

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

TREVA THOMPSON, et al.,

Plaintiffs,

v.

JOHN MERRILL, in his Official Capacity
as Secretary of State of Alabama, et al.,

Defendants.

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CIVIL ACTION NO.
2:16-cv-783-ECM-WMD

**PLAINTIFFS' RESPONSE TO STATE DEFENDANTS' OBJECTION TO THE
SUPPLEMENTAL EXPERT REPORT OF DANIEL A. SMITH, PH.D.**

In advance of Dr. Daniel A. Smith's scheduled deposition, Plaintiffs provided Defendants a supplement to his expert report. *See* Docs. 245-1, 245-2. The supplemental report corrected two potential inaccuracies in the initial report and clarified that the changes did not affect his opinions as described in the initial report. *Compare* Doc. 245-2 *with* Doc. 215-13. Defendants questioned Dr. Smith extensively about the supplemental report at his deposition. *See, e.g.*, Ex. 1 at 34-42, 139-170 (Smith Dep.). Eleven days after they received the supplemental report, eight days after Dr. Smith's deposition, and four days after the close of discovery, Defendants objected to the supplemental report. Doc. 245. Defendants presented no evidence that they were unfairly surprised by the supplemental report and cited no authority suggesting that a brief supplemental expert report filed in advance of an expert's deposition and before the close of discovery is anything but proper. *Cf. Reese v. Herbert*, 527 F.3d 1253, 1266 (11th Cir. 2008) ("[T]he expert witness discovery rules are designed to allow both sides in a case to prepare their cases adequately and to prevent surprise.") (quoting *Cooper v. S. Co.*, 390 F.3d 695, 728 (11th Cir. 2004), *overruled on other grounds by Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 457-58 (2006)). Instead, Defendants' objection seeks to avoid a proper and timely supplemental report that demonstrates that Defendants' critiques make no difference to

Dr. Smith's analysis. Defendants' objection should be disregarded.¹

1. On April 17, 2020 Plaintiffs timely provided Defendants with Dr. Daniel A. Smith's extensive expert report pursuant to Fed. R. Civ. P. 26(a)(2). The report described Dr. Smith's qualifications, the data he analyzed to reach his expert opinions, which data had been provided by defense counsel to Plaintiffs' counsel and by Plaintiffs' counsel to him, as well as his methods of preparing that data for analysis, *See* Doc. 215-13. It described his analysis of financial barriers for people with felony convictions, an analysis of income and poverty in Alabama and their relation to race, an analysis of disqualifying and non-disqualifying felony convictions in Alabama and their relation to race, an analysis of an earlier proposal to restrict voting rights for a more limited class of felonies, an analysis of rates of voter ineligibility due to felony convictions, an analysis of voter registration rates by race before and after the passage of H.B. 282, and an analysis of the incidence of legal financial obligations (LFOs) by race. *See id.* The results of Dr. Smith's analyses are captured in tables and graphs plotting the incidence of one constant variable and one value of the independent variable against the constant variable and another value of the independent variable by county: for example, plotting income for black households against income for white households by county. *See* Doc. 215-13 at 15 fig.1.

2. On June 15, 2020, Defendant Leigh Gwathney in her opposition to Plaintiffs' Motion for Preliminary Injunction submitted a declaration and analysis purporting to undermine Dr. Smith's analysis of the incidence of LFOs in Section XI of his report. *See* Doc. 222 at 18-23 & Exh. 8. In particular, Chair Gwathney claimed that Dr. Smith had misleadingly aggregated LFOs for disqualifying and non-disqualifying offenses, *see* Doc. 222 at 18-21, and, based on the declaration of Stephen LeVeque, *see* Doc. 222 at Exh. 8, claimed that Dr. Smith had misleadingly aggregated

¹ Defendants have not moved for exclusion at this time and request no relief from this Court, Doc. 245 at 4, n.4, therefore the Court need not take any action on this objection at this time.

LFOs assessed at sentencing and post-sentencing, *see* Doc. 222 at 22-23. Chair Gwathney claimed that these two features of Dr. Smith's analysis of LFOs undermined his analysis entirely.

3. When Plaintiffs provided Dr. Smith with Chair Gwathney's criticisms of his analysis and with Stephen LeVeque's declaration, pursuant to his duty under Fed. R. Civ. P. 26(a)(2)(E) and 26(e), Dr. Smith began to conduct the additional analyses Chair Gwathney had suggested were required to determine if his opinions in his initial report concerning LFOs were inaccurate or incomplete.

4. On June 22, 2020, Defendants noticed a deposition of Dr. Smith for July 16, 2020.

5. On July 13, 2020, Dr. Smith completed his additional analyses and prepared a supplemental report describing the results. Dr. Smith explained that he took seriously Chair Gwathney's criticisms of Section XI of his report and performed the additional analyses to ensure that his opinions described in the initial report were accurate and complete. *See* Doc. 245-3 at ¶¶ 2-3. Dr. Smith relied on the same data for his analyses as in his initial report. *Compare* Doc. 245-3 at ¶¶ 6, 25 *with* Doc. 215-13 at ¶¶ 8, 77. The results of these analyses were provided in the same type of tables and graphs as utilized in the initial report. *See, e.g.,* Doc. 245-3 at ¶ 5, tbl.3 & fig.2. Indeed, except for correcting the inaccuracies identified by Chair Gwathney, his analysis and methods did not change and he added no new analytics.

6. On July 13, 2020, Plaintiffs provided Defendants with a copy of Dr. Smith's supplemental report. *See* Doc. 245-1.

7. On July 16, 2020, Defendants deposed Dr. Smith. The deposition lasted over six hours. Defendants introduced the supplemental report as an exhibit and questioned Dr. Smith extensively about the details of his supplemental report. *See* Ex. 1, Smith Dep. at 34. For example, Defendants asked about the data underlying the supplemental report, what specific details Dr. Smith had learned from Stephen Leveque's declaration, and how Dr. Smith had understood the aggregation

of fees imposed at sentencing and post-sentencing in spreadsheets. *See* Ex. 1, Smith Dep. at 36-38. Defendants also spent nearly a fifth of their questioning, more than 30 pages out of a total 170, on how he had handled individuals with multiple convictions for both felonies involving moral turpitude and non-moral turpitude felonies in the supplemental report, *id.* at 139-151, how he disaggregated post-sentence fees for purposes of the supplemental report and reported those results, *id.* at 151-70, as well as details about specific phrasing in the supplemental report, *id.* at 157-62. As counsel for Defendants explained at the end of this extensive questioning, she found it “very helpful for [her] to confirm that [she] under[stood] [Dr. Smith’s] report.” *Id.* at 169.

8. On July 24, 2020, eight days after extensively questioning Dr. Smith about his supplemental report and four days after the close of discovery in this case, Defendants for the first time objected to Dr. Smith’s supplemental report. Defendants did not seek to meet and confer with Plaintiffs regarding their objection. In their objection, Defendants explain that they packaged criticisms of Dr. Smith’s initial report in their preliminary injunction briefing rather than as part of their expert reports so that Dr. Smith would not be able to respond to the criticisms. *See* Doc. 245 at ¶¶ 3-4.²

9. Defendants provide no authority in their objection suggesting that an expert’s supplemental report provided in advance of the expert’s deposition, before the close of discovery, and over six months before trial is improper. Defendants instead cite numerous cases where courts excluded supplemental expert reports filed *after* the close of discovery. *See* Doc. 245 at 5-6 (citing *Companhia Energetica Potiguar v. Caterpillar Inc.* No. 14-cv-24277, 2016 WL 3102225, at *6 (S.D. Fla. June 2, 2016) (supplemental report filed four months after expert’s deposition and close of expert

² In so doing, Defendants attempted to accomplish by manipulation what they were unable to accomplish through the Rule 26(f) process, depriving Plaintiffs of their opportunity to respond to critiques as envisioned in the Rules. *See* Doc. 192 at 2-4.

discovery to oppose *Daubert* motion); *Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1252 (11th Cir. 2007) (no abuse of discretion in excluding supplemental report submitted after deadline and, in any case, excludable under *Daubert*); *Cook v. Royal Caribbean Cruises, Ltd.*, No. 11-20723, 2012 WL 2319089[, at *2] (S.D. Fla. June 15, 2012) (fifth supplemental report served a month and a half after close of discovery and a month before trial); *Goodbys Creek, LLC v. Arch Ins. Co.*, No. 3:07-cv-947, 2009 WL 1139575, at *2 (M.D. Fla. Apr. 27, 2009) (initial report an inadequate summary of legal conclusions and supplement not allowed in response to motion to strike initial report after court deadline for supplementation); *Cochran v. Brinkmann Corp.*, No. 1:08-cv-1790, 2009 WL 4823858, at *5 (N.D. Ga. Dec. 9, 2009) (report submitted five months after expert's deposition); *Friebel v. Paradise Shores of Bay Cnty., LLC*, No. 5:10-cv-120, 2011 WL 2420230, at *2 (N.D. Fla., June 13, 2011) ("supplemental" report submitted after motions for summary judgment); *Jones Creek Investors, LLC v. Columbia Cnty.*, 98 F. Supp. 3d 1279, 1282 (S.D. Ga. 2015) (supplemental report "in midst of summary judgment briefing and after close of discovery"); *Rojas v. Marko Zaninovich, Inc.*, No. 1:09-CV-00705, 2011 WL 4375297, at *6 (E.D. Cal. Sept. 19, 2011) (supplemental report styled as declaration in support of class certification motion provided after expert's deposition); *Akeva L.L.C v. Mizuno Corp.*, 212 F.R.D. 306, 310 (M.D.N.C. 2002) (supplemental report offered after close of discovery); *Minebea Co., Ltd. v. Papst*, 231 F.R.D. 3, 6 (D.D.C. 2005) (report provided one week after start of trial)).

10. Defendants cite only one case where a supplemental report was provided before the expert's deposition, but even that case suggests the objection is meritless. In *Guevara v. NCL (Bahamas) Ltd.*, the district court below had allowed plaintiff's expert to supplement his report based on new information provided by defendants subsequent to his initial report. 920 F.3d 710, 718 (11th Cir. 2019). It did so even though plaintiff provided the supplemental report "on the eve of [the expert's] deposition which gave [defendant] little time to review or prepare questions on the new

information” and even though the expert left the deposition prematurely without prior agreement of the parties. *Id.* at 719. The Eleventh Circuit approved admitting this much of the supplemental report. And it could not say it was an abuse of discretion to exclude the portions of that supplemental report that reworked the initial report based on a new set of standards “not included in [the expert’s] initial or rebuttal reports and [] not produced ahead of his deposition” or a second supplemental report submitted more than a month after the close of discovery. *Id.* at 718-19. Dr. Smith’s supplemental report is most like the portion of the supplemental report admitted in *Guevara*. It was based on new information to Dr. Smith: alleged inaccuracies or incompleteness of the data he utilized and a declaration describing the State’s dataset in detail. It simply supplemented the initial report based on that information to ensure an accurate and complete report. And unlike the supplemental report in *Guevara*, it was provided to defense counsel enough in advance of Dr. Smith’s deposition that defense counsel were able to prepare to and did in fact question Dr. Smith extensively about it. *See supra* at ¶ 7.

11. In cases where courts have encountered facts more like those at issue here, they have uniformly approved filing of supplemental reports. To take just one example in some detail, in *Capitol Justice, LLC v. Wachovia Bank*, plaintiff’s expert submitted an initial report in February 2009, which he amended on March 16, 2009, two days before his deposition on March 18, 2009. 706 F. Supp. 2d 34, 37 (D.D.C. 2009). Based on issues raised in the deposition about the calculation of certain losses, the expert submitted a revised report in April and was deposed again. *Id.* at 37-38. The court held that the revised report was “a proper supplementation and [was] therefore timely.” *Id.* at 38. In so holding, the court explained that “the Court’s central inquiry is ‘whether [a party’s] supplemental report comes so late in the game that [the opposing party] has no meaningful opportunity to respond or prepare for deposition or trial.’” *Id.* at 38-39 (quoting *Nnadili v. Chevron, U.S.A., Inc.*, Civ. No. 02-1620, 2005 WL 6271043, at *1 (D.D.C. Aug. 11, 2005)).

12. Just as in *Capitol Justice*, supplementation was proper in this case because Dr. Smith “used the same methodology in his revised report as in his initial report”; “only changed the inputs and calculations to produce a more complete and accurate report”; defendant “had the opportunity to depose [the expert] on his supplemental report”; and “supplementation [was] timely because it occurred before the date of the Rule 26(a)(3) pretrial disclosures.” *Id.* at 39; *see also, e.g., David E. Watson, P.C. v. U.S.*, 668 F.3d 1008, 1014 (8th Cir. 2012) (approving expert’s revision of his report on value of services in tax dispute where expert discovered errors in initial assessment and learned additional facts through deposition leading to revision); *Deere & Company v. FIMCO Inc.*, 260 F. Supp. 3d 830, 837 (W.D. Ky. 2017) (holding that supplemental report of 700 pages submitted on the eve of the deadline for pretrial disclosures was appropriate under Rule 26(e) because report didn’t “change [the expert’s] earlier opinions or theories such that they [would] constitute improper new evidence as opposed to supplemental materials. Rather, the Supplemental Report and exhibits offer further support for [the expert’s] original opinion”); *Thomas v. Sheahan*, 499 F. Supp. 2d 1062, 1073 (N.D. Ill. 2007) (allowing addendum to expert report even after close of discovery and expert’s deposition had been taken because it addressed deposition testimony that occurred subsequent to expert’s deposition).

12. Even where courts have found a supplemental report untimely, they have found the untimeliness harmless where the opposing party was not surprised by the additional information and that therefore the additional information should be admitted. *See, e.g., Brennan’s Inc. v. Dickie Brennan & Co. Inc.*, 376 F.3d 356, 375-76 (5th Cir. 2004) (upholding district court’s determination that failure to disclose underlying data and calculations for updated damages report was harmless because opposing party was already familiar with the data and the expert’s methodology had not changed); *Estate of Gaither ex rel. Gaither v. D.C.*, No. 03-1458 (CKK) (AK), 2008 WL 5869876, at *3 (D.D.C. 2008) (declining to strike late-filed supplemental defense expert report because

schedule provided plaintiff with sufficient time to process and respond to supplemental report and plaintiff did not suffer unfair surprise or prejudice). Just so here, even assuming Dr. Smith's report was untimely, Defendants cannot say they were surprised by the additional information where they had the underlying data available to them, they suggested the additional analyses themselves, and where Dr. Smith used the same methodologies as in his initial report.

13. Numerous courts have also emphasized that there can be no surprise or harm where the opposing party was able to depose the expert regarding the supplemental report. *See, e.g., Jackson v. Allstate Ins. Co.*, 785 F.3d 1193, 1204 (8th Cir. 2015) (expert's supplemental report summarizing additional study discussed at deposition was harmless because opposing party fully deposed expert and did not identify any information in supplemental report that took her by surprise or that required additional discussion); *Dormu v. D.C.*, 795 F. Supp. 2d 7, 28 n.16 (D.D.C. 2011) (permitting supplemental affidavit where it "does not blindside defendants with new information"; "comes several months prior to trial, leaving defendants with sufficient time to adjust their trial preparation"; and where any harm "can be minimized by allowing defendants to depose the expert if they so choose"); *Capitol Justice*, 706 F. Supp. 2d at 38 ("Even if the report [was] not a proper supplementation, its untimely submission [was] harmless."); *Only The First, Ltd. v. Seiko Epson Corp.*, 822 F. Supp. 2d 767, 779-81 (N.D. Ill. 2011) (finding that new expert opinions in supplemental expert declarations submitted in support of motion for summary judgment did not prejudice opposing party because new data just corroborated results of tests already done and that "Plaintiff was not 'sandbagged' by [expert's] new testing" because, among other things, he had the opportunity to ask questions at expert's deposition); *Luma Corp. v. Stryker Corp.*, 226 F.R.D. 536, 544-45 (S.D.W. Va. 2005) (permitting supplemental expert report including new opinions based on additional information because opposing party had access to information that provided basis for new opinions and there was no threat of incurable surprise because supplemental report was provided in

advance of expert's deposition and several months before trial); *see also Commonwealth Ins. Co. v. Titan Tire Corp.*, 398 F.3d 879, 888 (7th Cir. 2004) (holding use of expert deposition testimony from earlier case was harmless where opposing party had participated in earlier deposition).

13. These numerous rulings on facts like those in the present case are true to the purposes of Rule 26's requirements, "to prevent unfair surprise at trial," *Dormu*, 795 F. Supp. 2d at 28 n.16, and all show that Defendants' objection is meritless. Where, as here, defendants had ample "opportunity to depose" Dr. Smith and, as they themselves explain, decided to forego the opportunity "to obtain an expert of their own" to rebut Dr. Smith's testimony in an attempt to avoid a response to their critiques, they have no basis for claiming that the "design[]" of "the expert witness discovery rules" "to allow both sides in a case to prepare their cases adequately and to prevent surprise" was frustrated. *Reese v. Herbert*, 527 F.3d 1253, 1265-66 (11th Cir. 2008).

14. Defendants admit that they chose not to provide their critiques of Dr. Smith in an expert report to deny him the opportunity to respond. Doc. 245 at 3. In Defendants' opposition to the preliminary injunction motion, Defendants argued that Dr. Smith's analysis was "irrelevant" and "inflat[ed]" because he did not eliminate non-disqualifying felonies or post-sentencing LFOs in his calculations. Doc. 222 at 19-22. Defendants are in possession of all the relevant data but did nothing to determine whether the errors it identified meaningfully change the results. As Dr. Smith's supplemental report establishes, they do not. Doc. 245-3. By eliminating Dr. Smith's supplemental report, Defendants seek to retain their ability to critique Dr. Smith on grounds it knows to be inconsequential. Such an objection "do[es] violence to the court's duty to search for the truth and would be inimical to the traditional concept of (discovery)." *Carr v. Monroe Mfg. Co.*, 431 F.2d 384, 389 (5th Cir. 1970).

15. But Defendants should not be allowed to relitigate the discovery schedule the court set following the parties' Rule 26(f) conference, to surprise Plaintiffs with criticisms of an expert

report repackaged in briefing and a supporting declaration, or to keep Plaintiffs' expert from timely supplementing his report to answer those criticisms.

Dated: August 3, 2020

Respectfully Submitted,

/s/ Danielle Lang_____

Danielle Lang
(CA Bar: 304450)
Mark Gaber
(DC Bar: 988077)
J. Gerald Hebert
(VA Bar: 38432)
Molly Danahy
(DC Bar: 1643411)
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005
(202) 736-2200
dlang@campaignlegalcenter.org
mgaber@campaignlegalcenter.org
ghebert@campaignlegalcenter.org
mdanahy@campaignlegalcenter.org

Jessica Ring Amunson
(DC Bar: 497223)
Jennifer Yun
(DC Bar: 1600953)
Jenner & Block LLP
1099 New York Ave. NW, Ste. 900
Washington, DC 20001
(202) 736-6000
jamunson@jenner.com
jyun@jenner.com

Jason Hipp
(NY Bar: 5232277)
Jenner & Block LLP
919 Third Avenue
New York, NY 10022
(212) 407-1784
jhipp@jenner.com

J. Mitch McGuire
(AL Bar: ASB-8317-S69M)
McGuire & Associates, LLC
31 Clayton Street
Montgomery, AL 36104
(334) 517-1000
jmcguire@mandabusinesslaw.com

James U. Blacksher
(AL Bar: ASB-2381-S82J)
P.O. Box 636
Birmingham, AL 35201
(205) 591-7238
jblacksher@ns.sympatico.ca

Pamela Karlan
(NY Bar: 2116994)
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
(650) 725-4851
karlan@standford.edu

Aderson B. Francois
(DC Bar: 498544)
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue NW
Washington, DC 20001
(202) 662-6721
Abf48@georgetown.edu

Armand G. Derfner
(SC Bar: 1650)
Derfner & Altman
575 King Street, Suite B
Charleston, SC 29403
(843) 723-9804
aderfner@derfneraltman.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on August 3, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record as listed below:

Brad A. Chynoweth
Office of the Attorney General
501 Washington Avenue
Post Office Box 300152
Montgomery, AL 36130
334.242.7997
Fax: 334.353.8440
Email: bchynoweth@ago.state.al.us

James William Davis
Office of the Attorney General
P O Box 300152
Montgomery, AL 36130-0152
334-353-1356
Email: jimdavis@ago.state.al.us

Misty Shawn Fairbanks Messick
Office of the Attorney General
P O Box 300152
Montgomery, AL 36130-0152
334-353-8674
Email: mmessick@ago.state.al.us

Winfield James Sinclair
Office of the Attorney General
P O Box 300152
Montgomery, AL 36130
334-242-7300
Email: wsinclair@ago.state.al.us

Counsel for Defendants

/s/ Danielle Lang

Danielle Lang
(CA Bar: 304450)
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
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TREVA THOMPSON, et al.,

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VS.

