 MS. LANG: I don't want to do that, Your Honor, so I'd  
21 be happy to get them re-received by another individual directly  
22 and submit them to the Court. I do apologize for that, Your  
23 Honor.

24 MR. BRASHER: Your Honor, to be clear, there's a  
25 declaration in the record purporting to authenticate these

1 documents; and now counsel is saying that the witness who signed  
2 the declaration can't actually authenticate the documents. I  
3 just find this whole process befuddling.

4 THE COURT: Well, of course, she can't authenticate  
5 documents that are hearsay, she can't have anything to do with,  
6 so -- that she didn't have anything to do with. So I'm not  
7 going to admit any hearsay documents. So I guess we'll just  
8 take it as it comes. Why don't we go ahead -- and the plaintiff  
9 has the burden here.

10 So, Ms. Lang, if you want to -- are there any other  
11 deals you-all have worked out you need to tell me about?

12 MS. LANG: No, Your Honor.

13 THE COURT: All right. Proceed.

14 MS. LANG: Your Honor, I'll just start with a couple of  
15 comments on the motion to strike, since it's still pending, for  
16 Exhibits D through N. The motion to strike claims that this is  
17 ambushed material, that there is over 300 pages of documents,  
18 but that's just really not true. At most, there's about 40 or  
19 so pages of new material that are new to the defendants.

20 Exhibit C, for example, is entirely responsive to the  
21 opposition as are, really -- all of the new declarations are  
22 directly responsive to an opposition. When plaintiffs filed  
23 their original preliminary injunction motion, they did so as  
24 quickly as physically possible after they were unable to reach  
25 an agreement with the State; and so not all the evidence had

1 been gathered. And we have spent the last three weeks gathering  
2 the appropriate evidence for the Court, and that evidence is all  
3 the more important, given the opposition that was filed just on  
4 Friday.

5           When we filed the motion for preliminary injunction, as  
6 we noted in our papers, we really thought that it was  
7 uncontested at that point that the prior system, prior to HB  
8 282, was arbitrary in the way that it was enforced, because  
9 Secretary Merrill had said so himself. So had a number of the  
10 legislators. But there is quite a forceful opposition to that  
11 proposition in the opposition. And so it would make sense to  
12 add a number of declarations to --

13           THE COURT: Why does that matter at the preliminary  
14 injunction stage based on counts six through ten?

15           MS. LANG: Our claim is based on the idea that we are  
16 likely to succeed on the merits of claims six through ten, that  
17 the --

18           THE COURT: You're likely to succeed on the merits of  
19 six through ten when the Legislature has basically changed the  
20 law?

21           MS. LANG: Yes, Your Honor. And that's because the  
22 State cannot possibly change the law slightly -- or change the  
23 law but not inform victims and, therefore, not provide an  
24 appropriate remedy for constitutional harms and then attempt to  
25 moot out the case that way.

1 THE COURT: But the -- but the statute is not even  
2 effective yet. It's not effective until August the 1st.

3 MS. LANG: Right, Your Honor. And all the more reason  
4 why we are still likely to succeed on the merits of our claim  
5 that the constitutional system, up until August 1, is  
6 unconstitutional and that --

7 THE COURT: Well, who is your new class?

8 MS. LANG: -- there has to be a remedy for that harm --  
9 I'm sorry?

10 THE COURT: Yeah, but this lawsuit is about a  
11 constitutional amendment that doesn't -- that has been, I will  
12 just say, remedied, for lack of a better verb. So I looked  
13 through all your classes -- I believe it's A through J or  
14 something like that -- and I didn't see a single one that  
15 survived after -- by definition, because of a change in the law.  
16 So it seems to me you're bringing this case on behalf of a new  
17 class.

18 MS. LANG: I don't think we are, Your Honor. A number  
19 of our classes are about people who would have trouble  
20 determining whether or not they were eligible to vote under the  
21 law. I think under the current registration form, that's  
22 absolutely still the case.

23 THE COURT: I think you referred, though, to the law as  
24 a constitutional prohibition for crimes involving moral  
25 turpitude, which was undefined. And I think all your counts tie

1 to that, or most of them do. I don't see any that are --  
2 between six and ten that are likely to survive. But the point  
3 is, though, for a preliminary injunction, why does it matter?

4 MS. LANG: Well, of course it matters, because if we  
5 were not likely to succeed on the merits, if none of our claims  
6 succeed, if we have absolutely no claims remaining, then, you  
7 know, claims for remedies would not --

8 THE COURT: Well, no. I'm not saying you have no  
9 claims remaining. I'm saying six through ten seem to be  
10 problematic on mootness. But you've got one through five.  
11 You've got some discrimination claims. You've got Section 2.  
12 And then you have the financial -- in 14 or 15 -- 13, 14, and  
13 15, you've got the financial claims.

14 MS. LANG: Yes.

15 THE COURT: And so what we're talking about here for an  
16 injunction is for what you have identified as 282 voters.

17 MS. LANG: Yes.

18 THE COURT: Well, those didn't exist when this lawsuit  
19 was filed.

20 MS. LANG: That's true, Your Honor. But --

21 THE COURT: So this is a new class.

22 MS. LANG: You could think of it that way, although I  
23 don't think it's necessary to think about it that way because  
24 this class, you know, was obviously created by HB 282. But it's  
25 always been our claim that there was a class of voters that were

1 eligible to vote that should be allowed to vote and that were  
2 unable to access the franchise because of the vagueness of the  
3 law. And that's still -- even though HB 282 has been passed,  
4 since there are thousands of voters -- I mean a discrete set of  
5 thousands of voters who have been told by the State under what  
6 we, you know, purport was a completely unconstitutional  
7 system -- told they aren't eligible to vote, there has to be a  
8 remedy for that harm.

9 THE COURT: Well, there has to be a lawsuit for that.  
10 And that's not this lawsuit, because 282 didn't exist. So  
11 you've had -- you know, it seems to me that you need to be  
12 allowed to eventually reset the case in view of the, you know,  
13 current circumstances. You know, defining a class is a highly  
14 technical thing.

15 MS. LANG: Absolutely, Your Honor.

16 THE COURT: And I've reviewed all of your class  
17 definitions. I don't think any of them apply. I know that they  
18 refer to people who would now be 282 voters, as you refer to  
19 them. But you said you were bringing this relief solely on the  
20 basis -- solely for the benefit of 282 voters. You defined that  
21 as people who now -- who were either -- I guess were wrongfully  
22 denied the right to vote, if you -- if you considered it  
23 wrongful, if the new list is the comprehensive list that would  
24 have applied then, or who were removed from the rolls. And I'm  
25 not saying that's not a lawsuit, but I don't think it's this

1 lawsuit, is the problem.

2           And so -- all right. So let's get down to the business  
3 end of this. This evidence that you want to put on I'm assuming  
4 that the State is objecting to. I -- first of all, I'd  
5 recommend you not make yourself a witness. There must be some  
6 other way to do that.

7           MS. LANG: Absolutely, Your Honor.

8           THE COURT: And you don't need to be playing two roles  
9 here today. Two is you have two witnesses that you want to put  
10 on to put on some evidence; is that right?

11           MS. LANG: Just a few items, Your Honor.

12           THE COURT: Okay. Well, I think you can call those and  
13 we can get started on that. And then we can argue the merits of  
14 the thing when you get your -- when we get all the evidence in.  
15 How about that?

16           MS. LANG: That sounds fine, Your Honor.

17           THE COURT: All right. Now, Mr. Brasher, I didn't give  
18 you a chance to respond. Do you want to respond now, or do you  
19 want to wait until the witnesses are done?

20           MR. BRASHER: Your Honor, I'll just wait until the  
21 witnesses are done and during the course of normal argument.

22           THE COURT: All right. Fine.

23           MS. LANG: And --

24           THE COURT: I'm sorry. Just a minute, Ms. Lang.

25           (Off-the-record discussion)

1           THE COURT: If you would, just go ahead and bring your  
2 two witnesses up and we'll go ahead and swear them in right now.  
3 That way we can -- we won't have to stop to do it.

4           THE CLERK: Raise your right hands.

5           (Two prospective witnesses are sworn)

6           THE COURT: Okay. Ms. Lang, would you like to call one  
7 of these witnesses now?

8           MS. LANG: We would like to call Ms. Danahy to the  
9 stand.

10          THE COURT: Come on up, Ms. Danahy.

11          Good afternoon.

12          THE WITNESS: Afternoon.

13          THE COURT: Are you a lawyer?

14          THE WITNESS: I am. Yes.

15          THE COURT: You signed one of the declarations.

16          THE WITNESS: I did. Yes.

17          THE COURT: All right. There's water right there if  
18 you need it.

19          THE WITNESS: Thank you.

20          THE COURT: Just speak slowly so she can take it down  
21 and so that we all can hear you.

22          THE WITNESS: All right.

23          THE COURT: Thank you.

24          Go ahead.

25          MS. LANG: And, Your Honor, if I could approach with a

1 copy of the evidentiary submissions.

2 THE COURT: You may. You have leave to approach. Just  
3 don't camp out.

4 (Brief pause)

5 **MOLLY DANAHY**

6 The witness, having been duly sworn to speak the truth, the  
7 whole truth, and nothing but the truth, testified, as follows:

8 DIRECT EXAMINATION

9 BY MS. LANG:

10 Q. Could you just state your name for the record.

11 A. My name is Molly Danahy.

12 Q. And where do you work?

13 A. I work at Campaign Legal Center.

14 Q. Thank you very much. And Ms. Danahy, if you could turn, in  
15 your evidentiary submissions, to Exhibit A, Attachment 10.

16 A. I have that here.

17 Q. And could you tell me what you see.

18 A. This is the state instructions for the federal form, I  
19 believe. Let me just review. Yes. That is submitted to the --  
20 it's posted by the EAC.

21 Q. And are you aware of how we received that document that was  
22 submitted to the Court yesterday?

23 A. Yes. I -- I went to the EAC website, I found it, and I  
24 downloaded it.

25 THE COURT: Went to which website?

1 THE WITNESS: The Elections Assistance Commission.

2 THE COURT: Oh, EAC?

3 THE WITNESS: Yes.

4 Q. (Ms. Lang, continuing:) And so you downloaded that  
5 yourself?

6 A. I did. Yes.

7 Q. And is this a true and correct copy of the document that you  
8 downloaded --

9 A. It is. Yes.

10 Q. -- from the EAC website? Thank you. And if you could point  
11 also -- if you could turn also to A-11.

12 A. I have Exhibit A-11 here.

13 Q. And what is this?

14 A. This is an application for the absentee ballot.

15 Q. And --

16 THE COURT: Is that for Alabama?

17 THE WITNESS: For Alabama. Yes.

18 Q. And how did you obtain that document?

19 A. I looked at it I believe this Sunday on the Alabama  
20 Secretary of State website.

21 Q. And is this a true and correct copy of that document that  
22 you saw on the Alabama Secretary of State website?

23 A. Yes.

24 MS. LANG: Okay. Thank you very much, Ms. Danahy.

25 THE COURT: Any cross-examination?

1 MR. DAVIS: Briefly, Judge.

2 THE COURT: All right. Go ahead, Mr. Davis.

3 CROSS-EXAMINATION

4 BY MR. DAVIS:

5 Q. Ms. Danahy, good afternoon. My name is Jim Davis, one of  
6 the lawyers for the defendants. Exhibit 10 that you looked  
7 at -- A-10. Pardon me.

8 A. Yes.

9 Q. This is, is it not, the federal voter registration form and  
10 state instructions? Or that was your testimony?

11 A. My testimony is that this is the federal form with the state  
12 instructions.

13 THE COURT: Both of you-all are talking really fast.  
14 You need to slow down.

15 THE WITNESS: I apologize.

16 MR. DAVIS: Thank you for the reminder.

17 Q. Do you know, Ms. Danahy, if this was the only version of the  
18 federal voter registration form and state instructions available  
19 on the website that you reviewed?

20 A. It's not. There's another one.

21 Q. Okay. Can you tell me what the other one is.

22 A. I don't have it in front of me. I remember it has different  
23 instructions.

24 Q. Okay. Do you have any memory at this time how the  
25 instructions differed?

1 A. I know that they were different. I don't remember  
2 specifically how.

3 THE COURT: Did it relate to criminal  
4 disenfranchisement?

5 THE WITNESS: It did relate to criminal  
6 disenfranchisement.

7 THE COURT: So the other version did have something  
8 about criminal disenfranchisement?

9 THE WITNESS: Yes.

10 THE COURT: Does this version, or do you remember? I'm  
11 sure it --

12 THE WITNESS: It does say that to register in Alabama  
13 you must not have been convicted of a felony involving moral  
14 turpitude or have had your civil and political rights restored.