CIVIL ACTION NO.
2:16-cv-783-ECM-SMD

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

Defendants.

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COPY

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VIRTUAL VIDEOCONFERENCE DEPOSITION OF
DANIEL A. SMITH, Ph.D, taken on behalf of the
Defendants, pursuant to the stipulations set forth
herein, before Wendy Kendrick, Certified Court
Reporter and Notary Public, at the Alabama Attorney
General's Office, 501 Washington Avenue, Montgomery,
Alabama, commencing at approximately 10:00 a.m.,
Thursday, July 16, 2020.

1 APPEARANCES OF COUNSEL

2 FOR THE PLAINTIFFS:

3 LAW OFFICE OF MARVIN H. CAMPBELL

4 Post Office Box 4979

5 Montgomery, Alabama 36103

6 334.263.7591

7 BY: MR. MARVIN H. CAMPBELL

8 mhcfirm@aol.com

9 and

10 CAMPAIGN LEGAL CENTER

11 1411 K Street NW, Suite 1400

12 Washington, DC 20005

13 202.736.2200

14 BY: MS. DANIELLE LANG

15 dlang@campaignlegalcenter.org

16 FOR THE DEFENDANTS:

17 OFFICE OF THE ATTORNEY GENERAL

18 501 Washington Avenue

19 Post Office Box 300152

20 Montgomery, Alabama 36130

21 334.353.8674

22 BY: MS. MISTY S. FAIRBANKS MESSICK

23 Misty.Messick@AlabamaAG.gov

1 AND

2 MR. WINFIELD J. SINCLAIR

3 Winfield.Sinclair@AlabamaAG.gov

4 ALSO PRESENT:

5 DR. LESLEY REID

6
7 * * *

8 EXAMINATION INDEX

9 **DANIEL A. SMITH, Ph.D**

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EXHIBIT INDEX

DEFENDANTS' EXHIBITS: MARKED

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(Smith Declaration)

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* * *

STIPULATIONS

It is hereby stipulated and agreed by and among counsel for the respective parties and the witness that the virtual videoconference deposition of **DANIEL A. SMITH, Ph.D.**, is taken pursuant to notice and stipulation on behalf of the Defendants; that all formalities with respect to procedural requirements are waived; that said virtual videoconference deposition may be taken before Wendy Kendrick, Certified Court Reporter and Notary Public in and for the State of Alabama At Large, without the formality of a commission; that objections to questions, other than objections as to the form of the questions, need not be made at this time, but may be reserved for a ruling at such time as the virtual videoconference deposition may be offered in evidence or used for any other purpose as provided for by the Civil Rules of Procedure for the State of Alabama.

It is further stipulated and agreed by and among counsel representing the parties in this case that the filing of the virtual videoconference

1 deposition of **DANIEL A. SMITH, Ph.D,** is hereby
2 waived; and that said virtual videoconference
3 deposition may be introduced at the trial of this
4 case or used in any other manner by either party
5 hereto provided for by the Statute, regardless of
6 the waiving of the filing of same.

7 It is further stipulated and agreed by and
8 between the parties hereto and the witness that the
9 signature of the witness to this virtual
10 videoconference deposition is hereby not waived.

1 MS. MESSICK: Danielle, do
2 we want to -- we want to
3 continue to do the usual
4 stipulations as we have been
5 doing them, so we would of
6 course object to privilege and
7 --

8 MS. LANG: And reserve the
9 right to read and sign, yes.

10 MS. MESSICK: Okay. That
11 is fine with us.

12 And then I think you-all
13 might mostly just be able to
14 see me, so I want to let you
15 know that the record will
16 reflect that Win Sinclair, my
17 colleague, is here with me.
18 The court reporter is here in
19 Montgomery at our office.
20 That's why there is not
21 another screen for her. And
22 then we also have with us Dr.
23 Lesley Reid, who is our

1 consulting expert in this
2 case.

3 And with that we are
4 ready for the court reporter
5 to swear in the witness.

6 DR. SMITH: Before we do
7 that I just wanted to make a
8 note that I don't have the
9 option to see you. I see
10 Danielle. I don't even have a
11 box for you.

12 MS. LANG: Yeah, neither
13 do I.

14 MS. MESSICK: Okay.

15 MS. LANG: Which when Dan
16 could see you, I was okay with
17 moving on that way. But if Dan
18 can't see you, that seems like
19 a problem.

20 MS. MESSICK: I agree.
21 I.T. is still here. Let us go
22 back off the record and see if
23 we can get that fixed.

1 (Off-the-record discussion.)

2 MS. MESSICK: We are back
3 on the record. And if the
4 court reporter could please
5 swear the witness.

6 THE THE COURT REPORTER: D
7 r. Smith, can I get you to
8 raise your right hand, please?

9 (Witness complies.)

10 THE THE COURT REPORTER: D
11 o you solemnly swear, or
12 affirm, that the testimony that
13 you are about to give will be
14 the truth, the whole truth, and
15 nothing but the truth so help
16 you God?

17 DR. SMITH: Yes, I do.

18 THE THE COURT REPORTER: T
19 hank you.

20
21 * * *

1 **DANIEL A. SMITH,**
2 was called as a witness, having first been duly
3 sworn by Jeana S. Boggs, Notary Public of the
4 State of Alabama at Large, was examined and
5 testified as follows, to-wit:

6
7 DIRECT EXAMINATION
8 BY MS. MESSICK:

9 Q. Good morning, Dr. Smith. My name is
10 Misty S. Fairbanks Messick, and I
11 represent the Secretary of State, the
12 Chair of the Board of Pardons and
13 Paroles, and the Chair of the Montgomery
14 County Board of Registrars in the
15 litigation that we're here for today.
16 And I appreciate your patience in helping
17 us through the technology this morning.

18 Could you please state your
19 name for the record.

20 A. Yes. My name is Daniel A. Smith.

21 Q. And you have provided an expert report
22 for the Plaintiffs in this litigation
23 which challenges Alabama's laws

1 concerning felon voting; is that correct?

2 A. I have provided a report as well as
3 supplemental rebuttal.

4 Q. And you also served as an expert for the
5 Plaintiffs in Jones V. DeSantis or the
6 Florida felon voting lawsuit?

7 A. I was one of many experts working in that
8 consolidated case, yes.

9 Q. Okay. I want to first this morning
10 introduce your original report in this
11 case. Do you have a copy of that with
12 you?

13 A. Yes. My Counsel provided me one. I just
14 want to make sure that it's the same that
15 you have. It's a .PDF version.

16 Q. Well, I am sure that's what they sent me.
17 I have a report dated April 17, 2020, and
18 it's got a signature on it that I would
19 think would have had to come through a
20 PDF.

21 A. Yes. That's the same date that I have on
22 page 67.

23 MS. MESSICK: So, that

1 will be Exhibit One in this
2 case.

3 (At which time, the referred-
4 to document was marked as
5 Defendants' Exhibit No. 1 for
6 identification.)

7 Q. Would you please turn to page three of
8 this report?

9 A. Yes, ma'am.

10 Q. And do you see that on page three you
11 make reference to the Jones V. DeSantis
12 case?

13 A. That is correct.

14 Q. And you say that you had testified in the
15 trial in that case?

16 A. I testified during the preliminary
17 injunction as well as the trial itself.

18 Q. And when was the trial?

19 A. I don't recall the exact date. It was
20 pushed back several times. The trial
21 itself happened virtually. I want to say
22 that it was in April.

23 Q. Was it -- was the trial in late April,

1 early May?

2 A. The months during this time of COVID have
3 blurred together.

4 Q. Are you on Twitter as Election Smith?

5 A. Yes, I am.

6 Q. Do you have an exhibit from me this
7 morning with clippings from your Twitter
8 account?

9 A. Yes. Counsel provided that to me just a
10 little before the start of this
11 proceeding.

12 Q. Great. We are going to mark that as
13 Exhibit Two to this deposition.

14 (AT which time, the referred-
15 to document was marked as
16 Defendants' Exhibit No. 2 for
17 identification.)

18 Q. And I would ask you take a look at it and
19 see if there are any -- Well, let me back
20 up.

21 I have a snipping tool on my
22 computer where I can take images off of
23 the Election Smith Twitter feed. And

1 that is what I have done in creating
2 Exhibit Two.

3 And I would like you to look at
4 it and see if you see anything there that
5 you don't recognize from your own Twitter
6 feed.

7 A. It all looks as you have presented it.
8 These are snippings of various posts.

9 Q. Right. You actually -- you posted a lot
10 more that is not here, correct? A
11 variety of topics?

12 A. I would image so, correct.

13 Q. Looking at page two of Exhibit Two --

14 A. Yes.

15 Q. -- does this posting concern the 11th
16 Circuit's decision to grant a stay of the
17 District Court's order in the Florida
18 case?

19 A. I don't recall -- I don't recall the
20 specifics because I was referencing an
21 article, but it certainly references the
22 case.

23 Q. Do you see the comment that you added at

1 the top of that document, above the news
2 article?

3 A. Yes.

4 Q. And can you read for me your comment,
5 please?

6 A. Sure. I said (as read) "I can give you
7 one million reasons why this is
8 problematic."

9 MS. MESSICK: We're
10 getting some really loud
11 dinging here. I'm not sure if
12 maybe somebody is receiving
13 chats or emails or something.

14 MS. LANG: It was my
15 fault. I'm sorry. I was just
16 trying to pull up the emails
17 with the exhibits. My
18 apologies.

19 MS. MESSICK: Thank you so
20 much.

21 BY MS. MESSICK:

22 Q. Dr. Smith, was your reference to
23 "1,000,000 reasons why this is

1 problematic" a reference to the
2 approximately 1,000,000 voters or
3 1,000,000 felons looking to be able to
4 vote?

5 A. The 1,000,000 certainly references the
6 number that I arrived at in my analysis
7 in this case of individuals who have
8 believed from state or county confinement
9 with a felony conviction sentence
10 completed. That includes individuals who
11 owe no LFOs, legal financial obligations,
12 as well as those who do.

13 Q. Thank you. And then is it fair to
14 summarize pages three through six of this
15 exhibit as tweets concerning Judge
16 Hinkle's ruling following the trial in
17 that Florida case?

18 MS. LANG: Object to form.

19 A. I would say that these are my re-tweeting
20 either ACLU press statements or
21 statements from ACLU counsel.

22 I was retained by the ACLU in
23 that litigation. It also involved news

1 coverage of Judge Hinkle's ruling. That
2 looks like it was from May 24th. And it
3 looks like there was a self-promoting
4 tweet about footnote 82 in Judge Hinkle's
5 ruling that stated that the evidence
6 supporting the finding includes the
7 expert testimony of Dr. Daniel A. Smith,
8 Dr. Smith's testimony in full.

9 Q. If you would stay on that page for me, at
10 the top of the page with the
11 self-promoting tweet, can you read your
12 comment?

13 A. Sure. I write (as read) "Oh, for those
14 of you who read Judge Hinkle's 125
15 ruling, know that I use the term, quote,
16 "returning citizens" knowingly."

17 I have a little smiley face
18 after that. And I see that I did not put
19 page after 125. 125 pages.

20 Q. Yes, it was very long.

21 What did you mean by this
22 public statement that you used the term
23 "returning citizens" knowingly?

1 A. So, I do not tend to use the term
2 "returning citizens." That is a term
3 that advocacy groups have used. And if I
4 had used that term in some tweet, I did
5 so knowing that it was a term that
6 neither do I intend to use or does Judge
7 Hinkle as he notes in his ruling.

8 Q. Thank you, Dr. Smith. Do you have your
9 CV in front of you?

10 A. I can pull up the CV that Counsel
11 provided to me this morning.

12 Q. And we are going to mark that as Exhibit
13 Three here today.

14 (AT which time, the referred-
15 to document was marked as
16 Defendants' Exhibit No. 3 for
17 identification.)

18 Q. And I just want to be clear for the
19 record. The version of your CV that I
20 received is actually a word version that
21 has a field at the top for the date. So,
22 when I printed it today, it is dated
23 today but obviously I haven't been

1 updating your CV.

2 Do you know when this CV that
3 is Exhibit Three is actually current
4 through?

5 A. It does the same thing if I look at this
6 and do it in the email as a preview, it
7 is dated 9, April, 2020. I assume that
8 that has been updated by Counsel or by
9 you.

10 Q. Thank you. Do you have any expert
11 consulting work that has happened since
12 this CV was last updated that isn't
13 reflected on this CV then?

14 A. Yes.

15 MS. LANG: Object to form.
16 Do you only want him to say the
17 consulting work or all the work
18 he did to testify as an expert
19 witness?

20 MS. MESSICK: I'm sorry.
21 We are having audio problems.
22 Are you asking me if I only
23 want to know about cases where

1 he has been hired to testify as
2 an expert?

3 MS. LANG: No. I objected
4 to form only because I think
5 it's unclear. Do you want him
6 to say where he's an expert
7 consultant or where he's an
8 expert consultant and cases
9 where he's an expert witness.

10 Since those terms are
11 used distinctly in the legal
12 context, I want to make sure
13 he discloses everything that
14 he is supposed to disclose.

15 MS. MESSICK: Thank you.

16 Q. Dr. Smith, what I am interested in
17 knowing is whether you have provided any
18 expert testimony, whether through a
19 written report, or a deposition, or
20 testimony in open court, since this CV
21 was last updated?

22 A. Sure. This is off the top of my head but
23 I should be able to recall.

1 I am currently an expert in the
2 litigation that has been consolidated in
3 Florida over vote-by-mail. I am working
4 for the Plaintiffs, Dream Defenders.
5 That's in federal district court in
6 Tallahassee. I have been deposed in that
7 case, and I have written two declarations
8 in that case.

9 Q. And that case goes to trial next week?

10 A. That is correct.

11 So, I have been deposed. I
12 have written a report. I have written a
13 rebuttal report.

14 I am also an expert in similar
15 litigation in Texas regarding
16 vote-by-mail. And I have written a
17 declaration. I have written a response
18 of rebuttal and -- maybe it wasn't a
19 rebuttal, maybe it was just a response or
20 an update because I had additional data.
21 I have not been deposed in that case.
22 That case is called Lewis V. Hughes I
23 want to say.

1 And I am a consulting expert
2 for --

3 Q. Hold on, hold on.

4 A. I'm sorry.

5 Q. I -- I do not want to know about any case
6 where you are only consulting as an
7 expert and do not actually expect to
8 provide a written report.

9 A. And those would be the two cases since
10 the submission of my report in this case
11 that I have been involved in.

12 Q. If you would turn to page 11 of your CV,
13 you gave a presentation -- it's listed
14 near the top of the page -- on -- or
15 entitled "Barriers to Registering
16 Returning Citizens in Florida."

17 A. Yes.

18 Q. In 2019?

19 A. Correct.

20 Q. Did that cover any topics that did not
21 overlap with the expert testimony that
22 you gave in Florida, in the Florida
23 litigation that we discussed earlier?

1 A. It's difficult for me to remember exactly
2 what I presented. I know that I did not
3 do a written report or paper in that
4 litigation. And I certainly did not
5 speak about any of the specifics in that
6 ongoing litigation.

7 Q. Were you paid?

8 A. And --

9 Q. I'm sorry. I thought you were done.

10 A. No, no. No, no. I certainly hadn't
11 written my report that were filed in that
12 case that went to trial in 2020.

13 And no, I was not paid.

14 Q. There was a preliminary injunction in the
15 Jones V. DeSantis Florida case, and you
16 testified at that preliminary injunction
17 hearing, did you not?

18 A. That is correct.

19 Q. Did you remember when that was?

20 A. I don't remember. I would say it was
21 sometime in September maybe.

22 Q. Do you talk about vote-by-mail on your
23 Twitter feed?

1 A. I am sure I talked about vote-by-mail on
2 my Twitter feed.

3 Q. Have you ever written an op-ed about
4 litigation that you were involved in?

5 A. So, I have written many op-eds. The
6 op-eds are linked to my research.
7 Sometimes my research is the result of
8 litigation. Often my research is what
9 causes attorneys to pursue me to be an
10 expert. Have I written an op-ed that is
11 directly engaged with ongoing litigation
12 -- I'm pretty careful not to talk about
13 any ongoing litigations in any op-eds.

14 Q. Near the bottom of your CV, on page 11,
15 it says that you gave a presentation
16 defending democracy, how political
17 scientists are engaging in the fight over
18 voting rights, and why you and your
19 department should too.

20 Can you tell me what that was
21 about?

22 A. Sure. I was part of a panel, roundtable.
23 I did not come up with that title. I was

1 on the panel. I did not write anything
2 for that presentation, probably four or
3 five scholars of various types of
4 litigation.

5 THE THE COURT REPORTER: I
6 'm sorry. Can I get you to
7 stop for a minute?

8 (As read) "I was on the
9 panel. I did not write
10 anything for that
11 presentation, probably" -- go
12 from there.

13 A. Yes. And I certainly did not come up
14 with that title, "Defending Democracy."
15 That was something that the core of that
16 panel stated and came up with.

17 Q. Do you remember what you spoke about on
18 that panel?

19 A. I have no recollection. It was probably
20 talking about the opportunity to have an
21 expertise in the area to work in
22 litigation and to advise, as I always do,
23 junior scholars to be cautious about

1 doing that. Because if you want to get
2 tenure as an academic, the coin of the
3 realm is not to work as an expert in
4 litigation. It's getting your articles
5 and your book out.

6 So, I am sure that whatever I
7 said to the younger scholars in that
8 audience that you're not going to get
9 tenure based on how wonderful you are as
10 an expert witness.

11 Q. Thank you. You said you were hired by
12 the ACLU in the Florida felon voting
13 right case; is that right?

14 A. That is correct.

15 Q. And you have done non-litigation work for
16 the ACLU of Florida as well?

17 A. That is correct.

18 Q. And you have done work for ACLU
19 organizations in other states as well?

20 A. Yes, I have.

21 Q. Have you ever been hired by Campaign
22 Legal Center as an expert in a case
23 before this one?

1 A. I would have to look at my CV. I
2 honestly don't recall. There are often
3 coalitions that came up and as a result
4 -- I honestly don't know. It could be
5 four or five, six organizations. Whether
6 or not the Campaign Legal Center was part
7 of that -- I wouldn't be surprised, but I
8 would have to go back to look at that.

9 Q. Have you ever provided expert testimony
10 in an Alabama case before this one?

11 And I am specifically asking
12 about expert testimony. I do not believe
13 it's proper to ask about the consultation
14 that you did in the Greater Birmingham
15 Ministries case on voter ID. So, I'm
16 just asking for testimony in Alabama
17 cases.

18 A. No.

19 Q. On page two of your report you mention
20 state and local politics, institutions
21 and reform. What if anything does that
22 textbook say about felon
23 disenfranchisement in Alabama?

1 A. I'm pulling up my report. Counsel
2 provided that to me the other day when I
3 asked for it. So, one second.

4 Q. Okay. It's really -- you're talking
5 softly but we haven't effective --
6 actually gone off the record. The court
7 reporter is struggling to hear you.

8 So, you are taking a minute to
9 look for the PDF of that report; is that
10 correct?

11 A. Correct. My apologies. Yes. I've got
12 it. Thank you. Sorry.

13 Q. Okay. So, on page two of your report you
14 say that you are co-author of a textbook
15 called "State and Local Politics,
16 Institutions and Reform."

17 And my question to you was:
18 What if anything does that textbook say
19 about felon disenfranchisement in
20 Alabama?

21 A. I don't recall specifically. Almost
22 every one of the 15 chapters as I recall
23 discusses some aspect of Alabama

1 politics. I recall some much more
2 vividly than others, like the
3 representative action chapter.

4 With respect to voting rights,
5 I am sure it is covered in Chapter Three,
6 Political Presentations. Do I recall the
7 details of that, no. But I certainly
8 recall having a conversation of voting
9 rights and looking at felony
10 disenfranchisements across the state.

11 Q. Okay. And you cut out. Was Chapter
12 Three called "Public Participation"? I
13 didn't hear what you said.

14 A. Oh, I'm sorry. No, I think it's
15 Political Presentation is what it's
16 probably called.

17 Q. Okay. Well, that's --

18 A. Political Presentation, something along
19 that line.

20 Q. Is it fair to say that when you started
21 providing expert testimony and
22 litigation, you frequently testified for
23 the government?

1 A. I don't know if that's a fair assessment.
2 I have worked for various state
3 governments, including Florida, Colorado,
4 California. I wouldn't say that that was
5 -- that was proportionately early on in
6 my expert work.

7 Q. When is the last time that you were a
8 state expert for the State of Florida?

9 A. So, the last time I helped to defend the
10 State of Florida was a couple of years
11 ago in a case in which I worked as a
12 defendant intervenor expert for the
13 Constitutional Office of Supervisor of
14 Election in Broward County.

15 So, I worked in that case. The
16 case is listed on my CV. It went through
17 a couple of different name changes. It
18 used to be ATRU. I honestly don't
19 remember what it's called. I think it's
20 Belitto V. Snipes. Snipes was the
21 Supervisor of Election, Constitutional
22 Office of Florida. And I did that work
23 publicly in 2017.

1 Q. When is the last time you were a
2 litigation expert for Colorado?

3 A. Probably when I still lived in Colorado
4 or soon thereafter. So, I left Colorado
5 around 2003.

6 Q. Did you say 2003?

7 A. And may have done more -- I'm sorry. I
8 may have done more work in the mid 2,000s
9 for the state of Colorado, maybe even the
10 late 2,000s.

11 Q. Okay. Can we go off the record for a
12 second?

13 (off-the-record discussion.)

14 BY MS. MESSICK:

15 Q. Dr. Smith, when is the last time that you
16 were an expert in litigation for the
17 state of California?

18 A. I want to say that was Summer of 2018.

19 Q. What case would that be?

20 A. I don't recall the -- the name of it. It
21 had to do with defending the Secretary of
22 State's Office. I want to say it was
23 Judicial Watch that was suing regarding

1 list maintenance in California, and I was
2 brought in to help defend the State of
3 California.

4 Q. Thank you. On page 15 of your CV, you
5 say that you gave an "Invited Response"
6 on "Law and Politics of Judging Election
7 Cases" in 2016.

8 Can you summarize for me what
9 that was about?

10 A. Can you point to where on page 15 that
11 might be so I can get a better sense?

12 Q. It's the ninth item down, and it is
13 called an "Invited Response" with --
14 you've got Michael Kang, Emory School of
15 Law, on here as well with that entry.

16 A. Yeah. I have very little recollection.
17 I remember Michael Kang. I remember that
18 law school invited conference. And I am
19 sure that I had to provide extemporaneous
20 comments on his presentation.

21 But again that is not my title.
22 That was the title probably of his
23 presentation.

1 Q. So, your recollection is that he gave a
2 presentation and then you basically had
3 to respond on the fly?

4 A. Correct.

5 Q. We've already marked your April
6 Declaration as Exhibit One in this case.

7 When you signed this report,
8 did you believe it to be accurate and
9 complete?

10 A. Sure. To the best of my knowledge, yes.

11 Q. And you have submitted a new report
12 recently?

13 A. That is correct.

14 Q. And do you have a copy of that report?

15 A. Yes. Counsel provided that to me a
16 couple of days ago in PDF form.

17 Q. Okay.

18 MS. MESSICK: And,
19 Danielle, did you say
20 something? I heard --

21 MS. LANG: No. I'm sorry.
22 I -- I'm getting used to using
23 the phone instead and so I

1 pressed un-mute on the wrong
2 place. I apologize.

3 MS. MESSICK: Okay. I
4 think what I am actually
5 hearing is feedback from me
6 apparently only if I move.
7 Okay.

8 BY MS. MESSICK:

9 Q. Dr. Smith, you said that Plaintiff's
10 Counsel provided you with a copy of your
11 report, supplemental report?

12 A. Correct. That is correct.

13 Q. Okay. We are going to mark that as
14 Exhibit Four to the deposition this
15 morning.

16 (At which time, the referred-
17 to document was marked as
18 Defendants' Exhibit No. 4 for
19 identification.)

20 Q. I don't see a date on this report. When
21 did you sign it?

22 A. That's a good question. I do not recall.
23 I can probably figure it out from the

1 email that I sent to Counsel.

2 Q. Did you sign it in the last few days?

3 A. No. I would have signed it -- it's all a
4 blur. Certainly not in the last few
5 days.

6 MS. LANG: Dr. Smith, it
7 might make sense for you to go
8 through and actually find the
9 date that you sent your final
10 report to me so that you can
11 provide Ms. Messick with that
12 information.

13 A. I am doing so right now.

14 (Brief pause.)

15 A. Yes. It looks like I sent a final report
16 on Sunday, which would have been the 12th
17 of July.

18 Q. Thank you. And you have entitled this a
19 supplemental report, correct?

20 A. That is correct. Supplemental expert
21 report, correct.

22 Q. And the supplement is in response to
23 Chair Gwathney's opposition to the Motion

1 for Preliminary Injunction?

2 A. That is correct.

3 MS. MESSICK: Danielle, I
4 am handing the court reporter a
5 note of how to spell Gwathney.

6 MS. LANG: Okay.

7 BY MS. MESSICK:

8 Q. Did you acquire any new data to be able
9 to prepare this supplemental expert
10 report?

11 A. I certainly used the same underlying
12 data, and it was informed by
13 Ms. Gwathney's -- I don't know what to
14 call it because I'm not familiar with
15 that document that she submitted. I was
16 also informed by the -- the LeVeque
17 Declaration because he provided some
18 codes to assist in interpreting the
19 Administrative Office of Court's main
20 database that I relied on.

21 Q. Okay. You should have received this
22 morning from your Counsel the exhibits
23 for today's deposition, and one of those

1 would have been the Declaration of
2 Stephen LeVeque. Do you have that
3 document?

4 A. Yes, I do.

5 Q. And can you tell me to what you were just
6 now referring, what is it in this
7 document that was new to you?

8 A. I wouldn't say anything was new except
9 that it was informative with respect to
10 details about various information in a
11 database that has been provided to me
12 that is called the Alabama Felony
13 Conviction and Guilty Pleas Disposed
14 1/1/1983 through 5/1/2019.

15 Q. And can you tell me specifically which
16 details this declaration informed you of?

17 A. Well, I was able to infer quite a bit of
18 that from the raw data, but it was nice
19 to have -- I guess the individual who
20 pulled the data from the mainframe, to
21 have his specific information about what
22 each of these fields entailed.

23 Q. At the time that you wrote your original

1 report, the April report, did you know
2 that the grand total columns included the
3 post-sentence fees?

4 A. So, I -- I did know that, and my
5 understanding at the time when I started
6 this litigation was that Alabama had at
7 one point included all fines and fees and
8 restitution. And so, it was interesting
9 reading the statement by Chair Gwathney
10 about her interpretation.

11 Q. Okay. Thank you. Another exhibit that I
12 sent your Counsel this morning -- I think
13 it's probably called AOC's snippets and
14 it is a one-page PDF that shows some of
15 the column headings?

16 A. I see it.

17 Q. I am going to introduce that as Exhibit
18 Six.

19 (At which time, the referred-
20 to document was marked as
21 Defendants' Exhibit No. 6 for
22 identification.)

23 Q. Do recognize these column headings from

1 that AOC database?

2 A. Yes, I do.

3 Q. Okay. And there were many, many, many
4 more columns that are not reflected here,
5 correct?

6 A. It's a very large database.

7 Q. Have I captured in Exhibit Six all of the
8 columns that you actually used in your
9 analysis?

10 A. No, I don't think so. Because there are
11 multiple charges within a particular row
12 of data, up to I want to say three. And
13 so, I used some of those other fields as
14 well.

15 Q. Okay. Have you read any of the expert
16 reports that the Defendants have
17 submitted in this case?

18 A. No.

19 Q. Are you currently working on any
20 additional written report to file in this
21 case?

22 A. No.

23 Q. Have you reviewed your original report

1 from April and found any errors in it
2 that you have not addressed in the
3 supplemental report?

4 A. No. I -- I addressed -- I wouldn't
5 characterize them as errors but different
6 interpretation which I am very
7 transparent and document in my
8 supplemental report.

9 I should also add that there
10 were some things that I didn't respond to
11 in my supplemental report because frankly
12 they were very inaccurate and I didn't
13 think it was up to me to have to define
14 to the State what your data actually
15 entails.

16 And so, there are things in my
17 report that are criticized by Chair
18 Gwathney that are actually inaccurate.
19 And footnote 13 on page 19 is something I
20 read with -- you know, very carefully to
21 try to understand how I could have
22 possibly made basic math errors. But in
23 fact my report initial report is accurate

1 and I didn't make basic math errors.

2 Ms. Gwathney, or whoever wrote this for
3 her, or whoever did the interpretation
4 for her, made errors.

5 The math errors that are
6 described in that footnote are not math
7 errors. I think it's very important that
8 the State understands that the data that
9 you provided me has many rows that have
10 no information or partial information
11 that are not individuals.

12 And so, the distinction that I
13 make very clearly in my report are the
14 difference between rows and individuals.
15 Not every row of data -- not every row in
16 the data has an individual that can be
17 identified. There is a lot of error in
18 both of those, but particularly the
19 document D005349, which I use in my
20 analysis.

21 And so, when I append rows of
22 data and keep only the 410 rows from the
23 two datasets when I am appending them,

1 that is different than individuals. And
2 so, the math that you or Ms. Gwathney or
3 whoever did this report for her doesn't
4 understand the nature of the data
5 apparently, which is your data, because
6 many of those rows have information that
7 are not related to an individual. They
8 are gibberish. They are clearly data
9 errors and formatting errors.

10 And so, I did not think it was
11 worth my time to respond to something
12 that is very clear in my initial report
13 that you or Ms. Gwathney or her
14 representatives have erred on.

15 That is one example in which
16 responding to your question that I did
17 not respond to -- that I did not update
18 because my report is accurate.

19 Q. So, you're saying that there are rows of
20 gibberish that had not been eliminated
21 from your analysis by the time you got to
22 this stage in paragraph 87 of your
23 report?

1 A. My analysis eliminates those rows of
2 gibberish because there is clearly data
3 entry errors or data formatting errors
4 that cannot be linked. If you and your
5 team want to take a look at your original
6 data from D005349 which has, you know, 20
7 some thousand rows of data, not every one
8 those rows has an individual listed.

9 And so, the distinction that I
10 am making in my report is between rows in
11 a dataset and actual individuals.

12 Q. And where in your report did you explain
13 that?

14 A. All right. Well, let's pull up my
15 report.

16 And again, you know, I am very
17 careful with my language, and I am very
18 careful with my data. And even when I am
19 confronted with very messy datasets such
20 as this one, I try to be very precise
21 with my language.

22 So, let me go to my original
23 report. And I suppose that you actually

1 referenced it, in paragraph 87 you say.
2 I am going to paragraph 87 in my original
3 report.

4 And yes, here I am at page 64
5 of my original report. In it I say (as
6 read) "I draw on two data files
7 containing information from the Alabama
8 Board of Pardons and Paroles of CERV
9 applicants from 2008 forward. By
10 appending the 22,365 rows included in
11 D005349 with the 2,618 rows included in
12 the D200069 supplement" -- parenthesis --
13 "(but retaining only the D200069 records
14 for the 410 individuals in both files),"
15 -- end parenthesis -- I find that there
16 are a total of 23,316 individuals who
17 applied to have their voting rights
18 restored, what I refer to as CERV
19 Applications."

20 Q. And I --

21 A. There is a distinction between rows in a
22 dataset and individuals. And that is
23 because the datasets that you have

1 provided, most notably the very important
2 D005349, has hundreds if not thousands of
3 rows that are, for lack of a better word,
4 gibberish.

5 MS. MESSICK: And I am
6 going to object to the form of
7 that response.

8 Q. And I am going to remind you that my
9 question five minutes ago was: Where in
10 your report did you explain that there
11 were multiple rows of D005349 that
12 contained gibberish and that you were
13 taking them out of your report?

14 I do see that in paragraph 87
15 you switch from the word "rows" to
16 "individuals." I do not see where in
17 your report you explain the distinction.

18 And so, I -- that is what I am
19 asking you for. Where in your original
20 report --

21 MS. LANG: Object to the
22 form.

23 A. Again I am very precise with my language.

1 I distinctly used "rows." And I
2 distinctly used "individuals." The
3 reader should be able to -- it's not my
4 data. It's the State's data -- know that
5 there are rows in this dataset that do
6 not contain information about an
7 individual. They are -- for lack of a
8 better word -- gibberish.

9 Q. What is your understanding of which
10 felons are disenfranchised in Alabama?

11 What is the -- how is it that a
12 person comes to be disenfranchised as a
13 felon in Alabama?

14 A. So, can you provide me with a little more
15 context as to when? The law has changed
16 quite a bit over time, my understanding.

17 Q. I am asking you to explain to me your
18 understanding of current Alabama law as
19 to which felon -- which felonies are
20 disenfranchising?

21 A. Felonies that fall under the current
22 statute -- what I refer to as House Bill
23 282 -- that define crimes of moral

1 turpitude.

2 Q. If a felon has lost his voting rights due
3 to a conviction for a felony of moral
4 turpitude --

5 A. I missed the first part of that. It was
6 a little muffled. I'm sorry.

7 Q. If a felon has been convicted of a felony
8 of moral turpitude and therefore lost his
9 voting rights in Alabama, are you aware
10 of any ways that that felon may be able
11 to get his voting rights back?

12 A. Yes.

13 Q. And what are those ways?

14 A. Well, the main way is applying for a
15 CERV, a certificate that you would apply
16 for.

17 Q. Is there any other way?

18 A. I image that there is a pardoning process
19 like most states have.

20 Q. I would like to ask you to look at page
21 23 of your April report.

22 A. Yes, ma'am.

23 Q. At the very top line you refer to people

1 (as read) "who under H.B. 282 are
2 disqualified from having their voting
3 rights restored."

4 What do you mean by that?

5 A. I would like to go back to the beginning
6 part of that sentence since that's the
7 end of a clause.

8 So, I write here as the last
9 part of that clause on the top of 23, (as
10 read) "who under H.B. 282 are
11 disqualified from having their voting
12 rights restored."

13 And you are asking me what does
14 that mean?

15 Q. Yes, please.

16 A. It means that the individuals were
17 disqualified because they committed a
18 crime defined by the State Legislature as
19 of moral turpitude.

20 It doesn't say that they can
21 apply at some point to have their voting
22 rights restored but they've been
23 disqualified.

1 Q. Well, what you've said is that they are
2 disqualified from having their voting
3 rights restored by H.B. 282. Is it your
4 understanding that H.B. 282 speaks to
5 restoration at all?

6 A. Oh, sure. I -- the language there is not
7 as artful as it could have been.

8 Q. How many hours would you say you spent on
9 your April report?

10 A. I would say between 30 and 40 on that
11 report.

12 Q. And how many hours would you say that you
13 spent on your supplemental report?

14 A. I would say between 20 -- roughly 20 or
15 30.

16 Q. Are you familiar with the eligibility
17 requirements for a felon to achieve a
18 Certificate of Eligibility to Register to
19 Vote?

20 A. Am I familiar with the procedures?

21 Q. No, the requirements. Do you know what
22 makes a felon eligible to receive a
23 Certificate of Eligibility to Register to

1 Vote?

2 A. I can't list all of the criteria off the
3 top of my head, but I've certainly seen
4 that certificate, the CERV.

5 Q. Can you list any of the criteria?

6 A. Well, paying off one legal financial
7 obligation.

8 Q. And can you list any others?

9 A. Not off the top of my head, no.

10 Q. Did you address any of the other criteria
11 in your report at any point?

12 A. No, I did not.

13 Q. Are there data from any other sources
14 that you did not have for your report
15 that you would have liked to have had?

16 A. Well, absolutely. I would have liked to
17 have had the information about the reason
18 a CERV was denied in a way that was easy
19 to digest. I -- I have to say again --

20 Q. Actually you don't. My question --

21 A. -- while I'm on the record --

22 Q. No. My question is not what criticisms
23 you have of the data you had.

1 My question is: What other
2 data, if any, would you have liked to
3 have had from some other source?

4 For instance, would you have
5 liked to have had any data from the
6 Department of Corrections?

7 MS. LANG: Object to the
8 form.

9 A. It's -- Yes. So, I would like to have
10 from the Department of Corrections more
11 complete information about an AIS number
12 for instance. There are hundreds of
13 thousands, over hundreds of thousands
14 that don't have that information
15 presumably the State of Alabama tracks
16 its convicted felons and they all have an
17 AIS number. The data that I received
18 doesn't have that.

19 I would presume that the CERV
20 data -- presumably there is actually a
21 record of individuals who had applied
22 that were rejected. One of the things
23 that I note in my report is that it is

1 overridden. When an individual finally
2 achieved CERV and has his or her voting
3 rights restored, it overrides other
4 denials.

5 So, in many ways my estimates
6 are underreported with respect to the
7 denials because I don't have that.
8 Presumably other snapshots of that
9 database would have that information.
10 So, that -- that is information that I
11 would love to have.

12 So, again off the top of my
13 head it's difficult to -- to come up with
14 an exhaustive list, but certainly the
15 State of Alabama has to have records that
16 can identify an individual in a way that
17 is precise, and an AIS number is one that
18 would do that.

19 Q. Did you make any effort to get data from
20 the Alabama Department of Corrections?

21 A. So, I have been an expert in dozens of
22 cases. I have never gone outside of my
23 Counsel to request data. And I certainly

1 wouldn't be requesting data from the
2 defendant in a case where I am working
3 for the plaintiff. Just as if I was a
4 defendant expert, I wouldn't be asking
5 the plaintiffs for their data. That's
6 not the job of an expert.

7 Q. I understood your testimony in the
8 Florida felon voting trial to indicate
9 that you had in fact done many
10 information requests to various offices.

11 Did you in fact do multiple
12 data requests for that litigation
13 yourself?

14 A. So, the data that I collected in that was
15 not part of the litigation. It was
16 actually my work for the Florida ACLU.

17 So, I was independently
18 contracted by the Florida ACLU to put
19 together data.

20 Q. And then the Florida ACLU hired you as an
21 expert in that case and you used that
22 same data?

23 A. I was hired by the National ACLU to do

1 the expert work. But the Florida ACLU
2 owns the data that I put together. They
3 hired me to put together a database.

4 Q. We have been talking some about the
5 database from the Administrative Office
6 of Courts earlier. That's what Exhibits
7 Five and Six were about.

8 In your report, did you rely
9 only on the 2019 data from the Alabama
10 Administrative Office of Courts?

11 A. It's hard for me to remember since I
12 started this work in I want to say 2018,
13 and I have received different craunches
14 of data. My practice is to use the most
15 recent data that I have received.

16 Q. Do you remember doing any analysis of the
17 2018 data?

18 A. I may have done analysis of that, but the
19 way that I work is it is replaced as soon
20 as I get new data.

21 Q. On page six of your April report in
22 footnote one, you say that (as read) "All
23 CERV applications that have a VR status

1 field that includes out-of-state are
2 dropped."

3 Do you see that?

4 A. I'm sorry. I missed the first part.
5 It's in my original report you said?

6 Q. Yes. On page six, the last sentence of
7 footnote one.

8 A. Okay. Yeah.

9 Q. My question to you is: Why did you drop
10 those records?

11 A. So, I'm trying to be as transparent as
12 possible in my report. And again I would
13 have to go and take a specific look at
14 that fairly long footnote.

15 Q. Please take all the time that you need to
16 read it.

17 A. And will you just ask me again
18 specifically now that I am there what the
19 question is.

20 Q. So, the last sentence of the footnote
21 says that you dropped certain records.
22 And I am asking you why you dropped them.

23 A. Yes. Thank you. I had forgotten the

1 specifics looking at this. So, it's the
2 last sentence --

3 Q. Yes?

4 A. -- of that footnote? Yes.

5 So, the reason that I dropped
6 those that had a VR status of
7 out-of-state is because I couldn't
8 reliably be able to link them using my
9 method of name and race and county.