15 MR. DAVIS: Just one moment, Your Honor.

16 (Brief pause)

17 MR. DAVIS: Thank you.

18 THE COURT: Okay. Ma'am, you can stand down. Thank  
19 you.

20 MS. LANG: I'm so sorry. I had one more question for  
21 Ms. Danahy.

22 THE COURT: Oh, you had one more question?

23 MS. LANG: I apologize.

24 THE COURT: Follow up. Go ahead.  
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REDIRECT EXAMINATION

BY MS. LANG:

Q. Ms. Danahy, could you turn to Exhibit A-12,  
the Attachment 12.

A. Yes. I have that here.

Q. And can you tell me what it is.

A. This is a letter received by Mark Irby from the Alabama  
State Board of Pardons and Paroles. And it informed him that he  
had not been convicted of a crime involving moral turpitude but  
instructed him that he must pay an unpaid balance of fees before  
he would be able to vote.

Q. Okay. And how did you receive that document?

A. I received this from a man named Adrian Muller who runs an  
organization called the Alabama Non-Violent Offenders  
Organization, I believe. And he received it from Mark Irby.  
And then I spoke on the phone with Mr. Irby and verified the  
accuracy of that.

Q. So you spoke to Mr. Irby directly and confirmed this was the  
letter he received?

A. Correct.

MS. LANG: Okay. Thank you.

THE WITNESS: Thank you.

THE COURT: Mr. Davis? It's a new matter.

Nice try.

1 RE CROSS-EXAMINATION

2 BY MR. DAVIS:

3 Q. Ms. Danahy, this letter was not sent to you; correct?

4 A. It was emailed to me.

5 Q. Okay. But originally it was not sent to you. On September  
6 19th, 2013, you were not a recipient.

7 A. No. That's correct.

8 Q. Okay. Did you ever speak to Mr. Jim Kirkland?

9 A. No, I did not.

10 Q. Who is Adrian -- last name, please?

11 A. Muller.

12 Q. -- Muller?

13 A. He's a gentleman that runs a nonprofit organization that  
14 works with nonviolent offenders.

15 Q. Is all the information you have about this letter  
16 information that you received either from Adrian Muller or  
17 Mr. Irby or some other third person?

18 A. That's it.

19 Q. Do you have any independent knowledge yourself that you did  
20 not hear from anyone else about Exhibit A-12?

21 A. No.

22 MR. DAVIS: We maintain our objections on hearsay,  
23 Judge. That's all the questions I have.

24 THE COURT: Well, is this an admission against  
25 interests? It's filed -- it's a state -- it's a letter if it's

1 authentic. Is your objection that it's not authentic?

2 MR. DAVIS: The objection is we can't tell whether it's  
3 authentic. We have no information to base that on. Yes.

4 Well, this is information received from -- a letter  
5 sent from one person sent to someone else, then sent to someone  
6 else who didn't even sign the declaration. Yes. We maintain  
7 our objections on hearsay.

8 THE COURT: All right. Ms. Lang, do you want to  
9 respond briefly as to the hearsay objection?

10 MS. LANG: That's fair enough, Your Honor. I think we  
11 would point to the fact that this is on a preliminary  
12 injunction. Mr. Irby has a very difficult work schedule, and we  
13 have not an able to work with him directly. He works with  
14 Adrian Muller at the nonprofit organization. We have verified  
15 it with him. We've also submitted a declaration where he  
16 describes the letter that he received on this date, and that is  
17 precisely this letter. So we think that the Court is certainly  
18 capable of, you know, weighing its weight and concerns about  
19 authentication. But I don't think that there's any real debate  
20 that this was the letter that was received and that it is, in  
21 fact, a statement against interests.

22 THE COURT: All right. I don't know how this is  
23 relevant or material to what we're doing today. I'm going to  
24 overrule the objection and consider it for what it's worth.

25 Ms. Danahy, how many lawyers work at the Campaign Legal

1 Center or -- are they employed or is it just kind of a loose  
2 association of lawyers who help?

3 THE WITNESS: They're employed by the Campaign Legal  
4 Center. I know we have around 30 staff, but some of those are  
5 nonlawyers.

6 THE COURT: So -- but over a dozen would be lawyers,  
7 probably?

8 THE WITNESS: Probably.

9 THE COURT: Okay. Thank you.

10 MS. LANG: Thank you, Ms. Danahy.

11 THE COURT: Thank you. You can stand down.

12 MS. LANG: And I would call Ms. Bodi.

13 THE COURT: Good afternoon.

14 THE WITNESS: Good afternoon.

15 THE COURT: Ma'am, are you a lawyer?

16 THE WITNESS: Yes.

17 THE COURT: What's your name?

18 THE WITNESS: Anna Bodi.

19 THE COURT: All right. Thank you.

20 Go ahead.

21 **ANNA BODI**

22 The witness, having been previously sworn to speak the truth,  
23 the whole truth, and nothing but the truth, testified, as  
24 follows:

25

1 DIRECT EXAMINATION

2 BY MS. LANG:

3 Q. Ms. Bodi, if you could turn, in the evidentiary submissions  
4 before you, to Exhibit A-17.

5 (Brief pause)

6 A. Yes. I have it here.

7 Q. And could you tell me what it is.

8 A. It's a notice from the Jefferson County Commission sent to  
9 an individual, and it's a notice of nonqualification to register  
10 to vote telling this person that they've been convicted of a  
11 felony involving moral turpitude.

12 Q. And how did you receive that document?

13 A. I received this document from Greater Birmingham Ministries.

14 Q. Who at Greater Birmingham Ministries?

15 A. I believe I got it from Martha Shearer.

16 Q. Okay. And are you aware of how Martha Shearer received this  
17 document?

18 A. I believe it was either sent to her or she got it directly  
19 from this individual who came in and wanted help.

20 Q. Okay. Thank you very much. And can you tell me, did you do  
21 anything with the name of the individual that was on this  
22 letter?

23 A. No.

24 Q. Did you check Alacourt's database?

25 A. Oh, yes. I looked up the name and the identifying

1 information of this individual on Alacourt and checked what his  
2 convictions were in Alabama.

3 Q. And were any of his convictions in Alabama listed on HB 282?

4 A. No.

5 MS. LANG: Okay. Thank you very much.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MR. DAVIS:

9 Q. Hello, Ms. Bodi. Exhibit A-17 -- I'm sorry. Who did you  
10 say you got this from?

11 A. Greater Birmingham Ministries.

12 Q. But who at Greater Birmingham Ministries?

13 A. I believe Martha Shearer.

14 Q. You're not sure?

15 A. I'm not sure.

16 Q. Do you know how she got it?

17 A. I believe she either got it directly from helping this  
18 individual or directly from the individual.

19 Q. Do you have any personal knowledge of how this person got  
20 it?

21 A. No.

22 Q. Did -- do you have any personal knowledge regarding the  
23 source of Exhibits 10 -- A-10 or A-12? A-10 is a federal voter  
24 registration form and state instructions.

25 A. Uh-huh. Yes. I prepared these -- this -- a document with

1 these exhibits together, but I did not personally download this  
2 from the website.

3 Q. That's true for 10 and 12?

4 A. I haven't looked at 12. Let's see. Twelve is the letter  
5 from Mark Irby -- or to Mark Irby.

6 Q. Correct.

7 A. This was -- I don't believe this was sent directly to me,  
8 but --

9 Q. Exhibit 8 -- were you present at the deposition of Ed  
10 Packard?

11 A. No, I was not.

12 Q. Do you know what case that was from?

13 A. I believe it was *Greater Birmingham Ministries v. Alabama*.

14 Q. Do you know what the case was about?

15 A. No, I do not.

16 Q. Look back at -- at 17, please.

17 (Brief pause)

18 A. Yes.

19 Q. When you received the letter -- well, it's been redacted  
20 since this letter was received. True?

21 A. Yes.

22 Q. Without the redacted material, would you have any way to  
23 investigate this person or what crimes this person was convicted  
24 of?

25 A. It was not sent to me redacted.

1 Q. But you'd need the information that's been redacted in order  
2 to do the research that you did; correct?

3 A. Yes. You would need -- you would not necessarily need a  
4 name, but a name is one of the ways you could do that.

5 Q. You couldn't have gotten this piece of paper in this form  
6 and done the research that you testified that you did; correct?  
7 You wouldn't have enough information to look up the person's --

8 A. No.

9 MR. DAVIS: Thank you.

10 THE COURT: Do you have an objection?

11 MR. DAVIS: Yes, Your Honor. We object to 17 on  
12 hearsay. We -- although this wasn't part of direct examination,  
13 we do object to this excerpt of Ed Packard. We haven't had time  
14 to authenticate --

15 THE COURT: Well, it hasn't been offered. It's  
16 objected to and hasn't been offered. So --

17 MR. DAVIS: Then I'll wait until the appropriate --

18 THE COURT: All right. I'm going to sustain the  
19 objection because this is from the Jefferson County Commission  
20 and on hearsay. They're not a party. It wouldn't be an  
21 admission of any sort. So the county commission not being a  
22 party and there being no identifying information, based on what  
23 I have, I'm excluding A-17 on the basis of hearsay.

24 MS. LANG: Thank you, Your Honor. We would point out  
25 that we have sued all the board of registrars as a class. So

1 Jefferson County Board of Registrars would be included as a  
2 party.

3 THE COURT: Yes. But this is the Jefferson County  
4 Commission.

5 MS. LANG: I believe it --

6 THE COURT: Signed by chair of the Jefferson County  
7 Commission. I'm not quite sure why. But nevertheless, that's  
8 my ruling.

9 MS. LANG: Okay. Thank you, Your Honor.

10 THE COURT: Ms. Bodi, you can stand down. Thank you.

11 Now, do you have any more evidence to present before we  
12 get into the argument, Ms. Lang?

13 MS. LANG: Your Honor, I'd like to call Martha Shearer.

14 THE COURT: Mark --

15 MS. LANG: Martha Shearer. She's in the courtroom.

16 THE COURT: Okay. Go ahead. Call her. She'll need to  
17 be sworn.

18 THE CLERK: Ma'am, up this way. Stand right there and  
19 raise your right hand.

20 (The witness is sworn)

21 THE CLERK: Have a seat right up there.

22 THE COURT: Good afternoon, Ms. Shearer.

23 THE WITNESS: Hi.

24 THE COURT: How are you?

25 THE WITNESS: I'm good.

1 THE COURT: Good. Speak so we can hear you. You may  
2 need to get closer to that mike there.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you.

5 Go ahead.

6 **MARTHA LYNN SHEARER**

7 The witness, having been duly sworn to speak the truth, the  
8 whole truth, and nothing but the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY MS. LANG:

11 Q. Good morning, Ms. Shearer -- or good afternoon. I  
12 apologize. Can you say your full name for the record.

13 A. Martha Lynn Shearer.

14 MS. LANG: Okay. May I approach with the evidentiary  
15 submissions?

16 THE COURT: Yes.

17 (Brief pause)

18 Q. Ms. Shearer, where do you work?

19 A. Greater Birmingham Ministries.

20 Q. And what is your position there?

21 A. Community organizer.

22 Q. How long have you been there?

23 A. Thirteen months.

24 Q. Okay. And Ms. Shearer, if you turn to tab F in your  
25 submissions --

1 A. I don't have my reading glasses.

2 Q. Oh, that's all right.

3 A. Let's see.

4 Q. It's towards the back there.

5 MS. LANG: May I assist the witness?

6 A. I gotcha.

7 Q. You got it? Okay. Can you tell me what that document is.

8 A. It's a declaration that I signed.

9 Q. You signed this declaration? When did you sign it?

10 A. Yesterday.

11 Q. Okay. I'd like to just go through some of the information  
12 in your declaration. What are the types of activities you do as  
13 a community organizer in Greater -- at Greater Birmingham  
14 Ministries?

15 A. Primarily, I do go out and get people registered to vote.  
16 We also do it there at our office, community events, and also do  
17 voter restoration for people that have lost their rights to  
18 vote.

19 Q. And by voter restoration, do you mean applying for  
20 certificates of eligibility --

21 A. Correct.

22 Q. -- to register to vote?

23 A. Correct.

24 Q. Okay. And as part of your voter registration activity, do  
25 you work with a lot of people with convictions?

1 A. We do.

2 Q. Do you yourself have a past conviction?

3 A. I do.

4 Q. Okay. Up until, you know, May 25th of this year when a new  
5 law was passed, did you understand who was eligible to vote and  
6 who was not eligible to vote?