10 Q. And you're talking there about the
11 concatenation methodology that you used
12 in this case?

13 A. Correct.

14 Q. And I am a little confused about that.
15 Tell me again which fields you used.

16 A. So, I'm looking here at that full
17 footnote and maybe I'm confused. Sorry.

18 But it does look like I am
19 using just the CERV database using the
20 unique AIS numbers here. So, my
21 apologies.

22 Q. Okay. So, we will come back to
23 concatenation later.

1 A. Correct. I'm sorry. Again that was a
2 long footnote and I rushed through it.

3 Q. No, that's fine. But it sounds like the
4 earlier answer you gave me about your
5 concatenation is not actually a reason
6 for dropping out-of-state records at this
7 point.

8 So, is there any other reason

9 --

10 A. Correct.

11 Q. -- that you can think of as you sit here
12 today why you dropped those?

13 A. No. I -- I -- again I want to say that
14 it was a while ago when I wrote that code
15 in terms of trying to understand the VR
16 status field. I was trying to understand
17 whether or not an individual is eligible
18 or not eligible and living out-of-state
19 seemed to be outside of that question of
20 whether or not an individual has paid off
21 his or her restitution implying fees from
22 that initial charge.

23 So, the lives out-of-state as I

1 recall was a common -- not so common
2 field in the -- the VR status field.

3 Q. So, you understand out-of-state to refer
4 to where the CERV applicant lives?

5 A. I -- I wouldn't presume that, no. I
6 don't know.

7 Q. Okay. Do you know what it does refer to?

8 A. Again I was not provided a code book for
9 that when I was hired to do this work.

10 Q. On page eight of your April report, in
11 paragraph 10, the first sentence says
12 that your analysis excludes -- well, that
13 your analysis focuses on persons with --
14 Hold on. Let's do it this way.

15 Can you read aloud the first
16 sentence of paragraph 10 on page eight of
17 your April report?

18 A. Yes. (As read) "My analysis of the
19 number of persons in Alabama with felony
20 convictions excludes all individuals with
21 an out-of-state or federal felony
22 conviction."

23 Q. Okay. Now to be clear, if somebody -- if

1 a felon living in Alabama has a felony
2 conviction from the Alabama court system
3 and also an out-of-state conviction, is
4 that person included in your data but the
5 out-of-state conviction is not?

6 A. So, let me try to be very clear. I have
7 no data on individuals living in Alabama
8 who were convicted of either a federal
9 crime as a felony that would not allow
10 them to have their voting rights in
11 Alabama, nor do I have any information of
12 anyone convicted of an out-of-state
13 felony that under Alabama law would not
14 allow them.

15 That is not to say that I am
16 excluding people who were convicted in
17 Alabama of a felony from my analysis. I
18 just do not know if those individuals
19 also had a federal or an out-of-state
20 felony conviction.

21 Q. Do you have any concerns that that lack
22 of data impacted your analysis?

23 For instance when you're

1 running percentages of felons, that those
2 percentages might not be accurate because
3 you don't have the entire data pool?

4 MS. LANG: Object to the
5 form.

6 A. I am not concerned when it comes to the
7 Alabama felons under state law. I am
8 certainly concerned that I am
9 underestimating the total number of
10 individuals in Alabama who might not be
11 able to have their voting rights restored
12 because of an out-of-state conviction or
13 a federal conviction. But again I don't
14 have that information.

15 So, my results are actually
16 bias against an inflated number.

17 Q. I understand why some of your results
18 might be bias in that way. What I'm
19 trying to get at is aren't there
20 situations where the impact of the
21 absence of that data is unknown?

22 A. Again --

23 Q. For instance --

1 MS. LANG: Object to the
2 form.

3 A. My -- my report is focusing purely on the
4 administrative data that the State of
5 Alabama has provided. I am not making
6 any inferences about other individuals
7 living in Alabama who may have a felony
8 conviction from another state or from a
9 federal court.

10 So, it is very conservative in
11 that sense that I am using the state
12 administrative data. I am not making
13 inferences about a voter population. It
14 is limited to the administrative data of
15 the State of Alabama.

16 Q. You say on page five of your April report
17 that you have control for the
18 disproportionate of felony convictions
19 generally in the black community.

20 Why was it necessary for you to
21 do that?

22 A. So, in that --

23 MS. LANG: Object to the

1 form.

2 A. Sure. In that sense, I am just looking
3 at situating felony convictions in the
4 larger realm of felony convictions in the
5 state.

6 Q. Where in your April report do you explain
7 how you have controlled for the
8 disproportionate rate of felony
9 convictions generally in the black
10 community?

11 A. Sure. I can walk you through some of the
12 figures that try to do that. But it's
13 basically conditioning on things like the
14 voting age population of African
15 Americans in Alabama and looking at their
16 rate of felony convictions relative to
17 their population.

18 Q. Without walking me through the figures,
19 can you just tell me which figures you
20 are referring to?

21 A. Sure. Let me scroll down and see if I
22 can find a representative chart or two.

23 So, if we look at Figure 9 for

1 instance in my April report, on page 41,
2 what I have tried to do here is show that
3 on the X-axis, the percent black
4 population in a county and on the Y-axis,
5 look at the percent black persons who
6 have their voting rights -- who have lost
7 their voting rights, excuse me.

8 Q. And --

9 A. And so in this sense, I am effectively
10 conditioning on black population to get a
11 sense of the rate of individuals who are
12 black in this county who have lost their
13 voting rights.

14 Q. But how in this figure have you actually
15 controlled for the disproportionate rate
16 of felony convictions?

17 To do that, wouldn't you have
18 needed to compare black felons to black
19 felons who have lost their voting rights
20 rather than instead using a general
21 population number?

22 A. Yeah. So, we can turn our attention to a
23 previous figure in terms of -- let's take

1 Figure 3.

2 So, I have broken down
3 individuals who prior to H.B. 282 were
4 convicted of felonies. And because we
5 didn't have a standard legislative
6 statute on which crimes because it was
7 left up to individual county boards to
8 determine a crime of moral turpitude to
9 allow that Board to not allow the
10 individual to vote or remove the
11 individual from the voting roles, I used
12 H.B. 282 standard and applied it to this
13 time period from '93 to 2017.

14 And so, here the universe is
15 Alabama convicted felon from '93 to 2017
16 who are black. I am applying the
17 standard from H.B. 282 with respect to
18 the crime that they were convicted of and
19 then applying it across the 67 counties
20 to get a sense of whether or not black
21 individuals were more likely to be
22 convicted of a crime that under H.B. 282
23 would disqualify them from voting.

1 So, that's the sense of trying
2 to condition. And I do that also post
3 H.B. 282 limitation.

4 Q. Right. So --

5 A. And for the white individuals as well.

6 Q. So, Figure 3 is prior to the 2017 law for
7 blacks, correct?

8 A. That's correct.

9 Q. And then Figure 4 is after the
10 implementation of the 2017 law for
11 blacks?

12 A. That's correct.

13 Q. And then Figure 5 is pre-implementation
14 for whites?

15 A. Yes.

16 Q. And Figure 6 is post-implementation for
17 whites?

18 A. That's correct.

19 Q. And you have applied the 2017 law against
20 both time periods, before and after
21 implementation, correct?

22 A. That is correct.

23 Q. And --

1 A. It's kind of a thought experiment for the
2 pre-2017 implementation obviously.

3 Q. And you just made some statements about
4 how the law operated before 2017. Is
5 that actually anything that you studied
6 as part of -- Is that anything that you
7 are opining on? Let me say that.

8 Are you offering any opinion on
9 how moral turpitude was applied prior to
10 Alabama Act Number 2017-378 which you
11 refer to as H.B. 282?

12 A. I'm not opining to individual county
13 board decisions on how to define moral
14 turpitude, correct.

15 Q. Are you opining on the role of the
16 Board's of Registrars with respect to
17 moral turpitude?

18 A. I think broadly my study if you take the
19 definition from that statute and apply it
20 to past determinations, you could infer
21 from that. But I am not specifically
22 looking across the 67 counties for their
23 specific determinations prior to 2017.

1 Q. What is -- looking at Figure 3, what
2 would perfect correlation be?

3 MS. LANG: Object to form.

4 A. I don't really know how to use that term
5 with respect to this figure. I suspect
6 one could understand that if black
7 individuals, pre-implementation of 282,
8 were equally likely to have committed a
9 felony to commit a felony defined as
10 moral turpitude and not moral turpitude,
11 then all of the circles with -- of the
12 these 67 counties would line up on a
13 45-degree line.

14 Q. And if they did, they would have a
15 correlation of 1 percent; is that
16 correct?

17 A. You don't use percent when dealing with
18 correlations. But it would be even with
19 respect to the likelihood of an
20 individual having a conviction that was
21 defined as moral turpitude using the 2017
22 definition as not being convicted of a
23 crime with moral turpitude.

1 Q. How do you measure correlation?

2 I thought it was 1 percent.

3 You said I'm wrong. So, how do you
4 measure correlation?

5 A. Again there are a lot of different ways
6 that that term is used. We can use it in
7 terms of looking at how related two
8 different items are, and it usually goes
9 from zero to one, from zero to one.

10 Q. Okay. So -- to one. At what point is a
11 correlation considered to be strong on
12 that scale of zero to one?

13 A. Again that is --

14 MS. LANG: Object to form.

15 A. It's not really relevant to what I am
16 doing because I'm not doing any
17 correlation analysis here. I am merely
18 plotting out the rates of individuals in
19 each of the counties that were black in
20 Figure 3 that were convicted of a felony
21 conviction that was either a
22 disqualifying felony under H.B. 282 as
23 applied or not.

1 So, it's not really the correct
2 terminology to be using here,
3 correlation. One could say that if all
4 of the circles lined up on that 45-degree
5 line, that black individuals would be
6 equally likely to be convicted of a
7 disqualifying and a non-disqualifying
8 felony conviction in each of the
9 counties. They would obviously be at
10 different rates, but that is how that
11 figure should be interpreted.

12 Q. Isn't the plotting of that data showing
13 -- Aren't you taking from how close a
14 data point is to the line some
15 information?

16 A. Oh, certainly. You can take information
17 from the thought, yes. And I tried to
18 explain that in the paragraphs that
19 precede that figure.

20 Q. How far from the line does any data point
21 need to be for a county for you to
22 believe that the relationship is
23 meaningful or sub --

1 MS. LANG: Object to form.

2 Q. -- or substantive?

3 A. So, I -- again, I'm not here to opine on
4 what meaningful or substantial is. This
5 is not a statistical analysis. This is
6 using the administrative data from
7 Alabama and merely plotting the
8 percentage of individuals who are black
9 in this particular plot, and the line is
10 merely a reference point. It's very easy
11 to see that most of the county circles
12 fall below the 45-degree line in this
13 plot, meaning that most of the counties
14 have individuals who are black, convicted
15 of a felony con -- felony that would
16 disqualify them under H.B. 282.

17 Q. Is it your testimony then that you are
18 not drawing any sort of causation
19 relationship between the two variables in
20 Figure 3?

21 MS. LANG: Object to form.

22 A. So, I am merely taking the State's
23 administrative data and plotting it in a

1 way that I think is easy to interpret
2 with respect to the rate that black
3 individuals, in this particular Figure 3,
4 are convicted of felonies during this
5 time period that under H.B. 282 would
6 disqualify them or not disqualify them.

7 MS. MESSICK: Let's take
8 just a five-minute break,
9 please.

10 MS. LANG: Okay.

11 (At which time, a brief
12 recess was held.)

13 BY MS. MESSICK:

14 Q. I would like to ask you to look, please,
15 at paragraph 31 of your report on page
16 24? This is --

17 A. I was hoping before -- before doing so --
18 I looked at my email a little more
19 carefully, and I did send an updated
20 report, supplemental, on Monday. I think
21 I said Sunday earlier, but in fact I made
22 some minor revisions on Monday. I've
23 been traveling, so it was some blur

1 through that travel that I updated it.

2 Q. Thank you.

3 On page 24 of your report,
4 paragraph 31, proceeds Figure 3. And can
5 you explain paragraph 31 as if I am an
6 undergrad student?

7 MS. LANG: Object to form.

8 A. Sure. I am just trying here to plot out
9 the rate of black individuals convicted
10 of a felony by county that would, under
11 H.B. 282, disenfranchise them because of
12 crime of moral turpitude or not.

13 And so, I am merely just trying
14 to visually put those 67 counties to see
15 what rate would be on one side versus the
16 other side of that 45-degree line.

17 Q. And are you drawing any conclusions from
18 that plotting?

19 A. Yes. I am drawing the conclusion that
20 black individuals during this period of
21 time, prior to implementation if we were
22 to use H.B. 282 as a standard, are more
23 likely to be disqualified of their voting

1 rights because of the felony conviction
2 being one of moral turpitude.

3 Q. Are you trying -- Does Figure 3 say
4 anything about causation?

5 A. No. It doesn't say anything about
6 causation. But I'm not really sure what
7 you're referring to with respect to
8 causality.

9 Q. And does Figure 3 reflect any information
10 about the -- the disproportionate rate of
11 felony convictions generally in the black
12 community?

13 A. I'm not --

14 MS. LANG: Object.

15 A. -- really sure what you're asking there.

16 Q. Okay. Let's move on to something else.
17 We might come back to this later.

18 I would like you to look at
19 page 10 of your April report. At the top
20 of the page, could you read for me the
21 sentence that begins "in short"?

22 A. Sure. (As read) "In short, it is clear
23 that individuals face significant

1 economic barriers as a result of a felony
2 conviction. As such, formerly
3 incarcerated individuals are usually
4 unable to pay their assessed LFOs because
5 they face significant economic barriers."
6 Excuse me. Yes.

7 Q. Okay. And my question was directed at
8 the sentence beginning "in short."

9 Where if anywhere in the four
10 corners of your report do you demonstrate
11 a causal connection between the -- a
12 felony conviction and the economic
13 barriers you refer to in that sentence?

14 A. Sure.

15 MS. LANG: Object to the
16 form. And before you answer,
17 Dr. Smith, I -- I lost where we
18 are. Can you remind me so that
19 I can follow along?

20 MS. MESSICK: It's on page
21 10, the first full sentence.
22 It begins on the top line, "in
23 short."

1 MS. LANG: Okay. Thank
2 you.

3 A. Sure. So, that sentence is referring to
4 the paragraph previous, that is -- it
5 runs from page eight to page nine.

6 And in that I am merely
7 summarizing some of the scholarship and
8 reports that have been issued that look
9 at the relationship between things like
10 income and how income is generally lower
11 among those who have been incarcerated,
12 looking at what is known as a wage
13 penalty for those individuals post
14 conviction of a felony, in that they earn
15 less; that unemployment rates are higher
16 among individuals who have a felony
17 conviction, and that homelessness which
18 is tied to imminency is higher for
19 formerly incarcerated individuals.

20 So, all of these are from
21 studies that have shown the earning
22 potential, the income, the access with
23 respect to a home, say, or not of

1 individuals who have faced a felony
2 conviction.

3 Q. Has each of the studies that you relied
4 on demonstrated causation, that the
5 felony is the reason for those results?

6 A. So, certainly there have been studies.
7 Chris Hogan is probably the person
8 leading this area of research -- he's a
9 sociologist at University of Minnesota I
10 believe -- that have looked at
11 individuals with felony convictions doing
12 multi-various analysis and finding either
13 earning potential or the wealth being
14 lower for those individuals.

15 So, other scholars have
16 certainly looked at the effect generally
17 of a felony conviction on any one of
18 these outcome variables, homelessness,
19 income, earning potential.

20 Q. And the scholar that you just referred,
21 was that last name Uggen, U-G-G-E-N?

22 A. Correct.

23 Q. In paragraph 14 of your report, which is

1 on page 11, you say that the (as read)
2 "Median household income in Alabama is
3 about \$14,000 less than national
4 household income."

5 Does this analysis consider
6 cost of living?

7 A. No, it does not.

8 MS. LANG: Object to form.

9 Q. Would you agree that the cost of living
10 is lower in Alabama than it is in other
11 parts of the country?

12 A. My general knowledge when you're
13 comparing it to national, that is
14 possible. I don't have those figures in
15 front of me.

16 Q. Beginning on page 12 of your report you
17 address median household income and race
18 both in Alabama and nationally; is that
19 right?

20 A. Yeah.

21 Q. And again do the comparisons of Alabama
22 income to national income control for
23 cost of living?

1 A. So, this next section that you're
2 referring to I think is focusing solely
3 within Alabama and looking at white and
4 black in section five that you're
5 referring to on page 12. There may be
6 some also national comparisons.

7 Q. Yes. For instance --

8 A. And you will see -- so, yeah.

9 Q. Okay. So, there are also national
10 comparisons, for instance --

11 A. Correct.

12 Q. -- in paragraph 16?

13 A. Correct.

14 Q. Okay. And you said yes a minute ago and
15 I'm not sure what you were answering.
16 Are you saying that these comparisons do
17 control for cost of living?

18 A. No. Sorry. They do not control for cost
19 of living.

20 Q. On page 13 of your April report you say
21 that the median household income for
22 whites nationally is \$63,917 with a
23 margin of error; is that correct?

1 A. Yes.

2 Q. And then the median household income for
3 blacks nationally, you say in that same
4 paragraph is less than that, correct?

5 A. Correct.

6 Q. Okay. But two pages earlier you told us,
7 on page 11, that the median household
8 income was 77,483 nationally; is that
9 right?

10 A. That is what I wrote, yes.

11 Q. Okay. So, I don't understand how the
12 national median household income can be
13 77,463 when the median household income
14 for whites and blacks are both lower than
15 that, if in fact we are still talking
16 about the same measures. Are we talking
17 about something different here?

18 A. I think this is my, again, inartfulness
19 in drawing data from the census --

20 THE COURT REPORTER: I'm
21 sorry?

22 A. -- where I had a three-person household
23 in one example.

1 So, I am reliant on the census
2 bureau, ACS data, but very well could be
3 comparing -- drawing on two different
4 data sources there, which I have in front
5 of me.

6 MS. MESSICK: Okay. I
7 believe the court reporter
8 missed part of that. What I --
9 do you want to read back or --

10 THE COURT REPORTER: I
11 don't know if he'll remember.

12 At the beginning of your
13 response, I have (as read) "I
14 think this is my again in my
15 census I had a three-person
16 household" -- right in there
17 I tried to interject. But I
18 did pick back up and -- I
19 heard the word inartfulness.
20 Is that what you in fact
21 said?

22 THE WITNESS: I did say
23 inartfulness of my writing in

1 paragraph 15, yes.

2 THE COURT REPORTER: Thank
3 you.

4 MS. MESSICK: Thank you.

5 BY MS. MESSICK:

6 Q. On page 13 you do have the median income
7 for blacks is actually lower nationally
8 than it is for whites nationally; is that
9 correct?

10 A. That is correct.

11 Q. So, that's not just an Alabama
12 experience, that's true nationally?

13 A. Correct.

14 Q. And in fact haven't you reported in
15 paragraph 16, on page 13, that the median
16 white household income nationally is
17 nearly 60 percent higher than the median
18 black household income nationally?

19 MS. LANG: Object to form.

20 A. Yes. I think that is what I have written
21 there. I would have to go back and look
22 more specifically.

23 Q. Okay. And then I will give you a second

1 to look at this, but I just want to be
2 clear. In pages 100 through 15 of your
3 report where you're talking about median
4 household income, that entire discussion
5 concerns the population generally, it
6 does not focus on felons; is that
7 correct?

8 A. I would --

9 MS. LANG: Object to form.

10 A. I would clarify to say that it has to do
11 with the population of Alabama but not
12 specific to felons in Alabama, correct.

13 Q. Okay.

14 A. Not the general population which I think
15 you said.

16 Q. Okay. Thank you.

17 Paragraph 18 of your report is
18 on pages 14 and 15. And on -- it's the
19 end of the sentence on page 15 that I
20 want to ask you about.

21 You there make a reference to
22 individuals with a felony conviction who
23 are unable to pay outstanding debts to

1 the Alabama court system.

2 By using the phrase
3 "outstanding debts to the Alabama court
4 system," are you meaning to exclude
5 restitution payments to the victims of
6 those felonies?

7 A. No, no --

8 MS. LANG: Objection.

9 A. No. I mean, again this is referring as I
10 do throughout my report to legal
11 financial obligation.

12 Q. Okay. And so, there are a couple of
13 other places where you talk about
14 outstanding debts to the court. And you
15 mean the legal financial obligations, the
16 court costs, the fines, the fees, and the
17 restitution?

18 A. Yeah. That's -- again probably could
19 have been more clear in terms of who that
20 is owed to, obviously it's to individuals
21 because of restitution as opposed to the
22 courts.

23 Q. Okay. Let's talk about the courts for a

1 minute. Let's move to page 16 of your
2 report where you start talking about the
3 AOC file.

4 You have said that there were
5 696,583 rows of data; is that correct?

6 A. So, again -- yes, if you look at just the
7 raw number of rows, that is the
8 calculation.

9 Q. Okay. But then because some rows contain
10 multiple convictions, there are actually
11 741,932 convictions, correct?

12 A. Yes.

13 Q. Okay. And then right after -- a few
14 lines after you give us that number, you
15 refer to 97,356 observations.

16 Is an observation a row, a
17 conviction, or something else? I wasn't
18 sure what that -- what you meant by that
19 term.

20 A. You may not believe me but I spent a lot
21 of time thinking about the language of
22 each of these because it is confusing,
23 and I apologize.

1 So, an observation is within a
2 row. It is also across a row. The way
3 that the data file is structured is not
4 how I would have structured the data file
5 but so be it. My job is to try to
6 decipher it and analyze it.

7 And so, there are court actions
8 within an individual row. It seems the
9 database if I recall correctly is limited
10 to three separate court actions for an
11 individual. Some individuals might have
12 more court actions, say, on like a given
13 crime spree. And so, the database then
14 goes to another row in which you will get
15 additional court action and one must move
16 it back and connect that second row. So.

17 So, I am using the term
18 "observation" for any one of those
19 particular court actions that are within
20 a particular row.

21 Q. And is a court action the same thing as a
22 conviction where you used -- You had said
23 earlier -- Oh, wait.

1 Okay. Each felony conviction
2 includes a court action date. And you
3 have said that there can be multiple
4 convictions on a row. So, it's an
5 observation, a court action, a
6 conviction?

7 A. I cannot sit here today and precisely let
8 you know that. I -- it's been awhile
9 since I parched that data.

10 Q. Okay. And then at page 17 and 18, I
11 would like to talk about your
12 concatenation methodology.

13 On page 17, in footnote 14, do
14 you see the reference to name, birth
15 date, and county?

16 A. Yes, I do.

17 Q. And then on page 18, do you see that
18 there are a couple of references to name
19 race and county?

20 A. Yeah.

21 Q. Okay. So, both of them include name and
22 county, one of them includes birth date,
23 the other includes race.

1 A. Yeah. That's --

2 Q. So, are we talking about different things
3 there or is there a typo?

4 A. No. That is -- that is a typo.

5 Q. Okay. So which --

6 A. It should be name, race, county.

7 Q. Name, race, and county?

8 A. Yeah. My apology. I should have caught
9 that.

10 Q. So, you did not use birth date in your
11 concatenation methodology in this case?

12 A. That is correct because there were 50,000
13 some odd missing social security numbers,
14 \$270 000 missing AIS, and 8,000 missing
15 birth dates. And so, I decided to go
16 with the fields that had the most
17 complete. And that was name, county, and
18 race.

19 Q. Okay. For the Florida litigation you
20 used name and race but you also used date
21 of birth and sex; is that correct?

22 A. I -- I think that is correct.

23 Q. Are you confident that the methodology

1 here which was not able to include date
2 of birth is sufficiently reliable for
3 purposes of your work here?

4 A. I think --

5 MS. LANG: Object to the
6 form.

7 A. I think it's reliable for what it is, and
8 that is that I got a lot of missing data
9 from that AOC database. And so, I had to
10 make a decision on how to link records
11 when for whatever reason the State has
12 not provided AIS numbers. 270,000 of
13 these rows of the 690 something thousand.

14 I would love to be able to use
15 a unique ID number that the State has,
16 but the database doesn't have that, at
17 least the database that I received.

18 So, I had to come up with a way
19 to try to link individuals who might be
20 in the database multiple times.

21 Q. So, the 8,849 rows of missing birth
22 dates, that's of the total database of
23 nearly 700,000 rows, correct?

1 A. Yes, that's correct.

2 Q. And did you -- most of your analysis
3 doesn't actually involve all seven --
4 nearly 700,000 rows. You move to unique
5 individuals with a felony -- with at
6 least one felony conviction, correct?

7 A. That's correct.

8 Q. And I've got that there are 363,511
9 unique individuals with at least one
10 felony conviction?

11 A. Using my methodology to link them,
12 correct.

13 (Thereupon, a discussion was
14 held off the record.)

15 MS. MESSICK: Let's go
16 back on the record.

17 BY MS. MESSICK:

18 Q. Okay. I would like to ask you to turn to
19 page 19 of your April report and focus
20 your attention on paragraph 24.

21 A. Yeah.

22 Q. And you say there, quote, (as read)
23 "Drawing on the AOC file, following the

1 steps outlined above, it is possible to
2 compare the percentage of black
3 individuals residing in each county with
4 the percentage of black individuals with
5 a felony conviction in each county," end
6 quote.

7 Did I read that correctly?

8 A. Yeah.

9 Q. And when you refer to black individuals
10 residing in each county, you are talking
11 about data that you're getting from the
12 United States census; is that correct?

13 A. Not -- I am referring to two things
14 there. I am referring to, yeah, census
15 data in terms of black individuals
16 residing in each county. And I'm
17 referring to the AOC data that allows me
18 to identify black individuals with a
19 felony conviction in each county.

20 Q. Okay. So, I was focused on the first
21 part. Basically one of those is the
22 X-axis and one of those is the Y?

23 A. That's correct.

1 Q. And when you refer to residing in each
2 county, in the second line of the first
3 sentence of paragraph 24, that data is
4 coming from the census?

5 A. Yes. Correct.

6 Q. Okay. And then at the end of that
7 sentence where you refer to black
8 individuals with a felony conviction in
9 each county, at that point you're using
10 the AOC data?

11 A. That is correct.

12 Q. And was it your understanding at the time
13 that you did this that the AOC data about
14 county reflected the county of residence
15 of the criminal defendant?

16 MS. LANG: Object to the
17 form.

18 A. So, I missed the -- the first part of
19 that in terms of was it my understanding
20 -- sorry.

21 Q. Okay. So, when you refer to black
22 individuals with a felony conviction in
23 each county, are you saying that those

1 black individuals reside in that county?

2 A. No. I'm saying that I am using the data
3 as inputted by the Alabama Administrative
4 Office of Courts of where that
5 individual's county is.

6 (At which time, the referred-
7 to document was marked as
8 Defendants' Exhibit No. 5 for
9 identification.)

10 Q. Could you look, please, at Exhibit Five,
11 the Declaration of Steven LeVeque?

12 A. Sure.

13 Q. And I would direct your attention to
14 paragraph six?

15 A. Yeah.

16 Q. So, in paragraph six, Mr. LeVeque
17 explains that county refers to the county
18 where the conviction occurred; is that
19 correct?

20 A. Yeah.

21 Q. That's what it says?

22 Did the AOC database contain
23 information about the county of residence

1 for the criminal defendant?

2 A. I don't think so. I think it has the
3 county in which an individual was
4 convicted.

5 Q. So, how is it meaningful to compare who
6 is convicted in a county to who lives in
7 a county?

8 A. So, I am limited unfortunately by the
9 data that I am provided by the State.
10 And so, I am using the county information
11 that I have from the AOC.

12 Q. Okay. And you plot your findings from
13 this data on Figure 2 which is on page 20
14 of your April report?

15 A. Let me go back to that. Yeah.

16 Q. And your findings in Figure 2 hold across
17 every single county in Alabama, including
18 where the leadership is heavily African
19 American?

20 A. That is correct.

21 Q. Okay. Turning to page 21 of your report,
22 in paragraph 26, you discuss
23 consideration of which felony convictions

1 are disenfranchising.

2 A. Yeah.

3 Q. How did you manage those rows of data
4 where there were multiple convictions for
5 a single felon?

6 A. Yes, that's a good question. And it's
7 one of the first things that I had to
8 decipher.

9 So, I was able to loop through
10 the database in each row and find if any
11 of the 46 categories was a -- was in that
12 row and then note and flag that row as
13 having a felony under H.B. 282 that was a
14 disqualifying felony.

15 Q. So, did you basically add a column to the
16 database where you had some sort of
17 indicator that this is a felon that has
18 one of these 46 felonies?

19 A. I'd be lying if I told you how I did
20 that. I either pulled it out of a
21 separate table or I created a flag. I
22 cannot remember. I did this awhile ago.

23 Q. Thank you.

1 And then on page 22 you tell us
2 that you determined that some 37 percent
3 of the individuals in the AOC data file
4 have at least one felony conviction for a
5 felony of moral turpitude; is that
6 correct?

7 A. You're referring to Table One?

8 Q. I'm referring to paragraph 28, just under
9 Table One. And --

10 A. So --

11 Q. The 135,579 individuals is in Table One,
12 and then in paragraph 28 you say that's
13 37 percent?

14 A. Correct. I think if you divided 135,579
15 into 367,511, you would get 37 percent.

16 Q. So, 63 percent of the felons in the
17 database that you were looking at are
18 allowed to vote under current Alabama
19 law; is that correct?

20 A. So, of this 363,511 individuals, I was
21 able to identify from the AOC, yes, that
22 is the inverse of the 37 percent.

23 Q. And then in paragraph 29 you say that the

1 2017 legislation -- which you refer to as
2 H.B. 282 -- "further skews the racial gap
3 with respect to disenfranchisement by
4 disproportionately impacting black
5 individuals."

6 Do you see that?

7 A. Yes, I do.

8 Q. And when you say "further skews," what is
9 it that you are comparing to?

10 A. I think I am comparing that to the
11 overall rate.

12 Q. Looking at paragraph eight, I understood
13 the comparison to be -- okay. Hold on
14 one second.

15 (Brief pause.)

16 Q. Okay. Tell me one more time what you're
17 -- you said that you were comparing it to
18 a rate, and I didn't understand what the
19 rate is.

20 A. I think we might need to go back and --

21 Q. Okay. So let's --

22 A. -- reask.

23 Q. -- go back. The end of paragraph 29

1 refers to the 2017 legislation as further
2 skewing a racial gap.

3 And so, I am trying to
4 understand what you are comparing the
5 impact of the 2017 legislation to.

6 A. I'm referring to the analysis I did prior
7 to H.B. 282's implementation.

8 Q. And that analysis looked at who would
9 have been disenfranchised if the 2017 law
10 was in effect earlier than it was.

11 A. Again, it's a hypothetical since we don't
12 have a measure available on how the
13 individual boards were doing it.

14 MS. LANG: I think it
15 might be helpful if we look at
16 Table One.

17 MS. MESSICK: I actually
18 have quite a few questions
19 about Table One in a minute.

20 MS. LANG: Sure. But I
21 think that -- you know, the
22 discussion after Table One
23 included in paragraph 29 is

1 easier to decipher in reference
2 to Table One about racial gaps.

3 BY MS. MESSICK:

4 Q. In Table One have you controlled for the
5 disproportionate rate of felony
6 convictions generally in the black
7 community?

8 MS. LANG: Object to form.
9 I'm not sure what you mean by
10 "controlled for." There is a
11 column that is dedicated to
12 total felony convictions broken
13 out by rate.

14 So, I don't know how you
15 can control for that rate
16 when it is part of the table
17 itself.

18 MS. MESSICK: I would like
19 the witness's answer, please.

20 A. Sure. I mean, Table One has a lot of
21 data in it. It is derived from the AOC
22 database. I provide a column of total
23 felony convictions and percent that add

1 up to 353,511 individuals. I break that
2 down by race. You can see here that
3 white commit out of that total -- account
4 for more than 50 percent.

5 I think that's the wrong metric
6 in some ways to think about because the
7 population of Alabama is around
8 70 percent white and about 26 percent
9 African American. And so, you can look
10 at that number and say a higher
11 percentage of whites and blacks are
12 convicted of felonies over this time
13 period, but in fact blacks are
14 disproportionately more likely to have
15 committed a felony than whites.

16 If you go to the next column
17 where I am filtering effectively where
18 all the crimes under H.B. 282 would be a
19 disenfranchising criminal conviction, you
20 can see in fact that blacks do worse in
21 that. Relatively speaking, they account
22 for over 50 percent of crimes of moral
23 turpitude out of that 135,579.

1 Q. In each --

2 A. So, that's the point of this table, to
3 think relative to column one which is the
4 percentage of voting age population which
5 I characterize as 70 percent white for --
6 according to that census data, and
7 26 percent for black.

8 Q. Okay. And looking at Table One, if I add
9 the percentage white and the percentage
10 black, I am going to get pretty close to
11 1 percent. There are some other who have
12 not been included here, right?

13 A. And that's a curiosity of the data in
14 that you will get closer to 100 percent
15 in those initial columns than you will in
16 the last column.

17 So, I can only infer from that
18 that the Administrative Office of Courts
19 has come up with maybe a different coding
20 scheme for race and ethnicity because
21 that last column doesn't get you to
22 100 percent.

23 Q. Okay. So, the first four columns get you

1 to 100 percent or pretty close?

2 A. Correct.

3 Q. And the last column gets you closer to
4 82 percent?

5 A. That's correct.

6 Q. And you think that there must have been
7 some sort of change in the AOC coding to
8 explain that nearly 20 percent
9 difference?

10 A. So, again off the top of my head, it's
11 either a change in coding accounting for
12 more people to be a mixed race or
13 Hispanic. It's missing data for that
14 more recent period. I can't tell you off
15 the top of my head which it is, but
16 clearly we're not at 100 percent like in
17 the previous columns.

18 And I think I note that in
19 footnote 19 of my report.

20 Q. Right. But that doesn't address a nearly
21 20 percent difference?

22 A. Again this is something that you should
23 ask your AOC.

1 Q. You don't think it's because 3,548 is
2 more than 37.2 percent of the number in
3 Table Three -- column three, the 68,428?

4 A. That is another possibility. Should we
5 do the math?

6 Q. If you've got a calculator there, I would
7 like you to do it because I'm getting it
8 much closer to 50 percent?

9 A. And it could be a scrivener's error.

10 MS. LANG: I'm sorry --

11 A. Again I'm doing it off the top of my
12 head.

13 MS. LANG: I'm -- I'm
14 lost.

15 MS. MESSICK: We are
16 dividing --

17 MS. LANG: Number three --

18 MS. MESSICK: We are
19 dividing 3,548 by 68,428.

20 These are the totals in columns
21 three and five of Table One in
22 the row for blacks.

23 MS. LANG: Wait. I don't

1 think that that's --

2 A. I don't think that's it.

3 MS. LANG: -- the numbers

4 --

5 A. I don't think that's -- Correct. Because
6 I am looking at these numbers as well,
7 this math, and in fact 4242 plus 3548
8 equals 7,790.

9 So, that difference are people
10 of different race and ethnicity according
11 to the AOC.

12 MS. LANG: And to be clear
13 3,548 divided by 9,532 is
14 37.2 percent.

15 MS. MESSICK: Okay. That
16 is --

17 A. Absolutely.

18 MS. MESSICK: -- not what
19 I was dividing.

20 MS. LANG: Right. That's
21 probably the confusion.

22 A. Correct. So, the --

23 Q. Well, except --

1 A. -- problem is that --

2 Q. Dr. Smith, do you agree that the totals
3 in columns four and five add up to the
4 totals in column three?

5 A. The columns in four and five should add
6 up to the column in three.

7 Q. So, if the column in three reaches
8 100 percent exactly and the column four
9 is nearly 100 percent, wouldn't you
10 expect the last column, column five, to
11 also be close to 100 percent?

12 A. No. Because the total for every one of
13 those columns is including every
14 individual. It just so happens that in
15 the first three columns every individual,
16 quote, unquote, is quoted as white or
17 black.

18 MS. LANG: Misty, I have a
19 question about your question
20 just so that I can follow
21 along.

22 Are you dividing --
23 Like, my understanding of

1 these percentages is that
2 it's white over total for
3 each column, and it's not
4 doing percentages across,
5 right?

6 So, it's -- for the
7 first column it's 2,000,000
8 odd over 3,000,000 odd for
9 white, et cetera.

10 So, the column -- the
11 percentages are done on a
12 vertical basis.

13 MS. MESSICK: But my
14 understanding --

15 MS. LANG: Are your
16 questions about that?

17 MS. MESSICK: No.

18 MS. LANG: Or are they
19 about --

20 BY MS. MESSICK:

21 Q. My understanding is that everybody that
22 is in the fourth and fifth columns is
23 also in the third column; is that true?

1 A. No. So -- so -- I tried to make this
2 table very simple and clearly I could
3 have made it simpler. I could have added
4 an additional row that would have said
5 "other." All right. So, it would have
6 been black -- white, black, other, total.
7 If you add up column one from the census
8 data, 2,548,850 plus 960,075 does not
9 equal 3,671,110. The reason it doesn't
10 add up is because Alabama actually has
11 people that the census considers not to
12 be white or black.

13 So, that same methodology is
14 used for every one these columns. The
15 fact of the matter is that most of
16 Alabama is racially either white or black
17 as defined by the census or defined by
18 the AOC. That is up until the last
19 couple of years where it appears to me
20 that the AOC has changed its coding, or
21 there is missing values, or some other
22 reason why we're only getting up to that
23 7,000 figure as opposed to the 9,532.

1 Does that make sense?

2 Q. I understand what you said. I don't
3 think we're talking -- I think we're
4 talking passed each other. Give me just
5 one second. Let me see.

6 A. Sure.

7 (Brief pause.)

8 Q. So, you've explained that if I add whites
9 and blacks I do not reach the totals
10 because there should be -- there are
11 others who are not included in this table
12 and we could have put them in but they
13 exist. And so --

14 A. I'm not saying it's a certainty. That's
15 a possibility. It has to do with how the
16 agency is coding individuals. In some
17 instances they may only be using white
18 and black. And if they are, then you're
19 going to get 100 percent.

20 Q. So, if --

21 A. If you are using other categories --
22 again, I'm not making up these
23 categories. I am using the

1 administrative data as it is -- then
2 you're not going to get up to
3 100 percent.

4 And so, it appears that there
5 has been some change in that practice, or
6 there is missing data with respect to
7 race.

8 I can't sit here and tell you
9 without investigating the data, which I
10 don't have available.

11 Q. Starting on page 32 of your April report,
12 you engage in counterfactual analysis; is
13 that correct?

14 A. Yeah.

15 Q. And this is where you are looking at the,
16 quote, "Alabama No CERV Conviction List,"
17 end quote?

18 A. Yes.

19 Q. And you are comparing on these next few
20 pages what the impact would have been if
21 that narrower list had been used; is that
22 correct?

23 A. That's correct.

1 Q. And in paragraph 39 on page 32, you say,
2 quote, "I understand from counsel that
3 this narrow list was the emerging
4 consensus from the Exploratory Committee
5 up until the final meeting when Secretary
6 Merrill introduced his proposed list,"
7 end quote.

8 Do you see that?

9 A. Yes, I do.

10 Q. And are you operating on the assumption
11 that that is true in the following
12 paragraphs?

13 MS. LANG: Object to form.

14 A. I don't understand what you mean by "the
15 following" -- it's in my following
16 methodology that I am assuming that that
17 is true.

18 Q. So, in page --

19 A. Is that what you're --

20 Q. In paragraph 40 you use the language,
21 quote, "under the Exploratory Committee's
22 narrower list of initial
23 recommendations," end quote.

1 Is that statement based on the
2 representation from Counsel in paragraph
3 39?

4 A. Yes, that's correct.

5 Q. Okay. Same in paragraph 40. You also --
6 and this is on page 33 -- refer to,
7 quote, "under the Exploratory Committee's
8 narrower recommended list," end quote.

9 Is that language again in
10 reliance on the representation of
11 Counsel?

12 A. That is correct.

13 Q. And later in paragraph 40 when you refer
14 to "the Exploratory Committee's narrower
15 list," that again is on the basis of
16 representation from Counsel?

17 A. That is correct.

18 Q. And in paragraph 41 when you refer to the
19 Exploratory Committee's -- you say "had
20 the Exploratory Committee's
21 recommendations been adopted," in that
22 first line in paragraph 41, that's again
23 on the reliance on the representation of

1 Counsel?

2 A. I don't see that in 41.

3 Q. The very -- the first line of paragraph
4 41, it says "As such, had the Exploratory
5 Committee's recommendations been
6 adopted"?