7 A. I did not.

8 Q. And when you encountered people in the community who had  
9 convictions, what did they think about their eligibility to  
10 vote?

11 A. Most people that I encountered just assumed that they could  
12 not vote.

13 Q. And when you spoke to these people and tried to inform them  
14 about their rights, what did you tell them?

15 A. That not all convictions caused them to lose their right and  
16 that they can complete a certificate of eligibility or just go  
17 ahead and do a registration card and find out.

18 Q. So it was your view that the only way to find out if you  
19 were disqualified was to apply?

20 A. Right.

21 Q. And when -- and did you encourage people to apply to  
22 register to vote?

23 A. Yes.

24 Q. And what did you find when people -- when people with  
25 convictions registered to vote? What happened?

1 A. Sometime nothing happened. Sometime they never received  
2 anything from the registrar telling them either way. Sometime  
3 people received letters stating that they could vote, and  
4 sometime they received letters stating that they couldn't vote.

5 Q. And were there ever people with similar convictions and one  
6 could vote and one couldn't?

7 A. Yes.

8 Q. Did that happen often?

9 A. Yes.

10 MR. DAVIS: Your Honor, I want to register an objection  
11 to lack of foundation and to hearsay. I believe Ms. Shearer is  
12 testifying as to what she's heard from other people. I don't  
13 know that it's been established that she has personal knowledge  
14 of what individual voters were told by registrars.

15 THE COURT: Sustained.

16 Q. Okay. Ms. Shearer, did you often help people fill out these  
17 applications themselves?

18 A. Yes.

19 Q. And did they bring you back the letters that they received?

20 A. Yes.

21 Q. And you read those letters yourself?

22 A. Yes.

23 Q. And do you, in fact, track all of that information for each  
24 individual that you help?

25 A. Yes. We keep a record of everybody that we register,

1 whether they do a CERV application or regular registration. And  
2 we track it and follow up with them to find out if they've been  
3 told where they're going to go register at or if they received a  
4 letter telling them that they could or could not vote.

5 Q. And did you keep records of all the documents that voters  
6 get and return back to you?

7 A. Yes.

8 MS. LANG: Your Honor, we would submit that that is  
9 a -- that is a reasonable foundation for her testimony.

10 THE COURT: Not for records. I don't know what -- I  
11 don't know what you're going to try to get in through the  
12 records. She's testified that she --

13 MS. LANG: To her knowledge about the various responses  
14 from registrars.

15 THE COURT: That's hearsay, pure hearsay.

16 (Brief pause)

17 MS. LANG: Okay.

18 Q. Do you have difficulty -- given the information you've  
19 received, do you have difficulty advising individuals as to  
20 their rights to vote prior to the new -- passage of the new law?

21 A. Yes.

22 Q. And what does that mean for you practically, on a day-to-day  
23 basis, that you don't have that information?

24 A. Basically, I tell anybody it's a gamble. You do not know  
25 until you apply if you're going to get your right to vote or

1 not, because it depends on who receives your application at the  
2 time that it's submitted.

3 Q. And have you ever tried to help somebody who was denied  
4 their ability to register but also denied a CERV because their  
5 crime wasn't disqualifying?

6 A. Because it was or wasn't?

7 Q. Because their crime wasn't disqualifying. So the board  
8 would say their crime wasn't disqualifying, but the registrar  
9 would deny them?

10 A. Yes.

11 Q. And what do you advise people to do in that circumstance?

12 A. To resubmit.

13 Q. Okay. Based on the work you do, the population you work  
14 with, do they have access -- regular access to Internet and  
15 things like that?

16 A. No.

17 Q. Are there members of your community that are eligible to  
18 vote now under the new law?

19 A. Are there members eligible now?

20 Q. Of your community. That you've worked with.

21 A. Yes.

22 Q. Will you be able to reach them all yourself?

23 A. No.

24 MS. LANG: That's all I have for you, Ms. Shearer.

25 Oh, you know what, Ms. Shearer? If you could turn

1 to -- on the first tab, Exhibit A, to A-17. And that's page 153  
2 at the top.

3 A. Is it behind the sites? No. That's A-2.

4 Q. Yeah. So 153 on the top there. It's quite a ways into  
5 tab A.

6 THE COURT: You know, your numbering may be a little  
7 confusing to the witness and she doesn't have her glasses.  
8 So maybe you'd like --

9 MS. LANG: Could I help, Your Honor?

10 THE WITNESS: It is.

11 MS. LANG: Thank you.

12 THE WITNESS: Oh, it's way back there.

13 MS. LANG: Yeah.

14 THE WITNESS: Okay.

15 MS. LANG: There you are.

16 THE WITNESS: Thank you.

17 Q. (Ms. Lang, continuing:) Ms. Shearer, did you provide the  
18 documents that you testified that you collect to Campaign Legal  
19 Center for their review?

20 A. I did.

21 Q. And do you recognize this document in particular?

22 A. I do.

23 Q. And what is it?

24 A. It's a notice of nonqualification to register to vote.

25 Q. And did you provide this to Campaign Legal Center?

1 A. Yes.

2 Q. And it was from one of your clients?

3 A. Yes.

4 MS. LANG: Okay. Thank you, Ms. Shearer. I don't have  
5 anything further.

6 THE COURT: Ms. Shearer, did you apply to have your  
7 voting rights restored?

8 THE WITNESS: I applied the regular way, and I was  
9 granted the right to vote. And then I applied for a pardon, and  
10 they asked me if I wanted to restore my rights to vote. And I  
11 informed them that I had been voting, and they informed me that  
12 I had been committing fraud.

13 THE COURT: So you are not registered to vote now?

14 THE WITNESS: Yes.

15 THE COURT: Yes, that's correct, you're not?

16 THE WITNESS: Yes, I am registered to vote.

17 THE COURT: Oh, now you are registered to vote.

18 THE WITNESS: I was registered then.

19 THE COURT: Have you been -- have you continued to  
20 vote?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. All right. Go ahead, Mr. Davis.

23 CROSS-EXAMINATION

24 BY MR. DAVIS:

25 Q. Hello, Ms. Shearer.

1 A. Hi.

2 Q. Do you have personal knowledge of whether any of your  
3 clients have access to the Internet or transportation or any  
4 other public facilities?

5 A. We do have clients that we see that we -- we ask their form  
6 of transportation, and they'll tell us if they have a vehicle or  
7 if they're catching a bus or if they have to catch rides.  
8 Majority of them do not have Internet access at home, so --

9 Q. Your information is only what you know -- only what was told  
10 to you by the client; correct?

11 A. By the client. Correct.

12 Q. Oh. When you were testifying that you had difficulty  
13 knowing who was eligible and who was not, were you speaking of  
14 the situation under the old law before House Bill 282 was  
15 passed?

16 A. Yes.

17 Q. That's not the law anymore, though, is it?

18 A. It's not -- well, until August the 1st, it is.

19 Q. Have you been advising people since 282 was passed?

20 A. Yes.

21 Q. Have you been able to tell them whether or not they were  
22 eligible to vote?

23 A. I could tell them that under the new law and what was  
24 written, that on August the 1st, that they could apply.

25 Q. Did you ever help any client appeal a denial of a right to

1 vote?

2 A. I have not.

3 Q. Are you aware that they have the right to appeal?

4 A. Yes.

5 Q. Did you advise them to?

6 A. Yes.

7 Q. Do you know if any of them did?

8 A. I don't know of any that did. But we are still in the  
9 process of making phone calls.

10 Q. Is it your role to help people of all walks of life register  
11 to vote?

12 A. Yes.

13 Q. Do you intend to continue to do that?

14 A. Yes.

15 Q. Will you help felons that come to you or former felons --  
16 people who have been convicted of felonies in the past, will you  
17 help them register to vote?

18 A. Yes.

19 Q. Will you use the list under 282 to help them know whether or  
20 not they're eligible?

21 A. Yes.

22 Q. If they're denied and you believe wrongfully, would you  
23 advise them to appeal that?

24 A. Yes.

25 MR. DAVIS: Thank you.

1 THE COURT: Brief follow-up?

2 MS. LANG: I don't have anything further, Ms. Shearer.  
3 You're welcome to step down.

4 THE COURT: Thank you, Ms. Shearer.

5 All right. Ms. Lang, do you have any other testimony?

6 MS. LANG: That's all for testimony, Your Honor. We  
7 would move to submit the remainder of our declarations into  
8 evidence, A through N.

9 THE COURT: A through N?

10 MS. LANG: Uh-huh.

11 THE COURT: All right. What says the State?

12 MR. BRASHER: Your Honor, we continue to object to that  
13 on the basis of our motion to strike.

14 THE COURT: All right. I'm going to admit A-12, and  
15 I'm denying A-17. I'm going to -- let's see. B and C are not  
16 objected to. So I'm denying A-8, 10, 13, 17, and 18.

17 And then I'll begin with D. For purposes of this  
18 hearing only, I'm admitting Exhibit D, which is the declaration  
19 of Synethia E. Pettaway. I'm admitting F, the declaration of  
20 Martha Shearer, who just testified. I'm admitting G,  
21 declaration of Perrion Roberts; H, declaration of Constance  
22 Todd; I, declaration of Brio Richardson. And J will be  
23 admitted, the declaration of Willie Goldsmith. Those are  
24 admitted for purposes of this hearing only and to the extent  
25 that they are material and relevant to what we're doing.

1 MS. LANG: Your Honor, are you going to make rulings on  
2 K through N as well? Those are the new declarations that I  
3 handed to --

4 THE COURT: I haven't seen those. What's the  
5 State's --

6 MS. LANG: I'll be happy to describe them to you.

7 THE COURT: Well, let me just look at them real quick.

8 MS. LANG: Absolutely.

9 (Brief pause)

10 THE COURT: Well, now, K appears to be from Mr. Irby,  
11 who is apparently -- no. This is a different Irby.

12 MS. LANG: No. It's the same Mr. Irby.

13 THE COURT: Oh, it's Mark Gary Irby. Same Mr. Irby.

14 MS. LANG: Yes. We weren't sure if Mr. Irby was going  
15 to be able to get us the declaration in time, which is why we  
16 submitted it with A. Knowing now that he able to get it to us  
17 last night, we would have attached his letter, you know,  
18 directly.

19 THE COURT: Does the government have any specific  
20 objection? I've already admitted 12, which is the letter.

21 MR. BRASHER: Our objection is just that we've just  
22 received this with Your Honor about 15 minutes ago.

23 THE COURT: All right. In my discretion, I'm going to  
24 allow it. Now, L is Melinda Ricketts.

25 MS. LANG: Your Honor, we do apologize for the quality

1 of that document. She did not have access to a printer or  
2 scanner. She I believe took a picture and sent it to us. And  
3 that was the only way she was able to get the document to us.

4 THE COURT: All right. It's in the same nature as the  
5 earlier exhibits. It appears to be. I'm going to admit it for  
6 purposes of this hearing only.

7 Exhibit M is the declaration of Josh Moon.

8 (Brief pause)

9 THE COURT: Mr. Brasher, your objection to Josh Moon's  
10 declaration is likewise, you just received it?

11 MR. BRASHER: Yes, Your Honor. We just received it.  
12 And I would say that this one in particular is prejudicial  
13 because, you know, given that we just received this, we -- I  
14 mean, we have no opportunity to even investigate Mr. Moon's  
15 claims. I mean, we had no opportunity to evaluate whether a  
16 witness could come to rebut these.

17 THE COURT: On the basis of the lateness of this and  
18 because the State is prejudiced -- Mr. Moon reports  
19 conversations -- I mean statements that he heard from the  
20 Secretary of State. The State can't rebut it today. So I'm not  
21 going to admit this for purposes of today's hearing. That  
22 doesn't mean it wouldn't be admissible at some other time.

23 MS. LANG: Your Honor, thank you. And Your Honor, we  
24 just point out that this statement by Mr. Moon was actually made  
25 available to the State three weeks ago in the preliminary

1 injunction hearing. It was one of the newspaper articles --

2 THE COURT: In the preliminary injunction hearing?

3 MS. LANG: The preliminary injunction motion. I  
4 apologize. So this was an article that was quoted directly in  
5 the preliminary injunction motion. On Friday, we received an  
6 opposition that said that they vehemently objected to the  
7 admission of newspaper articles. So it was only then that we  
8 were able to go to reporters and ask them to submit declarations  
9 instead because the State objected to newspaper articles.

10 THE COURT: Okay. But I'm sustaining the objection at  
11 this time.

12 All right. Now, the declaration of Kira Lerner. Let  
13 me have a look at this.

14 MS. LANG: It's in the same nature, Your Honor.

15 THE COURT: I'm sorry?

16 MS. LANG: It's in the same nature.

17 THE COURT: It's a report of the questions -- something  
18 said by the Secretary of State?

19 MS. LANG: Yes.

20 THE COURT: And it has an article attached to it. All  
21 right. I'm going to sustain the objections to N and M at this  
22 time for purposes of this hearing only.

23 MS. LANG: Thank you, Your Honor.

24 THE COURT: The others are admitted.

25 Now, does that take care of all the evidence?

1 MS. LANG: It does, Your Honor.

2 MR. DAVIS: Your Honor, did you address Exhibit E?

3 THE COURT: E? Let me see.

4 MS. LANG: He did not.

5 THE COURT: Oh, E is the expert's report. That's a  
6 different character. It's quite an extensive report. I read  
7 all of it. What's the nature exactly of the State's objection,  
8 now, to that?

9 MR. DAVIS: Well, we do have a timeliness objection,  
10 because there's just not enough time to -- 24 hours is not  
11 enough time to address an expert report. But also --

12 THE COURT: Had you seen the report before it was  
13 turned in?

14 MR. DAVIS: No. No. This was the first I believe that  
15 we've seen the report. Also, we don't think that it satisfies  
16 the rules of evidence in terms of expert material. We don't  
17 know the person's methodology for trying -- if -- to the extent  
18 he's trying to tell you that, in his opinion, this was passed  
19 with a discriminatory purpose, that's not expert material.  
20 That's a question of law for the Court to decide.

21 THE COURT: Well, he didn't opine on the '96 passage or  
22 the 2012 passage. He's just talking about 1901. Is that --

23 MR. DAVIS: He didn't seem to ever get there, but he  
24 suggested, I thought, that he was -- that was ultimately going  
25 to be his conclusion.

1 THE COURT: Well, it's not in here.

2 MR. DAVIS: Okay.

3 THE COURT: So I'm not -- I don't know how it's  
4 relevant to what we're doing today.

5 MR. DAVIS: Just a last objection. He doesn't talk  
6 about the relevancy of any -- of the -- and he doesn't give any  
7 opinion about any discriminatory intent for anything happening  
8 today, so I question the relevancy of it for purposes of this  
9 motion for preliminary injunction.

10 THE COURT: All right. Ms. Lang, why is it material to  
11 what we're doing today?

12 MS. LANG: Your Honor, it has always been the position  
13 of the plaintiffs that the 1996 law and the 2012 law, I suppose,  
14 are directly carried over from the 1901 Constitution. And it's  
15 also relevant to how it was discriminatorily applied, the  
16 standard, in the fifties and sixties, which is the description  
17 in -- the historical description in Mr. -- in Dr. McCrary's  
18 report is very similar to the evidence of the nineties and 2000s  
19 as to how it was also implemented in the nineties and 2000s. So  
20 it's relevant for that reason.

21 THE COURT: Well, he doesn't get to that opinion that  
22 you're talking about.

23 MS. LANG: No. But it's an important part of the  
24 historical piece of the puzzle for Your Honor.

25 THE COURT: Well, maybe it will be when we have the

1 final hearing on the case, but I'm going to sustain the  
2 objection today because of the timing of it. And I'm still not  
3 quite sure of its content, how it's material to what we're  
4 doing. But -- so that one is sustained, the objection.

5 MS. LANG: Thank you, Your Honor.

6 THE COURT: All right. Now, any other evidence issues?  
7 Does the State have any evidence you want to add?

8 MR. BRASHER: No, Your Honor.

9 THE COURT: All right. Ms. Lang, this is your  
10 opportunity to argue -- I'm sorry?

11 MR. BRASHER: I'm sorry, Your Honor. Never mind.

12 THE COURT: -- to argue your side of the case, why I  
13 should enter an injunction and what exactly it is you're asking  
14 me to do.

15 MS. LANG: Sure, Your Honor.

16 THE COURT: So why don't you start out. Why don't you  
17 just explain to me what you're asking the Court to do.

18 MS. LANG: We're asking the Court to do a few very  
19 simple things, Your Honor. The first Your Honor has already  
20 done, which is to require the -- a list to be provided of voters  
21 who have been denied or purged. But I suppose we could start --  
22 but I'll put a pin in that issue, because we will have to  
23 discuss defendants' compliance with that order.

24 THE COURT: Why don't you go ahead and discuss that  
25 right now.

1 MS. LANG: Okay. So Your Honor ordered that all  
2 individuals who had been purged or denied on the basis of  
3 criminal conviction for the past two years be provided. It's  
4 important background for the Court to know that we have been  
5 seeking these documents pursuant to an NVRA request since  
6 February. In February we sent a request to the State saying  
7 that these documents were -- you know, needed to be produced  
8 under the National Voter Registration Act. And the Court seemed  
9 to recognize that as well in his order. Nonetheless, in April,  
10 we received a response saying that they would not provide those  
11 documents, that they did not have those documents. And once  
12 again, on June 9th, I believe -- on June 9th --

13 THE COURT: Now, to be clear, April I had not entered  
14 my order.

15 MS. LANG: No. Of course not. So in February we made  
16 this request for the first time. In April we were told that the  
17 request would not be honored. Again we requested these  
18 documents in June prior to the filing of the motion for  
19 preliminary injunction. In a meet-and-confer Mr. Brasher told  
20 me that this document was impossible to produce.

21 THE COURT: So he didn't say he wouldn't produce it.  
22 He said he couldn't produce it.

23 MS. LANG: He said -- yeah. He said it was impossible  
24 to produce any document that had a list of people who had been  
25 denied or purged. It was not possible. Of course, that turned

1 out not to be true, because that document was produced to us  
2 pursuant to the Court's order.

3           Unfortunately, the list now contains over 70,000  
4 individuals going back who knows how many years. The defendants  
5 have not told us how many years. And that makes the list  
6 relatively useless. To the extent that Greater Birmingham  
7 Ministries wanted to do outreach based on that list to reach  
8 voters who had been wrongly disenfranchised and let them know,  
9 it's obviously cost-prohibitive to reach 70,000 individuals.  
10 And as the defense points out, it would not be practical because  
11 lots of those people have moved, no longer live at that  
12 residence, et cetera.

13           And, you know, in the declaration of Mr. Packard, he  
14 says that it's not possible, that there are no dates assigned to  
15 the individuals being denied or purged. And this is just not  
16 possible. It may be that the --

17           THE COURT: Wait a minute. It's not possible --

18           MS. LANG: It's not possible that they don't have these  
19 dates. And that's the case for a few reasons. One, we know  
20 that Mr. Packard himself, in 2014, was able to run a report that  
21 found how many individuals had been denied or purged in the past  
22 two years. It's unclear to me how that could be done except for  
23 that there are dates of denials and purges assigned to each  
24 individual.

25           THE COURT: Now, do you want to tell me where that is

1 in the evidence?

2 MS. LANG: Yes. It's in the EAC --

3 THE COURT: Is that in the FEC report -- EAC report  
4 or --

5 MS. LANG: It is in the EAC report and attached to  
6 Exhibit C. And this was, you know, delivered by Mr. Packard.  
7 In fact, I expect that Mr. Packard is preparing precisely the  
8 same document for the 2016 EAC survey that's currently  
9 outstanding. And that would be exactly the individuals that  
10 we're looking to obtain.

11 Moreover, we have a declaration by Synethia Pettaway  
12 that's Exhibit D. And in that declaration a former registrar,  
13 who was a registrar from 1999 to 2011, says these dates are  
14 absolutely put into the record, not -- you know, for individuals  
15 and done on the computer. So for those two reasons it seems  
16 clear that it's not true that the State cannot obtain this  
17 information.

18 THE COURT: All right. Well, let's not get diverted on  
19 a discovery issue. I'm going to get the State's position on  
20 this, and I will resolve it. But I don't want you to use all  
21 your time --

22 MS. LANG: Thank you very much, Your Honor.

23 THE COURT: -- just on that issue. So I'll get those  
24 questions answered when the State is up here.

25 MS. LANG: Okay.

1 THE COURT: Go ahead.

2 MS. LANG: Okay. So --

3 THE COURT: Now, we're talking about your wanting a  
4 preliminary injunction.

5 MS. LANG: Yes.

6 THE COURT: And six days is the last day to register  
7 for the special primary for the senatorial race in Alabama.

8 MS. LANG: That's correct.

9 THE COURT: All right. What do you want me to do in  
10 the next six days?

11 MS. LANG: So the one thing that I think you can do  
12 easily, Your Honor -- there are two things, actually, that can  
13 be done in the next six days. One is order there to be a notice  
14 put on the website. That's the easiest thing that can be done.  
15 It would take absolutely no energy on the part of the Secretary  
16 of State to put a notice on the website, and it would do  
17 enormous good. That is the entry point for many individuals  
18 looking to register to vote and determine their eligibility.

19 THE COURT: All right. I get that.

20 MS. LANG: Putting a notice is easy enough.

21 THE COURT: What's the second thing?

22 MS. LANG: The second thing would be to update the  
23 registration form. At minimum, for the moment, what the State  
24 could do for the next six days is take the list that they put as  
25 a hyperlink for the on-line registration form -- they already

1 created a list that would explain to voters what crimes are  
2 disqualifying -- and attach it to the PDF of the registration  
3 form. That would provide information. Because right now, if  
4 you download that voter registration form, it requires you to  
5 declare under penalty of perjury that you have not been  
6 convicted of a, quote-unquote, disqualifying felony. Not  
7 clear --

8 THE COURT: This is another website issue; correct?

9 MS. LANG: Yes. It could be right on the PDF of the  
10 website.

11 THE COURT: All right. So that means that there will  
12 be different kinds of registration forms out there, because I  
13 believe the State's evidence is that they've put out 1.775  
14 million registration forms to various agencies and interest  
15 groups and those kinds of things. So you would have two  
16 different kinds of forms out there; correct?

17 MS. LANG: Yeah. You would be providing more  
18 information to the voters. I don't see how that creates  
19 confusion to add information for voters.

20 THE COURT: Added to the website.

21 MS. LANG: Yes. And we're not asking for them to --  
22 we've never asked them to kind of collect all the one million  
23 forms they have out. It's clear from their own evidence and  
24 declaration that -- that when they make changes, they don't pull  
25 in all of the forms. They just make changes and put them into

1 circulation. And that's what we would ask the Court to do.

2 THE COURT: All right. What else would you ask me to  
3 do for --

4 MS. LANG: As far as public education goes --

5 THE COURT: Ma'am. Ma'am, let me finish --

6 MS. LANG: You're right. I'm sorry.

7 THE COURT: -- because she's trying to take it down.  
8 We can't both be talking at the same time.

9 So let's get it nailed down through the last day of  
10 registration for the primary. The primary is August 15th. You  
11 have absentee ballots and military ballots and lots of other  
12 issues. So what else did you want to be done in the next six  
13 days?

14 MS. LANG: The last thing that I would suggest could be  
15 done easily in the last six days is to put a notice up in board  
16 of registrar's offices and DMV offices, places where people  
17 register to vote. All we need to do is put a notice up. It  
18 would make sure that people have access to information,  
19 information that they need in order to register in the next six  
20 days.

21 THE COURT: Okay. Now, then, what else do you want as  
22 relief in a preliminary injunction?

23 MS. LANG: Sure. So moving past the next six days,  
24 it's important to remember that there's actually almost certain  
25 to be a runoff election in September and a number of other

1 elections rolling through in the fall. So there are a number of  
2 other things that are necessary to help prepare -- to help  
3 inform individuals. One would be requesting a change to the  
4 federal registration state instructions that the Election  
5 Assistance Commission --

6 THE COURT: Now, who does that?

7 MS. LANG: The State has an obligation to inform the  
8 Election Assistance Commission of changes in the law.

9 THE COURT: Do you dispute that the State has informed  
10 that commission over two years ago to make a change and they  
11 won't make it and that they've -- and this summer have been  
12 trying to get another change made and they won't make it?