7 A. Yes.

8 Q. And just so the record is clear, that yes
9 could mean you see it, or yes, it's on
10 the basis of representation of Counsel.

11 So, is that language at the top
12 in the first line of paragraph 41 used on
13 the basis of the representation of
14 Counsel?

15 A. Yes, correct.

16 Q. And moving to the second sentence in
17 paragraph 41, when you refer to "the
18 Exploratory Committee's list," are you
19 referring to that narrower list and doing
20 so on the basis of Counsel's
21 representation?

22 A. That's correct.

23 Q. And again in paragraph 41, the next

1 sentence, when you say "in contrast,
2 under the Exploratory Committee's
3 narrower list," you are again using that
4 language on the basis of the
5 representation of Plaintiff's Counsel?

6 A. That's correct.

7 Q. And in paragraph 42, which continues on
8 to page 34, when you refer to, quote,
9 "the legislature's decision to expand the
10 list of felonies constituting moral
11 turpitude," end quote.

12 Are you again assuming that the
13 narrower list was prevailing on the basis
14 of Plaintiff's Counsel's representation?

15 When you use the word
16 "expanding" you're comparing it to
17 something. I am assuming --

18 A. Correct.

19 Q. -- you are comparing it again to the
20 narrower list that you believe --

21 A. Yes. Thank you.

22 Q. Okay. In paragraph 43, the first
23 sentence says, quote, "As Figure 7 shows,

1 under the narrower set of felonies of
2 moral turpitude considered by the
3 Exploratory Committee but not ultimately
4 advanced by Secretary Merrill," end
5 quote.

6 You are again relying on the
7 representation of plaintiff's counsel?

8 A. That is correct.

9 MS. LANG: Object to form.

10 Q. And a couple of lines further down, in
11 paragraph 43, when you refer to "the
12 Committee's narrower definition of moral
13 turpitude," you are again referring to
14 the idea that the No CERV List on the
15 basis of Plaintiff's representation?

16 A. Yes, correct.

17 Q. And still on page -- paragraph 43, you
18 again refer to, quote, "the Exploratory
19 Committee's narrower set of 15 felonies."

20 And that is again on the basis
21 of Plaintiff's Counsel's representation?

22 A. Yes.

23 Q. And on paragraph 44, which is on --

1 begins on page 35. When you refer to
2 "the narrower set of felonies of moral
3 turpitude that was considered by the
4 Exploratory Committee but not advanced by
5 Secretary Merrill," you are again relying
6 on the representation of Plaintiff's
7 Counsel?

8 A. Yes.

9 MS. LANG: Object to form.

10 Q. And in that same paragraph, when you
11 refer again to "the Exploratory
12 Committee's narrower set of 15 felonies
13 of moral turpitude," you are again doing
14 so on the basis of Plaintiff's Counsel's
15 representation?

16 MS. LANG: Object to form.

17 How many times are you going to
18 ask the same question, Misty?

19 MS. MESSICK: Well, you
20 put it in his report 14 times,
21 so I've got one more to go.

22 BY MS. MESSICK:

23 Q. Paragraph 45, when you refer to "the

1 Exploratory Committee's narrower list,"
2 are you again relying on the
3 representation of Plaintiff's Counsel?

4 A. Yes, I am.

5 Q. So, despite the fact that you include
6 this language 14 times across five
7 paragraphs, you are not in fact intending
8 to offer any opinion yourself about what
9 happened in that Exploratory Committee,
10 you are merely relying on the
11 representation of Plaintiff's Counsel; is
12 that correct?

13 A. I am relying on this set of 15 felonies
14 that were presented to me.

15 Q. But when you've repeatedly described what
16 those felonies are and who supported
17 them, that is all based solely on
18 Plaintiff's Counsel's representation.
19 You have not in fact undertaken any study
20 of what happened in that committee?

21 A. I don't think that's accurate. Again
22 this is taxing my memory awhile, but I
23 want to say that I saw minutes from that

1 meeting at some point.

2 Q. Thank you. Did you look at -- in the
3 course of this analysis where you are
4 comparing the No CERV List and the
5 Legislation actually enacted in 2017,
6 which you refer to as H.B. 282, did you
7 look at which felonies were driving the
8 different results?

9 MS. LANG: Object to form.

10 A. So, we're not talking about the
11 Exploratory Committee anymore?

12 Q. So, these paragraphs as I understand them
13 involve you saying that the No CERV List
14 -- which Plaintiff's Counsel represented
15 was preferred by the Exploratory
16 Committee -- would have led to less
17 racial disparate impact than the
18 Legislation that was actually adopted in
19 2017.

20 So, the difference between
21 those two lists is the felonies on them.
22 And my question to you is: Did you look
23 at which felonies were driving the

1 different racial results?

2 A. You know, it's interesting. It's kind of
3 looking at two sides of the coin. I
4 happen to present one side of the coin.
5 You can flip the coin over and see the
6 other side.

7 So, I presented the data from
8 the No CERV List from the Merrill
9 Committee. I presented the data from the
10 H.B. 282. I suppose one could compare
11 and try to understand the differences
12 between those 46 and 15 felony
13 convictions that are accounted in one and
14 not in the other.

15 Q. But you don't actually provide the data
16 in the four corners of this report
17 demonstrating how many felony convictions
18 there are for each of those two lists,
19 correct -- for each felony on those two
20 lists?

21 A. So, the data are there. They're just not
22 represented visually in that sense. They
23 are aggregated across the 15 or the 46.

1 Q. Right. It's aggregated by lists. We
2 can't see the specifics of each
3 individual felony, correct?

4 A. That's correct. From the data that is
5 presented, that's correct. But those
6 data are there. They're just not
7 individually desegregated.

8 Q. I would like you to focus your attention
9 on paragraph 41, which is on page 33 of
10 your report.

11 A. Yeah.

12 Q. And you say there that if the No CERV
13 List had been used rather than the
14 Legislation that was actually enacted,
15 then blacks convicted of a disqualifying
16 felony would have -- they would have made
17 up 46 percent of -- blacks would have
18 made up 46 percent of the felons
19 convicted of a disqualifying felony.
20 While under the Legislation that was
21 enacted, blacks make up 50.5 percent; is
22 that correct?

23 A. That is correct.

1 Q. And you describe this difference as,
2 quote, "considerably lower," end quote.

3 The 46 percent is considerably
4 lower than the other; is that right?

5 A. Well, it's no longer a majority, and it
6 is close to the 5 percentage point.

7 So, when you look at the number
8 of individuals that you are talking about
9 -- you know, we are talking about
10 hundreds of individuals.

11 MS. LANG: Misty, would
12 now be a good time to break for
13 lunch?

14 MS. MESSICK: Yes, it
15 would. Let's go off the
16 record, please.

17 (Luncheon recess.)

18 BY MS. MESSICK:

19 Q. Dr. Smith, I would like to talk now about
20 your analysis of the data from the
21 Secretary of State's power profile
22 system, the voter registration data.

23 A. Sure.

1 Q. You are using a 2019 snapshot of that
2 data, correct?

3 A. Yes, that's correct, from the Summer of
4 2019.

5 Q. And it con -- that database contains
6 approximately 5,000,000 individuals?

7 A. I have it described in my report. I
8 don't remember the specific off the top
9 of my head.

10 Q. All right. Would you look at page 38 of
11 your report?

12 A. Sure. Yes.

13 Q. So, looking at paragraphs 47 and 48, it
14 is apparent to me that sometimes when you
15 talk about 5,000,000 registered voters,
16 you mean 5,000,000 people in the voter
17 registration file. But they may not all
18 be registered, in fact some of them are
19 not eligible or disqualified, correct?

20 A. Yes, that is correct. Thank you.

21 Q. Is it your understanding that there was
22 any kind of systemic effort to find
23 persons in the voter registration

1 database who had been disenfranchised
2 prior to the 2017 Legislation but who
3 would be eligible after that Legislation
4 and to make those persons active in the
5 system?

6 MS. LANG: Objection.

7 A. I want to make sure I understand the
8 first part because I'm not sure who you
9 were referring to as to who was doing
10 this.

11 Q. Are you under the impression that the
12 State undertook efforts to register -- or
13 to change the registration status in the
14 database for persons who had been
15 disqualified prior to 2017 but who would
16 be -- who if we knew all of the
17 information about them could know that
18 they would be eligible under the 2017
19 law?

20 MS. LANG: Objection to
21 form.

22 A. It speaks to routine with maintenance all
23 of the time. I'm not privy to all of the

1 things that the State may have done or
2 not done.

3 Q. Do you know in fact whether there are
4 persons who would have been
5 disenfranchised for a felony of moral
6 turpitude prior to the passage of the
7 2017 law but pursuant to that 2017 law
8 are now eligible to register to vote?

9 MS. LANG: Objection.

10 Form.

11 Are you talking about
12 like operation of law or as a
13 practical matter would have
14 been disqualified by the
15 registrars or the secretary?

16 MS. MESSICK: I don't
17 understand your question.

18 BY MS. MESSICK:

19 Q. Dr. Smith, my question to you is: As a
20 legal matter, are there people, if you
21 know, who were ineligible to vote due to
22 a felony conviction prior to this 2017
23 law who are now eligible to vote under

1 the 2017 law?

2 MS. LANG: Objection.

3 Form. Speculation.

4 As a legal matter, I
5 don't -- he's not being
6 offered as a lawyer or as an
7 expert in the law.

8 MS. MESSICK: Thank you
9 for your objection.

10 BY MS. MESSICK:

11 Q. Dr. Smith, do you have a response?

12 A. Well, empirically you can certainly see
13 from various snapshots that there is some
14 movement of people being moved on and off
15 active, inactive, eligible, not eligible,
16 disqualified.

17 So, there is some type of
18 maintenance going on.

19 Q. Would the snapshot of data that you
20 relied upon include persons who never
21 attempted to register to vote?

22 A. My understanding of the construction of
23 the statewide voter file -- I believe

1 it's D200071 -- is that it would not
2 include people who did not attempt to
3 register.

4 Q. Would you look for me, please, at page 43
5 of your April report, at Figure 10?

6 A. Yeah.

7 Q. And this figure shows two different
8 measures for each county in the state; is
9 that correct?

10 A. Yes, that's correct.

11 Q. And one of those measures looks at, of
12 the active and inactive voters in the
13 county, what percentage are black; is
14 that correct?

15 A. That is correct, active and inactive
16 registered voters percent black, correct.

17 Q. And then the other measure is of persons
18 who are coded CRM or with the criminal
19 conviction moral turpitude status. You
20 are looking at what percentage of those
21 persons are black, correct?

22 A. That is correct within a county.

23 Q. So, in each county you are looking at two

1 different groups of people to see what
2 percentage of those people are black,
3 correct?

4 A. That is correct.

5 Q. Okay. And then Figure 11, on page 47,
6 undertakes that same analysis but now for
7 whites instead of blacks; is that
8 correct?

9 A. That is correct.

10 Q. So, if you assume that the, quote, "other
11 population" is minimal, Figure 11 is just
12 the reverse of Figure 10, isn't it, so
13 long as the population is not black or
14 white, it's very small?

15 MS. LANG: Objection.

16 A. That is correct. Yes, the general gist
17 is correct.

18 Q. On page 48, in footnote two -- 24, are
19 you saying that of the active voters in
20 Alabama black voters actually account for
21 slightly more than the percentage that
22 they are in the population?

23 MS. LANG: Objection.

1 Form.

2 Q. Blacks make up about 26.2 percent of the
3 population in Alabama, correct?

4 A. Correct --

5 MS. LANG: Can you --

6 A. -- according to that census.

7 Q. There is --

8 A. The issue here though is that -- go
9 ahead. I won't jump in. I will let you
10 finish first.

11 MS. MESSICK: Well, there
12 is a delay. We are seeing
13 people talk but not hearing
14 their voice and it's leading to
15 a lot of talking over each
16 other.

17 So, I have no idea what
18 Danielle said a minute ago.

19 MS. LANG: I asked you if
20 you could refer me to the
21 figure that you were relying
22 upon for the population of
23 black individuals in Alabama.

1 I assumed it's based on the
2 consensus figures and maybe in
3 this report, but it's not in
4 footnote 24?

5 MS. MESSICK: No, it is
6 not in footnote 24. I think it
7 is fairly common knowledge and
8 that Dr. Smith has already
9 indicated that he knows that
10 the percentage is approximately
11 26.2, and I believe that we
12 will find that in one of these
13 tables if you will give me a
14 minute.

15 BY MS. MESSICK:

16 Q. Yes. On page 22 of your report, Dr.
17 Smith, do you see that the black
18 population of Alabama, citizen voting age
19 population is approximately 26.2 percent?

20 A. Yes, I do.

21 Q. And in footnote 24 you say that of active
22 -- of active registered voters in
23 Alabama, blacks make up 27.3 percent,

1 correct?

2 A. That is correct.

3 Q. Thank you.

4 A. I want to clarify that we have two
5 different time frames that you're making
6 this comparison that we should note.

7 The citizen voting age
8 population estimate from the American
9 Census Bureau, the US Census Bureau, ACS
10 data, is from 2014 to 2018. So, in fact
11 it is several years, quote, unquote, old
12 for that estimated citizen voting age
13 population. And the data that I have
14 from the snapshots from the voter file is
15 from 2019.

16 So, it's very possible that the
17 population in Alabama as a percentage
18 that's black, citizen voting age
19 population, could have increased since
20 the census data is basically three years
21 older.

22 Q. Is it also possible that it could have
23 decreased?

1 A. I am not here to determine one way or the
2 other. I am just saying that one should
3 be cautious when comparing apples to
4 oranges in that sense.

5 The other thing too of course
6 is that, you know, I am comparing in
7 footnote 24 blacks to whites. I am
8 excluding all the other racial
9 categories. That is going to
10 artificially increase the percentage of
11 blacks. So, it's the same exercise we
12 did previously before the break. If we
13 wanted to factor in all of the others in
14 the voter file, that would increase the
15 denominator and as a result a fraction of
16 black would result in being lower.

17 And of course when I am doing
18 citizen voting age population of blacks
19 and whites in the census, I am taking
20 into that, the other category. And that
21 would have created it lower.

22 So, again there is a lot of
23 inference that you are making that I

1 would just be cautious about doing.

2 Q. I would ask you to look at Table Two on
3 page 50 of your report.

4 A. Yes.

5 Q. And do you see the line for disqualified
6 -- so, look at the row for disqualified
7 voters, disqualified individuals and go
8 to the --

9 A. Yeah.

10 Q. -- pre-implementation column for whites.
11 And you see the number there is
12 7.7 percent; is that correct?

13 A. That is correct.

14 Q. Now would you please look above the table
15 in the paragraph there, on the third
16 line, you've got 9.3 percent to
17 8.1 percent. Can you look at that for a
18 moment to get the context and let me know
19 if that 8.1 percent should in fact be
20 7.7 percent?

21 A. Yes, I would be happy to do so.

22 (Brief pause.)

23 A. Yes. I have made a scrivener's error,

1 and it should be 9.3 percent to 8 -- I'm
2 sorry, to 7.7 percent in that paragraph
3 63.

4 Q. Thank you. I would like to jump ahead to
5 paragraphs 69, 70, and 71. And I want to
6 give you just a minute to look at those.
7 Paragraph 69 is on page 53.

8 A. Yeah.

9 Q. Now, paragraph 69 concerns a population
10 of people coded as not eligible, correct?

11 A. Correct.

12 Q. And the numbers that you give in
13 paragraph 69, those numbers cover a
14 46-month period of persons who were coded
15 as not eligible, correct?

16 A. Without giving a great overview, I
17 believe this is where I am comparing the
18 before and after 23-month period on
19 either side of the implementation of H.B.
20 282.

21 Q. Right. And so, in paragraph 70, you look
22 at one 23-month time period, and in
23 paragraph 71, you look at the other

1 23-month, correct?

2 A. Yes. Correct.

3 Q. So, the individuals that you talk about
4 in paragraph 70 and 71, those are two
5 subsets of the group that you talk about
6 in paragraph 69?

7 A. That should be correct, yeah.

8 Q. So, are -- should there be any persons
9 included in paragraph 70 and 71 who are
10 not included in paragraph 69?

11 A. Well, again I am screening by race, black
12 and white. So, that is a possibility of
13 including other people who are not black
14 or white.

15 Q. All I'm trying to ask you is if I add up
16 the numbers in paragraph 70 and 71,
17 should I get the numbers in paragraph 69?

18 A. And again what I would suggest is that
19 paragraph 69 could include non white and
20 black. I can't remember how I
21 constructed that.

22 Q. Well, could you look at the last sentence
23 in paragraph 69, please?

1 A. Sure. Okay.

2 Q. So, you don't make any mention of anyone
3 who is not black or white, correct?

4 A. Correct.

5 Q. And in paragraph 70, you're looking at
6 people who are black and white for one
7 23-month period, correct?

8 A. Correct.

9 Q. And in paragraph 71, you are looking at
10 people who are black and white for a
11 different 23-month period, correct?

12 A. Correct.

13 Q. Okay. And in these paragraphs you're
14 looking at applicants who were rejected
15 because of convictions of felonies of
16 moral turpitude.

17 Do you look at applicants who
18 have felonies who were allowed to vote
19 during this time period?

20 A. You know, I think what I state here is
21 what I am looking at.

22 Q. All right. And then I would like you to
23 focus for a minute on paragraph 73, 74,

1 and 75. And I will give you a chance to
2 get oriented.

3 (Brief pause.)

4 Q. Paragraph -- these three paragraphs are
5 like the ones that we just considered but
6 these look at the disqualified
7 population; is that correct?

8 A. Yes, I think that's correct.

9 Q. And so, again paragraph 73 looks at
10 blacks and whites for a 46-month period.
11 And then paragraphs 74 and 75 look at
12 blacks and whites over two separate
13 23-month periods within the 46-month
14 period, correct?

15 A. Yes, correct.

16 Q. And so, again the numbers in 74 and 75
17 added together should reach the numbers
18 in 73; is that correct?

19 MS. LANG: Object to form.

20 A. Again I would have to go back and look
21 and see what qualifications I placed on
22 -- on this. And I would have to go back
23 and, you know, reanalyze what I am doing

1 here.

2 Q. I would be happy to let you read
3 paragraph 73, 74 and 75 more closely and
4 let me know if there are any
5 qualifications that I need to understand
6 to understand this part of your report.

7 A. So, are you tieing it back to Table Two
8 again?

9 Q. No. I'm looking exclusively at paragraph
10 73, 74, and 75.

11 A. Okay. Again they should be fairly close
12 if not exact. There are obviously some
13 conditions on the quality of the data to
14 be able to do that, but...

15 Q. If there were conditions on the quality
16 of the data, would you have included that
17 in your report?

18 A. Probably someplace, yeah.

19 Q. So, in paragraph 73, where you are
20 talking about the entire 46-month period,
21 you refer to 29,513 white individuals; is
22 that correct?

23 A. Yes, I see that.

1 Q. And then in paragraph 75, where you're
2 talking about the 23-month period after
3 the 2017 law took effect, you have 29,547
4 white individuals in that period alone,
5 right?

6 (Brief pause.)

7 MS. LANG: Can we have
8 that question read back? I've
9 lost the thread.

10 THE WITNESS: I've lost
11 the thread as well.

12 (At which time, the Reporter
13 read the requested portion.)

14 A. Correct. That's what I have written in
15 75. Yeah.

16 Q. Does paragraph -- the numbers in
17 paragraph 73, are those meant to be sums
18 for the entire 46-month period that we
19 talked about a minute ago? 23 months
20 before and 23 months after the
21 implementation of the 2017 law?

22 A. I don't recall conditioning on that.

23 Q. So, what are the numbers that you are

1 discussing in paragraph 73?

2 A. So, it looks like it's the whole
3 statewide voter file regardless of any
4 time period.

5 MS. LANG: I think the
6 confusion may also be that at
7 some points we are talking
8 about everyone who is
9 disqualified and at some points
10 we are talking about people who
11 are disqualified with a CRM.

12 THE WITNESS: Correct.

13 MS. MESSICK: I thought I
14 already asked him don't
15 paragraphs 69 --

16 A. You were asking me do they do the same
17 thing. In fact they don't do the same
18 thing.

19 Q. Do paragraphs 69, 70, and 71 are not
20 eligible with the CRM, correct?

21 A. Correct. Those have a CRM code, correct.

22 Q. And then when we get to paragraphs 73, I
23 understand that we have now moved --

1 MS. MESSICK: Strike that.

2 Q. Beginning at paragraph 73, haven't you
3 moved off of the not eligible to the
4 disqualified?

5 A. I have moved to disqualified, correct.

6 Q. And in paragraph 74 and 75 -- I mean
7 paragraph 74 starts by saying you conduct
8 the same pre and post implementation
9 analysis as presented above with the not
10 eligible subpopulation.