13 MS. LANG: I learned that at the same time you did. I  
14 don't dispute it, Your Honor, and I think that's very  
15 discouraging. What I can say is it's my understanding that the  
16 Election Assistance Commission had no staff for some period of  
17 time but does now. It's also -- I can absolutely let you know  
18 that the Campaign Legal Center will do everything in its power  
19 to follow up with the Election Assistance Commission and make  
20 sure this change is made, but we don't have the power to request  
21 it in the first place.

22 THE COURT: How many lawyers do you have at the  
23 Campaign Election Center?

24 MS. LANG: I believe it's about -- we've grown quite a  
25 bit in the last year and a half, but I believe it's around 17

1 lawyers.

2 THE COURT: Well, you realize you've got more lawyers  
3 on this case -- nine at last count, nine who signed the motion,  
4 nine who are admitted -- than the Secretary of State has  
5 workers.

6 MS. LANG: I do understand that, Your Honor.

7 THE COURT: And you understand that that creates a  
8 resource -- and I've counted up the statutes. There appear to  
9 be 449 election statutes in Title 17, Title 21, Title 24 in  
10 Alabama. And the Secretary of State's Office is claiming  
11 they're going to be prejudiced by some of your requests. Now, I  
12 haven't heard one yet, maybe. EAC, they've requested a change;  
13 haven't gotten it. You know, I don't know what the cost is to  
14 request another change.

15 But what else are you asking as an affirmative  
16 injunction?

17 MS. LANG: To clarify, Your Honor, there is definitely  
18 not any cost as far as like EAC charging. Now, there's a cost  
19 to the work.

20 THE COURT: Oh, I'm not saying cost. I'm talking about  
21 a --

22 MS. LANG: Absolutely.

23 THE COURT: When the Secretary of State has to divert  
24 already scarce resources to other things is the cost I'm talking  
25 about.

1 MS. LANG: Absolutely, Your Honor. I'd be happy to  
2 help draft it. I think that they could just do nothing more  
3 than send the law, and it would help things along -- and request  
4 a change to reflect the law.

5 The EAC form for Mississippi I think is -- is notable,  
6 because Mississippi has the most similar law to Alabama's now in  
7 that it has a list of crimes that are disqualifying. And the  
8 EAC state-specific instructions lists all the crimes that are  
9 disqualifying in the state instructions.

10 THE COURT: Okay. What else are you asking for?

11 MS. LANG: The last -- the last thing that we are  
12 requesting -- we had requested that there be mandatory training  
13 of registrars. That was based on my meet-and-confer with the  
14 State. They were not -- they did not provide me the information  
15 that's in their opposition about what they're doing to implement  
16 the law.

17 THE COURT: But they now are --

18 MS. LANG: They are. I would withdraw that request.

19 THE COURT: All right.

20 MS. LANG: And so the last and I think most important  
21 request that we've made is to reinstate denied voters who were  
22 wrongfully denied under an old, unconstitutional system and to  
23 notify them of that reinstatement.

24 THE COURT: Okay. All right.

25 MS. LANG: And we would point the Court to *Hobson v.*

1 Pow as the most on-point case for that type of remedy. It was a  
2 very similar case involving Alabama felon disenfranchisement.  
3 They found that a group of voters had been unlawfully  
4 disenfranchised.

5 THE COURT: Is that the men who were striking their  
6 wives?

7 MS. LANG: Yes. And they had to be reinstated, and  
8 notice had to be given to them.

9 THE COURT: So men who were striking their wives were  
10 reinstated.

11 MS. LANG: Yes. I know. They're not the most --

12 THE COURT: Well, the temporary restraining order was I  
13 think against two boards of registrars, maybe Bibb County and  
14 one other. But the final order was against -- seemed to be most  
15 registrars. So I'm familiar with the case. But now, what are  
16 the mechanics of reinstated -- reinstated -- reinstating --

17 MS. LANG: Yes.

18 THE COURT: -- disenfranchised voters here? What are  
19 the mechanics of it?

20 MS. LANG: So the State says that it's not possible,  
21 that they can't identify voters who are now eligible that were  
22 previously purged, but that's not right. They have -- they have  
23 access to the Administrative Office of the Courts database.  
24 That is the database they use to purge lists ongoing. So they  
25 are constantly putting names through this list to determine who

1 is qualified and who is not. That's something they're already  
2 doing on an ongoing basis in order to purge voters going  
3 forward. So they certainly could do the same thing, especially  
4 if they limited themselves to just the last two years rather  
5 than this list of 70,000 individuals. That would make is far  
6 less burdensome. And they can do that quite easily.

7           Even if they could not do that, which we submit would  
8 be easy and appropriate and the only way that voters that were  
9 harmed could be put back in the position they would have been  
10 absent the constitutional harm -- that's the standard for  
11 constitutional remedies is you have to put people back in the  
12 position they would --

13           THE COURT: Doesn't this dispute of the whole case?

14           MS. LANG: Only with respect to this particular issue.  
15 And it would not -- as Your Honor has pointed out, there's a  
16 number of live claim issues. There's also the question of  
17 declaratory and injunctive relief because this is voluntary  
18 cessation and could continue. And so if --

19           THE COURT: All right. So you're asking me -- I don't  
20 think the State is going to agree to do this, because they say  
21 it can't be done. So you're asking me to -- on the basis of an  
22 unconstitutional scheme in the past, to enter a preliminary  
23 injunction now. Is that your point?

24           MS. LANG: Yes, Your Honor.

25           THE COURT: All right. Give me your best argument why

1 counts six through ten are not mooted by 282.

2 MS. LANG: Because the harm has not been resolved.  
3 Because the State has created a system for decades -- I mean,  
4 with the exception of perhaps a few years in the eighties, since  
5 1901 there has been an arbitrary system of disenfranchisement.  
6 And you heard Ms. Shearer --

7 THE COURT: So you're wanting to remedy that harm, and  
8 so you asked for that in the lawsuit.

9 MS. LANG: Yes.

10 THE COURT: But in that lawsuit, there was no 282. So  
11 this is what I was talking to you about before we started the  
12 evidentiary hearing. You now have a different class -- you're  
13 claiming a relief for a different class of voters or potential  
14 voters, and you referred to them in your motion at 282 voters,  
15 in quotes. All right. That's not a class that's in this  
16 lawsuit. So why is your claim not outside the complaint? And  
17 this seems like a new lawsuit to me.

18 MS. LANG: That's fair, Your Honor. I think that --  
19 you know, this is something the courts have been struggling with  
20 quite a bit recently because in response to litigation, there's  
21 often new laws passed. And then the question is do you really  
22 have to go back to the beginning even though it's a continuing  
23 harm, and courts have held that you do not. So the North  
24 Carolina voter ID case, the ongoing Texas voter ID case both  
25 involved amendments to those laws. And defense did argue, well,

1 you have to go back from the beginning and start all over again.  
2 And the courts have said that that's not proper, that if you're  
3 still talking about remedying a harm that continues and that was  
4 alleged at the beginning, the fact that the State provided part  
5 of the remedy can't mean that they get to restart the clock,  
6 restart the case. Otherwise, they could do that over and over  
7 and over again. It would be a game of Whack a Mole. You know,  
8 oh, well, we'll change it a little bit and then you'll have to  
9 go somewhere else.

10 THE COURT: Well, you're changing it orally, though. I  
11 mean, you're changing the whole lawsuit here orally just by  
12 saying, well, our class now is someone else. We've never put it  
13 on paper. You know, we haven't asked that class to be  
14 certified. And now you're asking me to grant relief to a class  
15 that doesn't exist on paper. And it seems to me that needs to  
16 be pled so that the State can respond and we can have a class  
17 certification discussion, which the law contemplates, and then  
18 put this case back on track maybe some other way.

19 I'm not saying your whole case is gone. As I told you,  
20 you have several other claims. But maybe it's time to kind of  
21 reset the case, because I haven't heard a really good argument  
22 for why counts six through ten aren't mooted. You keep saying  
23 the harm is still there, but what you alleged in six through ten  
24 is not the factual scenario anymore.

25 MS. LANG: I understand, Your Honor. Obviously, we did

1 not plead HB 282; it did not exist at the time. But counts six  
2 through ten did say that there was confusion that really harmed  
3 voters. For example, if HB 282 had never been passed but the  
4 Secretary of State had just come up with a comprehensive list,  
5 that would have changed the circumstances somewhat.

6 But the underlying problem of confusion wrought by the  
7 State needs to be resolved. And yes, it will be resolved -- you  
8 know, one way to resolve it, I suppose, that, you know, doesn't  
9 just focus on a class of HB 282 voters would be to send out a  
10 notice to everyone who had been denied and say, you know, we had  
11 this old system; it is no longer the way; here is the new law;  
12 apply to vote if you'd like. That would not require a new class  
13 certification. Because time is of the essence. We would be  
14 happy to amend our complaint along these lines. We would be  
15 happy to amend our complaint, and we'd be happy to do as you  
16 say. But time is of the essence for some of these issues.

17 It is also the case that Greater Birmingham Ministries,  
18 we believe, is entitled to this relief because they are  
19 diverting extraordinary amounts of resources trying to reach  
20 people in the absence of the State doing it. And that has been  
21 their claim, as an organizational plaintiff, all along.

22 You know, and I'll point out that some of the class  
23 certification language cited by the defendants is also  
24 inaccurate. Right? So they -- they cite the Supreme Court  
25 decision *Eisen v. Carlisle* for the quote, We agree with the

1 appellant's premise that were we to uphold a preliminary  
2 injunction of this scope, we would not do so without reviewing  
3 the propriety of the class certification order.

4           That quote actually isn't in a Supreme Court decision  
5 at all. It's only in a Third Circuit opinion. And the Third  
6 Circuit opinion went on to say, oh, this is an extremely broad  
7 injunction and it was -- it was brought to preserve potential  
8 damages, and so it wouldn't be proper before a class  
9 certification.

10           Several of the other cases about the need for class  
11 certification before a PI are also about damages. This is a  
12 case that isn't about damages. The Eleventh Circuit has  
13 actually held that just -- quote, Just disposition of the  
14 outcome may require relief that, quote, may benefit individuals  
15 not party to the action and that class-wide injunctive relief  
16 may be appropriate even in individual action. And that is  
17 *Carmichael v. Birmingham Sol Works*, 738 F.2d 1126.

18           And so given the time -- timely nature of this issue  
19 and the need for a resolution, we would ask that this limited  
20 relief be offered. It really causes no harm to the State. It  
21 doesn't ask for any individuals to be enfranchised that are  
22 disenfranchised under state law. Often constitutional cases of  
23 this nature pit the Federal Constitution against state laws.  
24 The relief we're asking for right now doesn't do that. There's  
25 no --

1           THE COURT: No. It seems to have a *Pennhurst* problem.  
2 What's your best argument that you don't have a *Pennhurst*  
3 problem? You're asking me to supervise, in essence, the  
4 implementation of a state law by federal court.

5           MS. LANG: Your Honor, defendants do point to  
6 *Pennhurst*. We think that that's improper. We did not file a  
7 lawsuit about HB 282 and ask you to enforce HB 282 as you see  
8 fit. We filed a lawsuit saying that Alabama has engaged in an  
9 unconstitutional scheme for decades and that a remedy is  
10 required. And now that remedy is going to involve HB 282  
11 because the Legislature decided to act and provide part of the  
12 remedy, but the Court has to fill out the rest of that remedy.  
13 You know, when there's a constitutional claim made, the remedy  
14 has to be one that fits the entire claim and the entire harm.  
15 And the Legislature can't come in and cause -- provide a partial  
16 remedy and, therefore, deprive plaintiffs of the rest of their  
17 remedy.

18           THE COURT: All right. Well, I'm going to cite the  
19 Seventh Circuit case in *Acorn versus Edgar* that says that  
20 federal judicial decrees that bristle with interpretive  
21 difficulties and invite protracted federal judicial supervision  
22 of functions that the Constitution assigns to state and local  
23 government are to be reserved for extreme cases of demonstrated  
24 noncompliance with milder measures. I'm thinking like school  
25 desegregation where milder measures -- and the school boards in

1 Alabama continued to fight, and so the remedies had to be  
2 stiffer and stiffer. But this court said they are last resorts,  
3 not first.

4           So I'm not sure that we've had any milder measures. We  
5 have a new law. We have a new scenario. We've -- in effect,  
6 you've gotten what you asked for prospectively in your lawsuit.  
7 Now you're trying to focus retrospectively on the harms that  
8 were done over a period of time, and you haven't demonstrated to  
9 me a substantial likelihood of success in the evidence that's  
10 before me on the underlying claim of, I suppose, a  
11 discriminatory system that existed for a hundred years. Maybe  
12 that's what you're going to prove, but I don't have that  
13 evidence before me sufficient to say that you can succeed  
14 ultimately on that remedy.

15           MS. LANG: Okay.

16           THE COURT: And then there's the issue of -- and I've  
17 got to hear from the State, obviously -- of how they would  
18 intend to implement that remedy and their position on *Pennhurst*.  
19 So you're, in essence, asking me to, in effect, supervise  
20 implementation of a state law, and I'm concerned about that.

21           MS. LANG: I understand that, Your Honor.

22           THE COURT: Why should I do that?

23           MS. LANG: I think that the retrospective nature of the  
24 remedy is incredibly important. Most of the voters that --  
25 eligible voters out there will not be helped unless they know

1 that this law exists, because the State has already told them,  
2 oh, you probably aren't eligible. You're only eligible if you  
3 haven't been convicted of a crime involving moral turpitude.

4 This is the system that individuals go through when  
5 they get released from parole. So this isn't kind of a small  
6 part of the pie. It's probably 90 percent of the pie with the  
7 exception of people who are kind of just cycling out of prison  
8 now or just, you know, now having convictions. Everybody else,  
9 the 250,000 individuals who have been disenfranchised in this  
10 state, the 15 percent of the voting-age black population in this  
11 state, that's the group that we're talking about and clarifying  
12 the law after decades of arbitrariness for that entire group.  
13 So we would submit that that's no small thing.

14 I would also submit that this is not going to require  
15 any ongoing supervision by this Court. They -- the State has  
16 actually already prepared a notice of what the disqualifying  
17 crimes are. Just make it more public. That's not going to  
18 require your micromanaging. I think this would be a one-off  
19 order and would not require any further micromanagement.

20 But if Your Honor would be willing, I would like to go  
21 through some of the evidence on the arbitrariness of the  
22 underlying system.

23 THE COURT: I've read all of this and, actually, I read  
24 your expert's report. And so I don't need you to go back  
25 through -- I mean, I know what the law is on that. I know the

1 holdings. And I certainly know the history of the unfortunate  
2 1901 Constitution and the reasons for that. But I haven't heard  
3 nor have I seen any evidence of any discrimination that occurred  
4 and discriminatory intent that occurred when the same --  
5 basically, the same language was adopted in 1996 after the  
6 *Underwood* decision and then in 2012 again. I don't have any  
7 evidence on that.

8 MS. LANG: So with respect to racially discriminatory  
9 intent, we have not moved for the preliminary injunction on that  
10 issue precisely because it is going to involve quite a bit more  
11 evidentiary submissions. As you know, discovery has been stayed  
12 in this case, so we have not received all the documents that we  
13 would need to put that forward.

14 I would note that the language in the 1996 amendment is  
15 exact, to the word, to a draft that was -- a draft of the  
16 Constitution that was drafted in the 1970s. And the comments  
17 with -- alongside that draft said that they were --

18 THE COURT: It's guilt by association because it was --  
19 one was -- the first one was -- it was never adopted in the  
20 seventies? I don't understand your argument.

21 MS. LANG: It was never adopted in the seventies. It  
22 was drafted in the seventies as a simplification of the 1901  
23 law. And there is no -- there was no legislative debate about  
24 any additional reason for choosing the moral turpitude standard.  
25 There was no additional debate whatsoever.

1 THE COURT: And there was nothing adopted in the 1970s.

2 MS. LANG: In 1996 there was no legislative history.  
3 There is no legislative debate about why choose moral turpitude  
4 in the 1990s.

5 THE COURT: Okay.

6 MS. LANG: So it was adopted directly from prior drafts  
7 without any -- you know, many of the cases that kind of say  
8 there's been a removal of discriminatory intent was because the  
9 Legislature had debated the issue and come up with alternative  
10 reasons why they thought that the law was still appropriate.

11 THE COURT: Ms. Lang, we need to try that.

12 MS. LANG: Absolutely.

13 THE COURT: It's not before me today. Okay?

14 MS. LANG: Absolutely.

15 THE COURT: So you're down to about two minutes. Why  
16 don't you give me your closing and your best argument for why I  
17 should intervene here.

18 MS. LANG: Your Honor, even as late as 2015 the  
19 Secretary of State distributed a board of registrars handbook  
20 that said both to follow the AOC list and then also provided its  
21 own list. Those lists are themselves not -- not consistent.  
22 The board of registrars list created by the Secretary of State  
23 added quite a few additional crimes, like prostitution and  
24 pandering, that were not cited to any decision. You'll see in  
25 Ms. Pettaway's declaration that she says that the system of

1 disenfranchisement was not only random and arbitrary and that  
2 registrars had absolutely no -- no working definition of moral  
3 turpitude, but that most registrars, as a result, just decided  
4 to disenfranchise everyone. They just decided to kick everyone  
5 off the list.

6           And so as a result, we have thousands of individuals  
7 who were unsupervised by the State in denying the right to vote  
8 to thousands of eligible voters. These voters are  
9 disproportionately black citizens of Alabama. They -- they  
10 wanted to participate in the political system. They have  
11 completed their sentences. And only because the Secretary of  
12 State and the State of Alabama have refused to resolve the  
13 problem of the arbitrariness of the moral turpitude standard  
14 they have been disenfranchised.

15           This is an issue that goes back to 1979. The board of  
16 registrars asked for a definition, asked for a definition again  
17 in 1983, asked for a definition again in 2005. And over and  
18 over again state officials have said that they refused to  
19 provide any exhaustive list, that registrars have to make a  
20 decision on their own. And the only guiding principles are, you  
21 know, good community standards or vileness or baseness, which,  
22 you know, the Eleventh Circuit --

23           THE COURT: Or if it hurts somebody else. If it hurts  
24 another human being.

25           MS. LANG: Or if it hurts somebody else. Exactly. And

1 the result was obvious, which is that registrars made completely  
2 random decisions. And many just decided every felony was  
3 disqualifying.

4 And so you have individuals like Perrion Roberts, who  
5 has a declaration in the record that she was allowed to register  
6 to vote in one county and not allowed to register to vote in  
7 another county.

8 You have the declaration of Constance Todd, who's a  
9 woman in her late seventies who's registered -- who's been  
10 registered to vote and voted her entire life, but after 20  
11 years, 20 years after a conviction, was given a notice that she  
12 had a disqualifying conviction and kicked off the rolls then.

13 You have the result of Mr. Giles, one of our clients,  
14 who was convicted of stalking. Stalking is not on any list that  
15 you can find anywhere in the record. And yet the State defended  
16 that decision in the motion to dismiss. It is now clear under  
17 HB 282 the Legislature thought otherwise, and he is eligible to  
18 vote. There are thousands of these individuals.

19 THE COURT: Okay.

20 MS. LANG: Thank you.

21 THE COURT: Thank you.

22 Mr. Brasher?

23 MR. BRASHER: Thank you, Your Honor. I know that you  
24 understand the law on this and that you've read the briefs, so I  
25 will try to be brief but I'm happy to answer any questions you

1 have.

2 I've heard that it helps a judge sometimes to have an  
3 outline of an argument. I made an outline if you'd like to see  
4 it. I've gotten a little carried away with the amount of points  
5 on my outline, but --

6 THE COURT: Oh, I'll just listen to it. Go ahead. I  
7 have an outline too.

8 MR. BRASHER: Okay. Very good. Very good.

9 So first I guess let me address this discovery issue  
10 regarding the ability to make this list. I don't think there's  
11 actually any -- any disparity in the record about the list. If  
12 you look at Ed Packard's affidavit, he says that he cannot  
13 search the database by year of disqualification. I mean, no one  
14 contends that if you go into each individual -- you know,  
15 individual person's file within the database, you could create  
16 the list that they are suggesting. But you would have to  
17 manually go in and look at the year that the person was  
18 disqualified. In the same way, I think that they are suggesting  
19 that we run basically criminal background checks on people to  
20 determine their crimes of convictions. So that's what we're  
21 saying. We're not saying that, you know, with six months worth  
22 of work or with enough manpower, you couldn't create this list.  
23 Our point is that the database is not searchable.

24 THE COURT: It has to be individually searched. Is  
25 that what -- is that your representation?

1           MR. BRASHER: That's exactly light. And I'm happy to  
2 file something that explains this in greater detail. Like I  
3 said, I did not know that this was going to become an issue  
4 today. But our main point with respect to that is that I don't  
5 think anybody alleges that the crime of conviction is somehow in  
6 the Secretary of State's database. So even if we could  
7 somehow -- I'm sorry. The conviction that ultimately resulted  
8 in the dis --

9           THE COURT: What about AOC's database?

10          MR. BRASHER: I think you could run a background check  
11 on the person through AOC and look at all of the --

12          THE COURT: Would that be individually? Would that  
13 have to be each individual person?

14          MR. BRASHER: That would be each individual person you  
15 would have to identify -- I believe. I'm happy to research that  
16 further and report to the Court if that's something you were  
17 interested in.

18           I think the first thing I would like to say on the  
19 merits is just to make really three points on the merits that  
20 apply basically to all the claims in the case. And Your Honor  
21 has already hit on these. The first is that there's really  
22 only -- you know, there's been decades of litigation all across  
23 the country over felon disenfranchisement. And there's really  
24 been only one kind of claim that has succeeded in any of those  
25 cases, and it's a claim of racial discrimination or gender

1 discrimination. And that's a claim that is in this case, but it  
2 is not the claim that they sought a preliminary injunction on.

3 I would also point out -- the second point is that  
4 there is no fundamental right to felons under the United States  
5 Constitution. And many of their claims in this case  
6 specifically argue based on a fundamental right to vote that the  
7 Supreme Court has said does not exist. So, for example --

8 THE COURT: Does not exist for convicted felons.

9 MR. BRASHER: Convicted felons. You're right, Your  
10 Honor. So, for example, count nine of their complaint says  
11 this, quote, Voting and participating in the election process is  
12 a fundamental right protected by the Fourteenth Amendment.

13 Count six and seven also cite the cases -- the very  
14 cases that the Supreme Court said in *Richardson* did not create a  
15 fundamental right to vote. So many of the counts in their  
16 complaint run right up against what the Supreme Court has said  
17 is not the law.

18 The third point, just kind of an overarching merits  
19 point, is that there are serious mootness problems in --

20 THE COURT: Serious --

21 MR. BRASHER: Mootness problems.

22 THE COURT: Mootness.

23 MR. BRASHER: -- Your Honor, in this complaint, in this  
24 case. I mean, as Your Honor has already pointed out, we are  
25 litigating here today about the constitutionality of a law that

1 is over. And I think actually the story of what we're doing  
2 here today is that no good deed goes unpunished, because about  
3 three or four years ago, the Secretary of State created a  
4 committee for the purposes of modernizing Alabama's election  
5 law. And this new law that was passed was the outcome of that  
6 committee. And the Secretary of State supported this law,  
7 pushed this law through the Legislature.

8 And the plaintiffs sat through this entire process not  
9 moving for a preliminary injunction, not arguing that there was  
10 irreparable injury under the actual unconstitutional scheme that  
11 they were challenging in the case, but, instead, waited for that  
12 process to be over to show up and say that their injuries were  
13 irreparable.

14 And so there are just serious, serious mootness  
15 problems. I'm happy to go through each count.

16 THE COURT: Well, tell me what you think the proper  
17 legal view is of the status of the pleadings vis-a-vis a motion  
18 for a preliminary injunction. What's that case been about?  
19 What's it about today? What's the motion about?

20 MR. BRASHER: I think Ms. Lang more or less admitted  
21 this. I mean, what she is seeking is class-wide relief on  
22 behalf of a class that is not mentioned in the complaint, that  
23 has not been certified by this Court. And there is no request  
24 for certification. She's basically seeking class-wide relief on  
25 behalf of what she is calling HB 286 voters -- or two -- I can't

1 remember the --

2 THE COURT: 282.

3 MR. BRASHER: 282 voters. And until you go through the  
4 steps of amending the complaint asking for that class-wide  
5 relief, you can't give it. And the reason why, I would suggest,  
6 they haven't done that is because that class-wide relief would  
7 be a state-law claim. Your argument, if this really were  
8 litigation on behalf of that class, that would be a state-law  
9 claim saying that this group of voters was unlawfully  
10 disfranchised -- disenfranchised under state law as it existed  
11 before the new law. That would be --

12 THE COURT: What if she were able to prove, though,  
13 that they were denied because of discriminatory reasons?

14 MR. BRASHER: Well --

15 THE COURT: Wouldn't that be a federal claim, equal  
16 protection?

17 MR. BRASHER: That would be. I mean, that is an equal  
18 protection claim. I think the problem with the remedies that  
19 she is seeking in light of that claim is that if this law  
20 really -- if that the previous regime were really applied in an  
21 arbitrary way, there would be plenty of voters who were allowed  
22 to vote who are now disallowed to vote under HB 282. I noticed,  
23 actually, that there were some of the declarations that were  
24 submitted late last night -- or in the afternoon last night of  
25 voters who say that they were arbitrarily disenfranchised under

1 the previous regime who are disenfranchised now under the new  
2 regime. And so there's a mismatch between their legal claims  
3 and the actual relief that they're seeking.