11 So, you are now doing that with
12 the disqualified population, correct?

13 A. It's the same principal of looking
14 pre-imposed implementation.

15 Q. Okay. And so, paragraph 74 is the
16 pre-implementation paragraph, correct?

17 A. That is correct.

18 Q. And paragraph 75 is post implementation;
19 is that correct?

20 A. Yes, post implementation, correct.

21 Q. And then it sounds like that paragraph 73
22 might not be limited to pre 23 plus post
23 23, it may actually be broader than that;

1 is that what you're saying?

2 A. I don't see a condition in that
3 paragraph. It sounds like it is as of
4 that snapshot which would include people
5 well before the 23-month prior to
6 implementation.

7 Q. I would ask you to please bring up again
8 your supplemental expert report, which is
9 Exhibit Four.

10 A. Sure.

11 Q. We are going to move on to a new topic.

12 In paragraph six of your
13 supplemental report, you refer in the
14 last line on the page to the sequence.
15 Basically the sequence of actions you
16 would take in analyzing this data; is
17 that correct?

18 A. Yeah.

19 Q. Did you in fact in your original report,
20 in your analysis, elimi -- of the -- what
21 you call LFOs, the court-ordered monies
22 owed, did you eliminate monies owed on
23 felonies that were not themselves

1 disqualifying?

2 A. So, I think I document and it is
3 certainly preventive to me in
4 Ms. Gwathney's report about what I did in
5 terms of going through the AOC database
6 that has multiple fields within it for
7 multiple criminal activities and
8 sentencing. It has rows that don't fit
9 within those confines for an individual.
10 And so, I had to look over the data to be
11 able to make sure that I was getting
12 individuals and the same individuals with
13 multiple criminal convictions.

14 In that process I may have been
15 picking up some non-H.B. 282 felonies but
16 then I would eliminate them subsequently.

17 Q. In your original report --

18 A. Well -- so --

19 Q. No, hold on.

20 A. Now I'm confused.

21 Q. In your --

22 A. I thought --

23 Q. In your original report, you eliminated

1 persons who did not have at least one
2 felony conviction of moral turpitude,
3 correct?

4 A. Absolutely correct, yes.

5 Q. Now, if a person had a felony of moral
6 turpitude and a second felony that was
7 not moral turpitude, that person stayed
8 in your dataset, correct?

9 A. That is correct.

10 Q. And they were in the dataset with both
11 convictions, correct?

12 A. Correct.

13 Q. And so, in your supplemental report in
14 response to Chair Gwathney's critiques,
15 you have removed the cost associated --
16 or the court-ordered monies associated
17 with felonies that do not involve moral
18 turpitude, correct?

19 A. That is correct.

20 Q. So, what you're doing there is you're
21 removing some of the monies that were
22 owed for some of the people who you were
23 studying, correct?

1 A. That is a possibility, yes.

2 Q. Okay. I thought I was summarizing
3 exactly what you were doing. How is that
4 only a possibility?

5 A. No. You're summarizing correctly the
6 process.

7 Q. Okay.

8 A. I cannot sit here and say whether it
9 eliminated any LFOs. I can't say if
10 there were any LFOs related to those
11 non-disenfranchising felonies.

12 Q. How, in the process of eliminating the
13 court-ordered monies associated with
14 certain felony convictions, did you end
15 up with 911 new individuals?

16 A. Yes. So, this is a process that is as I
17 write in my first report using name and
18 race and county, there is a possibility
19 of having both false positives and false
20 negatives.

21 So, it's very possible that the
22 method that I used underestimated. It
23 thought that there might be some

1 individuals who were the same individuals
2 and as a result linked them together
3 because I had added information as
4 opposed to the second method which
5 eliminated additional rows and may not
6 have had that and may have actually
7 resulted in that 991 I believe it was
8 individuals.

9 So, again it depends on how you
10 want to clean a dataset like this. I
11 opted to do one method first. It also
12 could have to do with other missing data
13 that I was dropping in my first one that
14 I don't have to drop in this one. I
15 haven't gone through and done a full
16 probe in terms of why there might be
17 that.

18 But, you know, we're talking
19 here -- you know, 1 percent would be a
20 thousand and 300 some odd. So, maybe
21 six-tenths of a percent more people than
22 911. Or 991. Sorry. 911 or 991, I
23 can't remember which one it is. Sorry.

1 Q. No. It's 911 in case it comes up again.

2 A. Okay. Okay.

3 Q. So, basically because you wanted to re --
4 in order to remove the court-ordered
5 monies associated with a
6 non-disqualifying felony, you wanted to
7 do --

8 MS. MESSICK: No. Strike
9 that. That's a different
10 issue.

11 Q. It sounds like you basically started over
12 with the full dataset and ran the
13 concatenation again, and this time got
14 different results. And what you're
15 saying is that the difference is very
16 minor?

17 A. That's actually correct.

18 So, I started with the raw data
19 that was presented to me and rewrote the
20 script that processes the data that deals
21 with multiple crimes within a row that
22 deals with -- because there is limited --
23 by the structure of the dataset, only

1 three convictions for a particular --
2 let's call it for a lack of a better term
3 crime spree. Sometimes they are put on a
4 separate row.

5 So, I want to make sure that I
6 am capturing all of that as well as --
7 you know, we talked about the LFOs. But
8 then an individual is going to be
9 possibly in the database multiple times.
10 But because I don't have an AIS number
11 for over a hundred and -- I don't know,
12 hundred-thousand plus people, I had to
13 come up with this methodology to loop
14 across the close to 700,000 rows of data
15 to find Daniel Smith in an actual county
16 who is white multiple times.

17 And it's very possible just by
18 reordering those steps that I would have
19 been eliminated in the way that I did it
20 originally in a second field, but that
21 was included in the second methodology
22 that I used in the Gwathney recommended
23 steps.

1 So, to take two different
2 steps -- and we've only talked about half
3 of it so far. You know, we also have to
4 talk about the LFOs. To be off by 911 is
5 I think kind of what we would call a
6 robustness check. Because the
7 methodology that I used originally seemed
8 to work. The methodology that was
9 recommended to me seemed to work. It
10 resulted in largely different results
11 that we can talk about I hope.

12 But that processing of data
13 that comes in a format that is not
14 optimal to be able to find a unique
15 individual across counties, perhaps
16 Daniel Smith or Daniel A. Smith. I could
17 have false positives where I am including
18 Daniel A. Smith and Daniel Smith together
19 even though they're two different people,
20 or a false negative where I think that
21 Daniel A. Smith and Daniel Smith are
22 different people. It can lead to those
23 marginal differences.

1 Again I haven't had the time to
2 fully pull it apart and figure out where
3 those minute changes are happening. But
4 your statement is correct, I started with
5 the raw data and reorganized the steps as
6 indicated in Chair Gwathney's logic as
7 best that I could understand them.

8 Q. Thank you. Also in paragraph six, at the
9 top of what would be page four, you refer
10 to --

11 A. I'm sorry?

12 Q. So, paragraph six goes on to a second
13 page. If you will look at the back part
14 of paragraph six. In the top line there
15 you make a reference there to, quote, "as
16 few individuals have non-disqualifying
17 felony convictions in multiple rows," end
18 quote.

19 What is the significance of
20 that statement?

21 A. So, the significance of that statement is
22 either method is going to get you pretty
23 close to the same result. Because by my

1 first method, which concatenated
2 individuals using my three-part scheme of
3 name, race, and county may have picked up
4 people who had non-disqualifying felonies
5 as opposed to Ms. Gwathney's method which
6 is eliminating those rows of data that
7 clearly have no field with a
8 disqualifying felony and then
9 concatenate.

10 Q. So, I thought what you were doing is
11 keeping -- In your supplemental report,
12 are you keeping every felon who has at
13 least one disqualifying felony but you're
14 eliminating the monies associated with
15 non-disqualifying felonies?

16 A. The first step -- again following the
17 logic that she provides -- is to
18 eliminate all of the rows of the
19 non-disfranchising felony convictions.

20 Q. So --

21 A. I did not do that in my first report.

22 Q. In your supplement we've talked about
23 that an AOC row might have multiple

1 convictions on that row.

2 So, let's say I go on a crime
3 spree and I commit --

4 (Brief interruption.)

5 MS. MESSICK: We're off
6 the record.

7 (Brief pause.)

8 MS. MESSICK: We are back
9 on the record.

10 BY MS. MESSICK:

11 Q. Let us return to my crime spree.

12 Hypothetically I get picked up for five
13 felonies.

14 Now, Dr. Smith, if I have five
15 felonies, I'm going to be on two
16 different rows for that crime spree in
17 the AOC database, correct?

18 A. Yes. That is the way it is structured.

19 Q. So -- well, we would expect to find three
20 of my convictions on one row and two on
21 another row, correct?

22 A. That is the way it's structured, yes.

23 Q. If the two of my felonies that are on the

1 same row are both felonies that do not
2 disenfranchise, then that row of data has
3 been eliminated in your supplemental
4 report; is that correct?

5 A. If both of those were not
6 disenfranchising, the new methodology, as
7 recommended by Chair Gwathney, first
8 eliminates that row.

9 Q. Okay. Let's say the other row for my
10 crime spree, which includes three
11 felonies, some of those felonies -- let's
12 say one of them is disenfranchising and
13 the other two are not, what is included
14 from that row in your supplemental
15 report?

16 A. So, the effort is to have it go through
17 and pick up what the orders are for those
18 and take from -- I'm not interested again
19 in the total now. We haven't talked
20 about that. We are only interested in
21 the initial charges. So, making sure
22 they are all a part of that initial crime
23 spree and differentiating those charges

1 so that it's picking up the LFOs from the
2 felony conviction that is disqualifying.

3 Q. I'm sorry. But I don't understand your
4 answer.

5 The two non-disqualifying
6 felonies on that row of data for my crime
7 spree, are the monies associated with
8 those two felonies still included in the
9 modified analysis?

10 A. No. I mean, it's the same -- I am using
11 the same method that I did in the first
12 one for that code that goes and looks
13 across a single row to isolate the
14 amounts due for the disenfranchising
15 felonies.

16 Q. Looking back at Exhibit Six, which is the
17 snippets from the AOC database, the
18 headings there?

19 A. Yes.

20 MS. LANG: Can we wait a
21 minute while I open that?

22 (Brief pause.)

23 MS. LANG: Go ahead.

1 BY MS. MESSICK:

2 Q. Are there money columns that you used in
3 your AOC analysis that are not included
4 in Exhibit Six?

5 A. Well, from my recollection, from your
6 Exhibit Six, you're going up to column Q.
7 And again I haven't looked at the raw
8 data in many, many a month. And what I
9 do with that data is pull it into a
10 database, so I actually don't even
11 remember this original form because I am
12 pulling it all into a form that is unable
13 to deal with.

14 But I want to say that there
15 were -- I don't know. Going all the way
16 from A to Z and through AA to AZ and
17 probably into the B range, you know, this
18 -- this is an interesting question in
19 terms of how you differentiate the amount
20 that were initially charged and isolate
21 those that are with the felony conviction
22 that is disenfranchised.

23 Q. Right.

1 A. And so, my method doesn't again come
2 pulling out those that are -- that have a
3 charge tied to the conviction that is
4 disenfranchised.

5 Q. Okay. Thank you.

6 A. So, that's -- just to clarify, so that
7 part of my code doesn't change from my
8 initial April report to the supplemental
9 report.

10 Q. So, if a row of data includes a felony of
11 moral turpitude conviction, the entire
12 row comes across -- remains in your
13 dataset, correct?

14 A. Correct. The big difference from my
15 initial report and getting it in quotes
16 is taking the suggestion of Chair
17 Gwathney and subtracting any
18 post-sentence fees that might be in that
19 row from the grand total.

20 So, that is a difference in
21 terms of interpretation. And again I
22 think I talked earlier that my initial
23 understanding was that the Alabama code

1 included all of those grand totals.

2 I am happy to use Chair
3 Gwathney's interpretation and eliminate
4 any post-sentence fees from that grand
5 total. And certainly it was helpful to
6 see the sum column.

7 Q. So, what you did there is you subtracted
8 post-sentence fees balance due from grand
9 total balance due and you basically did
10 it 130,000 times? You did that
11 calculation on each row?

12 A. Yes. That is absolutely correct.

13 Q. Okay. And so, when you did that it led
14 to new Table One which is on page -- I'm
15 sorry, new Table One which is above
16 paragraph 11 in your supplemental report?

17 A. Yes, ma'am.

18 Q. Okay. And then two pages later, you have
19 reproduced from your original report
20 Table Three which is both tables are
21 looking at the same measures but you're
22 using the two different datasets, the
23 original and the supplemental?

1 A. No, no. I just want to be very clear I
2 am using the exact same dataset.

3 In fact I did not alter
4 anything in terms of pulling the data
5 into my database to be able to then run
6 the code. So, I just -- to be very
7 clear, that database is the original
8 database that I received last summer
9 maybe.

10 Q. Okay.

11 A. All I have done is reorder the code to be
12 able to do the analysis because I don't
13 have an AIS number to link individuals.
14 And all I did was change the order of my
15 code to eliminate rows that did not have
16 any crimes of moral turpitude to
17 disqualify. So, I did that first in my
18 supplemental.

19 And I did the second alteration
20 in the code which subtracts out the
21 balance due -- subtracts out any
22 post-sentence fees balance due from the
23 grand total. Again upon suggestion.

1 Q. Right. And I understand all of that.

2 A. I just want to be clear that it's the
3 same data, it's just processing it
4 slightly different to get to that 135,
5 136,000 people.

6 Q. Right.

7 A. To qualifying 911.

8 Q. I'm just trying to ask you Table One and
9 Table Three, they're the same table but
10 the numbers are different because one is
11 based on your original analysis and one
12 is based on the supplemental report
13 analysis?

14 A. Yes. I think that's a fair way to say
15 that.

16 Q. Okay. In paragraph --

17 A. It's the same -- again to clarify, it's
18 the same underlying data. The code to
19 bring it in to be able to calculate these
20 things is slightly different as I have
21 already described.

22 Q. Well, and all I'm really trying to ask
23 you is that the rows are the same and the

1 columns are the same but the actual data
2 showing the results vary because one is
3 your original analysis and one is your
4 supplemental analysis?

5 A. They should be the same in terms of the
6 structure. The total amounts are going
7 to be different because of the two steps,
8 one eliminating any non-disqualifying;
9 and two, by taking the subtraction of any
10 post-sentence fees that might be there,
11 correct.

12 Q. Okay. Yeah, I think we're on the same
13 page.

14 A. Okay.

15 Q. In paragraph 12, you say that
16 22.4 percent of all individuals,
17 including those who owe zero, owe up to
18 \$5,000.

19 Is the word "not" missing from
20 that sentence?

21 A. There could be a missing "not." Let me
22 read it carefully. Sorry.

23 Q. Thank you.

1 A. So, we're in paragraph 12?

2 Q. Yes. And what I am looking at is 30
3 percent of people owe zero. So, I
4 couldn't possibly add something to that
5 and get 22.4.

6 MS. LANG: I think it

7 might be -- well --

8 A. So, if there's a subtraction -- I see
9 exactly what I'm doing here.

10 So, again an inartful way of
11 trying to be true to what I did in the
12 first report. I think there is a better
13 way of talking about the \$0.

14 So, it -- the way that
15 paragraph 12 is constructed it is
16 thinking about the total, black and
17 white, of 136,490 individuals. And what
18 I am saying is that including in that are
19 the 40,912 who owe \$0.

20 Again it's not a graceful way
21 of saying it, but I wanted to be able to
22 say that that 1.9 percent represents the
23 2,563 individuals who owe up to \$100.

1 That 1.9 percent is inclusive of the
2 30 percent who owe zero. Does that make
3 sense? Again it's an ugly --

4 Q. Yeah, I don't --

5 A. If I could do it differently, I would
6 have written it a little different. And
7 I think I do later on.

8 But I want to be very clear
9 that that 1.9 percent is inclusive of the
10 30 percent of the total population that
11 owes nothing.

12 Q. How -- how is 1.9 inclusive of 30?

13 A. So --

14 MS. LANG: Can I clarify
15 my understanding as I tried to
16 follow all of this.

17 My understanding is that
18 including those who owed \$0
19 is modifying all individuals.
20 So, to make clear that when
21 we are talking about all
22 individuals, we are including
23 in the denominator those who

1 owe zero.

2 MS. MESSICK: Okay.

3 A. So -- yeah. Again it's not a graceful
4 way of saying it but I wanted to be clear
5 that the 1.9 percent includes the 40,912
6 individuals who owe nothing when thinking
7 about that 100 percent total.

8 I could have run this table
9 differently. And I actually do make some
10 references if I eliminated that top row
11 of those who owe zero. But I wanted to
12 be very transparent and say that
13 30 percent of the total with this new
14 methodology owes zero and 70 percent owes
15 something. That if we actually wanted to
16 talk about how much you owe, not
17 including zero, then we would subtract
18 the 40,912 from the 136,490.

19 Q. So, it look -- isn't it true that if you
20 look at the total percentage column in
21 Table One that 52.4 percent of felons who
22 have a disenfranchising felony conviction
23 owe less than \$5,000.

1 That's the people who owe zero,
2 the people who owe up to 100, up to 250,
3 up to 500, up to 1,000?

4 A. I didn't hear your number. Did you say
5 50 or 60?

6 Q. Actually -- hold on one second. I think
7 --

8 A. Because I think I understand what you're
9 saying.

10 Q. Yeah, I think it's --

11 A. And then we just add those percentages.

12 Q. Yeah. I think it's actually 52.4 percent
13 of the total felons who owe money owe
14 less than \$1,000, correct?

15 MS. LANG: Objection.

16 Form. Are you talking about
17 people who owe money or all
18 people?

19 MS. MESSICK: I am talking
20 about -- I am going to include
21 the zeros, the people who --
22 the felons who do not owe money
23 are felons who are not

1 disenfranchised by the money
2 requirement.

3 MS. LANG: I agree. The
4 form of your question was of
5 people who owe money.

6 MS. MESSICK: Okay.

7 BY MS. MESSICK:

8 Q. Of the people who have felony convictions
9 for felonies of moral turpitude who are
10 included in Table One, 52.4 percent owe
11 between nothing and one cent less than
12 \$1,000; is that correct?

13 A. That is correct. That is a good way to
14 interpret this table, correct.

15 Q. Okay. And then paragraph 15 has another
16 sentence like the one in 12, and it's
17 that last sentence where I thought
18 perhaps a "not" was missing.

19 So, is paragraph -- the last
20 sentence of paragraph 15 where it refers
21 to 15.5 percent, is that sentence
22 structured in the same way that we just
23 talked about for page 12 -- paragraph 12?

1 A. Let me read it quickly and make sure.

2 Q. Absolutely.

3 A. Okay.

4 (Brief pause.)

5 A. Yeah. I'm missing a decimal point.

6 I think it would be easier to
7 just to go over Table Three and do the
8 exact same thing. I'm having a hard time
9 shifting up and down. I see that I
10 missed a decimal point in the
11 11.5 percent.

12 Q. Actually isn't -- the 115 percent is what
13 you're looking at, correct?

14 A. It should be -- yeah, yeah.

15 Q. And that should actually be a 1.1?

16 A. 1.5. Yeah, 1. -- it should be
17 1.1 percent I guess. Yeah. Sorry.
18 Scrivener's error. The table is correct.

19 Q. Okay. And so --

20 A. And the table should represent exactly
21 the table that I am sure I cut and pasted
22 it.

23 Q. Okay.

1 A. In my original report.

2 Q. And so, then in the last sentence of
3 paragraph 15 where you say 15.5 percent
4 of all individuals, including those who
5 owe 100 -- I'm sorry, owes nothing, owe
6 up to \$5,000. And so, my question --

7 A. And I --

8 Q. That including those who owe nothing,
9 that's what Danielle was explaining about
10 the modification of the group of total
11 felons that you are looking at. Because
12 we have 26.7 percent --

13 A. Yeah.

14 Q. -- of felons who owe nothing.

15 So, paragraph 15 is a lot like
16 paragraph 12, just looking at the
17 different tables, correct?

18 A. I am afraid I may have made a mistake in
19 terms of that. I -- I want to be very
20 clear here and it shouldn't be difficult
21 to amend paragraph 15 by --

22 Q. Well, is 15 --

23 A. Figures are wrong.

1 Q. 15.5 percent, is that 1.5 percent for
2 those who owe something but up to \$100,
3 plus 1.1 percent for those who then owe
4 up to 250, plus 4.4 percent for those who
5 owe up to 500, plus 8.5 percent for those
6 who owe up to 1,000. That is what the
7 15.5 percent represents, correct?