4 I would also just point out, you know, this is not just  
5 a technicality. The point of a preliminary injunction is to  
6 have a plaintiff who says, "I am being irreparable injured; I  
7 need emergency relief" -- usually to maintain the status quo,  
8 but "I need emergency relief so that I'm not irreparably injured  
9 going forward until the end of the case." And there really  
10 isn't a plaintiff in this case that is before you right now  
11 saying I will be irreparably injured unless I get the list of  
12 relief that Ms. Lang talked about earlier.

13 On just sort of the irreparable injury to the  
14 defendants and the balance of the equities and the public  
15 interest, I think Your Honor understands that very well. One  
16 case that I would point out to Your Honor which you probably  
17 read already is the Fifth Circuit case that's cited in our brief  
18 out of Mississippi where, there, it was actually a final  
19 judgment.

20 THE COURT: Mabus?

21 MR. BRASHER: Yes, sir. Where, there, it was a final  
22 judgment. And the district court said, you know what? I told  
23 the legislature of Mississippi to fix the problem. They came up  
24 with a solution to the problem. There, it was about an equal  
25 protection violation about dual registration systems. And the

1 district court said there, look, they came up with a way to fix  
2 the problem. The plaintiffs came back into the court and said  
3 we want this, this, this; we want same-day registration, et  
4 cetera, some specific types of relief. And the district court  
5 said, that's just not what the case is about. The State is in  
6 charge of the voter registration system.

7           And the Fifth Circuit, when it affirmed that district  
8 court -- the Seventh Circuit in the case Your Honor mentioned  
9 earlier reversed the district court for doing the opposite. But  
10 when the Fifth Circuit affirmed that district court, the Fifth  
11 Circuit said the district court was exactly right. Registration  
12 is a state function. The legislature of Mississippi has fixed  
13 this problem.

14           And the Fifth Circuit also said another important  
15 thing, I think, for the purposes of this case. The district  
16 court -- the Fifth Circuit said, look, this specific form of  
17 relief -- in that case it was same-day registration and here  
18 it's notice, you know, reinstatement -- these things weren't  
19 requested in the complaint themselves.

20           And that's the same case here. I mean, what they got  
21 is that got what they requested in the complaint. They got the  
22 old regime to go away. They got basically the Legislature  
23 saying, you know, we're giving you what you want. And now  
24 they've come back into the court and said we want even more than  
25 that. And that's exactly what the Fifth Circuit said should not

1 be done and affirmed the district court on that basis.

2           Let me just talk about a few of the kinds of relief,  
3 the specific kinds of relief that Ms. Lang talked about, and why  
4 the balance of the equities and the public interest wouldn't  
5 support Your Honor ordering that relief. First, she talked  
6 about putting something on the Secretary of State's website.  
7 Two points on that. Pardons and Paroles has the website for the  
8 State of Alabama about a felon voting. We have a declaration in  
9 the record from Pardons and Paroles that talks about that. They  
10 are actively updating that website, and it talks about that in  
11 the declaration.

12           Second point with respect to the Secretary of State, in  
13 the declaration of Brent Beal, he says that there is going to be  
14 a press conference I think this week, on July 27th, by the  
15 Secretary of State, by the legislators who passed this law,  
16 talking about this law. I mean, it's not in the declaration,  
17 but it seems highly likely that that press -- the press  
18 conference will result in a press release on the Secretary's  
19 website. And I would also -- you know, these forms of relief --  
20 website, things of that nature -- once again, the question here  
21 is is there a plaintiff who's being irreparably injured. And  
22 then the last part of that is is there a relief that will stop  
23 that irreparable injury. And Ms. Lang's own witness just  
24 testified today about people not using the web to find out about  
25 the law. So I just don't understand how that even makes any

1 sense.

2           Moreover, we submitted -- if you look at declaration --  
3 I think it's F attached to our opposition, you know, this is one  
4 of the most widely publicized laws passed over the last five or  
5 so years in the state of Alabama. I mean, the Legislature  
6 passed a lot of laws this session, and the ACLU and Legal  
7 Services of Alabama are not traveling the state talking about  
8 the other laws they passed. They're traveling the state talking  
9 about the laws -- talking about this law that was passed, which  
10 has been widely covered on AL dot com, on TV stations, on things  
11 of that nature. So the notion that all that is standing in the  
12 way of these HB whatever-the-section-is voters somehow being  
13 eligible to vote is a posting on the website I just think is --

14           THE COURT: Well, I went through all your materials.  
15 And I have found at least 35 sources of publicity about the act  
16 based on what you-all had submitted, and then I looked at a few  
17 other sites too. But the ones that you submitted are -- of  
18 course, it's on the website of the ACLU, the website of Legal  
19 Services, Facebook page of ACLU, Facebook page of Legal Services  
20 of Alabama. It's on the Twitter page for the ACLU of Alabama,  
21 Twitter page for Legal Services of Alabama. It's been in *The*  
22 *Tuskegee News*, multiple articles, including one today right  
23 behind an article about the tomato rot in Alabama about --

24           MR. BRASHER: An equally important subject.

25           THE COURT: Yeah. It was -- so that was -- but there

1 have been multiple articles in AL dot com; WSFA in Montgomery;  
2 *The Anniston Star*; the *Dothan Eagle*; AlabamaNews dot net, which  
3 is Channel 8 here; WIAT CBS in Birmingham; *The Selma*  
4 *Times-Journal*; WRBL in Columbus, Opelika, and Auburn; *Montgomery*  
5 *Advertiser*; Alabama Public Radio; *The Birmingham Times*; the  
6 *Yellowhammer News*; Channel 8 CBS in Montgomery; *Andalusia Star*  
7 *News*. And then some national and international ones, *U.S. News*  
8 *& World Report*, the *Election Academy*; *Huffington Post*, *New York*  
9 *Times*, *Mother Jones* dot com. Lagniappe did an article. And  
10 then ThinkProgress, AP news, Slate dot com, EJI dot org, ACS  
11 blog -- that's American Constitution Society. Even MTV News and  
12 the Vera Institute of Justice are just some of the publicity  
13 that I've noticed in your filings and coming across my desk  
14 about this case.

15 MR. BRASHER: That's exactly right, Your Honor. And  
16 also in our filings are searches on Google. If you go to Google  
17 and you type in "felon Alabama voting" and things of that  
18 nature, information about this law comes up within the top ten  
19 searches. So the notion that -- that, you know, we need to  
20 update a website on an expedited basis to make sure people can  
21 get this law on the Internet, it just doesn't make any sense to  
22 me.

23 THE COURT: Well, but now, your client is the election  
24 officer for the State of Alabama.

25 MR. BRASHER: That's correct.

1           THE COURT: And if there's been a significant change in  
2 the law, it was not in the news section. It was not in the  
3 absentee ballot section. He's got to know that the first place  
4 people are going to look -- lawyers, especially, are going to  
5 look, and they've got apparently 17 lawyers who are looking and  
6 others -- is they're going to look at the website. And some  
7 people do register in Alabama that way. It's probably not the  
8 predominant way.

9           MR. BRASHER: Well, and that's why --

10          THE COURT: It's a state law issue, but it seems to me  
11 to be kind of a common-sense solution too.

12          MR. BRASHER: That's right. I mean, I don't disagree,  
13 Your Honor. I will just make two points. I mean, one, the  
14 Secretary of State's Office updated the electronic voter  
15 registration form on the website so if you use -- if you  
16 register electronically, which is why you would go to the  
17 website to register, you can click on, you know, Disqualifying  
18 Felonies and it shows up to this list.

19               The other point is that as in Brent Beal's affidavit,  
20 it says they've always intended to do a press conference on this  
21 law with everybody who worked on it and it's just been delayed  
22 for scheduling issues. But once again, that's supposed to  
23 happen on July 27th. And then, you know, the Pardons and  
24 Paroles is fixing their website. They're going to have their  
25 website.

1           On the voting forms, you know, I -- the way I  
2 understood the motion for preliminary injunction -- and maybe  
3 I'm wrong, but the way I understood that is a request to add the  
4 list of 60 specific felonies to Alabama's voting form and to the  
5 federal form. It sounds like now Ms. Lang is suggesting that  
6 they just want a PDF on the -- on the website, and I had not  
7 seen that request prior to now. That's certainly something that  
8 we will think about, about whether we should add a PDF.

9           But with respect to the request that was actually made  
10 in the motion about adding a list of 60 specific felonies to the  
11 form, I mean, I think Your Honor can see the form in the record.  
12 It's been filed by both parties multiple times. This is a small  
13 form. On one face of it it asks for normal information about,  
14 you know, who you are, where you live. On the back it has where  
15 you're going to mail the form. It doesn't have a place on the  
16 form for a list of 60 specific felonies.

17           With respect to Mississippi, I think Mississippi's form  
18 is an interesting point. Mississippi's Constitution actually  
19 provides a specific list of crimes, like Alabama's old  
20 constitution did before the 1901 Constitution. I guess it was  
21 during -- it was the 1901 Constitution that had specific lists.  
22 And that specific list is what they put on their form. But even  
23 that wouldn't work here because Mississippi's list I think has  
24 12 crimes on it, something in that range, and they're not  
25 specific to statute, whereas in this list, for example, you

1 couldn't just say "burglary" on the form. You would have to say  
2 first-degree and second-degree burglary pursuant to this  
3 statute, not third-degree burglary, because that's not in the  
4 statute itself. So even if we wanted to do something like what  
5 Mississippi does, it wouldn't be feasible.

6 Now, we have submitted some voter registration forms  
7 from Nevada and Georgia, I think Missouri as well, that show  
8 that, you know, this kind of language on a form is pretty much  
9 par for the course as far as voter registration forms go.

10 With respect to the Election Assistance Commission, our  
11 point, really, with respect to that, the Secretary of State has  
12 not decided whether this would be an appropriate change to ask  
13 the EAC to make but is not going to make it right now because we  
14 know for a fact the EAC is not going to add this specific 60,  
15 you know, with statute, felonies on the form before this  
16 election cycle is over.

17 I mean, they -- they have -- I mean, Your Honor went  
18 through the history before. In 2014 the Secretary of State  
19 requested very small changes to the form and didn't get a  
20 response from the EAC until two years later in 2016. Then this  
21 whole month a staff member at the Secretary of State's Office is  
22 calling the EAC just to try to get them to change one word in  
23 the state-specific instructions. And it isn't going anywhere  
24 with that for this election cycle, it appears. So the point  
25 there, really, is just Your Honor ordering us to talk to the EAC

1 is not the kind of remedy that's going to solve anyone's  
2 irreparable injury.

3 I would also point out one of the serious evidentiary  
4 failings in this case, among others, is that of all the evidence  
5 in the record of all these declarations -- and we checked. The  
6 ones that were filed today, I think I checked them sufficiently  
7 to say this. Nobody says that they had any trouble with the  
8 forms. Nobody says that they went to try to register with a  
9 form but then saw this language and decided not to register.  
10 Nobody even says they used the federal form to register at all.  
11 And the federal form itself doesn't have this language on it at  
12 all. It's in the state-specific instructions. There's a big --  
13 you know, a big boilerplate thing -- boilerplate thing on the  
14 back. And that's really what's going on there. So that's the  
15 forms.

16 With respect to the individualized notice and  
17 reinstatement, I think we covered that. I think even Ms. Lang  
18 suggested that it would be inappropriate for us to try to do  
19 that unless we really could winnow this list down to people who  
20 had specific felony convictions that were not included in HB 282  
21 and that we could winnow it down to some kind of time period.

22 THE COURT: It appears there were 14,000 taken off the  
23 voter list for felon, 14,100, roughly, maybe in 2015 or 2016,  
24 according to the evidence. What you're telling me is -- and  
25 what the Secretary of State's attorney is telling us is that

1 there is no way to generate a list, a comprehensive list of  
2 those 14,000 along with the crime for which they were  
3 disenfranchised.

4 MR. BRASHER: That's --

5 THE COURT: Except on a case-by -- checking 14,000  
6 individual files. That's your -- that's your position.

7 MR. BRASHER: That's -- that is my understanding, Your  
8 Honor. And I would add to that, actually, you know, we know the  
9 number 14,000. But I don't know that the Secretary of State can  
10 match those 14,000 people to names in the database. So they  
11 know, for example, that 14,000 times someone was disqualified.

12 THE COURT: How did they get the 14,000 if there are no  
13 names?

14 MR. BRASHER: They can query the number of  
15 disqualifications is what I understand. So -- so there's no  
16 searchable field in the database for year of disqualification,  
17 which is what you would need to winnow that down by --

18 THE COURT: So 14,000 is just buried in all the  
19 disqualifications.

20 MR. BRASHER: I think that's right, Your Honor. And I  
21 think the analogy is just, look, the Department of Education  
22 could tell you what the graduation rate was in high school, but  
23 that doesn't mean they can tell you who graduated and who didn't  
24 graduate. And that's not the kind of data that the Secretary of  
25 State collects in an electronic sort of searchable format that

1 you could generate that list without, you know, immense labor  
2 going through and doing basically a background on everybody on  
3 the State's current list.

4 Unless Your Honor has any further questions, I don't  
5 think I have any additional submissions to make.

6 THE COURT: Let me see. Give me your best argument on  
7 the mootness of counts six through ten.

8 MR. BRASHER: Right. So I mean --

9 THE COURT: And I want to hear your final word on  
10 *Pennhurst*.

11 MR. BRASHER: Okay.

12 THE COURT: Go ahead.

13 MR. BRASHER: So on the mootness issue, there's an  
14 overarching mootness issue, which is that they requested in  
15 their complaint that the law stop being enforced. And we've --  
16 actually, we've attached affidavits from the registrar in the  
17 city of Montgomery -- county of Montgomery, rather, who is the  
18 only registrar who's a named defendant, and he's not enforcing  
19 the law anymore. He's enforcing the new law. The Secretary of  
20 State has told the registrars to enforce the new law.

21 And going forward, you -- this is a minor point, so you  
22 could have conceivably missed it, although you've clearly looked  
23 at all the declarations. In the declaration of Clay Helms, he  
24 talks about, look -- this far -- this close to an election, you  
25 stop purging voters from the list. So there's not even anybody

1 to order to stop purging from the list. And the registrars are  
2 using this. So that's the overarching point. They requested  
3 that the old law go away. As a practical matter, the old law  
4 has gone away.

5           With respect to sort of each -- each of the counts, I  
6 mean, I think it's hard to talk about mootness without  
7 specifically going through and talking about the -- sort of the  
8 claim itself. But I mean, I would just say that I think -- you  
9 know, the real -- the real rubber meets the road on mootness on  
10 count ten, which is where they're alleging that this prior  
11 system was irrational and violated equal protection because it  
12 wasn't uniform, everybody working in this process is working to  
13 try to make this system as uniform as possible. And that's what  
14 this new law was about, to make it as uniform as possible. And  
15 so they suggest in their complaint that the real problem here is  
16 that the Legislature hasn't acted by passing a law to define  
17 moral turpitude. And the Legislature has acted. So that's, I  
18 guess, my best point on mootness.

19           On the issue about *Pennhurst*, I guess two points on  
20 that. One, like I said, the way this issue about reinstatement  
21 and prior disqualifications really should be raised is the same  
22 way that it was raised in the Louisiana case that they cite to  
23 you. If you look in the preliminary injunction motion, they  
24 cite a Louisiana case where someone said, I was wrongfully  
25 disenfranchised, I shouldn't have been, filed this state court

1 lawsuit that said under this law I should not have been  
2 disenfranchised. And the state court said, you're right. At --  
3 the law at the time that you were disenfranchised, you shouldn't  
4 have been. So I'm ordering you to be put back on the ballot.  
5 I'm ordering notice.

6 That's the same thing that happened in all of the  
7 federal cases they cite, except it was federal law that was at  
8 issue. Someone was saying I was erroneously struck from a voter  
9 list, because I shouldn't have been struck from that list under  
10 federal law that applied to me at the time.

11 If they think that this new law somehow affirms their  
12 right to vote or establishes that their right to vote was  
13 wrongly denied, which is what they say in their motion for  
14 preliminary injunction, then those are claims about the status  
15 of state law. Those are claims about these people's rights  
16 under state law. And they need to bring those state-law claims  
17 in state court.

18 The other point on *Pennhurst* I think is just that it's  
19 absolutely clear what they're asking this Court to do is to tell  
20 the Secretary of State how to implement this law in the  
21 instance. And, you know, *Pennhurst* does say, quote, It is  
22 difficult to think of a greater intrusion on state sovereignty  
23 than when a federal court instructs state officials on how to  
24 conform their conduct to state law.

25 And I think *Pennhurst*, at the very least, stands for

1 the proposition that this Court entering such an order would be  
2 irreparable injury on the defendants' part in the fact that this  
3 Court would be telling those defendants, who one of which was  
4 elected overwhelmingly by the people of Alabama to do this job,  
5 how to do their job.

6           And I will make one further point, which is the notion  
7 that if this Court enters some kind of injunction we won't be  
8 back here again, this isn't something that would be ongoing. I  
9 mean, if the Court orders us to update a website, we're going to  
10 be back here about whether we've updated the website  
11 sufficiently. If the Court orders us to update a voter  
12 registration form, we're going to be back here about whether  
13 we've fixed the voter registration form sufficiently. The same  
14 thing if the Court were to say I want you to tell the EAC about  
15 this new law. We will be back here talking to the Court about  
16 whether we sufficiently communicated with the EAC and about the  
17 fact that the EAC probably hasn't responded to us and isn't  
18 doing anything to change the federal form.

19           And so this -- what they're really asking for this  
20 Court to do is to embark on this effort of sort of iteratively  
21 going through and trying to do the Secretary of State's job for  
22 him. And we would respectfully ask that the Court simply deny  
23 the motion for preliminary injunction and let state officials  
24 enforce state law. Thank you.

25           THE COURT: All right. Thank you.

1 Ms. Lang, you used all your time, but I'll give you two  
2 minutes of grace to make your best point.

3 MS. LANG: Okay. My cocounsel was going to ask to say  
4 a few words; but given our two minutes, I think I'm going to use  
5 my privilege to take them. And thank you very much, Your Honor,  
6 for the additional two minutes.

7 There has been a claim throughout this litigation so  
8 far that somehow *Richardson v. Ramirez* creates a  
9 constitution-free zone for people with convictions. There's no  
10 such thing. For people who have the right to vote under state  
11 law who have felony convictions, they have the same rights under  
12 the Federal Constitution to have that not be treated arbitrarily  
13 and otherwise violate the Constitution as everybody else. And  
14 you can't possibly find a case that says anything other than  
15 that. And, in fact, you'll find exactly the opposite in cases  
16 like *Williams v. Taylor* and *Shepherd v. Trevino* where the court  
17 said that arbitrary disenfranchisement of felons would be  
18 unconstitutional as well as *Hunter v. Underwood*, *Hobson v. Pow*.  
19 These individuals have the same rights as all other eligible  
20 voters in the state of Alabama.

21 With respect --

22 THE COURT: You're saying they are fundamental rights.

23 MS. LANG: Fundamental rights. Absolutely.

24 THE COURT: All right. And so then you've just  
25 reversed *Richardson versus Ramirez*, it appears to me.

1 MS. LANG: No, Your Honor. With all due with respect,  
2 Your Honor, I don't think so, because what *Richardson v. Ramirez*  
3 said is that felony conviction is a valid form of a  
4 qualification. Everybody here, every voter, has their votes  
5 given to them by the State, actually. The way that the Federal  
6 Constitution works is that states set voter qualifications. And  
7 the federal -- and those are -- and the right to vote is a  
8 fundamental right, but states set voter qualifications and the  
9 Federal Constitution sets limits on what are acceptable types of  
10 qualifications.

11 THE COURT: All right. So, now, what does this have to  
12 do with *Ramirez*?

13 MS. LANG: So a felony conviction is a type of  
14 qualification that can be acceptable, but it doesn't mean that  
15 felons somehow are outside the scope of the Constitution when it  
16 comes to the fundamental right to vote. For example, if you  
17 were to take Maine where -- all felons have the right to vote in  
18 Maine. There's no felony disenfranchisement, but registrars  
19 were just kind of denying felon applications. That would be a  
20 federal constitutional violation of the fundamental right to  
21 vote for those individuals.

22 THE COURT: Because Maine didn't make it a  
23 qualification.

24 MS. LANG: Exactly. And Alabama -- Alabama has not --  
25 but it has not made it a qualification for everyone, only for

1 people who do not have felonies involving moral turpitude. So  
2 for all of the individuals who had felonies not involving moral  
3 turpitude, they have the same fundamental rights as the rest of  
4 us. And that's our allegation when it comes to *Richardson*, and  
5 I think it's an important one.

6 With respect to a plaintiff that's harmed, I think  
7 Ms. Shearer is the exemplification of the harm of this ongoing  
8 confusion, her work at Greater Birmingham Ministries. And  
9 Greater Birmingham Ministries, especially on behalf of their  
10 members --

11 THE COURT: Maybe her own personal story is more  
12 directly on point.

13 MS. LANG: Her own personal story is certainly on  
14 point. But also Greater Birmingham Ministries on behalf of its  
15 members, I think, has the right to kind of bring forward this --  
16 the need for clarification on the confusion.

17 THE COURT: All right. You've about used your two  
18 minutes. What's your last point?

19 MS. LANG: If I could just make two last points, one  
20 would be -- the point about the list without the dates, it's  
21 critical, even though it seems like a discovery issue -- the  
22 list that we've been provided -- because if we cannot get relief  
23 from this Court, we would like to do outreach ourselves but  
24 cannot to 70,000 people. The State has now admitted that there  
25 are --

1 THE COURT: I don't see how the State can with six  
2 employees.

3 MS. LANG: No. I think that the State could, because  
4 it could run a mail merge. It has all that data itself, you  
5 know, available to it in a way that we don't.

6 But to the extent that there are date forms available  
7 but they can't search by them, I'm not sure I understand it.  
8 But if they could just provide that -- the database they  
9 provided us has a lot of information for the voter. It has  
10 addresses and phone numbers, but it doesn't have the date field.  
11 They've said that the date field exists. So if they could just  
12 include that, we'll do the search ourselves.

13 And the last thing I would ask this Court to focus on  
14 is, if nothing else, the registration forms have to be changed.  
15 And this is not about HB 282 as a class. We've always alleged  
16 that there is a class of voters that are eligible under the  
17 Alabama Constitution and just can't figure it out because the  
18 forms just say "Have you been convicted of a disqualifying  
19 felony?" This was -- this was the question on -- the last  
20 question on the literacy test in the fifties and sixties. And  
21 it was a major barrier then, and it's a major barrier now. And  
22 federal law requires that registration forms have eligibility  
23 requirements on it. So we would ask at minimum that they  
24 provide information on the registration forms about eligibility  
25 requirements.

1           Now, if they can't fit all 60 on the form, I would say  
2 the State has an obligation, if they have a complicated law, to  
3 explain it. But they could, at minimum, say, you know,  
4 "Disqualifying felonies or felonies involving moral turpitude.  
5 A list is available at your local board of registrars." That  
6 would make an enormous difference so that voters could know  
7 whether or not they have the right to vote. And that doesn't  
8 run up against any of the other mootness or class certification  
9 problems. And so I would urge you to take at least that action,  
10 which would make an huge difference for the voters of Alabama.

11           THE COURT: Okay. Thank you.

12           MS. LANG: Thank you, Your Honor. And thank you so  
13 much for the additional time. We appreciate it.

14           THE COURT: All right. I'm going to take the matter  
15 under advisement. An order will be issued forthwith because of  
16 the closeness of the primary and the runoff. An opinion will  
17 probably follow that will take a few days after that. So I want  
18 to thank you for your arguments. And we are adjourned.

19           MS. LANG: Thank you, Your Honor.

20           (Proceedings concluded at 4:34 p.m.)

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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

This 2nd day of July, 2018.

/s/ Risa L. Entrekin  
Registered Diplomat Reporter  
Certified Realtime Reporter  
Official Court Reporter