8 A. That's correct. And --

9 Q. So, if I wanted to look at how many owe
10 one cent less than a thousand all the way
11 down to nothing, I would actually add
12 that 15.5 percent to the 26.7 who owe
13 nothing. And in this table, it would be
14 42.2 percent of people who owe less than
15 \$1,000?

16 A. Yeah, I think that is correct.

17 Again I will just say that the
18 table is correct, and it is easy to
19 calculate what you just said by going
20 down the column of the total percent
21 which is the second column of data.

22 Q. Okay. Well, and I -- I do think that in
23 paragraph 15 you were just doing the same

1 as in 12 and I was just -- but okay.

2 A. Okay.

3 Q. Let's move on.

4 So, looking -- comparing Table
5 One in your supplemental report to Table
6 Three from your original report, don't we
7 have about a 5-percentage point drop in
8 how many felons with a disenfranchising
9 felony owe more than \$10,000?

10 A. Yes. I think that's a really good point.
11 And it's I think reflective of doing what
12 Chair Gwathney suggests that I do and
13 that is to eliminate the -- any type of
14 balance due from the post-sentence fees.

15 I -- I think it's pretty clear
16 that that's what's going on, that the
17 post-sentence fees for some individuals
18 -- not -- not that many but some
19 individuals was bumping up that high-end
20 sum out.

21 And so, by eliminating those
22 post-sentence fees, which I did not do in
23 the first report -- again I was under the

1 assumption that I should use the grand
2 total due. But I'm happy to amend my
3 report with this alternate methodology.
4 That is where the big change is happening
5 and you can see that by the drop of the
6 5-percentage point total of more than
7 10,000 that is due.

8 Q. Okay. And related to that, in paragraph
9 16 of your supplemental report, you say
10 that your new calculations following the
11 logic of Chair Gwathney actually results
12 in a higher rate of individuals owing
13 monies up to \$5,000. And isn't it that
14 what has happened is that people have
15 dropped from higher categories to lower
16 categories, correct?

17 A. That is exactly what is happening.

18 Q. Okay. The sentence after that that
19 starts "further more," can you -- can you
20 tell me what you're saying there?

21 A. Right. So, this is --

22 MS. LANG: Object to the
23 form.

1 A. What I am saying in paragraph 16,
2 "further more"?

3 Q. Right. I am trying to just understand
4 your point with that sentence.

5 A. Yeah. So, here I am trying to look at
6 Table Three in my original report and say
7 what if we eliminated those who owed
8 nothing, right? So, this would be a
9 different denominator. The denominator
10 would be 135,579 minus 36,215.

11 So, the universe that we would
12 be calculating from eliminates those who
13 owe zero. And what I am trying to do
14 there is say what is the fraction, what
15 is the percent of individuals who owe in
16 these different categories if we
17 eliminated those who owed zero.

18 Q. And since you've gotten rid of 30,000 or
19 40,000 people, your denominator has
20 gotten smaller and your percentages would
21 go up, right?

22 A. That's -- that's absolutely correct.

23 Q. Okay.

1 A. For those remaining categories.

2 I think it's just a different
3 way to think about it. I am agnostic as
4 to what is the best way to present. I
5 try to be as transparent as possible and
6 want to be able to make an overall
7 statement of what percentage owe zero out
8 of all of those who have disenfranchising
9 felony convictions.

10 As a result I include the
11 number of individuals in both Table One
12 and Table Three that owe zero. And as a
13 result it changes the way we think about
14 those who actually owe money.

15 Q. Well, and I appreciate it. It's been
16 very helpful to me to confirm that I
17 understand your report.

18 Now, this entire analysis that
19 we've been talking about here with the
20 court-ordered monies and the AOC
21 database, you have been focusing solely
22 on balances due, correct?

23 A. Yes.

1 Q. Okay. So, you -- do you know if whites
2 or blacks are more likely to have
3 court-ordered monies imposed at the time
4 of sentencing?

5 A. I don't know that. I wasn't asked to
6 look at that by Counsel.

7 MS. MESSICK: Could we
8 take just a five-minute break?

9 MS. LANG: Yes.

10 (At which time, a brief
11 recess was held.)

12 MS. MESSICK: We are back
13 on the record. I do not have
14 any further questions. I
15 appreciate your time today.

16 MS. LANG: I have a few
17 but not many, so I think we can
18 probably just go straight
19 through.

20 CROSS-EXAMINATION

21 BY MS. LANG:

22 Q. Thank you, Doctor.

23 At the very beginning of this

1 deposition you were asked about how many
2 hours did you work on your April 2020
3 report, and I think you said somewhere in
4 the range of 30 to 40 hours; is that
5 right, more or less?

6 A. It's difficult to remember because I did
7 a lot of the data processing last year
8 and then worked very hard on --

9 Q. Sure.

10 A. It was a lot of information. So, it
11 could be more than that certainly in
12 terms of the number of hours of data
13 processing and writing. I think I was
14 thinking about the writing process.

15 Q. Okay. That was exactly my question.

16 Was that 30 to 40 hours an
17 estimate of the actual writing of the
18 Gwathney --

19 A. Yes.

20 Q. -- Gwathney --

21 A. Yes.

22 Q. -- original report?

23 A. That's --

1 Q. And it does not necessarily include all
2 of the --

3 MS. MESSICK: Hold up.

4 Hold up. You are breaking up a
5 lot, a lot.

6 Let's go off the record
7 for one second.

8 (Off-the-record discussion
9 was held.)

10 MS. LANG: Okay. When I
11 was just objecting, it wasn't
12 really necessary but for
13 questioning it is. So, thank
14 you.

15 BY MS. LANG:

16 Q. The question I was going to ask you, Dr.
17 Smith, is whether or not your estimate
18 was only focused on the writing of your
19 report this year and not necessarily all
20 of the time that you spent over the years
21 getting acquainted with or doing the
22 analysis of the data?

23 A. Yes. My apologies. That 30 to 40 hours

1 was the amount of time it took to write
2 up my April report. I probably easily
3 matched that many hours, maybe even
4 doubled that many hours in terms of the
5 data analysis or the multiple data that I
6 have had to process and that I've had to
7 update as new data came in.

8 So, I have to apologize. I'm
9 not trying to be misleading. I was
10 thinking about the actual writing up.

11 Q. Thanks. I want to look at your initial
12 --

13 MS. LANG: I'm so sorry.

14 I'm so use to using my
15 computer. I am going to put my
16 mouse away.

17 Q. I want to look at your initial report,
18 Table One. So, that is on page 22.

19 A. Yes.

20 Q. And we talked about how this final column
21 doesn't add up to close to 100 percent
22 the way the other columns do; is that
23 right?

1 A. That's correct.

2 Q. So, I want to ask you what that means
3 when we compare our cross rows.

4 So, for example, if I am
5 looking at 51.5 percent of African
6 Americans, or black persons, and the
7 51.5 percent of the people in the
8 pre-implementation row are black and only
9 37.2 percent are black in the fourth row,
10 isn't it true that that's a bit of an
11 apples and oranges comparison because
12 it's clear that something in the racial
13 categorization data has changed between
14 those two rows?

15 MS. MESSICK: Object to
16 the form.

17 A. Yes, that is true. I was trying to
18 convey that in terms of why the totals
19 didn't get 100.

20 But clearly, you know, I am
21 looking at just black and white in the
22 tables and the number of non-black and
23 non-white has increased in the State's

1 coding scheme post H.B. 282
2 implementation.

3 Q. Exactly. And so, my point is that there
4 is about 20 percent or so for whom we do
5 not know the rate in that final column;
6 is that correct?

7 A. That's correct.

8 Q. And so, for example --

9 A. And that is -- that is -- again, that is
10 a result of the State's administrative
11 data.

12 Q. Exactly. And so, when comparing across
13 -- horizontally across the road, we would
14 have to be cautious in what we read into
15 that final column as compared to the
16 prior columns; is that correct?

17 A. Yes. That's absolutely correct.

18 Q. Because for example -- and I am not
19 suggesting that this is the case.

20 But if close to all of the
21 20 percent that are missing would have
22 previously been coded as black because of
23 mixed race or something, it would

1 actually mean that that percentage would
2 be higher than the prior column. We just
3 don't know; isn't that right?

4 A. That is correct. We do not know in terms
5 of that change in coding scheme.

6 Q. Exactly. At one point you were asked
7 whether or not you had broken out the
8 racial data as to each particular felony
9 conviction in H.B. 282. Do you recall
10 being asked about that?

11 A. I don't recall -- I don't recall breaking
12 --

13 Q. You were asked about --

14 A. -- out the racial -- I remember something
15 about breaking out different types of
16 crimes. But -- sorry.

17 Q. Yeah. And your testimony was just that
18 you didn't put the data about the
19 specific information for each felony
20 conviction but that the AOC data would
21 permit one to do that; is that correct?

22 A. Yes.

23 Q. All of the data to look at -- at the

1 individual criminal level -- at the
2 individual crime level is available, you
3 just didn't present that particular set
4 visually in your report; is that right?

5 A. That's correct.

6 Q. Okay. I would like to go to page -- to
7 paragraph 69. We talked about --
8 Ms. Messick talked about this with you
9 for some time. And I at least got a
10 little lost. It's possible that you both
11 were following each other and that I
12 wasn't. But just in case I looked back
13 and I think I understand it, and I want
14 to make sure we are all on the same page.

15 So, I am looking at the
16 paragraph 69 to 71.

17 A. Okay.

18 Q. And you say here that there were 9,081
19 registrants who both had a status code of
20 "N," meaning not eligible and a
21 registrant reason of CRM; is that right?

22 A. Yeah. So, I was conditioning on the "N"
23 code to include that CRM registrant

1 reason.

2 Q. Right. And in paragraph 70, you talk
3 about the 3,468 black individuals with a
4 registration date during the pre-period
5 who have a registrant status of not
6 eligible -- or in that first half of that
7 sentence; is that correct?

8 A. Correct. That is correct.

9 Q. And then you say only 79.7 percent of
10 that group had a registrant code of CRM;
11 is that right?

12 A. That's correct.

13 Q. So, if I wanted to know how many people
14 had both been not eligible and had a
15 registrant code of CRM, I would have to
16 multiply 3,468 black individuals by .797;
17 is that right?

18 A. That's correct.

19 Q. Okay. And the remainder of the sentences
20 in 70 and 71 have the same structure
21 where you start with the total number of
22 not eligible and then what percentage are
23 CRM; is that right?

1 A. Yes. That's absolutely correct.

2 Q. So, if you were to add just the raw
3 numbers in 70 and 71, they would add up
4 to more than the 9,081 registrant because
5 that number is both not eligible and
6 having a registrant reason of CRM while
7 the raw numbers in 70 and 71 are all
8 people who had a not eligible status; is
9 that correct?

10 A. That is correct.

11 MS. MESSICK: Object.

12 Q. Okay. And if you look at 74 and 75, you
13 use a similar structure there where you
14 talk about the total number of black
15 individuals who are disqualified and then
16 you talk about the percentage of those
17 individuals with the CRM code; is that
18 correct?

19 A. Yes. Again I condition in this paragraph
20 with CRM registrant reason.

21 Q. So, none of these raw numbers as
22 presented in these paragraphs --

23 MS. LANG: Strike that. I

1 think that's clear.

2 Q. My last question is: Ms. Messick asked
3 you some questions about how you went
4 about trying to eliminate crimes and fees
5 in your supplemental report that were
6 related to non-disqualifying felonies,
7 right?

8 A. Yes.

9 Q. And in order to do that one of the steps
10 you took was to remove all rows where
11 there was no disqualifying felony; is
12 that correct?

13 A. That is correct.

14 Q. Now, it is true that there would be --
15 within the rows that remain, there could
16 be a mixture of both disqualifying
17 felonies and non-disqualifying felonies;
18 is that correct?

19 A. Yes. And I was not terribly clear at the
20 first go of this with her, yes.

21 Q. Okay. Was there any way for you to be
22 able to -- within a single row, is there
23 any way within the AOC data to

1 desegregate between the LFOs that apply
2 to the disqualifying felony in the row
3 and the LFOs that apply to the
4 non-disqualifying felony in the row?

5 A. No, unfortunately not. They are
6 aggregated together in both the grand
7 total of restitution owed -- ordered and
8 owed as well as the post-sentence fees
9 ordered and balance due.

10 Q. So, it's not that you failed to
11 desegregate the data but that the data
12 itself was not desegregated; is that
13 right, that you -- that AOC provided?

14 A. That's correct.

15 And I can probably add that on
16 the wish list that Ms. Messick had asked
17 me to start off, off the top of my head,
18 data that would desegregate based on the
19 crime committed and convicted of those
20 LFOs ordered and paid, but the structure
21 of the data did not include that.

22 Q. You're not aware of any data that we
23 could have gotten that would have done

1 that, are you?

2 A. No. I don't know of -- I don't know of
3 that data.

4 Q. Yeah. So, there is no -- of the wish
5 list that Ms. Messick asked you for,
6 there is not something that is plainly
7 available that you know about that wasn't
8 available to you? It's rather kind of
9 you were identifying data that maybe
10 could exist in the world that would be
11 useful ideally; is that right?

12 A. No. Yeah, that's what wish lists
13 generally are, things that one can't
14 obtain or wishes they could obtain to be
15 able to answer questions. So, I am
16 limited by the data that exists and that
17 was provided.

18 MS. LANG: I don't have
19 any further questions.

20 MS. MESSICK: We don't
21 either. Thank you for your
22 time today, Dr. Smith.

23 MS. LANG: Thank you.

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THE WITNESS: Thank you
all.
MS. LANG: All right.
Bye.

(Hearing concluded at
approximately 4:20 p.m.)

* * * * *

REPORTER'S CERTIFICATE

STATE OF ALABAMA)

CHILTON COUNTY)

I, Wendy Kendrick, Certified Court Reporter and Notary Public in and for the State of Alabama at Large, do hereby certify on Thursday, July 16, 2020, I reported the virtual videoconference deposition of **DANIEL SMITH, Ph.D**, who was first duly sworn by me to speak the truth, the whole truth, and nothing but the truth, in the matter of TREVA THOMPSON, ET AL., Plaintiff, versus JOHN H. MERRILL, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE, ET AL., Defendant, Civil Action No. 2:16-cv-783-ECM-SMD, now pending in the United States District Court for the Middle District, Northern Division of Alabama; that the foregoing colloquies, statements, questions and answers thereto were reduced to 177 typewritten pages under my direction and supervision; that the deposition is a true and accurate transcription of the testimony/evidence of the examination of said

1 witness by counsel for the parties set out herein.

2 I further certify that I am neither of
3 relative, employee, attorney or counsel of any of
4 the parties, nor am I a relative or employee of such
5 attorney or counsel, nor am I financially interested
6 in the results thereof. All rates charged are usual
7 and customary.

8 This the 27th day of July, 2020.

9
10
11
12 15/Wendy Kendrick
13 Wendy Kendrick
14 ACCR NO. 444 Exp: 9/30/20
15 Certified Court Reporter and
16 Notary Public
17 Commission expires: 2/20/24
18

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E R R A T A S H E E T

I, **DANIEL A. SMITH, Ph.D**, the witness herein, have read the transcript of my testimony and the same is true and correct, to the best of my knowledge, with the exception of the following changes noted below, if any:

Page / Line /	Change	/ Reason
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DANIEL A. SMITH, Ph.D

Sworn to and subscribed before me,
this the ____ day of _____, 2020.

Notary Public

My commission expires:_____

DR. SMITH: [2] 8/6 9/17 MS. LANG: [75] 7/8 8/12 8/15 15/14 16/18 19/15 20/3 33/21 35/6 36/6 45/21 51/7 60/4 61/1 61/23 67/3 68/14 70/1 70/21 71/10 72/7 73/14 74/15 75/1 77/8 81/19 82/9 83/8 88/5 91/16 97/14 97/20 98/8 102/10 102/13 102/17 102/23 103/3 103/12 103/20 104/18 105/15 105/18 109/13 113/9 114/9 114/16 116/9 119/11 121/6 121/20 122/9 123/2 125/15 125/23 126/5 126/19 134/19 136/7 137/5 151/20 151/23 158/6 159/14 161/15 162/3 167/22 170/9 170/16 172/10 173/13 179/23 182/18 182/23 183/3 MS. MESSICK: [47] 6/11 7/10 8/14 8/20 9/2 11/23 15/9 15/19 19/20 20/15 33/18 34/3 36/3 45/5 71/7 74/20 80/6 81/4 89/15 97/17 98/18 102/15 102/18 103/15 103/18 105/13 105/17 114/19 119/14 122/16 123/8 126/11 127/5 137/13 138/1 144/8 149/5 149/8 160/2 161/19 162/6 170/7 170/12 172/3 174/15 179/11 182/20 THE COURT REPORTER: [3] 79/20 80/10 81/2 THE THE COURT REPORTER: [4] 9/6 9/10 9/18 25/5 THE WITNESS: [4] 80/22 136/10 137/12 183/1	125/12 10,000 [1] 167/7 100 [5] 82/2 160/7 161/2 164/5 174/19 100 percent [10] 100/14 100/22 101/1 101/16 104/8 104/9 104/11 107/19 108/3 173/21 10:00 [1] 1/22 11 [7] 22/12 24/14 77/1 79/7 125/5 125/11 154/16 11.5 percent [1] 163/11 115 percent [1] 163/12 11th [1] 14/15 12 [10] 77/16 78/5 157/15 158/1 158/15 162/16 162/23 162/23 164/16 166/1 125 [3] 17/14 17/19 17/19 12th [1] 35/16 13 [4] 40/19 78/20 81/6 81/15 130,000 [1] 154/10 135 [1] 156/4 135,579 [4] 95/11 95/14 99/23 168/10 136,000 [1] 156/5 136,490 [2] 158/17 160/18 14 [5] 76/23 82/18 86/13 114/20 115/6 1400 [1] 2/11 1411 [1] 2/11 15 [19] 28/22 32/4 32/10 81/1 82/2 82/18 82/19 113/19 114/12 115/13 117/12 117/23 162/15 162/20 164/3 164/15 164/21 164/22 165/23 15.5 percent [5] 162/21 164/3 165/1 165/7 165/12 16 [7] 1/23 78/12 81/15 84/1 167/9 168/1 184/9 17 [3] 11/17 86/10 86/13 177 [1] 184/20 18 [3] 82/17 86/10 86/17 19 [3] 40/19 89/19 101/19 1983 [1] 37/14	184/9 185/8 185/19 186/18 21 [1] 93/24 22 [3] 95/1 127/16 173/18 22,365 [1] 44/10 22.4 [1] 158/5 22.4 percent [1] 157/16 23 [6] 47/21 48/9 136/19 136/20 138/22 138/23 23,316 [1] 44/16 23-month [8] 131/18 131/22 132/1 133/7 133/11 134/13 136/2 139/5 24 [10] 71/16 72/3 89/20 91/3 125/18 127/4 127/6 127/21 129/7 185/15 24th [1] 17/2 250 [2] 161/2 165/4 26 [2] 93/22 99/8 26 percent [1] 100/7 26.2 [1] 127/11 26.2 percent [2] 126/2 127/19 26.7 [1] 165/12 26.7 percent [1] 164/12 27.3 percent [1] 127/23 270,000 [1] 88/12 27th [1] 185/8 28 [2] 95/8 95/12 282 [26] 46/23 48/1 48/10 49/3 49/4 64/3 64/12 64/17 64/22 65/3 66/11 67/7 68/22 70/16 71/5 72/11 72/22 94/13 96/2 99/18 116/6 117/10 131/20 140/15 175/1 176/9 282's [1] 97/7 29 [3] 95/23 96/23 97/23 29,513 [1] 135/21 29,547 [1] 136/3 2:16-cv-783-ECM-SMD [2] 1/7 184/16
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